

~~shabhom jew dawk li jkunu maghhom isegwu l-ezempju taghhom. Rakkomandazzjoni din li l-awtur qabel imsemmi jesprimi b'dawn il-kliem:~~

~~"We should all learn to rely as little on drugs as possible; stop taking tranquillisers or pep pills when we are merely worried about something that any normal person would worry about, or because we are just fed-up... Modern drugs are potent and effective; they are a dagger to destroy the enemy of disease, but like a dagger, those who play about with them incompetently and unnecessarily are liable to get badly hurt."~~

SHORT-TERM TREATMENT OF ADULT OFFENDERS*

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INTRODUCTION

A study of the short-term treatment of offenders must inevitably be based on recent developments in the field of social controls in general and penal policy in particular in developed communities. Hence one must consider:

(a) the imprisonment crisis — many countries now tend to replace long sentences by medium or short sentences, and to develop methods which simply restrict liberty or are outright alternatives for imprisonment. This decrease in prison sentences seems to show that there is a new trend towards a more social rather than merely penal treatment of offenders. And this is consistent with a desire to avoid, as far as possible, stigmatising the individual with imprisonment which may constitute a serious obstacle to his social rehabilitation and may even become a factor in 'secondary deviation';

(b) the difficulty of imposing imprisonment in view of both the increase in the number of offenders and the improvement in treatment standards, and the fact that imprisonment is less easily tolerated by those subjected to it than in the last century;

(c) particularly in advanced societies, social attitudes towards

offenders might undergo a change. Indeed it is already possible that in the future the treatment of offenders will be considered more and more as an aspect of social management rather than a simple matter of adjusting penalties.

THE CONCEPT

One must distinguish between 'closed' treatment in prisons (institutional treatment) and 'open' treatment on probation (non-institutional treatment OR treatment at liberty). A third and less familiar heading which provides a halfway house between 'closed' and 'open' treatment has been proposed and may be referred to as 'intermediate treatment' (vide infra).

Short-term imprisonment has for several decades been a major concern for penal administrators and criminologists due to the fact that this form of punishment has all the drawbacks of imprisonment without providing for the offender to be observed and treated with a view to his social rehabilitation. This objective is regarded as ESSENTIAL under modern penal legislation.

Recommendations by various local and international gatherings have led to certain reforms of legislation and practice aimed more especially at restricting the imposing of short-term imprisonment in favour of treatment measures without, however, producing wholly satisfactory solutions.

In view of a prevalent international practice, short-term imprisonment consists of sentences of six months or less. This criterion is not, of course, applicable to short-term treatment at liberty which, in principle, necessitates longer periods. A probation period of one year can thus be regarded as short term treatment at liberty as the probation period is usually two to three years. It may here be opportune to point out, that under the legislation of some States of the USA, the probation period must correspond to the length of the prison sentence prescribed for the offence concerned and may consequently be no more than a few months.

HOW EFFECTIVE SHORT-TERM TREATMENT?

It is difficult to assess the generic effectiveness of short-term treatment. Moreover, up to now no research seems to have established that the efficacy of a given kind of treatment is linked essentially with its duration.

The methodological and practical difficulties impeding research on the effectiveness of treatment – definition of the 'success' criteria of a penal method, preparation of a sample valid for re-

search, etc. — are severely emphasised by experts. Here have to be considered a great variety of forms of treatment, with different duration, in dissimilar institutions, with staffs and groups of delinquents of different kinds. Nor would such analysis be simple if restricted to a certain group of offenders for their psychological and social traits and criminal antecedents would vary widely (as witness the Resocialisation Experiment with Short-Term Offenders carried out by Mrs. K. Bernsten and Professor K.O. Christiansen in Denmark). It is indeed usual to measure the effect and the success of a given regime of treatment by reference to the recidivism of the treated offender. But this recidivism is not unequivocal because its nature and gravity within the various periods may vary without being able to consider the treatment as a failure. Though one is bound to conclude with Scarpitti/Stephenson and with Field that 'in the last analysis, the crucial test of programme effectiveness is recidivism, despite its many shortcomings'.

Research programmes carried out so far have produced rather fragmentary results and therefore have given no scientific evaluation of the effectiveness of short-term treatment. In fact, both short-term imprisonment and alternative measures leave many questions unanswered, and there is ample scope for penological and criminological research.

CURRENT TRENDS IN LEGISLATION AND PRACTICE

All governments emphasise the difficulties of arranging penal treatment during short-term imprisonment, though some consider such treatment feasible and useful in certain cases.

The draw-backs inherent in short-term imprisonment seem in a number of European countries to be aggravated by the large number of sentences of this kind imposed, making it difficult to arrange a satisfactory penitentiary regime. Thus, in January 1970, of the total number of inmates in Danish and Dutch prisons, 83% and 84.9% respectively were serving sentences of six months or less, the lowest percentage for the same period being that registered by France, namely 10%.

For such short-term prisoners, little constructive training is possible, but imprisonment has its full disrupting effect on the offender's employment and family. Where an offender's first prison sentence is a short one, there is the added disadvantage that he becomes familiar with prison, losing his fear of the unknown. These considerations led the second United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in 1960, to

urge a reduction in the use of short sentences, especially for trivial offences. The Congress suggested an extended use of probation, fines, 'extramural labour', 'suspended sentences', and 'other measures that do not involve the deprivation of liberty'.

On the legislative plane, there is definitely a trend towards limiting to a minimum the application of short-term prison sentences.

French legislation has favoured the system of *semi-liberty*. This is an intermediate stage between imprisonment and liberty for long-sentence prisoners, and is also a means of enforcing short prison sentences. Semi-liberty offers many advantages in the latter case, particularly because it avoids the drawbacks inherent in short terms of imprisonment.

A semi-free offender can keep his job, which means that he avoids the latent unemployment in prisons, is able to continue to support his family and may even be able to make such payments to his victim as are specified in his sentence.

Secondly, the semi-liberty system enables an offender to be kept out of continuous contact with other offenders and so removes (or at least reduces) the risk of desocialisation as a result of imprisonment.

Finally, although a semi-free offender enjoys a fairly large measure of freedom, he is nevertheless subjected to supervision and social guidance.

This form of treatment, first provided for in the 1958 Code of Criminal Procedure, has been further developed since 1970. As a result of an Act of 17 July 1970, whenever a court passes a prison sentence of six months or less, it may decide that the sentence should be served under the semi-liberty system provided the offender can show evidence of having a job or attending a course of education or vocational training or submits to medical treatment.

The semi-liberty system enables an offender to take part in the above-mentioned activities outside prison, without continuous supervision. He is required to return to prison each day at the end of the period needed for the activity and to remain there on days when, for whatever reason, the activity does not take place. If a semi-free offender misbehaves or fails to comply with the obligations imposed by the court, his semi-liberty can be withdrawn by the court of his place of detention on a recommendation from the judge responsible for the enforcement of sentences.

Besides the semi-liberty system, the prison authorities and enforcement judges may grant a *leave* for specific purposes. This is

authorisation to leave the prison for a limited period, which is deductible from a prisoner's sentence.

In the United Kingdom, the introduction of suspended sentences in 1968 has made it possible to suspend execution of sentences of six months or less in certain cases.

The trend away from short terms of imprisonment towards sentences restricting liberty or even involving no deprivation of liberty is born out in *judicial and administrative practice*.

In Belgium, week-end detention and semi-detention came about as a result of administrative circulars, while in France, a circular of 26 December 1968 recommending judges to apply the system of semi-liberty from the start of sentence was the origin, in this respect, of the Act of 17 July 1970.

To sum up, the attempt by legislators and the penal administration to avoid short terms of imprisonment is motivated by the large number of such sentences and the difficulty for the penal system of executing them, as well as scepticism regarding all efforts to organise treatment of an offender within such a framework. However, certain States, including the Scandinavian countries, seem to be less pessimistic than others with regard to the drawbacks of short-term imprisonment (especially when this measure substitutes long-term deprivation of liberty in respect of some categories of offenders.)

POSSIBLE FUTURE TRENDS IN SHORT-TERM TREATMENT

1. Institutional Treatment

Short prison sentences in the traditional form of continuous detention could be used constructively to detect the offender's personality and to choose a suitable treatment programme.

(a) Detection of the offender's personality.

Although many States have provisions for pre-sentence enquiries, these do not yet affect the majority of people sentenced to short terms of imprisonment, and consequently when they enter prison only very scanty information exists as their identity, past record, the offence committed, etc. In almost all cases no further investigation is made into the character of the convicted person during imprisonment, since such enquiries seem unnecessary in view of the relatively short sentence. As a result, the requirements for carrying out any programme of treatment are missing from the start.

A detection process is to be considered important since its results can be used for applying a programme of treatment if the

sentence is sufficiently long. But it could also be considered invaluable for:

(i) *arranging after-care* designed to limit to a minimum the danger of recidivism by the offender; and

(ii) *the treatment of the offender in case of a new sentence.*

Detection is meant to establish the difficulties in the convicted person's relationship with society and to facilitate the drawing up of individual or group treatment programmes. During the detection process, moreover, special efforts should be made to establish the offender's attitude towards himself and his offence and to make sure that he will co-operate actively in his own treatment.

(b) Treatment.

Short-term imprisonment is regarded as inhibiting, but the upheaval it causes in the offender's social, family and working life is so great that he may become anti-social. The stigma attaching to imprisonment is an additional obstacle to his social rehabilitation. Furthermore, there are major difficulties in the way of the organisation and application of a treatment programme, including the briefness of the imprisonment which is sufficiently long for reconstructing the offender's personality or even for complete vocational training, the wide variety of offenders sentenced to a short term of imprisonment (first offenders or even recidivists), and the large number of offenders serving a short-term sentence.

While appreciating these difficulties, the opportunities afforded by short-term institutional treatment were carefully examined by the Sub-Committee set up by the European Committee on Crime Problems to study the problems involved in the short-term treatment of adult offenders, and the following conclusions were reached:

'- In principle, there is no difficulty in implementing programmes of treatment during short terms of imprisonment. However, these programmes must be defined in different terms from those employed hitherto, which have been geared to long-sentence and time-tabling requirements as much as to the treatment.

'- A multi-purpose treatment geared to the length of the prison sentence needs to be studied in relation to the aims of short-term imprisonment and the personalities of the offenders to whom it is to be applied. However, there are great discrepancies in this respect between the courts and bodies providing treatment.

'- In view of a trend towards fewer short prison sentences in

some States, one is led to conclude that offenders sentenced to imprisonment are those who incline towards persistent delinquency, have committed an offence particularly frowned on by society or are considered unsuitable for treatment at liberty. In other words, institutional treatment should be regarded as one of a differentiated range of penalties available to the courts, to which it may be necessary to resort, in the case of certain offenders representing a danger to society, for a limited period and in material conditions resembling those of the community at large.'

However, in view of the difficulties of providing institutional treatment for short-term prisoners, the European Committee on Crime Problems has recommended the limitation to a minimum of prison sentences for authors of minor offences or for individuals considered to be not very dangerous to society. For such offenders, the various forms of treatment without deprivation of liberty or, at most, entailing only a restriction of liberty, have been judged preferable.

2. Non-Institutional Treatment

The various forms of treatment at liberty (probation and similar measures) as well as suspended sentences are an important alternative to short-term imprisonment, and formed the subject of Resolution (65) 1 of the Committee of Ministers of the Council of Europe whereby it was recommended to Member States of the Council of Europe to provide for certain forms of treatment at liberty for various offenders.

Emphasis is now being made on the intensity of treatment at liberty, thereby justifying a reduction in its length. It thus generally implies fewer offenders being placed under one probation officer's care and possibly an attempt being made to relate the character of the officer to that of the offenders. Furthermore, the active participation of the community in general and of the offender himself in such treatment are aspects which are receiving greater attention in certain States.

In the United States, the aim of the research carried out by the Special Intensive Parole Unit since 1953 and the Community Treatment Programme applied by the California Youth Authority since 1961, is to explore the possibilities of giving offenders intensive treatment within – and with the assistance of – the community. According to the reports of the officials of the Community Treatment Programme, that Programme has led to a drop in the rate of recidivism and an improvement in the results of psychological

tests undergone by young offenders who benefited by it. Other United States authorities have applied similar programmes to minor or adult offenders.

The positive results achieved by these experiments have been highly recommended in governmental reports on crime problems. One nevertheless still fears that such methods are only practicable in a limited number of cases having regard to the characteristic features of criminality in the social group in question.

3. Intermediate Treatment

For offenders judged unsuitable for treatment at liberty, less segregational forms of treatment which endeavour to avoid 'desocialising' the convicted person so that he may more effectively be 'resocialised' should therefore be particularly encouraged.

'Intermediate treatment' measures can be visualised as lying somewhere halfway on a continuum between the two extremes of (a) imprisonment under conditions of total deprivation of liberty, requiring the offender to sleep away from his home, and (b) of serving probation terms which in most cases enables an offender to sleep at home and deprives him of a minimum amount of liberty. These intermediate measures include the following:

(i) *Semi-liberty*: This term covers a number of measures which differ both in origin and in objective but have in common the condition that the offender shall reside at least part of the time at a given place. Semi-liberty may cover:

– *semi-detention*, whereby the offender is deprived of his liberty in the evenings and at night, at week-ends, on public holidays and during his holidays.

– *residence in hostels or half-way houses*. In these establishments, which are smaller than prisons, offenders are not wholly segregated from the community and are given aid by the wardens.

– *work release* under which a prisoner lives and sleeps in a penal institution and goes out daily to normal outside work.

(ii) *Week-end detention*, whereby offenders are deprived of liberty from Saturday afternoon to Monday morning.

(iii) '*Attendance centres*'. These centres were set up in the United Kingdom in 1950 for young offenders; they are also provided for by the Children and Young Persons Act 1969. Offenders are required to attend a centre for a total of 24 hours on alternate Saturday afternoons. Time at the centre is divided between physical training and technical education.

(iv) *Community service.* Offenders are required to perform unpaid work of value to the community in their leisure time.

(v) *Financial penalties.* These penalties may take various forms such as that of 'day-fines' (whose amount is calculated in the light of the gravity of the offence and the offender's disposable income).

(vi) *Various prohibitions, disqualifications, deprivations of rights or positive requirements,* for example, professional disqualifications, withdrawal of driving licences, prohibition to use cheques or other forms of credit, compulsory medical treatment, etc.

The concept of intermediate treatment, though perhaps still new and controversial, might be useful if one recognises possible advantages which have already accrued through its similar use in the juvenile field. However, these measures should not be applied as they are to adult offenders but should first be tried out and adapted to the special conditions and requirements of adult offenders.

These measures, sometimes described as measures restricting liberty and regulated by legal provisions which differ widely from country to country, have a common denominator: they are more than just a variation of deprivation of liberty. However, in view of the lack of suitable facilities and some hesitancy on the part of the administrative authorities, these measures have not yet been fully exploited. Admittedly, such measures may be motivated by a wide variety of factors ranging from the urgent need to empty prisons and to the more lofty aim, in an era of humane and enlightened penal policy, of finding a means of rehabilitating offenders. They are also an indication of some change in the attitude of society to offenders, a change which inevitably will encourage the development of a new system of penal justice.

In view of the considerations outlined above, the Committee of Ministers of the Council of Europe adopted a Resolution 'On the Short-Term Treatment of Adult Offenders' (Resolution (73) 17) on the 13 April 1973 at the 220th meeting of the Ministers' Deputies, recommending the governments of member States:

1. to take all possible steps to limit prison sentences for authors of minor offences or for individuals considered to be not very dangerous to society;
2. to use, in cases where imprisonment is unavoidable, the period of detention as far as possible to make a summary study of the personality and an examination of the environmental cir-

cumstances of the offender, if this has not already been done before imprisonment. The results should be used to throw light on the offender's difficulties in social relationships, and advantage might be taken of them for his treatment, which remains the main purpose of any penal measure, in all cases where treatment is useful and practicable, including after-care;

3. to give consideration to the possibilities offered by probation of a special short-term nature, it being understood that:

– the relative brevity of such a trial period could be offset by intensive treatment implying a limitation in the number of offenders entrusted to a single specialised probation officer, and possibly by selecting the latter on the basis of some degree of matching between his personality and that of his charges;

– although such treatment is already being carried out on an experimental basis in some States, it could be applied only to a small number of offenders, having regard to the characteristic features of criminality in the different member States;

4. to promote at the legislative or administrative level a set of carefully graded measures, half-way between imprisonment and complete liberty, thus paving the way for new forms of penal treatment. Since the aim of these measures is to ensure that the offender is no longer treated as an outcast but shall benefit by a process of assistance and social education, they should imply on the one hand the co-operation of the community and on the other hand the participation of the offender in the determination and implementation of his treatment. They may take various forms, either singly or in combination, including restriction of liberty, fines, social supervision of one kind or another, and suspension of certain civil rights.'

BIBLIOGRAPHY

- *1. Based on the Report of the European Committee on Crime Problems on Short-Term Treatment of Adult Offenders (drawn up by Sub-Committee No. XI), Council of Europe, Strasbourg, 1974. Particular reference to the following texts:
2. Bernsten, K. and Christiansen, K.O.: A Resocialisation Experiment with Short-Term Offenders, *Scandinavian Studies in Criminology* 1, 35 ff., 1965.

3. McClean, J.D. and Wood, J.C.: Criminal Justice and the Treatment of Offenders, 123-128, 1969.
4. Kaiser, G.: Research relating to short-term treatment of adult offenders.
5. Picca, G.: Short-term treatment methods for offenders in France.
6. Andry, R.G.: Short-term treatment of adult offenders.

Further reference:

7. Council of Europe (European Committee on Crime Problems), Suspended Sentence, Probation and other alternatives to Prison Sentences, 1966.
8. Council of Europe (European Committee on Crime Problems), Short-Term Methods of Treatment for Young Offenders, 1967.
9. Council of Europe (European Committee on Crime Problems), The Effectiveness of Punishment and other measures of Treatment, 1967.
10. Council of Europe (European Committee on Crime Problems), Collected Studies in Criminological Research 1, 1967.
11. Council of Europe (European Committee on Crime Problems), Standard Minimum Rules for the Treatment of Prisoners, 1973.
12. Field, E.: Research into Detention Centres, British Journal of Criminology 9, 71, 1969.
13. Scarpitti, F.R. and Stephenson, R.M.: A Study of Probation Effectiveness, The Journal of Criminology, Criminal Law and Pol. Science, 369, 1968.

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~~L-appellant, bil-hanut tad-drappijiet ta' l-irgiel, kellu kotba
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~~Ex officio assessment.~~