

training or habit adjustment, for which time is an essential element. I have on more than one occasion hitherto adverted to this matter, and it is of interest to note the following extract from a recent bulletin issued by the United Nations Economic and Social Council, which is apropos in this regard :—

Our century is characterized by the abuse of the short sentence, as the nineteenth century was characterized by corporal punishment. In the interests of both human dignity and social defence, short terms of imprisonment should be opposed as failing to protect society, as well as failing to check the development of criminal careers.

It is time now that the short sentence should be replaced by more suitably effective measures. The harmful consequences both to the individual and to society of short sentences of imprisonment go far beyond the punitive aims of criminal justice.

The purpose of a penal sanction is the protection of society, and to this end it is essential not only to have regard to the offence, but also to the offender. This aspect was featured during the discussions on the Criminal Justice Act, 1948 (Imp.), and it is of interest to note that in New Zealand we have provision under the Crimes Amendment Act 1910, which empowers the Courts, "having regard to the conduct, character, associations, or mental condition of the offender," as well as to the nature of the offence and any special circumstances of the case, to order, in addition to or without any preliminary term of imprisonment, that the offender may be detained in prison for reformatory purposes for any period not exceeding ten years (three years by a Magistrate). Reformatory detention is a finite form of indeterminate sentence for training and stabilizing an offender. It is interesting to note that in the original draft of the Bill no maximum limit was stipulated. The period to be served was to be contingent solely on the prisoner's amenability to reformatory influences and to be determined by the Prisons Board, which in recommending release, was to have regard to the interest of society as well as the interests of the offender. This latter provision was enacted and still subsists.

Under our law the sentencing of offenders is a matter entirely within the discretion of the Courts. Though there is a right of appeal against the severity of a sentence, there is no appeal on the ground that a sentence is inadequate. Nonetheless the Courts, equally with the Prisons administration, are integral components in the machinery of justice for law enforcement and the suppression of crime. Without presuming to offer criticism, but simply to state facts from a long and close-up association with the operation of the criminal law, it is submitted that unless a sentence is sufficient to enable remedial measures to be applied it is largely futile in its purpose.

Over the past decade or so there appears to have developed a reluctance on the part of the Courts to utilize the penal sanctions available in a manner likely to achieve the best results. By way of illustration I would cite the case of "A," aged twenty-three, with sixteen previous convictions for theft—on appearing in the Supreme Court charged with shop-breaking (a prevalent offence at the time), was sentenced to six months' reformatory detention. Such a sentence is a misnomer and is simply a more euphemistic way of ordering imprisonment. It is not sufficiently long to have any stabilizing influence on the offender and misses entirely the purpose of the law instituting reformatory detention.

As another example, take the case of "B," aged twenty—on being found guilty of unlawful conversion, breaking and entering, receiving, and theft (eight charges in all) was sentenced to twelve months' reformatory detention. His previous convictions included arson and attempted murder. The prisoner is above normal in intelligence, but shows defective judgment. He is a psychopathic case, but is not certifiable. He is not safe to be at large, at least until he has stabilized, yet his sentence being finite he must be released before he should be in his own interest or in the interests of society.

Take the case of "C," aged thirty-four, with seventeen previous convictions, who after "a continuous career of crime" appeared on a charge of housebreaking and was sentenced to twelve months' reformatory detention. This offender is definitely an habitual criminal and the sentence imposed serves no protection to society.