

THE TREATMENT OF YOUNG
OFFENDERS IN MALTA*
PROPOSALS FOR REFORM

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WHEN the Criminal Code of Malta was promulgated just over a century ago it was hailed as a very enlightened code of laws and so it was indeed. Suffice it to remark that it made no provision for any form of corporal punishment. When the position regarding corporal punishment in Malta in 1854 is compared with the corresponding position in England up to very recently it will be readily admitted that Malta was in this respect well ahead of the times. But although the criminological outlook of the code promised fair for the times, it is a fact that in certain respects, especially with regard to the treatment of young offenders, the present state of our law leaves room for a measure of improvement in the light of new developments in the field of criminal science.

Probably the first question to be posed in connection with the treatment of young offenders is the adequacy of the minimum age of criminal responsibility in the present state of our law. The matter has in recent years received attention in too many foreign legislations not to claim ours as well. In England the suggestion has been strongly put forward of raising the material age from eight to fourteen, if not to fifteen, the school leaving age; but so far it has not been legislatively acted upon. Many other countries, on the other hand, have remedied the matter by legislative action, thus abandoning the general nineteenth century doctrine on the subject. In France and Greece the age of responsibility is at present thirteen, in Italy, Austria, Germany, Norway and Switzerland

*The writer first published this paper in 1956 when he was Assistant Attorney-General and Chairman of the Approved School Board. It is being reprinted here in its original form in view both of its historical interest and of its definite proposals. Some of these proposals have been implemented by, *inter alia*, the Probation of Offenders Act 1957 and the Criminal Code Amendment Act 1956; others, still valid today, however, have not yet been put into practice.

it is fourteen, in Denmark and Sweden fifteen and in Belgium and Spain sixteen.¹ In Malta the material age may well, it is submitted, be raised from nine to fourteen, thus fully covering the period of puberty, often marked by various nervous disorders, and allowing for fuller intellectual and emotional maturity. The idea behind this proposal is indeed not to deprive maladjusted or wayward children of every kind of treatment, but rather to make it possible for society to provide for their readjustment and rehabilitation without the necessity of *criminal* proceedings. 'Criminal procedure', Professor Glanville Williams says, 'is criticised because it involves the application, in theory at least, of a difficult test of responsibility, with a consequent risk of stultification of the whole proceeding, and (more substantially) because the rules of evidence unduly limit the issue'.²

Under Maltese law a minor may be brought before a Court of law either on a criminal charge (subject of course to his having attained the age of criminal responsibility) or, if he is under sixteen years, on an application for committal to the Approved School in view of his leading such a life as will, most probably (this is the exact wording of the law, requiring a superhuman effort at an almost metaphysical grading of probability) make him fall into delinquency. Under the Approved School Ordinance (Chapter 75), where any juvenile under sixteen years is convicted by any Court of criminal jurisdiction of an offence punishable with hard labour or imprisonment, the Court may, in lieu of passing sentence of hard labour or imprisonment on him, order him to be sent to an approved school (only one has so far been established) and to be there detained for a period of not less than two nor more than five years, provided that the period for which he is there detained is to expire on his attaining the age of eighteen years or before. The juvenile may also, by order of the Court, be apprenticed to some useful calling or occupation 'with a respectable and trustworthy person', who must undertake to be responsible for him until his attaining the age of eighteen years; in the event that such order cannot for any reason be carried out, the juvenile is to be detained for the time for which he was ordered to be apprenticed. Apart from this, the Court of Magistrates of Judicial Police sitting as a Court

¹Vide, in respect of various legislations on the subject, the reports sent in for the VI International Congress of Penal Law (Rome, 1953) on *Le problème de l'unification de la peine et des mesures de sûreté*, published by RIDP, Paris, 1953-54.

²*Criminal Law (The General Part)*, London, 1953, p.671.

of criminal judicature may, on the application of the Director of the Approved School, authorised to that effect in writing by the Minister of Education, make any of the abovementioned orders if it is satisfied that a minor under sixteen years is leading such a life as will 'most probably' make him fall into delinquency. Thus a juvenile may be committed to the Approved School either on conviction for a criminal offence or substantially, though the wording of the law is different, on his being found to be in need of care and protection. Incidentally this is clearly inconsistent with subsection (1) of section 2 of the Ordinance itself, which provides that 'the Governor may establish Approved Schools for the reception and custody of juvenile *offenders* in the cases laid down hereunder.' In any event, the proposal to raise the minimum age of criminal responsibility in Malta from nine to fourteen years, far from doing away with the 'care and protection' procedure, would thus, in respect of children up to fourteen years, substantially substitute in appropriate cases such procedure, which is not of a criminal nature, for the purely criminal procedure on a criminal charge.

In the abovementioned Ordinance, enacted in 1921, provision was made for the eventual establishment of more than one approved school. Originally this enactment was entitled the Reformatories Ordinance and dealt with reformatories, which term was made to include a training ship afloat in territorial waters; but by Ordinance No. III of 1944 all references to reformatories in the principal law and other enactments were replaced by references to approved schools. By Government Notice No. 187 of the 5th July 1921 only one institution (then called 'Salvatore Reformatory', now known as the Approved School) was established under the Ordinance. The question may therefore be posed whether the establishment of only one approved school is adequate for the needs of these Islands. Theoretically the question is very easily answered in the negative. There can be no doubt that an efficient and scientific approved school system can only be based on classification and specialisation. While working with Dr Radzinowicz of the Department of Criminal Science, Cambridge University and Dr Hermann Mannheim of London University in the United Kingdom, I was afforded the opportunity of observing this process of classification and specialisation at close quarters. In the United Kingdom approved schools are, as a matter of fact, graded according to the pupils' entrance ages and classified according to the specialised instruction which they provide, the degree of intelligence of the pupils, their religious persuasion and so on. On the basis of this

principle classifying centres have also been established. Indeed it is interesting to note that in our Ordinance provision was originally made for enabling the Governor to make regulations for the classification of approved schools (section 17(a)). This being so, it will be readily realised that in these Islands the difficulties in this connection are altogether of a practical nature. The islands are small and their juvenile delinquent population not so numerous as to make classification into separate approved schools administratively and financially expedient. Even within such limitations, however, the present position is not, perhaps, incapable of improvement. The existing Approved School may perhaps be divided into two separate sections, a junior section and a senior section, with a maximum admission age-limit fixed at the attainment of the age of fourteen and seventeen years respectively and a maximum discharge age-limit fixed at the attainment of the age of sixteen and nineteen years respectively. This arrangement would still make no provision for the more refractory offenders, the special cases that in the United Kingdom would go to a Borstal institution. Again the difficulty about the establishment of such institutions in Malta is not one of principle (for even though critics have not been lacking, there is no gainsaying the fact that the Borstal system has yielded positively good results), but one of practical expediency. The same applies to institutions for mental defectives, which are also lacking.

There are at present no institutions for female juvenile delinquents in Malta. Although it is true that the number of female juveniles brought before the Courts who may need to be placed in such institutions is in actual fact very limited, the deficiency cannot nevertheless be overlooked. In 1954 a female juvenile aged fourteen was sentenced to one year imprisonment and fifteen days detention for several thefts. It appears that no other female juvenile of such tender age had ever been committed to prison within living memory and the occurrence was so distressing that the Governor decided to remit her sentence with a view to her being placed in the Good Shepherd Institute at Balzan, there to remain until her attaining the age of eighteen. The Criminal Code (Amendment) Bill, at present before Parliament, seeks to make provision for the placing of female juvenile offenders under sixteen in Approved Institutions, being institutions approved by the Governor and in respect of which an arrangement has been made between the management and the Government for the reception and custody therein of minor female offenders.

The leading principles in the shaping of a new policy which is

now being generally adopted in the treatment of young offenders are (i) the overriding consideration of the welfare of the young offenders themselves consistently with the interests of society and (ii) the strong desirability of keeping them as much as possible out of prison. This new attitude towards the treatment of young offenders has been determined principally by the realisation that juvenile delinquency is the result of the confluence of several currents and undercurrents in the juvenile's personality and the outcome of various internal and external circumstances often beyond his control. Nevertheless in Malta until now a child of nine years may still, in theory at least, be sent to prison and in certain cases for as long as two years (section 37(2)(a) of the Criminal Code). This relic of a bygone doctrine is, however, being happily done away with by the Criminal Code (Amendment) Bill already referred to. Indeed it is desirable that juveniles up to, it is submitted, sixteen years should not be liable to be sent to prison in any case: incidentally this age coincides with the maximum age limit within the jurisdiction of the Juvenile Courts (sections 2 and 9 of the Juvenile Courts Ordinance (Chapter 71). In England Juvenile Courts cannot sentence to imprisonment and no Court can sentence to imprisonment a juvenile under fifteen. This, however, presupposes the existence of adequate alternative institutions for special cases and thus in respect of these Islands the difficulty already mentioned is encountered once more.

It is true that in practice juveniles, especially those under sixteen, are as a rule sent to prison only in exceptional cases.³ They are usually dealt with, in respect of a first offence, under the provisions of section 23 of the Criminal Code (providing for conditional discharge) and, in respect of a subsequent offence, by reprimand or admonition or by a fine or, of course in the more serious cases, by committal to the Approved School. It is gratifying to note that by the Criminal Code (Amendment) Bill the scope of conditional discharge is proposed to be appreciably widened by the extension of that benefit to a wider range of first offenders than is at present possible and, under certain circumstances, also to persons previously convicted of a crime. This is admittedly applicable to both juvenile and adult offenders alike, but one important provision which is made specifically applicable to persons under eighteen is the proposed introduction of *absolute* discharge, which

³In actual fact imprisoned young persons under twenty years, except those who are specially 'unruly or depraved', are housed in a separate section of the Prison and are accorded special treatment.

as a first step is proposed to be limited only to minors and deaf mutes. This and other innovations proposed by the Bill have the avowed object of 'laying down the foundations of a more rational approach to the problem of the young offender, as a prelude to the early introduction of a system of probation.'

Indeed the probation system has been attended in England by a large measure of success and its introduction in Malta will satisfy a long felt need. Probation treatment is an experiment which is worth trying at least once on *every* juvenile offender, the more so as it is an established fact that juvenile offenders are the subjects that are most likely to respond to it. Probation makes it possible to avoid, at least in the first instance, the drastic measure of removing the juvenile from his own home. So much, of course, depends upon the juvenile himself, but – and this had better be kept in view in the organisation of the system – so much more depends upon his friend the probation officer. Side by side with the introduction of probation, the desirability of affording greater facilities for psychiatric observation of juvenile offenders may well be given consideration.

It has been said above that in practice juveniles, especially those under sixteen, are as a rule sent to prison only in exceptional cases. But a blatant incongruity remains. The law is such that, although a juvenile under sixteen who is guilty of murder may be placed in the Approved School, a juvenile under sixteen who is fined a few shillings *ammenda* for throwing stones *must*, on failing to pay the fine, be sent to prison. A child of eleven years had his one pound fine for theft converted into eight days detention on the 13th January 1950. Of the 21 persons under sixteen admitted to prison since 1950, 14 were cases of conversions of unpaid fines. This is without any doubt most unsatisfactory. Indeed fines imposed on young offenders are a form of treatment more punitive than constructive, more retributive than reformative and such as can hardly be said to accord with the principles of the more modern and more rational treatment of juvenile delinquents. In practice a fine imposed on a juvenile ultimately hits the parent. It is true that in certain cases fines may be imposed directly on the parent or other person charged with the upbringing of the minor, if the offence committed by the minor could have been avoided by his diligence (Sections 36 and 38 of the Criminal Code). But in practice fines fall on the parent even when he is *not* to blame, for very seldom does the parent refuse to pay a fine imposed on his child. The desirability of doing away with pecuniary punishments in respect of juveniles up to at least sixteen years ought, it is submitted, to

be earnestly considered.

Another incongruity is that, although a convicted juvenile under sixteen may and usually does avoid being sent to prison even for serious offences, he *must* nevertheless, if arrested, await his trial in prison.⁴ It is true that juveniles are arrested only in exceptional cases and that, even if arrested, they are generally released on bail. But it is worthy of note that, since 1950, fifteen arrested juveniles under sixteen have up to the moment of writing spent varying periods of time in prison prior to their trial. Of these eight were released on bail. Of the rest, three were eventually committed to the Approved School, three were conditionally discharged and one was released by the Court, which had ordered his arrest in connection with false evidence. But whatever the final decision, the harm had been done. Whenever it is found essential that a juvenile be arrested prior to his trial, then, if the establishment of a remand home is considered administratively and financially inexpedient, it is submitted that provision could be made in the law for enabling the juvenile to be placed in a special and separate section of the Approved School. Even though this is not an ideal arrangement, involving as it does the risk of contamination, it is always better than the present one.

Still another incongruity is that, although in respect of convicted persons between sixteen and eighteen years of age the law as it now stands specifically provides for their committal to a House of Correction, nevertheless, in cases where they cannot in the present state of the law be conditionally discharged or dealt with otherwise than by punishment restrictive of personal liberty, they *must* be sent to prison simply because no such place as a House of Correction actually exists. For the purpose of criminal responsibility minors are under Maltese law divided into three categories. It is expressly laid down in the Criminal Code that a child under nine is 'exempted from any punishment prescribed by law'. This formula is obviously incomplete and the Criminal Code (Amendment) Bill now seeks to make it abundantly clear that what the child is fundamentally exempted from is criminal responsibility. Exemption from punishment is merely a blatant consequence of exemption from responsibility. A child over nine but under fourteen is also 'exempted from punishment' if he is found to have acted without mischievous discretion, though if the offence (*recte* act) committed by him is a crime he may be 'confined' by order of the Court in an In-

⁴In actual fact 'awaiting trial prisoners' are kept segregated from other prisoners and are accorded special treatment.

ustrial School or in a House of Correction for a stated period, but not beyond the age of sixteen years. Otherwise, if the child is found to have acted with mischievous discretion, he is in some cases, regard being had to the gravity of the offence, liable to varying terms of imprisonment, but the Court may order that such punishment 'be undergone in a House of Correction'.

Under Maltese law the offender reaches the age of complete criminal responsibility when he is eighteen. If he has attained the age of fourteen but is under eighteen, the Court *must* diminish the punishment by one or two degrees and may direct that the punishment 'be undergone in a House of Correction', if the term of such punishment does not extend beyond the offender's eighteenth year. In 1899 the Industrial Schools and Houses of Correction Ordinance (Chapter 46) was enacted whereby the Governor was empowered to appoint one or more suitable places in Malta or in Gozo to be Industrial Schools ('intended for the reception of minors who in the cases prescribed by law are to be received, maintained and trained in an Industrial School') or Houses of Correction ('intended for the reception and detention of persons who in the cases prescribed by law are to undergo punishment restrictive of personal liberty in a House of Correction'). By Government Notice No. 165 of 1905, made under this Ordinance, the Governor eventually appointed a place in Malta (the Salesian School in Sliema) to be an Industrial School, and by Government Notice No. 226 of 1916, regulations were made for its management, but up to this very day no place in any part of these Islands has ever been appointed to be a House of Correction. Now, as already stated, a person of sixteen years or over cannot by law be committed to the Approved School. Thus in respect of juveniles over sixteen but under eighteen, in cases where punishment restrictive of personal liberty is to be applied, there is in the present state of the law no alternative to prison, with the attendant grave danger of contamination.

The reference to a House of Correction in the abovementioned provisions of the Criminal Code has therefore proved to be a sad abortion and as such is proposed by the Criminal Code (Amendment) Bill to be deleted and substituted by a more realistic reference to the Approved School in respect of males under sixteen and to an Approved Institution in respect of females of like age. The gap, however, remains. On a few occasions, notwithstanding the provision of the Approved School Ordinance fixing a maximum admission age-limit, the Courts have committed youngsters over sixteen but under eighteen to the Approved School, but they could not be legally kept there. (Vide Criminal Appeal *The Police v. Joseph*

Galea, 3rd May 1948, reversing a judgment of the Court of Magistrates which had committed a youngster over sixteen to the Approved School). On one occasion a Magistrate adhered to the dead letter of the law by ordering a youngster over sixteen but under eighteen to be sent to a non-existent House of Correction. The youngster appealed against the judgment and was acquitted, the Appeal Court quite rightly refusing to interpret the words House of Correction in the judgment as the 'juvenile section' of the Prisons. (Vide Criminal Appeal *The Police v. Manwel Gixti*, 6th June 1949). In any case, on attaining the age of eighteen, young offenders must unavoidably, in cases where punishment restrictive of personal liberty is to be applied, be sent to prison. This raises the question, already adverted to, of the desirability of establishing a Borstal institution or something approaching it in Malta for persons who have attained the age of sixteen but not of twenty-one, with a maximum discharge age-limit of say twenty-four. In the Malta Prisons Report for the year 1947-48 it was stated that 'every effort is being made to completely segregate the young men's prison and bring it into line with the Borstal institutions in England in so far as the local regulations and laws permit'. But the seed of Borstal, if it germinates at all, can best come to flower away from prison.

One last word about after-care, or rather the very opposite of it. Effective after-care is a necessary complement to practically all institutional training. The after-care worker collects beforehand all relevant information concerning the person to be looked after, he befriends him, helps him to form good associations, gives him good counsel, assists him to find employment and, if necessary, also accommodation. With the finding of employment the lad often settles down. In the United Kingdom the importance of after-care is widely appreciated; in 1949 the Central After-Care Association for England and Wales was created by the merger of three societies. In Malta some measure of after-care in respect of juveniles on their discharge from the Approved School or prison is undertaken by the Directors of the respective institutions, who seek to find employment for them. But not all employers are unprejudiced in this respect and indeed many make it a regular policy to require any applicant for employment to produce his conduct certificate. If he produces it and it is not a clean conduct certificate, too often the employer refuses to 'take the risk'; if he does not produce it, the employer imagines the worst and so refuses even to consider 'the risk'. The conduct certificate system operating in Malta deserves to be briefly described here. Under the Conduct Certificates Ordinance (Chapter 118) the Commissioner of Police is en-

abled to issue conduct certificates in three different forms known as Form A (certifying that no conviction recordable in terms of that Ordinance appears in the registers of the Police Criminal Record Office against the person concerned), Form B (specifying the conviction or convictions recordable in terms of the said Ordinance) and Form C (certifying that from the registers of the Police Criminal Record Office it appears that the person concerned has never been *convicted* of an offence). Form C is thus a *clean* conduct certificate; Form A *implies* that the person concerned has been convicted of one or more offences, but such convictions are not recordable in terms of the Ordinance (i.e. convictions for contraventions generally, or for crimes in respect of which Her Majesty's pardon has been granted or committed by the offender when under eighteen, and convictions the registration whereof is barred by the lapse of a specified period of time under certain conditions or the non-registration whereof is ordered by the Court in certain cases); Form B records such convictions as are recordable in terms of the Ordinance.

Conduct certificates are issued only at the instance of the person to whom the certificate refers or upon an order of any Court of law given either *ex officio* or at the request of an interested party.

Now it is true that a convicted minor, whether committed to the Approved School or not, is statutorily entitled, in view of his age, to a Form A Conduct Certificate; but owing to its vagueness, this particular form is sometimes found in practice to be even more objectionable than a full record of convictions, especially where these are for trivial offences. Thus it often happens that a person who is by law entitled to a Form A Conduct Certificate in fact applies for a full record of his convictions. The position is clearly unsatisfactory. The system hampers to a considerable extent and often utterly frustrates a convicted person's effort at finding employment and rehabilitating himself. Without employment, there is in many cases the practical certainty of relapse: obviously a vicious circle. This is indeed the very opposite of after-care. Admittedly in the Criminal Code (Amendment) Bill it is proposed that a conviction in respect of which an order is made for conditional or absolute discharge will not be regarded as a conviction for the purpose of conduct certificates. But even so, the fact remains that the present system is difficult to defend in the light of both modern developments in criminal science and of the true status of the police as public servants. So far as is known no system of conduct certificates comparable to the above exists in the United Kingdom or the Commonwealth countries and it might well be the case to scrap it.

This would not mean that a Court will not have before it a full record of an accused person's previous convictions for the purpose of applying the provisions of the law relating to recidivists. It would simply mean that a person who has been convicted of a criminal offence, be it serious or trivial, need not be branded in ink as such. Criminal punishment is enough, it need not be thus supplemented. A better understanding of the problems of the delinquent both before and after his conviction will help to fashion a more rational criminal policy in the interests of both the individual who translates his anti-social tendencies into criminal offences and society itself. And this is what is happening in Malta now.

In sum, the following proposals are put forward:

(i) raising the minimum age of criminal responsibility from nine to fourteen years;

(ii) introducing, at least to a minimum extent, the classifying principle in the local approved school system: the existing Approved School may perhaps be divided into two separate sections, viz. a junior section and a senior section, with a maximum admission age-limit fixed at the attainment of the age of fourteen and seventeen years respectively and a maximum discharge age-limit fixed at the attainment of the age of sixteen and nineteen years respectively.

(iii) introducing a system of probation: this is indeed a crying need;

(iv) affording greater facilities for psychiatric observation of young offenders: this is particularly important in connection with (iii) above;

(v) unless administratively or financially inexpedient, establishing an institution for mental defectives and a Borstal institution for persons who have attained the age of sixteen but not of twenty-one years on admission, with a maximum discharge age-limit fixed at the attainment of the age of twenty-four years;

(vi) young offenders under sixteen years should not be sent to prison nor fined in any case;

(vii) young offenders under sixteen years arrested on a criminal charge and not released on bail should not await their trial in prison; if the establishment of a remand home is under local conditions considered to be administratively and financially inexpedient, they should at least await their trial in a special and separate section of the Approved School;

(viii) the present conduct certificates system should be altogether abolished.