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**THE CRIMINAL JUSTICE BILL: INTERNATIONAL
ASPECTS OF PREVENTION AND TREATMENT**

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The author is President of the Howard League for Penal Reform and of the Magistrates' Association of Great Britain. During many years, as Sir Samuel Hoare, he has been very active in state affairs. He was a Conservative Member of Parliament from 1910 to 1944, during which time he occupied the following government posts: Secretary of State for Air, 1922 to 1929 and again in 1940; Secretary of State for India, 1931 to 1935; Secretary of State for Foreign Affairs, 1935; First Lord of the Admiralty, 1936 to 1937; Secretary of State for Home Affairs, 1937 to 1939; Lord Privy Seal, 1939 to 1940; British Ambassador to the Spanish Government on Special Mission, 1940 to 1944.

The article that follows embodies the substance of an informal address given by Lord Templewood in January 1948, at the Headquarters of the United Nations, Lake Success, at the invitation of the Department of Social Affairs.—EDITOR.

Upon the questions of human rights and penal reform I may be able to make some practical comments founded upon my five years of experience with a totalitarian regime in Spain. As Home Secretary in Great Britain, that is, as Minister of the Interior, I was brought into constant contact with penal questions. As Ambassador in Spain, I saw at first hand the evil effects of outraged human rights.

Both questions, human rights and penal reform, are focused upon the same two points: the priceless dignity of the human personality, and the inviolable sanctity of the human soul. It is interesting to note that these two lines of approach have always been closely connected. The humanitarian movements of the past always and usually simultaneously included, on the one hand, the defense of human liberty by means of declarations and enactments safeguarding human rights, and, on the other hand, penal reforms that were intended to abolish many of the savage methods that outraged human life in prisons and courts of law.

I shall give a personal example from the traditions of my own family. I quote this illustration not for egotistical reasons, but merely to show the close connection between the movement, on the one hand, for individual liberty, and the movement, on the other hand, for reasonable penal treatment. My own family, one of the Quaker families in Great Britain, first came into prominence in the seventeenth century. They were then the bankers

of Oliver Cromwell. My family was the oldest banking family, I think, in the world. At that time they were foremost amongst the upholders of individual liberty, and it is interesting to notice, in reference to the United States, that my ancestor at that time was an intimate friend of William Penn, and that the two were engaged in the campaign for individual liberties which was still in its early phase.

In the next century new questions forced themselves upon public attention. I am referring in particular to the question of better methods of penal treatment in a very savage age, and the question of the abolition of the slave trade. This latter question first came into prominence in the middle of the eighteenth century, and it subsequently came to include the issue of the abolition of slavery. It so happened that from generation to generation my family took one of the foremost parts in the campaign for the defence of the human personality, on the one hand—if I may so describe it—and the campaign for more humane penal methods, on the other hand.

When the nineteenth century arrived, this campaign went a step further. The first meetings of the Committee for Better Treatment of Inmates in Prisons were held in my great-great-grandfather's house in the early part of the nineteenth century. The first great penal reformer was my great-great-aunt, Elizabeth Fry. She was the first woman to enter British public life and the first woman who really stirred up public opinion on an urgent social question.

I state these facts not to glorify my own family but rather to show the background against which I approach these subjects, and against which in particular, I approached these subjects in the year 1936 when I became Home Secretary, that is, Minister of the Interior, in which capacity I was responsible for the administration of prisons in Great Britain.

I remember very well when I first became Home Secretary that, because of this family knowledge which I then possessed of penal questions, I was struck with the outstanding fact that since the early days of the humanitarian movement in the first half of the nineteenth century very little progress had been made in the field of penal reform, while other social reforms had advanced to an almost incredible degree in the fields of education, housing and sanitation. Penal questions had been left in an isolated corner from which nobody had taken the trouble to gather the conclusions of experience. The atmosphere had been left mixed between ignorance and hysteria. The general public had taken no close interest in these penal questions. The result

was that some emotional crimes, for instance, would excite a great wave of ignorant hysteria, while little attention was paid to the very great body of practical experience that had been gained in the field of penal questions during half a century.

I cite as an example the case of my own country. In Great Britain during the last generation we had placed at our disposal a mass of practical experience. We had a wealth of expert opinion. We had inquiry after inquiry into various phases of penal problems.

When I became Home Secretary there was this great mass of material of which hitherto no one had made any effective use. There was experience—if I may quote a case or two—as to the work of penal institutions and as to the treatment of habitual criminals. Over the whole field of penal questions we had this mass of information, but nobody in England hitherto had gathered it into one comprehensive programme of reform. I tried during the time I was responsible for these affairs to gather together this expert opinion, to put it into a single Parliamentary Act, and apply to these penal questions the same kind of tests and standards that were already being applied to other social questions, such as education and housing. I tried, in fact, to bring penal reform into the general field of social reform and to leave it properly focused in this social program, that we are trying to create for the new world.

I found that, in spite of this accumulated knowledge, we were still applying many antiquated methods of penal reform. We were still failing to avail ourselves of the lessons we had gained during the last generation.

I shall cite two or three principal instances of this failure. First of all, there is the central question of penal reform today: the treatment of the young. All will agree that the central problem of crime and delinquency today is the great increase in juvenile crime and delinquency.

It is a fact, although not always realized to be a fact, that it is the young and not the old who make habitual criminals. The men and women who have become habitual criminals almost invariably start their careers early in life. That is a fact that can be established in any country where a suitable inquiry is made. For that reason, how necessary it is to take the steps most likely to prevent young people from becoming the habitual criminals of the future.

When I was Home Secretary, I made it my business to visit a great many prisons. I remember going, in particular, to the prison to which our worst criminals are sent—Dartmoor—and

asking for the book in which the details of the criminals' careers are entered. I looked through these details and, almost without exception, I found that the worst criminals—the criminals who had committed every kind of horrible crime—had started their nefarious careers by committing some trifling offense perhaps at the age of twelve, thirteen or fourteen.

I found that such individuals had short terms of imprisonment imposed upon them; that they had become habituated to prison life; that their crimes had changed from insignificant to more serious offences, and that their criminal careers ended possibly with life-imprisonment sentences.

What better illustration can one have than the fact that the first problem of a wise system of penal treatment is to find a method that will deal sensibly with the young and make it less likely that they will drift back into prison and eventually become the persistent offenders of the future? The first question, therefore, that emerges in any consideration of these questions is whether it is folly and stupidity to impose short sentences of imprisonment upon young offenders.

I shall not stop to argue that contention. I merely state it here so that it can be checked with all the best experience in every part of the world. The worst possible way to deal with the young offender is to send him to prison for a week or a month or two merely to habituate the child to prison life. One of the objectives, therefore, of the reforms that I proposed when I was Home Secretary was to provide alternative methods of treating the young to prohibit imprisonment of the young offender altogether, and to substitute imprisonment with either probation, in the case of the less serious offender—that is, dismissal subject to good behavior—or a period of treatment in some suitable institution.

The next problem, which I believe is common to most of the countries of the world, was that of the habitual criminal. I am not one of those who take sentimental views of these questions. I realize the need for the community to be protected from the criminals who prey upon it and who make the citizens of the country the victims of their crimes.

It is therefore clear to me that while, on the one hand, it was necessary to develop these various methods of reform, particularly for the young, it was also necessary to strengthen the legislative provisions for protecting the community from the really dangerous and persistent criminals. I found in England that

the law which was passed to deal with persistent offenders had for various reasons become a dead letter.

Under our law it had been possible to impose two sentences upon a dangerous criminal: one sentence for the actual crime, and a second sentence for the criminal's general record. Our experience showed that in Great Britain there was very great prejudice against a double sentence. It was, rightly or wrongly, considered unfair. The result was that in actual practice this particular legislative provision was scarcely ever put into effect. It was therefore necessary, when I was reflecting upon the necessary reforms, to change the procedure and to make a new plan for dealing with the persistent offender.

There were two alternatives open. There was the alternative that has been adopted in several countries of the world—the indeterminate sentence, namely, a sentence without a limit imposed upon the really dangerous criminal. There was the other alternative of a sentence with a definite limit.

In Great Britain we have a very strong prejudice against an indeterminate sentence. We take the view that it removes any incentive that may exist for a prisoner to attempt to reform himself. Therefore I tried to strike a compromise between these two points of view, and in the provisions of my bill, which has since been adopted by the present Government in Great Britain, there was to be a determinate limit to the sentence. The sentence was not to be more than seven years in the worst cases, but within that seven years there was to be the power to reduce a sentence if the criminal really looked as if he would turn himself into a respectable member of society. That, I claim, is an interesting attempt for criminologists to follow closely—whether this compromise between the two conceptions of an indeterminate sentence and a determinate sentence is not probably the best alternative. Even in this category of the worst offenders we are drawing a very clear distinction between the younger and the older criminals. We are dividing it into two categories, the first for the younger criminals, in which training will play a very large part and in which the sentence will be limited to five years, and the other category of the older and hardened criminals—a very difficult problem—in which, although the chances of reform are considerably less, we shall still do our utmost to keep the objective of reform constantly in view. That is the second great problem that we have had to face: the problem of the persistent offender.

I come now to the third category of these problems and that is concerned with what I will describe as mental states—namely, all the many cases of crime and delinquency that are directly or indirectly affected by mental abnormality. Those here in the States and others who are present from other countries will notice the very great progress that has been made in the field of medicine concerning the problems which deal with mental states. I do not want to suggest that we have yet reached finality or that we can restrict ourselves to purely medical standards in dealing with many of these criminal cases, but I do say that a wealth of experience has been accumulated in the last twenty years showing to what extent mental abnormality enters into many of these cases of delinquency and crime, particularly in cases of undeveloped children living under very bad social conditions. I felt very strongly that the time had come to bring these facts to bear upon the whole field of penal treatment. Therefore, I included in my reforms proposals for making it easy, and in many cases obligatory, for a mental examination of a criminal to take place, if necessary, or for a delinquent, if necessary, to be forced to live in an institution where a medical examination could take place and where a medical report could be made before the sentence was actually imposed, showing to what extent, if any, mental abnormality accounted for the particular crime or delinquency.

I have ventured to suggest briefly these three great problems: the problem of juvenile delinquency, the problem of the persistent offender, and the problem of mental abnormality. I am glad to think that after ten years all my proposals connected with those three very difficult subjects have been embodied in a new bill that is being introduced by the United Kingdom Government, which will, I hope, be law in the space of a few weeks or months. I have the conviction that if my proposals had not been founded ten years ago upon actual facts and practical experience, they would have needed to be greatly modified today. The fact that they have stood the test of criticism over ten years surely shows that they have been founded not upon theory but upon the actual experience of the men and women who were studying these problems and who were actually working in the field of penal reform. My bill would have become law in 1938 if it had not been for the war. It was at that point when the war came that it had to be postponed, but nevertheless, there remains the fact that we in Great Britain are now moving ahead along these lines, and I believe that our experience may be of not inconsiderable value to many other countries in the world.

I take the view that the questions I have been discussing—juvenile delinquency, the persistent offender, and mental abnormality—are not questions peculiar to the United Kingdom or to any single country. They are questions of equal interest to practically every other country in the world. That leads me to the further observation that upon all these questions what is needed today is a more expert knowledge, a more alive public opinion and a more general appreciation of the importance of these questions in the field of social reform.

On that account, I am particularly interested in what the Secretariat is attempting to do in the United Nations—namely, to include these penal questions in the general field of related social activities. The world needs more knowledge today. It needs to have collated the experience of the various countries that are dealing with these problems. It needs a much freer exchange of information. It needs particularly a better instructed public opinion. As I said at the opening of my observations, one of the troubles in dealing with penal questions is the general ignorance of the public.

I look to such organization as you may start in the United Nations as an effective method for instructing public opinion. I look to it also for putting pressure upon backward governments. I do not wish to say anything controversial, but I have a profound feeling that there are many things going on in the world today in the field of prison treatment—it may be as a result of the war, since war is always apt to lower these humanitarian standards—that if public opinion were more alert, if the world at large were more alive as to what is happening, there would be a profound expression of disapproval.

I think particularly of the standards of penal treatment. In many parts of the world are all the standards of penal treatment to which I, as a penal reformer, have given much attention, but, in one country after another, they are being lowered and sometimes ignored.

I do not wish to criticize any government or any individual, but I want to see these standards once again raised. I want the humanitarian standards of the past to be respected; and I believe the United Nations, can give effective help in re-establishing the standards, and in applying to penal questions the same kind of standards of humane common sense that you would apply to questions of education, housing or sanitation. On that account, I hope there will be a permanent organization for dealing with these questions and for following what is happening in the world in relation to them.

I attach great importance to a permanent organization in constant session. I am inclined to think an occasional conference, however excellent may be its members, can never have the same effect as a permanent organization constantly collecting data and constantly influencing public opinion.

I hope, also, that when the organization is well established, regional conferences may be held in different parts of the world. The same standards can not apply everywhere in this very diverse world. However, I believe we can insist upon a minimum standard. Over and above the minimum standard, for many years to come I believe there will be diversity of treatment. On that account, I should recommend a regional organization; regional conferences at any rate.

A regional conference on prison treatment or penal questions would be of the greatest possible value. There are many countries in the world which are woefully ignorant of the actual facts of the problem. If a United Nations body should hold these conferences in this or that center, create a public opinion in the country and visit the penal institutions, it would do very much to raise the general standards. It would impress the public in the particular region, or country, with the necessity of putting its house in order, of abolishing antiquated methods, and of dealing with criminals as human beings rather than as wild beasts.

Having made these observations upon penal reform, I shall connect what I have said with the wider question to which I have given special attention in the United Kingdom: the question of human rights generally. I regard the rights of a prisoner as a part of the general problem of human rights as a whole. As to these rights, I had it borne upon my mind time after time, when I was living in Franco-Spain, how necessary it is to have a convention of human rights and, perhaps even more important than the convention, an organization for watching over the way in which these human rights will be respected.

I went back to my own country and I started a series of debates in the Parliament on the subject. It is disclosing no secret when I say that we in the United Kingdom instinctively are somewhat suspicious of these general declarations. Our tendency is to say, "What is the good of a general convention or a general declaration? We do not ensure our British liberties in that way. We have our system of justice. We have, in particular, our practice of what we call *habeas corpus*, under which no man can be kept in prison without trial. These practical methods are all that matter. What is the good of a general convention guaranteeing a whole series of what appear to be theoretical

rights? The guarantee in many countries very likely will be a dead letter.”

This is the argument of the opponents: “If it is not a dead letter, it will be a serious interference with the sovereignty of a particular country.” I admit it is a strong argument perhaps in my country. At the same time, having lived for a good many years of my life upon the Continent of Europe, I have come to the definite conclusion that whilst a convention of that kind might make very little difference to the actual practice in the United Kingdom, it would have a considerable moral and practical effect in many other countries of the world; and, on that account, I hope very much that the United Nations will continue to press for the need, first of all, for a bill of human rights; secondly, for a convention of human rights; and, thirdly—in my view most important of all—for an organization to follow what is happening from day to day, an organization, I quite admit, without sanctions at the outset. Sanctions may come later in the form of an international court.

I hope I shall live long enough to see it. It may not come at once, but with the moral pressure stirring up public opinion and pointing up the cases where human rights are being outraged, I believe it will help to raise the standard of the treatment of human beings in many countries of the world.

I finish my discussion of these great issues by congratulating the United Nations upon the steps that they have taken already to interest the member states in these questions; by wishing them every success, and by saying to them: Do not be discouraged if at first there is doubt and suspicion and opposition. I believe the United Nations has set its hands to a great task—a task that is going to help the social and economic progress of the world.