ASPECTS OF PUNISHMENT

BY

G. LLOYD ROBERTS

A former magistrate whose present duties in the Department of Justice include responsibility for prisons, Mr. Lloyd-Roberts is in a good position to report back to magistrates on the merits of different types of punishment. He suggests the setting up of a body to study the whole question, but in the absence of any such body he has obtained the views of six senior prison officers and a medical officer, to which he adds his own comments.

The minimum number of cuts should be four, but the generally held view that the maximum should be six is not borne out by experience. The side-effects of cuts should be remembered. Cuts are not recommended for non-violent crimes such as theft. Repeat doses have proved effective. Cuts should not be ordered in cases of possible psychiatric disorder.

Spare diet is less effective than solitary confinement and reduced diet, which should normally be kept in reserve for prison offences.

The suggestion of weekend imprisonment raises administrative problems, but Mr. Lloyd Roberts puts forward the alternative suggestion of overnight imprisonment.

This seminar covers, as I see it, punishment in the course of my talk; portion of the field of treatment in the next talk, and then you go on at great length on the question of sentencing tomorrow. It all seems to be well organised, but gentlemen, this is where I throw down the gauntlet. I feel that until we have some sort of body to study the whole question, the whole field on the people who deviate from accepted standards of behaviour, then we are wasting our time and this is a well-organised waste of time. We are just beating our gums. Having said that, I hope I can justify it.

This body I refer to would have to cover a very wide field. I will just cover it very briefly in case there are some points that you have overlooked. Before the offence, if we can be certain of detection, I am sure we avoid half the offenders coming to the prison. That is a police matter. Then we have the matter of looking after the children that come from broken homes, who are already beginning to frequent the streets. That falls under religious leaders, marriage guidance, social welfare
I think all these people come into this. We then come to the question of trial and sentence, which is your particular field and at the end of the trial you have an opportunity of playing the ball back to the treatment chaps, that is the probation officers. However, if you send him into prison, I think most of us nowadays accept the idea that a man may develop in prison. He may respond, he may show that he regrets his act and there should be some machinery for modifying his sentence as he goes along. People have suggested the prisons themselves should be responsible for this, but I think that those are the most easily eliminated, because I think it is wrong that the prison officers themselves should have this power over a prisoner, because there is always a danger abuse might creep in. It is sometimes suggested that it should be referred back to the court to enquire into the matter and consider the reports put forward and, of course, the machinery most commonly used is a Board, such as that now functioning in South Africa.

After imprisonment, we have the question of after-care which, in this country, I feel does not receive the attention that it should get. There ought to be a much more careful follow-up looking after your prisoners. Once again, it has been suggested that the police should do this. The police, I think very properly, are dead against it. They say that they get the reputation that they are hounding a man after he has left prison. Somebody even made the suggestion that the prison officer should call on a man after he left prison. I likewise think that that is out. When the chap has left prison, you like to tell him "That is now behind you" and to have a prison officer drop in to his front door to see if he is home, I think would be quite unacceptable.

So this is the field of study for which I feel there ought to be a body, who will study these problems and, in particular, they would pass on to judicial officers information as to what penalties are available to the judicial officer. I know that you know what is laid down in the C.P. and E. Act, to tell you what you can do, but sometimes you are not really sure of whether the accommodation is there. For instance, spare diet and solitary confinement, you are not really sure what reformatories and so on are available for girls, when you are dealing with a girl. You know that quite often we have to place them in South Africa and so on. I think the body I have suggested could pass on information to keep you informed of what is available, and they might even give you information indicating how these penalties should be used.

This body would also have the very difficult task, I think, as we are placed at the moment, of moderating past judgments of the High Court in the light of present knowledge. I have always felt that there
is a great criticism of our system of justice. That we are bound by a
decision which was given in the High Court. We have got no means
of varying that decision until another case arises, and it may be that
in the light of evidence that is available, that decision is quite wrong;
but we have got no way of changing it and we are stuck with it unless
we go to legislation and one wonders whether, possibly, the Chief
Justice on being persuaded of something, should not be allowed to do
rather like a Minister in the House, and that is make a statement, which
could be read out in court and recorded in the same form as a judgment.

Having got that preliminary talk off my chest, I will get down to
the brief given me by Mr. Jackson. The Chief Magistrate gave me a list
of matters to discuss, and they dealt, quite obviously, with the position
that arises when the magistrate gets around to sentencing. He is given
certain powers, these are his tools and they fall broadly in the two
groups "Punishment" and "Treatment".

Treatment is really the affair, I think, of something between the
courts and social welfare, the probation officers, that sort of thing, and
the punishment side, I think, is what I am chiefly meant to speak on
today. I think it is right and proper that we should always consider
this very carefully. I think that as judicial officers, you want to make a
point of knowing the effects and limitations of the sentences that you
can impose and you also have to devise new types of punishment that
you wish you could use in order to keep up to date, and I think the
brief given me by Mr. Jackson does cover both aspects of this.

The Chief Magistrate gave me a list of questions a few days back,
and chiefly, I think, Mr. Jackson was wanting to know what the people
in the prison service felt about a number of these punishments. We got
six of the most senior officers that I could muster and the medical
officer, and put these questions to them, and I give you what their
replies are. You, of course, will compare them with the reports of
various Commissions that have been set up in the past, and I think we
must, at the outset, accept that these Commissions probably had access
to very much more high powered witnesses, and it is likely they went
into things very much more thoroughly. However, it may be of interest
for you to know what our prison officers think about these questions.

The main field raised by the chief magistrate was this business of
cuts. He asked, first of all, what was the minimum number of cuts that
should be imposed if, in fact, there was a minimum. Well, my little
group say quite firmly "No less than four". They say at the stage of four,
you are getting to the point where by their observations the man is
definitely dreading the next one, and they say up to that point he is
doing quite well, and they say you are almost playing with him, you are just warming him up, but at four you are getting down to business. This question of the minimum number of cuts, I think is something that we should consider, because quite often I recollect seeing lists of previous convictions and the first brush with the law was three and sometimes two cuts. He might have been a very small boy at that time, but it makes one think of the remark which I have heard attributed to Lord Goddard once when he looked at similar types of convictions and he said to the man “I see you are a victim of early lenient treatment”. I think it is something one might bear in mind, that if you are too lenient with a fellow in the matter of cuts when he first appears, you might have him back on your hands, where this might have been avoided by a sharper punishment.

The next point that was raised was the question of the maximum, and there we run into the view which has been widely held by the judges for a long time. They gave a round figure, six or seven, and they said beyond that point it was needless brutality, and was ineffective. I hesitate to quarrel with the judges, and more particularly I hesitate to quarrel with the same statement which appears in reports of the Lansdown Commission and so on. The judges, after all, probably have not much practical experience of this, but the Commission, I have no doubt, made very thorough investigations; but the evidence I have is definitely that this is wrong.

First of all we had a situation in Khami prison a short time back, two years back, when we had a lot of Nationalists there, and some of these fellows—whether you agree with their politics or not is another matter—had considerable courage and they were definitely dedicated to making trouble. It got to the stage where they were just walking up to warders and punching them in broad daylight, in front of everybody else, and we had to try and get the situation under control, so twelve cuts became the order of the day. There were some of them, two of them, I think, came back for three doses and, half a dozen came back for two doses. This did bring it to an end but, of course, the judges might say “Well, if you had given them six, that would equally well have brought it to an end”, but I went and consulted the doctor who had been present at these punishments. I don’t know how many of you know Max Lewis, quite a humorous character. He said “I can’t tell you whether something is hurting a man or not. All I can tell you is that they were giving a bloody good imitation”. I have also consulted Dr. Baker-Jones, who is our doctor here, and although he is primarily a dietician, I gather, he has been attempting to make careful observations of this. He says that it is not true that those cuts after six are ineffective; and finally, every single prison officer that I have ever
spoken to who has seen more than six, says that this is not true. So I feel it is very difficult to accept that the judges are right on this particular point, and if we ask ourselves how we change the views of the High Court, the only answer I can see is this body which I mentioned before.

One point which the doctor at Salisbury prison has emphasised, and the prison officers also emphasised, is something I never heard of and never considered before, and I don’t know if it would apply to the rest of you. They say, whilst the actual infliction is painful, there is a post-infliction effect which occurs twelve hours after infliction and prevents movement or lying down on the back and fades away after 24 to 36 hours. This period of discomfort is very much dreaded by the people that have had cuts before. It does present an argument in favour of repeat doses, which is a subject I will come on to later.

Also emerging from the consultation with the prison officers, it seems to me that there were certain things which I might almost refer to as fringe benefits, a punishment that may or may not arise and which the courts certainly did not have in mind. This arises where there is a group of prisoners. First, the old hands frighten the new boys that have never had cuts before, and the prison officers say that this is quite an ordeal for the chap who is awaiting cuts and they think it is a fact to be taken into account. Particularly, the old hands use this matter of the post-infliction pain, they keep saying to the chap—they are pretty pushed for diversion in the prison—they work on this fellow and they say “And when you have had your cuts, don’t you think that is the end of it, you have got something more coming to you”, and they lay it on thick, I have no doubt.

Then there is the matter of ridicule. You probably recollect the rather ponderous section in Gardiner and Lansdown which says that the man who has received cuts in the portion of his anatomy normally reserved for pedagogic discipline becomes an object of ridicule and so on. I always thought this was rather ponderous and based on a little bit of speculation rather than fact. Well, from what the prison officers volunteered—I didn’t put this to them—it seems that I have done the learned authors a grave injustice. They say that this is quite a factor in their view, that if the chap goes in amongst these fellows, he gets baited something terrible, particularly whilst he is still suffering, and then, of course, if there is a whole group being dealt with at the same time, they tell me it is a bit rough on the fellow who is last in line, because every fellow that runs out exhibits his bruised and battered backside and it is very hard on the man who is last down the line.
All these things are, I think, features that one has to take into account when one is thinking of imposing cuts, and they are rather worrying to me, because they are beyond your control as judicial officers and difficult to eliminate on the prison side. There is a lack of accommodation, it is convenient to keep all the people together that are awaiting these cuts and so on, but it does introduce a rather worrying thought that here is a bit of pressure or additional punishment being imposed which the court did not have in mind.

I pass on now to juveniles, and the question whether cuts are favoured in respect of juveniles. The prison officers say that they think that cuts are a good form of punishment for juveniles and their impression is that these youngsters don't often return. When I said "Where did you get this impression? What figures have you got to back it up?" and so on, they had nothing. So I feel this is not verified. I have got personal doubts, and I am sure your experience is the same as mine; how many lists of previous convictions have you seen where the chap starts off with juvenile cuts and then he graduates all the way down to the indeterminate sentence? I have seen dozens of them. I have reservations about what the prison officers say about that one. It only emphasises again our weakness of study and our lack of statistical information on these points. I think it is most important to people like yourselves that there should be some group making a study of this.

Next, the Chief Magistrate asked me for some effects on the adults. There was a question "Is corporal punishment a suitable form of punishment for the potential habitual housebreaker or thief, or should it be reserved only for people who have committed crimes of violence?" He also quoted from a Mrs. Grosse's book *Who Hangs the Hangman?*, which says "The question still to be scientifically resolved is, is whipping likely to reform and serve to deter an offender from future crimes?" Well, I got hold of the prison officers and, once again, sought their views. I will read from their reply: "For adults"—this was whether it was suitable for thieves and so on or should it be reserved for crimes of violence, this statement was for adults—"views differed for crimes of violence, rape and previous convictions, a majority view is yes, it is suitable, and the minority say no". So far, I think that is a fair enough answer, but they then go on "the yeses and the noes both agree that corporal punishment has no lasting effect and has little, if any, influence as a deterrent for potential wrongdoers from the commission of similar or worse crimes and they say it can be considered as a physical instrument of social revenge". Well, once again, it is for you to decide, but I am not very impressed with this "social revenge" argument, and the previous sentence I think leaves one with the feeling that it is so inconclusive that one might consider abandoning corporal punishment.
I felt that the reply was very inconclusive and I venture to put before you my personal views, well realising that you are equally well capable of forming your views.

I have rather favoured cuts for crimes of violence. I felt that if you find that a man has committed a violent act upon another, he comes from a tough environment and that is the sort of thing he does impulsively. I don’t think it is a bad thing to give him a taste of his own medicine. If he is the kind of man that has inflicted pain on another person in the belief that by those means he will affect the other person, it seems to me to indicate that he himself believes that it would affect his own conduct, and on those grounds I feel that where there is a crime of violence there is an argument in favour of using corporal punishment.

For non-violent crimes I was against the use of it. First of all we might deter a lot of people from going into the field of violence if we hold this constantly before them. Suppose it became a practice in the courts for a housebreaker found carrying any sort of weapon to be given, say, six months for his housebreaking and a standard two years for carrying a weapon—well, I am pretty sure that there are a lot of housebreakers who would make a point of never carrying a weapon of any sort when they went in and that, I think, would be a step forward. It is true he is still a housebreaker, but at least he is not a possible murderer. My other reasons for being opposed to cuts for non-violent crimes is that we have got 319 habitual criminals. Nearly all of them are there for theft and nearly all of them have two lots of cuts somewhere in their record. To my mind this is pretty conclusive. the thief is not deterred by cuts, or let us say some of them might be deterred—we don’t know how many times we are successful—but we have certainly got a pretty large score of failures.

The question of repeat doses was put to me. As you know, the judges are very reluctant to confirm a second lot of cuts. They say this has been tried once before, you must abandon it now. Well, I feel quite strongly on this point, that if you have cuts at all you must have repeat doses, otherwise if you don’t, the word will very soon get round that once you have had cuts you are inoculated, you are salted, you are fireproof, they can’t touch you again, and the chap will say—“Well, thank goodness I have got that off my chest”—or backside, whichever way he thinks of it—“This won’t come my way again”.

We had a practical example of that in Bulawayo with Mr, Barry Hunt. He once said to a youngster “I am going to sentence you to eight cuts”, and this fellow bounced out of his seat and he said “You
can't do that, I have had them before". He was obviously very distressed at the possibility of getting cuts again and he did not seem to draw much comfort from the remark "You wait and see". Then we have the repeated doses of twelve that we issued at Khami. We found out later through the prison grapevine that one man who had had three lots of cuts had been the leader of the group; this was probably what was pushing him and driving him to it. He was the leader of the group in this particular Nationalist bunch and they removed him from office because they reckoned that having had these three lots of cuts his spirit had gone. So there is some evidence to support these repeat doses of cuts.

Finally, there is a retired native commissioner friend of mine, who tells me that he made a number of enquiries amongst tribal Africans as to what was the most dreaded punishment. His head messengers, he tells me, were all of one view, and that is that cuts were preferred by the criminal to spare diet and solitary confinement, largely on the basis that it was over and done with. I think that this is unreliable myself. I just put it forward to you for what it is worth, but the tribal African is often living very close to the breadline out in the reserves, and in fact he is much better off in prison doing this so-called hard labour than he is back at his kraal in times of drought. I feel that so long as we have this great gap in standard of living, which we have got in this country, there is a difference between the urban African and the rural African. I personally think it would be very unwise to rely on this statement which related only to tribal Africans in the reserves. However, I give it to you for what it is worth.

If I can conclude this section on cuts then, the theory about the numbness after five or six is not supported by the prison officers. The prison officers do suggest that you should observe a minimum. Repeat doses: I think there is an argument in favour of the proposition that, if we are going to have cuts at all, we must provide for repeat doses. In respect of juveniles, we think it serves a good purpose. In respect of crimes of violence, my personal opinion is that I think there is a place for this. For theft and non-violent crimes, my personal opinion is I don't favour it and I think it should be dropped.

There is one point I would like to mention, because I don't know how often this is taken into account, but the Lansdown Commission did say that cuts should never be inflicted where there was any possibility of a psycho-neurotic condition in the accused. Now, I think that that is something the courts have to watch out for, because it could be a completely unsuitable form of punishment. I think this arises with unnatural sexual offences, or another indication of where this might
arise is where you find a man repeatedly stealing from close relatives. That might also indicate that his theft is due to some psychiatric trouble and that he is really a case for the psychiatrist rather than for cuts.

Now I pass on to spare diet.¹ In the opinion of the prison officers (and, once again, this has been observed by the doctor) they have dealt with this spare diet and they don’t like it very much. They say that when you get the man on spare diet his scale of food is cut so fine that he quickly gets to the stage where the only thing that dominates his thinking is this desire for food, and he is just thinking in terms of a big plate full of sadza, and he is not concerned with how he got into this position. Their opinion is that it eradicates all thought or meditation and it is a short period and the fellow comes out fairly quickly, and they feel it is ineffective. Their view on reduced diet is very different. They feel reduced diet does not drive the man to the stage where he is only thinking in terms of the next big plate of food he is going to get. It is spread over a long period. He is on his own and he is driven to reflection on how he got there and they say that it is this element of solitary confinement, in their opinion, that is really important. So if you want to force a man to think on the lines that you want, put him all on his own and sooner or later he has got to get around to asking himself how he got there and whether it was worth while and that sort of thing, and on this we have got direct evidence from the male nurse at Salisbury prison. He apparently had too much to say for himself when he was a prisoner of war and they locked him up in solitary confinement on full diet for ten days. His account of it was:

“I was in a small, dimly lit cell with no reading matter. I could not converse with anybody. I could only think, and after a few days, in spite of trying to avoid it, I could only think of what caused me to be put there, and I was yearning to be returned to the company of others. It became unbearable and after my time was up I realised that a lesson had been learnt.”

So it seems in his case, anyway, to have been remarkably effective. There is a wide variation between individuals. Mr. Senn of the International Red Cross has spoken to me and he says that in Korea they had some instances of men who have stood up to six months of this, who haven’t given any signs of breaking down. So that although the prison officers—and I think there is a great deal to support them—say that this isolation is most effective, there are some chaps who would be able to resist it.

There is one point that I might mention—that in the Salisbury prison they had a couple of cells which were jacked up so that they were

¹ See also R. v. Jimmy, 1967 R.L.R. 194, decided after this address was delivered.
dark and also soundproof. You could not even hear other people there. They have not used these except for the odd lunatic, where they are holding him awaiting transfer to a padded cell. They haven't used these since 1951. It has been considered since then as being somewhat inhumane, but I am told that it was remarkably effective. The one officer that I consulted said in 1951 the last time they used it, they had a chap, a European on the indeterminate sentence, who seemed to be quite incorrigible. He was one of the very few in this country who received lashes. Well, they popped him in this dark, soundproof cell—it doesn't matter even if you leave the lights on, the great thing is that he is completely isolated and can't hear a sound—and at the end of the two days, this fellow was sobbing and pleading to be let out. This was imposed for a prison offence and the officer then in charge let him out with a threat that "You will go straight back if I have any more bounce out of you". The report was given to me by Senior Superintendent Patch. that they had no trouble from him from then onwards, so it does seem that it was a most effective way of dealing with the man.

I come now to the conclusions of the Lansdown Commission again. They suggested that this dietary punishment is unsuitable in some respects for a court because the court is not always sure that the accommodation that is necessary is available and when it is not available the punishment is not properly carried out. So that is a difficult thing for the courts to use and their recommendation was "Leave it as the weapon for the prison service to use for discipline within the prison". I have accepted that myself in the past: I have felt that the prisons have got to have something up their sleeve for dealing with a man and I think this isolation and dietary punishment might be best left chiefly as a weapon for the prisons.

Mr. Jackson then asked me about concurrent sentences and what did the prison officers think. Well, they think this is all a bit ridiculous and they say the prisoners feel the same about it. They go through all the hoo-ha of being dragged down to the High Court and after much evidence, challenging their statements and all the whole rigmarole, at the end of the hearing somebody says "You are sentenced to five years, but this runs concurrently with the five years you got yesterday". We know the position of the court. The court must give a chap discount for wholesale and if you go proving your counts one at a time, the court must start chopping back until it is driven back to concurrent sentences. My view of this is that the answer really lies with the prosecution. I would say that if it is obvious to the prosecution that the court will not be able to impose any additional sentence, they just should not bring the case up.
“Corrective training”—Mr. Jackson asked me what I could tell you about that. It comes from South Africa. I am afraid that, although we had an officer down there recently, he did not come back with any opinion on this. I am unable to tell you anything about it. There are two comments I would make. One is that I think this type of training whereby a man can progress and you deliberately set out to train him while he is in prison, this calls for enthusiastic and well-trained and well-qualified staff. The quality of your staff, I think, is a pre-requisite to working it satisfactorily and then I think you must have the prison facilities as well, which is a matter of money, and our Treasury never seems to have enough.

Mr. Jackson asked me what was done in the way of reformation and rehabilitation in the prisons. Well, to start with, this is rather progressing from the strict field of punishment going through the field of treatment but it has got to start somewhere, and I suppose prison is the right place. Once again, I think that a body ought to go into this and have it laid down. At the moment—I think it is undesirable—the position is that such reformation and rehabilitation as goes on is largely dependent on the opportunity you have got in the prison, because one prison may lend itself to that and has that kind of work available, and it also depends on the individual officer. Some officers are very good at this, others are just there to do their time and knock off at the right time if they can, without taking personal interest. This is inevitable in all kinds of staff. You will have people like that and I feel that we have got very little to be proud of in our present set-up.

On the educational side, I think there are 93 people taking correspondence courses at this stage. It is a very small number, nearly all are in Salisbury and we don’t have facilities elsewhere such as electric lights and so on, and I think the amount of education being done is very small. Whether it should be extended is arguable. If a man can’t get education down town, you then take him up to prison and you give him a good education and give him a trade certificate, you are back in that old dilemma of punishment: it is the right thing to do, but if you do it for him then you are, by comparison, penalising the fellow who has observed the law outside; and a lot of people argue strongly, you must not have any attractions attached to going into prison.

Farming and animal husbandry—we are getting more and more into farming and I think that the regular hours, the regular application to work, must have some desirable effect on a large number of prisoners, and they get into the way of having regular meals, they get into the way of thinking “Well, I do my job properly and I live fairly comfortably”.
One hopes they might settle down to that type of approach when they leave prison.

Trade instruction is only given to people of five years and more in Salisbury prison. There is some in Khami, but mostly in Salisbury prison.

There is a gratuity and stage system. If a man is sentenced to twelve months, at the end of six months he starts getting a little bit of money and this money, as he progresses to the stages, gets increased, and this enables him to buy cigarettes and so on which he can be deprived of for disciplinary offences. I think that is a step in the right direction. It does make control of the prisoners easier, but it is not very imaginative thinking. I would think that throughout our prisons at the moment, we are not making much progress on this line. We have just appointed a chaplain and there will be another one shortly. I am looking forward to the report put in by the chaplain, because I think that he might have some constructive suggestions as to how we might proceed on this.

The next point raised by Mr. Jackson was “Could we give any advice to the magistrates, any data, what our observations are?” I am sorry, I asked the prison officers and most of them say “We don’t think we can tell you anything”. As I say, the data is completely lacking, we haven’t been making a study of the prisoners. One wonders really whether it is the function of the prisons or whether it is the function of somebody else who should follow up afterwards and see what the results of your punishment would be.

Now we come to weekend imprisonment. Mr. Jackson asked me what we thought about weekend imprisonment. I have got a little cutting here saying “New Zealanders found guilty of drunken driving and other minor offences”—I don’t think we regard drunken driving as a minor offence— “may be sentenced to weekend jail terms. Speaking in the House, the Attorney-General said a similar scheme for young offenders seemed to be so successful it was going to be extended to adults”. This was discussed before and I only put to you what the prison attitude is to this. We feel that there are great administrative difficulties for this. A chap comes in on the weekend, we have got to kit him all out, we have got to find a place for him to sleep and then he is off; which may cause a fluctuation in our population. It will cause extra men to be on duty over the weekends, there would be feeding involved, a number of things like that. All these are things that we simply have to overcome if it is desirable, but we have to ask ourselves “Is there not some other way of doing this?” I would suggest that as an alternative we might try overnight imprisonment.
What I have in mind is that there should be an establishment which is not a prison, so the man is not going into that old lock-up on the Enterprise Road; he would have to report there at something about half past five or six at night, he would be coming in every night, so you give him a locker and this business man has to put his bowler hat and briefcase in his locker and he is issued with his blankets and he is given a bed through in the other side and he gets put to bed and at about half past four in the morning he gets chased out of bed, he has got to sweep under his bed, fold all his blankets, get dressed in his kit and find his own way down town and find his morning coffee and his shave and his bath and then he has got to be back there at six o'clock that night. Some people have suggested to me that this would not be much of a punishment. All I can say is that I would hate it. Some of these chaps, I can see, would nip into the Blue Room for a drink and they will go bang, bang, bang, and go off at six o'clock, having drugged themselves. Well, if they caused any trouble, the disciplinary step would be to bring them before the courts and have a different type of punishment imposed. I think that this would be an excellent way of dealing with the family supporter. So often you feel “I have got to do something drastic to this chap, but if I stick him in prison, that withdraws the family support, ruins his life, costs him his job”, and you know how you dither about with such cases. Then there is the rich man that you can’t touch with a fine, a fellow who has got a chauffeur and it doesn’t really hurt him if you suspend his licence for six months. I feel if he was forced to go in and abandon his golf date every Wednesday afternoon and slink off at six o’clock instead of playing the nineteenth hole, it would hit him very hard indeed and I feel that he would become a bit of an object of ridicule by the other members with whom he was playing golf, who would have to get someone else in. Then there are people who only indulge in their activities at night, such as vice milers. If a vice miler had to be locked up every night from six o’clock onwards, it would be depriving her of her source of livelihood and she would have to settle down into some other method of earning a living. (Question: Can you be sure of that if you have got other prisoners?) I can assure you there is no intention of doing away with segregation of the sexes.

Finally, there is a type of prisoner that I think might be very usefully catered for. If you have got a man who has been constantly in trouble and he is actually in prison and you know that he commits offences such as breaking into houses and so on at night, suppose you pass him on from prison for a period of six months to this overnight imprisonment and you force him to take up steady employment, during that period of six months. I would suggest to you that there is this
possibility that he would have settled into the routine of lawfully earning his living by the time you turned him loose at night. Anyway, I think it might be worth a try.

To go with that, you would have to make bookings for this “hotel”, because we can only supply a certain number of them. It would be rather like putting a man in a reformatory and we would have to arrange a booking, which brings me to what I think is an improvement required in our law and that is to give the courts some discretion as to when a man commences serving his sentence. We all know that very often a man comes to court and you sentence him to six months’ imprisonment or something like that, you get a notice of appeal automatically. The attorney who is representing him comes in to see you and says “Don’t bother too much with those reasons, but he needs three weeks to fix his business up”. You must all have had this. I have certainly had it, so this is nothing new, making an arrangement for a time. Take a farmer who has got his crops in and he is deprived of the opportunity, possibly, of seeing that the crops are properly reaped. That is a penalty which might not fall on other persons, so that I think there is an argument there for giving a farmer a chance to come in at the right time. We are very concerned with a man losing his job through being whisked off to jail: possibly some employers might say “Well, if you can wait for a month, your leave is due and you can go to jail during your leave”. So I think there is nothing particularly startling about saying the courts should have the power to give a man a little time before he starts to serve his sentence and I think there will be much benefit that might follow from it.

**DISCUSSION**

**Cuts.**

**Question:** How do you tie up your opinion (with which I think most of us agree) that repeated doses of cuts are effective with the statement you made immediately afterwards that there are more than 300 habitual criminals in the prison, most of whom have had two doses of cuts?

**Mr. Lloyd Roberts:** “The point I wished to make was that if you were going to have cuts at all then it should not be a rule that you stop at one dose. I quoted the facts concerning habitual criminals in support of my view that I have doubts as to whether cuts (whether one or more doses) are a suitable punishment for theft, and especially whether they act as a deterrent to the thief.”
Question: If we decide that it is worth trying this business of giving more than one dose of cuts, how are we going to persuade the judges that this is the proper approach? If we do it now, no sooner are the papers on the judge's bench on review than they are back in the basket with a white letter.

Mr. Lloyd Roberts: "This is a matter of considerable difficulty. A schoolboy who tries his luck too often is taken before his headmaster and can get six cuts every week. If he is unfortunate enough to be taken before the courts he gets one lot of six cuts and then he is a problem case who must go to the reformatory. I feel that the youngster who is treated as a problem case is most unfortunate and that if he were taken to his headmaster we would never hear anything more of him once he left school."

In the ensuing discussions it was pointed out that it is inevitable that there will be difficulty in persuading judges to alter their view on a matter on which they can have had little personal experience. The eventual answer might be to appoint a commission to hold a full enquiry but in the meantime it was suggested that the Attorney-General's staff might assist in solving this problem by picking a suitable case in which to call a psychiatrist to give evidence that in his opinion a second dose of cuts would be beneficial rather than harmful. With the co-operation of the Attorney-General the matter might then be argued on review.

Question: You have said something about the imposition of 12 cuts in the special circumstances of the disturbances in Khami Prison but in general what do you consider to be an appropriate maximum number of cuts?

Mr. Lloyd Roberts: "My enquiries amongst prison officers have not revealed that any of them have witnessed the infliction of more than 12 cuts on any occasion in this country but the previous Director of Prisons did describe to me the imposition of up to 24 lashes in British prisons and in those cases the prisoners receiving the lashes did not lose consciousness. The general opinion of the prison officers I consulted was that a maximum number of cuts for juveniles would be six to eight and with adults eight to twelve."

Question: It seems therefore that it would be safe for us in a proper case to impose as many as twelve cuts because there is always the safeguard that a doctor will be present and can stop the process if he sees that the accused is suffering unduly or his life or health might be in danger.
Mr. Lloyd Roberts: "Yes. I have pursued enquiries about infliction of cuts over the period of the last ten years, in the course of which in not one single case has a doctor had to interfere. The views of the Secretary for Health support these findings. He said that he would be very surprised if a doctor had to interfere because the crucial question for the doctor is whether the prisoner is fit enough at the start to receive cuts. If he is fit enough to start then he will almost always be able to go through with it. There have been several cases where the doctor has found a prisoner unfit to receive cuts at all but not where he has stopped the process once it has begun."

Question: To return to the maximum number. Although you have given it as your own opinion that in a proper case a maximum of 12 cuts might be imposed, I understand that the High Court frowns on the infliction of more than eight.

Mr. Lloyd Roberts: "It is perfectly correct that the Lansdown Commission in South Africa said that eight should be regarded as a maximum number and they referred to this question of lashes after that number falling on numbed flesh but as I said in my address, this point is not supported by any single person to whom I have spoken." The leading authority in this country is R. v. Sameli and Zipi, 1943 S.R. 150, 152-3 where Tredgold J. said:

'Finally, a word should be said as to the quantum of corporal punishment. There is a tendency in subordinate courts to award a large number of cuts or lashes without apparent appreciation of the effect. Competent observers agree that after the infliction of from eight to ten lashes or cuts with a heavy cane the limit of consciousness is, in the majority of cases, approached. A number in excess of fifteen is liable to result in permanent injury. Rex v. Mavana, 1908 T.S. 71; Rex v. Dukanini, 1922 N.P.D. 1. Five cuts or lashes is a considerable punishment, ten is very severe and the latter number should only be exceeded in the most extreme cases. Rex v. Mabelwana Kambula, 1911 T.P.D. 239; Rex v. Mafelane, 1931 O.P.D. 216; Rex v. Tapala, 1940 S.R. 210; Rex v. Sikateye, 1943 S.R. 17.'

There was some discussion of the occasional outbreaks of accused persons asking to be given cuts instead of imprisonment. It was agreed that the most probable explanation was that in rural areas especially, they wished to get back to the plough, to look after their wives and families and to keep up their payment of school fees. The request should be treated as a perfectly logical and reasonable one.
It was suggested that in cases of assault g.b.h., when for instance knives were used by people who were obviously members of street gangs, it might be worth trying an experiment that was tried some years ago in Cape Town, when razor gangs were prominent. There, cuts were inflicted and the recipients of the cuts were sent straight back into the streets where they could be seen in their damaged condition. It was felt that perhaps this came too close to public flogging and should certainly not be tried unless a very serious problem arose.

**Question:** What do you think about cuts by instalments?

**Mr. Lloyd Roberts:** “In Kenya they introduced this for theft of public money. The prisoner would be given six cuts on admission and having served his prison sentence he would receive a further six. It was thought this would be a good method of reminding the prisoner of the seriousness of his crime just before releasing him to the outside world. So far as the individual prisoner is concerned there might be something to support this, but I think from the prison point of view it would make it very hard on the prison officer who is trying to persuade a man to set himself up in a steady way of life and do steady work. If the prisoner knows that at the end of three or four months that same prison officer or one of his colleagues is going to tie him up and give him another six cuts, I think it would make the work of prison officers very difficult.”

**Punishment of prisoners—loss of remission.**

**Question:** While agreeing that in general the imposition of cuts for offences involving dishonesty is not appropriate, it seems to me that the only alternative for the man who keeps coming back to court is reduced diet. But I understand you to suggest that reduced diet should be left for disciplinary offences in prison. I would have thought that in the course of the average year there were very few prison offences committed which warranted reduced diet as opposed to the ordinary disciplinary punishment of loss of privileges and loss of remission.

**Mr. Lloyd Roberts:** “Well, a number of prisoners do not have privileges so there is not much scope for working on them. The only ones you can really touch are those who have been sentenced to a year or more and who can be charged and have their remission taken off. The loss of remission hits them very hard and is very effective when they are close to the end of their sentence because they tick off the days and know exactly when they are due to go out. But loss of remission earlier on in their sentence does not seem to bother them a bit and is therefore an ineffective punishment at that stage. This is why I suggest that in general, dietary punishment should be regarded as an appropriate weapon for the prison authorities to use.”
Question: On this question of remission, should it not be earned rather than received as a right?

Mr. Lloyd Roberts: "This question is very much under considera­tion at the present time and it is generally considered that the present situation is unsatisfactory. Mr. Hervey, the Director of Social Welfare, is presently carrying out a study and is investigating the possibility of releasing a man on parole at the end of his shortened sentence with a period of remission hanging over him as a form of additional sentence he will have to serve if he does not comply with the conditions of parole. This would operate something like a suspended sentence. The actual mechanics of the existing system of remission are also being studied. I understand that we introduced the present system by following the English system. This makes it very easy from a record-keeping point of view because the moment a man is admitted into prison he is given a date of release which takes into account his date of remission and they say to him 'You watch your step because that date might be varied if you do not behave yourself'. The result is that he does not earn his remission but obtains it automatically, so long as he keeps his nose clean. He knows he is going to get out on time because he can only lose his remission if he is actually convicted of an offence. This is not very satisfactory because a loafer who does not commit an offence gets just a much benefit as a hard worker who gives every sign of having reformed."

Reduced diet and solitary confinement.

Question: Although appreciating your reasons for suggesting that dietary punishment should generally be reserved for prison offences, I wonder whether this should be regarded as precluding magistrates from imposing such a sentence. In other words, can this form of sentence not be given twice?

Mr. Lloyd Roberts: "One objection to the free use of this form of punishment by the courts is the practical difficulty of knowing whether or not the sentence can be carried out. Occasionally, due to the prevalence of a particular crime or something like that, the courts decide to blitz a particular offence and we get a whole heap of prisoners in, all sentenced to dietary punishment and solitary confinement, but we just have not got that number of cells to operate the punishment. That is a practical reason for being very hesitant about imposing this punishment. Further, it is a form of penalty which various people who have studied punishment do not like, because they have found that in a large number of cases the fellow sits in his little cell, grinding his teeth and thinking what a lousy bunch of chaps society consists of, and he is going to get his own back when he comes out. They seem to think that is the way
it affects a large proportion of prisoners. It might be argued that if this is so there is a case for abolishing this form of punishment altogether, because if it makes an anti-social man even more anti-social it is not even appropriate for prison offences. The reason why I feel it should be retained for prison offences is because the man has been sent to prison and the prison officers must have something extra up their sleeves to be able to break him down. This is the expression used to me by prison officers—if they get a prisoner whom they simply cannot do anything with, they put him in a cell on his own and that is the best way to break him down. I must make it clear that they associate the breaking down process with the solitude rather than with the dietary punishment."

**Question:** Can you give any idea of the number of prisoners during a year who might require this breaking down process?

**Mr. Lloyd Roberts:** “I cannot be specific but I would say the number is small, particularly if the prisons have the facilities available. It has been put to me by prison officers on a number of occasions that if you have the solitary confinement cells there, you seldom have to use them, but in some of our prisons we have not had the facilities and the discipline at those prisons always seems to be very much worse than at those which do have solitary confinement cells.”

**Prison doctors.**

**Question:** Does the Department of Prisons employ a psychiatrist or psychologist?

**Mr. Lloyd Roberts:** “No. We have one full-time doctor who started last year and a second one on Estimates. I think we would have difficulty in persuading Treasury to allow us a full-time psychiatrist or psychologist.”

**Question:** Is the doctor to whom you referred only engaged to look after the health of Salisbury prisoners or does he go around the country generally looking into prison conditions?

**Mr. Lloyd Roberts:** “He is stationed at Salisbury and he has not yet been around to other prisons. In Bulawayo we have part-time doctors working on contract and in the smaller centres they visit as required. The doctor in Salisbury is a specialist dietician so we have referred to him certain questions relating to diet which, of course, are applicable to the whole prison service.”

**Variation of sentences.**

**Question:** Referring to your suggestion that some body be set up with the power to amend the original sentence imposed by the court, I am slightly concerned that the effect might be to bring the courts into contempt.
Mr. Lloyd Roberts: “I do not think this need be so. The American system, for instance, is to give a variable sentence of say one to five years which means that a minimum of one and a maximum of five years will be served but at what point between those extremes the prisoner will be released is a matter for the parole board to decide. This does not seem to affect the authority of the court. My point is that it is very difficult in court to assess whether a prisoner is likely to reform or not. He may say in court that he will never do it again and he is truly sorry, but when he gets to prison his behaviour may be entirely different. On the other hand, another man whose attitude in court appears identical may genuinely have made up his mind that he has ruined his life and made a fool of himself and he is going to reform. The proof of the pudding is in the eating and it is really only by observing their behaviour in prison that you can tell the genuine reformed criminal from the one who makes a big show of being sorry because he hopes to get a light sentence. There are various views on the best method of sorting these people out. Some suggest that they should be referred back to the court to take evidence and some suggest the setting up of some sort of board. I think that the prison should certainly not have the final say. The prison officers should be available to give evidence to the board or the court but if they themselves have the power to vary the sentence I think their relationship with the prisoners must suffer.”

It was generally agreed that something similar to the American parole board system linked with the imposition of variable sentences appeared attractive, but a fear was expressed that the man who committed fraud involving large sums of money was the type of man most likely to apply himself industriously in prison and give every indication of having reformed. Steps would have to be taken to ensure that large scale fraud did not become too attractive a business.

Transfer of prisoners.

Question: What is the policy of the Department of Prisons regarding the prison in which a long term prisoner serves his sentence? Is there any maximum sentence beyond which he is transferred from a small centre to a large one?

Mr. Lloyd Roberts: “The present position is that local prisons are bound to transfer (with certain exceptions) those who are serving over three months without the option of a fine. At the other prisons there is no definite rule laid down but a man who has just been sentenced to a very long term is naturally regarded as a security risk and that may lead to him being transferred to a maximum security prison. Similarly, if a particular prison becomes over-crowded the longer term prisoners will be transferred because it is naturally more convenient to transfer those
who will not have to be brought back to their point of release (if they wish) for a long period."

**Question:** I have frequently been asked by prisoners immediately after sentence whether they can be transferred to another prison. Is this simply a desire to get away from a particular prison officer, or to go to a larger prison which might have better recreational facilities?

**Mr. Lloyd Roberts:** "I think both reasons may be true. The larger prisons are able to provide more recreational facilities and so men sometimes request to go there. There is also undoubtedly something in the personalities of the individual prison officers. I know of one case where about twenty prisoners asked to be transferred from one prison to another but as soon as it was announced that a particular prison officer was being transferred to this other prison, all twenty immediately withdrew their application."

**Segregation of prisoners.**

**Question:** Mr. Justice Davies suggested that it would be a good thing to segregate those prisoners who were serving a sentence as a result of failing to pay a fine from those who had been sentenced to hard labour without the option of a fine.

**Mr. Lloyd Roberts:** "This would obviously be desirable because the two types of prisoners have obviously been viewed in a different light by the court which has sentenced them, but of course, there are practical difficulties. Already we are supposed to divide them according to sex and we are supposed to divide the first offender from the recidivist and the young from the old. By the time you have made all these divisions you have divided them horizontally, vertically and diagonally and in the smaller prisons especially, this is simply not practicable. The minimum security prisons such as the work camps in game parks to which Mr. Justice Davies referred are certainly a great help when it comes to segregating the less hardened criminal from the more hardened."