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HOME OFFICE

Report of the Departmental Committee on CORPORAL PUNISHMENT

*Presented by the Secretary of State for the Home Department
to Parliament by Command of His Majesty
March, 1938*

LONDON

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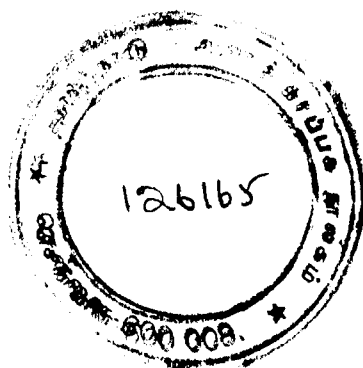


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NOTE.—The estimated cost of the preparation of this Report, including the expenses of the Committee, is £604 11s. 8d. of which £132 10s. 0d. is the estimated cost of printing and publishing the Report.

Institutions. (Although our terms of reference speak only of offences committed by "prisoners", we have been asked to interpret this part of the reference as extending to Borstal Institutions, as well as Prisons.) In each of these three parts of our enquiry different considerations have to be taken into account, and we have therefore thought it preferable to deal with each in a separate part of our Report. Each part contains a detailed statement of the development of that type of corporal punishment with which it is concerned: but we have thought it desirable, even at the cost of some repetition, to commence our Report with a general outline of the history of all three types of corporal punishment during the last century.

PART I.—HISTORICAL INTRODUCTION.*

1. Whipping has been used as a form of punishment in this country from the earliest times, and payments for whipping figure largely in municipal and parish accounts from an early date. When death was the penalty appointed by the common law for felonies, whipping was one of the punishments so appointed for misdemeanours at common law and for those statutory misdemeanours for which no punishment was specifically provided by statute. The punishment was usually administered in public—either at the cart's tail or, later, at a public whipping-post. Women were liable to whipping equally with men—until in 1820 the power to order female offenders to be whipped, either publicly or privately, was abolished by the Act 1 Geo. IV. c. 57.

In 1827, when benefit of clergy was finally abolished by the Act 7 & 8 Geo. IV. c. 28, the general penalty of death for felony was also abolished and it was provided that any person convicted of a felony should in future be punished in the manner prescribed by the statute specially relating to that particular felony. The same general Act provided that any person convicted of a felony for which no punishment was specially provided by statute should in future be liable to transportation or imprisonment and, if a male, "to be once, twice or thrice publicly or privately whipped" in addition to imprisonment. Many of the special statutes dealing with particular felonies also made similar provision for whipping. Thus in the early part of the nineteenth century corporal punishment, which was already a common law penalty for misdemeanours, became also a statutory penalty for many felonies. By this time the whipping of female offenders had already been prohibited by statute, and as a statutory punishment for felonies whipping was limited to males. The law still contemplated that the punishment might be administered in public.

The distinction between felony and misdemeanour is unknown to Scottish law, and in Scotland the common law had from the earliest times authorised whipping as a penalty for a wide range of offences under the common law.

2. The movement for penal reform, which had led to the curtailment of capital punishment, was maintained throughout the first half of the nineteenth century and operated in other directions to mitigate the asperities of the old criminal law. In 1824 Parliament curtailed the powers of Justices to deal with vagrancy offences by means of corporal punishment. Up to that time a single Justice had power to order any vagrant to be publicly whipped: but by the Vagrancy Act, 1824, whipping was reserved mainly for second or subsequent offences under the Act, and the power to order it was removed from the summary

WARRANTS OF APPOINTMENT.

WE HEREBY APPOINT:

The Hon. EDWARD CADOGAN, C.B., J.P.,
 MARGARET, LADY AMPHILL, C.I., G.B.E., J.P.,
 Mrs. E. A. ASTLEY,
 Professor J. L. BRIERLY, O.B.E., J.P.,
 Mr. E. FORD DUNCANSON, D.S.C., J.P.,
 Dr. ROBERT HUTCHISON, M.D., F.R.C.P.,
 Sir WILLIAM McKECHNIE, K.B.E., C.B.,
 Mr. H. R. TUTT, and
 Mr. CECIL WHITELEY, D.L., K.C.,

to be a Committee to consider the question of corporal punishment in the penal systems of England and Wales and of Scotland; to review the law and practice relating to the use of this method of punishment by Juvenile Courts, by other Courts and as a penalty for certain offences committed by prisoners; and to report what changes are necessary or desirable.

AND WE FURTHER APPOINT The Hon. Edward Cadogan to be Chairman and Mr. Norman Brook, of the Home Office, to be Secretary of the Committee.

(Signed) JOHN SIMON,
 WALTER E. ELLIOT.

WHITEHALL,
 27th May, 1937.

WE HEREBY APPOINT:

MRS. MURIEL M. MONTEITH, J.P.,
 to be an additional member of the Committee appointed on the 27th May, 1937, to consider the question of corporal punishment in the penal systems of England and Wales and of Scotland.

(Signed) SAMUEL HOARE,
 WALTER E. ELLIOT.

WHITEHALL,
 1st June, 1937.

DEPARTMENTAL COMMITTEE ON CORPORAL PUNISHMENT.

REPORT.

To The Right Honourable Sir SAMUEL HOARE, Bt. G.C.S.I., G.B.E., C.M.G., M.P., His Majesty's Secretary of State for the Home Department, and
 The Right Honourable WALTER E. ELLIOT, M.C., M.P. His Majesty's Secretary of State for Scotland.

SIRS,

We, the undersigned members of the Committee appointed "to consider the question of corporal punishment in the penal systems of England and Wales and of Scotland; to review the law and practice relating to the use of this method of punishment by Juvenile Courts, by other Courts and as a penalty for certain offences committed by prisoners; and to report what changes are necessary or desirable",

have the honour to submit our Report.

We have held 20 meetings and have examined 72 witnesses. In addition, some members of the Committee have seen sentences of corporal punishment carried out, both in prisons and also by the police. The names of the witnesses, and of associations and individuals who submitted written memoranda but did not give oral evidence, are set out in Appendix I of this Report. We desire to express our thanks to all who gave evidence, or submitted written memoranda, for the assistance which they have given to us in our examination of the questions referred to us for consideration.

We should also like to record our high appreciation of the valuable services of Mr. Norman Brook, the Secretary to the Committee.

The Foreign Office and the Dominions Office have been good enough to obtain, for the purposes of our enquiry, official and up-to-date information regarding the law relating to corporal punishment in fifteen foreign countries and in each of His Majesty's Dominions. The information so collected is summarised in Appendix V of this Report.

The subject matter of our enquiry falls into three parts—corporal punishment of young offenders by order of courts of summary jurisdiction, corporal punishment of older offenders for offences dealt with by the superior courts, and corporal punishment for offences against discipline in Prisons and Borstal

jurisdiction of Justices and vested in Quarter Sessions. During the next twenty years the whole of the criminal law was under continuous review by a series of Commissions and Parliamentary Committees, and in 1843 the Commissioners on the Criminal Law submitted their Seventh Report containing recommendations for a comprehensive codification of the criminal law. The Commissioners did not favour the retention of whipping as a general penalty for adult offenders, and their reasons are given in the following extract from their Seventh Report:—

“We have already had occasion to observe that the punishment of whipping is occasionally inflicted, and, in some instances, without regard to any peculiarity in the crime which seems to warrant such a distinction. We see no reason for confining this species of punishment to the limits within which it is now applicable, if resort to it be advantageous either in respect of deterring or correcting offenders. If, however, the efficacy be not established by experience, we should certainly be inclined to reject it altogether, except in the instance in which it has lately been imposed by the Legislature, as constituting a signal mark of ignominy. We think that, so far from extending this species of punishment, it would be better to reject it, except in the instance to which we have alluded, and a few, if any others, which it may be proper to mark with signal reprobation. It is a punishment which is uncertain in point of severity, which inflicts an ignominious and indelible disgrace on the offender, and tends, we believe, to render him callous, and greatly to obstruct his return to any honest course of life.”

The Act which the Commissioners specifically excluded from their recommendation was the Treason Act, 1842, which made it an offence to discharge or aim any firearm at the Sovereign and provided that any person convicted of such an offence might be ordered to be whipped not more than three times, either publicly or privately, in addition to a sentence of imprisonment. This Act was the result of the great public indignation aroused by the incidents in which the life of Queen Victoria had appeared to be threatened in May, 1842, and the Act had been passed only a few months before the Report of the Commissioners was presented.

3. The recommendations made by the Commissioners on the Criminal Law formed the basis for the great criminal statutes of 1861, which amended and consolidated the English law regarding coining, forgery, larceny, malicious damage, and offences against the person. None of these statutes made any provision for whipping as a penalty for persons over 16 years of age: and, as whipping under the common law for misdemeanours was already falling into disuse, the effect of these Acts was that, with four exceptions, whipping was abolished as a

penalty for adult offenders against the criminal law in England. The exceptions were contained in the Vagrancy Act, 1824, the Treason Act, 1842, and certain provisions in (a) the Diplomatic Privileges Act, 1708, and (b) the Knackers Act, 1786, which prescribed whipping as a penalty for (a) instituting, or assisting in the institution of, certain actions against an Ambassador or his servants and (b) the irregular slaughtering of horses and cattle.

In the following year a similar change was made in the law of Scotland by section 2 of the Whipping Act, 1862, which provided that in Scotland no person over 16 years of age shall be whipped for theft or for crime committed against person or property. Legal authorities are of opinion that this restriction would not apply to offences of treason and that whipping would still be a competent penalty, in Scotland as in England, for an offence under the Treason Act, 1842. As regards the three other exceptions made in England no question arises, since neither the Diplomatic Privileges Act, 1708, nor the Knackers Act, 1786, nor the Vagrancy Act, 1824, applied to Scotland.

4. While the whipping of adults was thus curtailed, it was recognised by Parliament that corporal punishment was often more suitable than imprisonment as a penalty for young offenders. In 1847 the Act 10 & 11 Vic. c. 82 empowered Justices to deal summarily with offences of simple larceny committed by persons under 14 years of age, and provided that boys so dealt with might be ordered to be once privately whipped, either instead of or in addition to imprisonment. This Act laid the foundations for the present powers under section 10 of the Summary Jurisdiction Act, 1879, by which summary courts may punish by whipping boys under 14 who are convicted summarily of any indictable offence.

In Scotland similar powers were conferred by section 6 of the Prisons (Scotland) Act, 1851, which provided that any Judge or Magistrate might punish by private whipping any boy under 14 convicted of any offence punishable by imprisonment or by fine with the alternative of imprisonment. This provision was re-enacted in section 74 of the Prisons (Scotland) Act, 1860, and a similar provision was later enacted in section 514 of the Burgh Police (Scotland) Act, 1892. Apart from these statutory powers, which applied only to boys under 14 years of age, the powers of ordering whipping under the common law of Scotland were preserved by section 2 of the Whipping Act, 1862, in relation to boys up to the age of 16 years.

In addition to these general powers, specific provisions were included in the English statutes of 1861 enabling courts of Assize or Quarter Sessions to order boys under 16 to be once privately whipped if convicted on indictment of certain offences against the person and certain offences of larceny and malicious damage to property.

5. The general principle was thus adopted in England in 1861, and extended to Scotland in 1862, that whipping is an unsuitable penalty for adults who offend against the criminal law but might be retained as a penalty for young offenders under 16 years of age. By this time Parliament had also adopted the two further principles that no offender should be whipped more than once for the same offence (section 2 of the Whipping Act, 1862); and (so far as concerned the new powers conferred by the various statutes after 1842) that the practice of administering whippings in public should be discontinued.

It was not long before a breach was made in these general principles. In the latter part of 1862 there was an outbreak of robbery with violence in London, and in a number of cases the violence took the form of "garrotting", i.e. attempting to choke or strangle the victim. This outbreak caused great public alarm—probably much greater than was warranted by the facts—and when it finally culminated in an attack on a Member of Parliament, a Bill was introduced by a Private Member proposing to add whipping to the penalties already available for garrotting (under section 21 of the Offences against the Person Act, 1861) and for robbery with violence (under section 43 of the Larceny Act, 1861). The Bill proposed that offenders should be liable to be "once, twice or thrice privately whipped", and this provision for repeated whippings was a further infringement of the principles adopted in 1861. As will be shown later (see paragraph 56), the wave of crime with which it was designed to deal had already passed before the Bill was introduced: but it passed into law as the Garrotters Act, 1863—against the advice of the Home Secretary of the day, by whom it was described as "panic legislation after the panic had subsided". This Act did not apply to Scotland.

In 1885 a further power of whipping was added to the statute book by section 4 of the Criminal Law Amendment Act, which provided that a boy under 16 years of age may be ordered to be whipped, in lieu of imprisonment, on conviction of unlawful carnal knowledge of a girl under 13 years of age. Being limited to boys under 16, this involved no breach of the principles adopted in 1861. The Act applied to Scotland.

In 1898 a Bill was introduced to extend the Vagrancy Act, 1824, by providing that any male person living on the earnings of prostitution or soliciting for immoral purposes should be deemed a rogue and vagabond within the meaning of that Act. When the Bill was in the House of Commons it was pointed out that, in view of the provisions of the Act of 1824 regarding incorrigible rogues, this would have the effect of rendering such persons liable to whipping on a second or subsequent conviction of the offence. The Government at first accepted an amendment repealing entirely that part of the Act of 1824 which authorised the punishment of whipping: but later, in the House of

Lords, they deleted that amendment and the Bill was passed in its original form, so that persons convicted more than once of these offences were rendered liable to be whipped by order of Quarter Sessions as incorrigible rogues. The reason given by the Government for this decision was, not that whipping was a suitable penalty for these offences, but that it was inappropriate to repeal all the powers of whipping under the Act of 1824 in a Bill designed only to extend the categories of persons to whom that Act applied. The new Act did not apply to Scotland.

In 1912 there was widespread alarm about the White Slave Traffic. This traffic was believed to be assuming large proportions, and it was claimed that the penalties under the existing law were not sufficient to enable it to be suppressed. This alarm led to the passing of the Criminal Law Amendment Act, 1912, which provided (a) that male persons convicted of procuring should be liable to be once privately whipped and (b) that male persons charged with living on the earnings of prostitution or soliciting for immoral purposes might be proceeded against on indictment (instead of as rogues and vagabonds under the Vagrancy Acts) and might, on a second or subsequent conviction, be ordered to be once privately whipped. This Act applied to Scotland.

In 1914 it was provided, by section 36 (1) of the Criminal Justice Administration Act, that no person shall be sentenced to be whipped more than once for the same offence. This finally removed the anomaly that, in spite of the similar provision in section 2 of the Whipping Act, 1862, persons convicted of garrotting or robbery with violence had been liable under the Garrotters Act, 1863, to be sentenced to one, two or three whippings for the same offence.

It was also provided, by section 36 (2) of the Criminal Justice Administration Act, 1914, that no person shall be sentenced to be whipped otherwise than under a statutory enactment. The old common law power to order whipping for misdemeanours had not in fact been exercised by the courts for a great many years, but the power still existed in law until it was finally extinguished, in England, by this provision in the Act of 1914.

6. Corporal punishment for offences against prison discipline stands on a different footing from the other categories of corporal punishment considered above; and, when the powers of whipping adults for criminal offences were curtailed in 1861, no question arose of modifying the provisions authorising corporal punishment in prisons. At that time the position in English prisons was governed by section 42 of the Gaol Act, 1823, and by section 1 of the Convict Prisons Act, 1850. In local prisons the Visiting Justices, or one of them, might order a prisoner to be punished by personal correction for any repeated offence against the Prison Rules or for any serious offence with which

the Governor was not himself empowered to deal. In convict prisons corporal punishment could be ordered only by the Directors of Convict Prisons and only for a limited number of offences specified in Rules made by the Secretary of State. In later years the position in local prisons was assimilated more nearly to that in convict prisons: and finally in 1898 the offences for which corporal punishment could be imposed in either type of establishment were limited by statute to three—mutiny, incitement to mutiny, and gross personal violence to an officer or servant of the prison—and the power to award this punishment was conferred on the Boards of Visitors and Visiting Committees, subject to confirmation in every case by the Secretary of State (Prison Act, 1898, section 5). When Borstal detention was introduced in 1908, it was provided by section 4 (2) of the Prevention of Crime Act, 1908, that the Prison Acts should apply to a Borstal Institution as if it were a prison; and in England persons detained in these Institutions thus became liable to corporal punishment for offences against discipline in the same way as persons detained in prisons.

In Scotland there has never been power to order corporal punishment for any offence against discipline in local prisons or in Borstal Institutions. In Scotland this power exists only in relation to persons serving sentences of penal servitude in Peterhead Prison. It is derived from section 23 of the Peterhead Harbour of Refuge Act, 1886, which empowered the Scottish Prison Commissioners to build a prison for male convicts at Peterhead and conferred on them, in relation to that prison, all the powers then exercisable by the Directors of English Convict Prisons in relation to convict prisons in England. The Prison Act, 1898, did not apply to Scotland, and the restrictions which that Act imposed on the use of corporal punishment in English prisons were not extended to Scotland.

SUMMARY OF THE EXISTING LAW.

7. The following is a summary of all the offences for which corporal punishment may be inflicted under the provisions of the existing law:—

COURTS OF SUMMARY JURISDICTION.

ENGLAND AND WALES.

Summary Jurisdiction Act, 1879, section 10 (2).—Boys under 14 years of age who are convicted summarily of any indictable offence may be ordered to be whipped.

SCOTLAND.

Common law.—Boys under 16 years of age, convicted summarily, may be ordered to be whipped for a wide range of offences at common law.

SUPERIOR COURTS.

ENGLAND AND WALES.

Diplomatic Privileges Act, 1708, section 4.—Male persons instituting any process which might result in the arrest of, or distraint on the goods of, the Ambassador or Minister of any foreign State; any attorney or solicitor acting in their behalf; and any officer executing any writ or process in connection with the action. On conviction before the Lord Chancellor or the Lord Chief Justice.

Knackers Act, 1786, sections 8 and 9.—Male persons convicted on indictment of unauthorised or irregular slaughtering of horses or cattle without a licence. This offence is triable at Assizes or Quarter Sessions.

Vagrancy Act, 1824, section 10.—Male persons convicted as incorrigible rogues and committed to Quarter Sessions for sentence: e.g., persons convicted of a second or subsequent offence of indecent exposure, sleeping out, failure to support family, etc.

Treason Act, 1842, section 2.—Male persons convicted on indictment of discharging or aiming a firearm at the Sovereign. This offence is not triable at Quarter Sessions.

Garrotters Act, 1863, section 1.—Male persons convicted on indictment of attempt to choke, suffocate or strangle with a view to facilitating the commission of any indictable offence. This offence is not triable at Quarter Sessions.

Larceny Act, 1916, section 23 (1).—Male persons convicted on indictment of robbery armed, robbery in company with one other person or more, or robbery with personal violence. The penalty of whipping was originally applied to these offences by the Garrotters Act, 1863, and this provision was transferred to the Larceny Act, 1916, on consolidation. These offences are not triable at Quarter Sessions.

Criminal Law Amendment Act, 1912, section 3.—Male persons convicted on indictment of an offence of procuring under section 2 of the Criminal Law Amendment Act, 1885. This offence is not triable at Quarter Sessions.

Section 7 (5).—Male persons convicted on indictment of a second or subsequent offence of living on the earnings of prostitution under the Vagrancy Act, 1898. This offence is triable at Assizes or Quarter Sessions.

Section 7 (5).—Male persons convicted on indictment of a second or subsequent offence of soliciting for immoral purposes under the Vagrancy Act, 1898. This offence is triable at Assizes or Quarter Sessions.

Boys under Sixteen.

In addition, the following statutes confer special powers to punish by whipping boys under 16 years of age who are convicted on indictment of specified offences. A few of these offences are not triable at Quarter Sessions, but the majority can be tried either at Assizes or at Quarter Sessions.

Larceny Act, 1861.—Sections 12, 13 and 16: certain offences relating to deer.

Malicious Damage Act, 1861.—Offences of malicious damage to property under the following sections of the Act:—1-10, 14-23, 26-33, 35, 39, 42-48, 50 and 54.

Offences against the Person Act, 1861.—Offences under sections 16, 28-30, 32 and 64.

Criminal Law Amendment Act, 1885, section 4.—Unlawful carnal knowledge of a girl under 13 years of age. In this case whipping is in lieu of imprisonment. This offence is not triable at Quarter Sessions.

Larceny Act, 1916.—Offences of larceny, receiving, embezzlement, and demanding money with menaces, under the following sections of the Act:—2, 8, 10, 16, 17, 29, 33, 34 and 37. The penalty was originally applied to these offences by the Larceny Act, 1861, and the provisions were transferred to the Act of 1916 on consolidation.

SCOTLAND.

Treason Act, 1842, section 2.—Male persons convicted on indictment of discharging or aiming a firearm at the Sovereign.

Criminal Law Amendment Act, 1912. Section 3.—Male persons convicted on indictment of an offence of procuring under section 2 of the Criminal Law Amendment Act, 1885.

Section 7 (5).—Male persons convicted on indictment of a second or subsequent offence of living on the earnings of prostitution under the Immoral Traffic (Scotland) Act, 1902.

Section 7 (5).—Male persons convicted on indictment of a second or subsequent offence of soliciting for immoral purposes under the Immoral Traffic (Scotland) Act, 1902.

Boys under Sixteen.

Common Law.—Boys under 16 convicted on indictment, as well as summarily, may be ordered to be whipped for a wide range of common law offences.

Criminal Law Amendment Act, 1885, section 4.—A boy under 16 convicted on indictment of unlawful carnal knowledge of a girl under 13 may be ordered to be whipped in lieu of being sentenced to imprisonment.

PRISON OFFENCES.

ENGLAND AND WALES.

Prisoners who have been (i) sentenced to penal servitude or (ii) convicted of felony or (iii) sentenced to imprisonment with hard labour may be ordered corporal punishment for:—

- (a) gross personal violence to an officer or servant of the prison;
- (b) mutiny;
- (c) incitement to mutiny.

Corporal punishment can be ordered only by the Visiting Committee or Board of Visitors of the Prison, and the order is subject to confirmation by the Secretary of State.

The same provisions apply to persons convicted of felony who are detained in Borstal Institutions.

SCOTLAND.

Persons serving sentences of penal servitude in the convict prison at Peterhead are liable to corporal punishment for the following offences against discipline:—

- (a) mutiny or open incitements to mutiny;
- (b) personal violence to an officer or servant of the prison or a fellow prisoner;
- (c) grossly abusive or offensive language to an officer or servant of the prison;
- (d) wilfully or wantonly breaking prison windows or otherwise destroying prison property;
- (e) when under punishment, wilfully making a disturbance tending to interrupt the order and discipline of the prison;
- (f) any other act of gross misconduct or insubordination requiring to be suppressed by extraordinary means.

Corporal punishment can be ordered only by the Secretary or Deputy Secretary of the Prisons Department for Scotland, and it is the practice to submit each case to the Secretary of State for Scotland before the corporal punishment is carried out.

There is no power in Scotland to inflict corporal punishment for disciplinary offences in local prisons or Borstal Institutions.

PART II.

CORPORAL PUNISHMENT OF YOUNG OFFENDERS
BY COURTS OF SUMMARY JURISDICTION.

HISTORY AND EXISTING LAW.

8. *England and Wales*.—Before 1847 Justices of the Peace had no jurisdiction to deal summarily with felonies, and all such cases had to be committed for trial at Assizes or Quarter Sessions, however young the offender and however trivial the offence. As a result, large numbers of children were committed to prison to await trial on indictment for small thefts and other offences which, though not serious, were classed in law as felonies. The conditions in the prisons were such that these children could not fail to be contaminated by association with hardened criminals, and in order to meet this situation an Act was passed in 1847 "to ensure the more speedy trial of juvenile offenders and to avoid the evils of their long imprisonment before trial". This Act (10 & 11 Vic. c. 82) enabled any two or more Justices of the Peace to deal summarily with any child under fourteen years of age charged with any offence of simple larceny or any offence punishable as simple larceny; and it provided that any child so dealt with might be fined not more than £3, or sentenced to imprisonment for not more than three months, and, if a male, might also be ordered to be once privately whipped, either instead of or in addition to imprisonment. In 1850 the jurisdiction thus conferred on the Justices by the Act of 1847 was extended to all persons under the age of sixteen years, but it was specifically provided that the power to order whipping should apply only to boys under fourteen years of age (13 & 14 Vic. c. 37). In 1862, Justices exercising this power to order whipping were required to specify in their sentence the number of strokes to be inflicted; and it was provided that the instrument used should be a birch rod and that the maximum number of strokes should be twelve (Whipping Act, 1862, section 1).

This jurisdiction was further extended by the Summary Jurisdiction Acts, 1879 and 1899, which empowered Justices in petty sessions to deal summarily, not only with offences of simple larceny, but with all indictable offences (other than homicide) committed by persons under sixteen years of age. Whipping was among the penalties which the Justices were empowered to impose in such cases, either instead of or in addition to any other punishment; but this power of whipping was again restricted to boys under fourteen years of age. The instrument and the maximum number of strokes were prescribed by the statute—for "children" (i.e. those under twelve years of age) six strokes with a birch rod; and for

"young persons" under fourteen years (i.e. those over twelve and under fourteen years) twelve strokes with a birch rod. The punishment was to be carried out in private, as soon as practicable after the sentence had been pronounced. It was to be administered by a constable, in the presence of an inspector or other officer of police of higher rank than a constable; and the parent or guardian of the child was to be allowed to be present if he so desired (Summary Jurisdiction Act, 1879, sections 10 and 11).

Section 128 of the Children Act, 1908, amended the definitions of "child" and "young person" in the Summary Jurisdiction Act, 1879, by substituting "fourteen years" for "twelve years". This had the effect that under section 10 of the Act of 1879 six strokes was the maximum punishment by whipping for boys under fourteen years of age; and the Children Act accordingly repealed the provision in section 11 of the Act of 1879, which had previously authorised a maximum of twelve strokes for boys over twelve and under fourteen years. From 1908 onwards six strokes has been the maximum number which Justices can order for any boy up to the age of fourteen.

In 1927 a Departmental Committee on the Treatment of Young Offenders submitted a *Report on the various methods then available for dealing with juvenile delinquents. The birching of young offenders was the only question on which this Committee was not unanimous. Three of the members signed the Report subject to the reservation that they were "not satisfied that whipping ordered by a court of law serves a useful purpose". The other ten members recommended that whipping should be retained as a punishment for juveniles and that the existing powers should be extended so as to give the courts "a discretion to order a whipping in respect of any serious offence committed by a boy under seventeen". This conclusion was prefaced by the following comment:—

"We deprecate strongly any indiscriminate use of whipping. To the boy who is nervously unstable or mentally unbalanced the whipping may do more harm than good. The mischievous boy, on the other hand, who has often been cuffed at home will make light of the matter and even pose as a hero to his companions. We believe that there are cases in which whipping is the most salutary method of dealing with the offender; but, as so much depends on the character and home circumstances of the boy concerned, whipping should not be ordered by a court without consideration of these factors and especially without some enquiry whether corporal punishment has been applied already, and, if so, with what result. . . . If, as

* Cmd. 2831. Published by H.M. Stationery Office. Price 2s. 6d.

we recommend, whipping is retained, we see no reason why it should be limited to certain offences. Cruelty to animals or wanton acts endangering the lives of others ought not to be excluded; but the character of the individual rather than the nature of the offence must be considered. Nor do we see any adequate grounds for discriminating between boys under 14 and those between 14 and 17 ”.

Legislation to implement the other recommendations made in this Report was not introduced until 1932, and by that time the use of birching had been abandoned by the great majority of the Juvenile Courts in England and Wales. In the Children and Young Persons Bill of that year it was necessary to re-enact, with amendments, the provisions of section 10 of the Summary Jurisdiction Act, 1879: and it was decided by the Government of the day that, in spite of the majority recommendation of the Young Offenders Committee, this opportunity should be taken to omit from that section the provision conferring on summary courts their general power to whip boys under fourteen for indictable offences. This part of the Bill was therefore introduced in a form in which it would have had the effect of withdrawing this power of whipping from courts of summary jurisdiction in England and Wales. In the House of Commons the Bill obtained a Second Reading without a division, and an amendment moved in Committee Stage to retain the existing power of whipping was negatived without a division. In the House of Lords, however, an amendment designed to retain the existing power of whipping was carried by 65 votes to 22. When the Lords' amendments were considered in the Commons, this amendment was rejected without a Division. The Bill then went back to the House of Lords, who insisted on their amendment by a majority of 41 votes to 33, and the power of whipping was once more inserted. On the last day of the Session the Bill returned again to the House of Commons, who were then presented with the alternatives of accepting this amendment or losing the whole Bill. In these circumstances the House of Commons were persuaded to accept the amendment, and after a Division it was carried by 133 votes to 44.

The Children and Young Persons Act, 1933, thus made no alteration in the powers of the summary courts to punish by whipping indictable offences committed by boys under fourteen. The Act made one further change, however, which affected the exercise of those powers. Up to that time the summary courts, though empowered to deal with indictable offences committed by children, had a discretion to commit such cases for trial if they thought fit, and were under an obligation to do so if the parent or guardian of the child declined to consent

to the summary jurisdiction. By the Act of 1933 the summary courts were required to deal summarily with all indictable offences (other than homicide) committed by children under fourteen years of age—save only for those exceptional cases in which a child is charged jointly with an older person who is committed for trial and the court thinks it necessary in the interests of justice to commit the child also for trial on indictment jointly with the other person. At present, therefore, young offenders under fourteen years of age are, with very few exceptions, always dealt with by the courts of summary jurisdiction, which alone can exercise this general power to punish by whipping boys of this age who are found guilty of indictable offences. This power is still derived from section 10(2) of the Summary Jurisdiction Act, 1879, which (as amended by subsequent Acts) now provides as follows:—

“ A court of summary jurisdiction who deal summarily with a child in respect of an indictable offence shall, in addition to any other powers exercisable by virtue of this or any other Act, have power to impose a fine not exceeding forty shillings and, when the child is a male, to adjudge the child to be, as soon as practicable, privately whipped with not more than six strokes of a birch rod by a constable, in the presence of an inspector or other officer of police of higher rank than a constable, and also in the presence, if he desires to be present, of the parent or guardian of the child.”

It is to be noted that this power applies only to indictable offences dealt with summarily. In England and Wales, there is no general power to punish summary offences by whipping.

9. *Scotland*.—In Scotland the common law penalty of whipping, which originally applied to adults as well as young offenders, was applicable to persons convicted summarily as well as to those convicted on indictment. In 1851, however, it was thought desirable to add special statutory powers on the lines of those which had been conferred in England by the Act passed in 1847 “ for the more speedy trial of juvenile offenders ”. It was accordingly provided, by section 6 of the Prisons (Scotland) Act, 1851, that any Judge or Magistrate might punish by private whipping any boy under fourteen years of age convicted of any offence punishable by imprisonment or by fine with the alternative of imprisonment. Whipping might be ordered either instead of, or in addition to, imprisonment; and the punishment was to be carried out in accordance with Regulations made by the Lord Advocate and sanctioned by a Secretary of State. The same provision was subsequently re-enacted in section 74 of the Prisons (Scotland) Act, 1860, which consolidated the Acts relating to Scottish

prisons, and it is still in force. At a later date, the same powers were conferred on burgh magistrates by section 514 of the Burgh Police (Scotland) Act, 1892, and this section also is still in force.

The Regulations made under the earliest of these Acts provided that the punishment should be administered with a leather tawse, and prescribed a maximum of thirty-six strokes. They also contemplated that more than one whipping might be ordered for the same offence. A few years later, however, the position was modified by the Whipping Act, 1862, which provided that for boys under fourteen the maximum punishment by whipping should be twelve strokes and the instrument used should be a birch rod. The same Act required the court to specify in all cases the number of strokes to be inflicted, and provided that no person should be whipped more than once for the same offence. These requirements were recognised by the later Regulations made under the Act of 1860, which prescribed for offenders under fourteen a maximum punishment of twelve strokes with a birch rod.

These statutory powers under the Scottish Acts of 1860 and 1892 were expressed as exercisable "in any case where it is competent for any Judge or Magistrate to award sentence of imprisonment, or of fine with the alternative of imprisonment". By section 102 (1) of the Children Act, 1908 (which applied to Scotland) it was provided that no person under the age of fourteen shall be sentenced to imprisonment for any offence or committed to prison in default of payment of a fine. Since 1908, therefore, it has not been competent to punish any person under the age of fourteen by "imprisonment or fine with the alternative of imprisonment"; and it is arguable that this prohibition in the Act of 1908 had the effect of extinguishing in Scotland the statutory powers to order boys under fourteen to be whipped. This is a point of law which could only be determined by a decision of the Scottish Courts, and up to now the point has not come before the Courts in Scotland. In practice, however, the question is academic; for in Scotland the common law powers of whipping young offenders have never been abolished by statute. The statutory powers applied only to boys under fourteen years of age: but section 2 of the Whipping Act, 1862, preserved the common law powers in relation to boys up to the age of sixteen. This distinction between the statutory and the common law powers had been recognised by the Regulations made in 1886 under section 74 of the Prisons (Scotland) Act, 1860. For boys under fourteen the Regulations had prescribed a maximum punishment of twelve strokes with a birch rod, in conformity with the restriction imposed by section 1 of the Whipping Act, 1862; but the Regulations also contemplated corporal punishment for boys

between fourteen and sixteen years of age, and for these prescribed a maximum of thirty-six strokes with a leather tawse or a birch rod. In 1923 it was expressly held by the High Court of Justiciary that in Scotland the common law power to order a boy under sixteen to be whipped for common law offences remained unimpaired by any statutory provisions (*Mackay v. Lamb*, 1923 J.C. 16).

In 1928 a Report was submitted by a Departmental Committee which had undertaken an enquiry into the treatment of young offenders in Scotland similar to that of the English Committee which had reported in 1927. In their Report* this Committee made the following recommendation on the question of whipping as a penalty for young offenders in Scotland:—

"Whipping is at once the simplest, the cheapest and the most speedy method of punishment, but these are not reasons for advocating it. We are not prepared to recommend that it should be entirely excluded. We are of opinion, however, that as a method of dealing with male juvenile offenders, whipping should be very sparingly used owing to the practical difficulty of determining in each case whether it will do more harm or good. The fullest particulars should be available for the court, and there should be a medical examination in every case. If the maximum age of a juvenile offender is raised by one year, we consider it reasonable, always subject to the reservations which we have just made, that the court should have power to order male offenders under 17 to be whipped, instead of under 16 as at present".

The Children and Young Persons Bill of 1932 applied to Scotland; and, when the House of Commons had endorsed the proposal that the birching of young offenders should be discontinued, a provision was added to the Bill providing that in Scotland "it shall not be lawful for a court of summary jurisdiction to order that any child shall be whipped". This provision was subsequently deleted when the House of Lords insisted that the existing powers of whipping should be retained, and the Bill as finally passed made no alteration in the common law powers to order whipping in Scotland.

At the present time the courts in Scotland exercise the power to order whipping on summary conviction for a wide range of common law offences committed by boys under the age of sixteen. This power is derived from the common law: but the whippings are carried out in accordance with the Regulations made by the Lord Advocate under section 74 of the Prisons (Scotland) Act, 1860. The Regulations made in 1886 are still in force, and the maximum punishments prescribed are—for

* "Protection and Training. Report of a Departmental Committee appointed to inquire into the Treatment of Young Offenders, etc.", published by H.M. Stationery Office. Price 1s. 3d.

boys under fourteen, twelve strokes with the birch, and for boys between fourteen and sixteen, thirty-six strokes with the birch or the tawse.

EXISTING PRACTICE.

10. *General.*—The use of the term “birch rod” appears to have given rise to misapprehension in some quarters, and we therefore think it desirable to explain at the outset that the birch used for judicial whippings is not a rod or cane but a bundle of birch twigs—somewhat similar in appearance to the broom or besom used by a gardener for sweeping up leaves, but less bulky and not having a wooden handle. The twigs are bound together at the thick end to form a handle, and the remainder is left free so that the loose ends of the twigs form a “spray”, which at the centre of the birch is about 6 inches in circumference. The following are the actual specifications for birches manufactured in English prisons for use in administering corporal punishment to boys aged between ten and sixteen years:—overall length, 40 inches: length of handle, 15 inches: circumference of spray at centre, 6 inches: total weight, 9 ounces. For boys under ten years of age there is a smaller birch, of which the specifications are as follows:—overall length, 34 inches: length of handle, 8 inches: circumference of spray at centre, 5½ inches: total weight, 6 ounces. There are no standard specifications for birches manufactured elsewhere than in prisons for use by the Police in birching young offenders. In some cases, however, Police Forces in England obtain from the prisons the birches which they use for this purpose: and we understand that, even where this is not done, the birches used are similar in pattern to those manufactured in accordance with the specifications laid down by the Prison Commissioners.

In Scotland the birches used by the Police are of a similar type. The tawse is a leather strap divided at one end into two or more tongues. The Regulations made under section 74 of the Prisons (Scotland) Act, 1860, authorise its use in the case of offenders between fourteen and sixteen years of age; but we understand that nowadays it is very rarely used in these cases, the orders of the courts specifying almost always the use of the birch.

A further misapprehension is that the birch is soaked in brine before use, in order to make the punishment more painful. The birch is sometimes soaked in water, not brine, before it is used; but the object is merely to make it supple. When a birch has been kept for some time the twigs tend to become brittle, and it is then advisable to moisten it in order to prevent the twigs from breaking off during use.

11. *England and Wales.*—The only statutory requirements are those laid down in section 10 of the Summary Jurisdiction

Act, 1879—that the birching shall be administered (a) privately, (b) as soon as practicable, (c) by a constable, in the presence of an inspector or other officer of police of higher rank than a constable, and (d) in the presence, if he desires to be present, of the parent or guardian of the child. There is no provision enabling the Home Secretary or any other central authority to make supplementary Regulations prescribing in greater detail the manner in which the punishment should be administered. The Home Office have, however, made certain recommendations to the Police on this matter and these were reproduced in the following terms in paragraph 17 of Section III of the Home Office Consolidated Circular to the Police of the 1st January, 1925:—

“In the event of a court of summary jurisdiction ordering a youthful offender to be birched, it is necessary in carrying out the order to consider (a) the age and (b) the physical constitution of the offender. As regards (a), the rod used for birching children under 10 should be lighter than that used for older offenders; as regards (b), a medical practitioner should be consulted as to the propriety of the punishment being carried out or the severity of it, if there is any reason to suppose that a child is in delicate health or is naturally of a specially weak constitution.”

From the evidence given to us on behalf of the Police it appears that in most Police Forces definite instructions have been given that in every case the boy is to be medically examined before the punishment is inflicted. There is, however, no universal requirement that this precaution should be taken and we understand that in some districts this medical examination takes place only if it is suggested by the court or by the parents, or if for some other reason there are grounds for believing that the boy might not be fit to undergo the punishment. In some districts it is the practice for the Police Surgeon, not only to examine the boy beforehand, but also to be present while the punishment is being administered.

An appeal may be made to Quarter Sessions against an order for birching, as against any other order made by a summary court in respect of a juvenile offender, and the preliminary notices of appeal may be lodged at any time within fourteen days of the making of the order. In these cases, however, appeals are rare and it has not been found necessary to adopt a practice of postponing the birching until after the expiration of the period within which appeal proceedings could be commenced. The statute requires that the punishment shall be administered “as soon as practicable”; and, unless the parent or other representative of the child signifies his intention to appeal against the

order, the birching is normally carried out at once—sometimes immediately after the rising of the court and almost always on the day on which the order is given.

The punishment is usually administered in a cell or private room either within the precincts of the court or at a neighbouring police station. The birch is applied across the buttocks, on the bare flesh. The method most commonly adopted is to bend the boy over a low bench or table. His hands, and sometimes his feet also, are held by police officers. This is done in order to ensure that he shall not move, for if he moved a stroke of the birch might fall on some more sensitive part of the body. This method, though probably the most common, is not universal. In some Police Forces one constable takes the boy on his back, drawing the boy's hands down over his shoulders; another constable holds the boy's feet, drawing his legs round the sides of the first constable; the first constable then leans forward, and the birch is applied by a third. We have also heard that in one Police Force the custom is for one constable to bend the boy over and hold his head between his knees, while a second officer administers the birch. And in one district the boy is strapped to an apparatus similar to the triangle used for corporal punishment in prisons.

The parent or guardian of the child has a statutory right to be present at the birching, but we understand that in practice parents rarely exercise this right.

12. *Scotland*.—In Scotland there are no statutory requirements, but whippings ordered under the common law are carried out in accordance with the Regulations made by the Lord Advocate under section 74 of the Prisons (Scotland) Act, 1860. The Regulations now in force were made on the 11th June, 1886. They provide that the punishment is to be administered in a police office or cell appointed for the purpose by the Sheriff, if possible within or adjoining the court-house; and that it is to be carried out in the presence of the Chief Constable or other officer of police of a rank not below that of sergeant. The parent of the child has no right to be present.

The court may direct that the Police Surgeon or other medical practitioner shall be present at the birching and, where such a direction has been given, the Regulations provide that he shall examine the child before the punishment is inflicted. If he considers that the prescribed number of strokes cannot be inflicted consistently with the health of the child, he may fix a smaller number of strokes and the punishment is to be modified accordingly: and if he certifies that only one half of the number of strokes can safely be inflicted, the child is to be deemed unfit for whipping and no part of the whipping is to be carried out. The Surgeon is also given power to stop the punishment on medical grounds at any time during the course of it. This

medical supervision is required by the Regulations only in cases where the court specifically orders that a medical practitioner shall be present at the birching: but we have been informed that, in Edinburgh and Glasgow at any rate, the Police Surgeon examines every boy who is ordered to be birched, before the punishment is administered, and is also present while the birching is carried out.

In Scotland there is no general right of appeal analogous to the right in England to appeal to Quarter Sessions against any decision of a court of summary jurisdiction. The only right of appeal is to the High Court of Justiciary on a point of law; and these appeals are rare. The Regulations accordingly provide that, where birching is ordered, the punishment shall be administered as soon as possible, and in any event on the day on which it is ordered. It is to be administered by a person appointed for the purpose by the Sheriff—in practice a police officer—and the birch used must also have been approved by the Sheriff. The birch is applied across the buttocks, on the bare flesh; and the Regulations require that the punishment shall be “sufficiently severe to cause a repetition of it to be dreaded”. We are informed that in Edinburgh the normal procedure is for the boy to be laid flat on a form, two police officers sitting astride the form at each end, one holding his elbows and the other his feet, while a third officer administers the punishment. We understand that a similar procedure is followed in other parts of Scotland.

NUMBER OF BIRCHINGS ORDERED.

13. *England and Wales*.—The following table shows the total numbers of birchings ordered by courts of summary jurisdiction in England and Wales in each of the years from 1900 to 1936:—

1900 ... 3,385	1913 ... 2,219	1926 ... 365
1901 ... 2,859	1914 ... 2,415	1927 ... 247
1902 ... 2,991	1915 ... 3,514	1928 ... 188
1903 ... 2,898	1916 ... 4,864	1929 ... 186
1904 ... 2,458	1917 ... 5,210	1930 ... 135
1905 ... 2,529	1918 ... 3,759	1931 ... 147
1906 ... 2,210	1919 ... 1,689	1932 ... 160
1907 ... 2,086	1920 ... 1,380	1933 ... 162
1908 ... 2,053	1921 ... 661	1934 ... 146
1909 ... 1,883	1922 ... 556	1935 ... 218
1910 ... 1,702	1923 ... 561	1936 ... 166
1911 ... 1,727	1924 ... 633	
1912 ... 2,164	1925 ... 474	

Apart from a marked rise during the war years 1915-18, the numbers of birchings have fallen steadily throughout this period. This fall is not to be attributed to a decrease in the numbers

of offenders liable to be birched. This is most evident in relation to the recent years 1932-1936, when the numbers of birchings have not shown any marked tendency to rise in spite of a considerable increase in the numbers of young offenders brought before the courts. In 1932 the number of boys under fourteen dealt with summarily for indictable offences was 8,449, or 404 per 100,000 of the estimated population in that age-group: in each of the succeeding years the number increased, and in 1936 the corresponding figure was 13,702, or 717 per 100,000 of the estimated population in that age-group. The numbers of birchings during that period showed no increase comparable to the great rise in the numbers of offenders liable to birching—indeed, apart from a rise in 1935, they remained fairly constant throughout the period. There is abundant evidence that the decreased use of the birch is due entirely to increased use of the other methods now available to the courts for dealing with young offenders. In recent years birching has been used by the summary courts in less than 2 per cent. of the total number of cases in which there was power to apply it: the other 98 per cent. of cases have been dealt with by other methods.

In the great majority of the Juvenile Courts in England and Wales the use of birching has been entirely discontinued. The birchings which still occur are ordered by a small number of courts, and (subject to the exceptions mentioned in paragraph 29) occur mainly in country districts or in the smaller towns. The Juvenile Courts in London and in many of the larger towns have not in recent years made any use of their powers to order corporal punishment.

14. *Scotland*.—The following table shows the total numbers of juveniles ordered to be whipped by courts in Scotland in each of the years from 1900 to 1936:—

1900 ... 731	1913 ... 407	1926 ... 279
1901 ... 660	1914 ... 499	1927 ... 201
1902 ... 546	1915 ... 562	1928 ... 135
1903 ... 425	1916 ... 800	1929 ... 183
1904 ... 574	1917 ... 925	1930 ... 161
1905 ... 457	1918 ... 755	1931 ... 209
1906 ... 450	1919 ... 400	1932 ... 173
1907 ... 371	1920 ... 338	1933 ... 210
1908 ... 467	1921 ... 255	1934 ... 237
1909 ... 328	1922 ... 255	1935 ... 239
1910 ... 268	1923 ... 316	1936 ... 230
1911 ... 450	1924 ... 283	
1912 ... 413	1925 ... 266	

In Scotland, as in England, the figures show that, apart from the war years, there has been a steady decrease in the use of whipping as a penalty for young offenders. In Scotland, however, the fall in the numbers has not been anything like so

great—from 731 to 230, as compared with the reduction in England from 3,385 to 166—and at the present time more birchings are ordered in Scotland than in England. In proportion to the total number of offenders dealt with, birching is much more common in Scotland than in England. In 1935, for example, the total number of juveniles found guilty of all offences in Juvenile Courts in England and Wales was 49,378, of whom 192* (or .39 per cent.) were ordered to be birched. In Scotland in the same year the corresponding number was 14,215, of whom 231* (or 1.63 per cent.) were ordered to be birched. These percentages are related to the total numbers of juveniles found guilty, not to the restricted numbers for whom birching was a possible penalty: and, if it were desired to compare the extent to which the courts, in the two countries, make use of their powers to order whipping, it would be necessary to make allowance for the fact that in England the Juvenile Courts can order birching only for indictable offences and only for boys under fourteen years of age, whereas in Scotland birching can be ordered for offenders up to the age of sixteen and for a wider range of offences. On the statistics available it is not possible to make an exact comparison of this kind, for the Scottish statistics do not indicate how many of the offences committed by boys under sixteen were common law offences for which whipping would have been a competent penalty. There is, however, little doubt that in the cases in which it is a possible penalty whipping is ordered more freely in Scotland than in England.

In Scotland it is not the case that the use of the birch has been abandoned by the courts in the larger towns. Of the 230 birchings ordered in 1936, 70 were ordered in Edinburgh, 69 in Glasgow and 26 in Aberdeen. The other 65 cases occurred in a comparatively small number of districts throughout the country.

SUMMARY OF EVIDENCE.

15. In our examination of the problems referred to us for enquiry we have been influenced primarily by practical considerations, and we do not desire to enter into any lengthy discussion of the philosophy of punishment. In view, however, of certain statements which have been made by some of the witnesses we think it desirable to offer some preliminary observations regarding the general principles which Parliament has laid down for the guidance of Juvenile Courts in dealing with young offenders.

* These figures relate to the number of birchings ordered by Juvenile Courts. They are in each case slightly less than the corresponding figure in the tables given earlier in this paragraph and in paragraph 13. The explanation is that those tables cover all courts of summary jurisdiction, and in each year a few children are ordered to be birched by summary courts other than Juvenile Courts.

Theorists have recognised that punishment may be justified on three main grounds—retribution, deterrence and reform—but the changes which have taken place in our penal methods during the last century have been aimed at subordinating the retributive element to the other elements of deterrence and reform. So far as concerns young offenders, at any rate, few people would now defend methods of treatment based purely on the retributive principle; and in the Children and Young Persons Act, 1933, Parliament expressly directed the Juvenile Courts to concentrate their attention primarily on the element of reform. Section 44 of that Act provided that “every court, in dealing with a child or young person who is brought before it . . . as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings and for securing that proper provision is made for his education and training”. We are not prepared to recommend any modification of the principles embodied in this statutory direction to the courts, and we are therefore unable to take into account any arguments in favour of birching which are based ultimately on the retributive principle. Some of the witnesses who advocated birching as a penalty for young offenders instanced cases in which offences by children had caused considerable damage to property, and represented that in these cases it gave small satisfaction to the property-owner to hear that the offenders had “merely” been placed on probation. We fully recognise that in dealing with this type of offence the courts should bear in mind the interests of the general public, but these are best served by measures designed to secure the reform of the offenders, and we do not believe that the courts would be justified in dealing with them by methods designed solely to satisfy the indignation of the persons who have suffered loss or damage by the offence. Other witnesses opposed birching on the ground that the methods used by Juvenile Courts should always be educative and reformatory, and never punitive. We agree that Juvenile Courts should not deal with children by methods which are “punitive” in the sense that they are based merely on retributive principles: but we cannot accept the view that their methods should never in any circumstances include any punitive element. There are cases in which some form of punishment (not necessarily corporal punishment) is the best means of ensuring that the offender will mend his ways: and we think it most undesirable to foster the impression, which is already gaining ground in some quarters, that in dealing with young delinquents the courts may not apply any methods involving an element of punishment for the offender. Later in this Report, we refer to some suggestions which have been made to us for strengthening the powers of Juvenile Courts in this direction.

On what grounds is it permissible to seek to justify birching as a penalty for young offenders? The retributive principle has been rejected; and, as birching is not a constructive method, it is only in very exceptional cases that it could be said to be reformatory in the full sense of the term. Birching could thus be justified only by its value as a deterrent. Section 44 of the Children and Young Persons Act, 1933, while it directs the attention of the Juvenile Courts primarily to the reform of the offender, does not exclude the deterrent principle; and in our view it would not be inconsistent with the general principles laid down in that section for the Juvenile Courts to apply, in appropriate cases, a method of treatment which is purely deterrent in character. There are, however, two aspects of the deterrent element in punishment. A deterrent penalty may be imposed either to deter the offender who suffers it from repeating his offence, or to deter others from committing similar offences. In the case of young offenders, at any rate, we think that the second of these two objects should always be subordinated to the first—i.e. if the penalty suggested is not the method of treatment most suited to the needs of the individual offender, it should not be imposed merely on the ground that it is calculated to deter others. The needs of the individual offender must be the first consideration, and a purely deterrent penalty should be applied only if it is considered to be the most appropriate treatment for the offender himself. If it also has the effect of deterring others, so much the better; but that should always be a secondary consideration subordinate to the first.

16. In these circumstances we have, from the outset of our enquiry, directed our minds to the question whether birching is in fact effective in deterring the child so punished from committing further offences. There is very little statistical evidence on this point. Apart from some limited figures collected by the late Sir William Clarke Hall and published in his book “Children’s Courts”, the only published statistics, so far as we have been able to ascertain, are those given in the Report published by H.M. Stationery Office in 1920, of an enquiry into juvenile delinquency by the Juvenile Organisations Committee of the Board of Education. The enquiry was conducted in four selected centres of industrial population, but the figures relating to birching were obtained from two centres only—a large seaport and a manufacturing town. These showed that out of 574 children birched, 222 appeared before the courts again within six months, 109 within twelve months and 109 within two years. In all 440, or over 76 per cent., were charged with a fresh offence within two years of being birched. Comparison of these records with those of children dealt with in other ways appeared to show that birching had been less effective as a deterrent than other

methods of treatment. While 76 per cent. of those birched had re-appeared within two years, the corresponding percentage for those put on probation was nearly 48 per cent., for those fined 35 per cent., and for those bound over 28 per cent. From these figures the Committee drew the conclusion—"apparently the use of the birch does very little good, for one out of every four birched returns in less than one month". In considering these figures in relation to the present enquiry, it is to be remembered that they were based only on the experience of two towns and related to the last years of the war, when the numbers of birchings were far greater than at any subsequent time and when there were many exceptional factors influencing the problem of juvenile delinquency.

Some of the witnesses who have given evidence before us have supplied us with limited statistics based on more recent cases. In one town, out of 100 boys birched before 1936, only 29 had made no subsequent appearance in the courts: 8 had subsequently been found guilty of minor offences only, but the other 63 had re-appeared on more serious charges. Another witness had collected information from eight towns, in which 70 boys had been ordered to be birched in 1935, and had ascertained that 19 of these boys had appeared again before the courts. In another town, out of 7 boys birched during 1934 and 1935, 6 had re-appeared in the courts and the other had left the town. In another, where 18 boys had been birched during the eighteen months ending in July, 1937, 10 had already re-appeared—one four days after he had been birched, and three others within three months. In Scotland larger groups of figures can be obtained; and we were informed by one witness that, in one town in Scotland, out of 133 boys birched during 1934 and 1935, 48 (or 36 per cent.) had subsequently been charged with further offences.

We have quoted these figures merely to illustrate the type of information which has been laid before us on this question. It has all been based on very small numbers, and in some cases relates only to selected groups. The witnesses themselves agreed that it would be unsafe to base any general conclusions on limited statistics of this kind. We therefore considered whether we could ourselves arrange for a special investigation to be made with a view to collecting some more comprehensive statistics regarding the deterrent effect of birching; but we came to the conclusion that it was impracticable to collect complete and reliable statistics dealing with this question. The main difficulty arises from the fact that in the case of young offenders there is no central machinery for recording convictions. Apart from this, however, we do not think that statistics of re-appearances after birching would be of any great value unless they could be compared with the re-appearances of similar children dealt with

by other methods. The cases selected by the courts as appropriate for birching may often be boys who are more likely to offend again than those to whom the courts apply other methods of treatment; and in these cases re-appearances may be due, not so much to the ineffectiveness of the penalty applied, but rather to the character and disposition of the boy. Purely statistical comparisons of the effects of various methods of treatment are of little value unless it can be shown that the persons to whom the different methods have been applied were roughly of the same type; and in the case of young offenders it is particularly difficult to obtain figures of comparable cases, dealt with otherwise than by birching, which could be used as "control-groups". In these circumstances we came to the conclusion that in this part of our enquiry we should be compelled to dispense with statistical evidence and to rely very largely on the views which have been formed by persons with wide practical experience of dealing with young offenders.

17. Corporal punishment is a question on which people are apt to hold strong views, and in many cases these views are based on sentiment rather than on intellectual conviction. This is not confined only to those who are opposed to corporal punishment: it is common also among those who support it. Strong opinions are often expressed, both for and against corporal punishment, by persons who have no special knowledge or experience of the treatment of crime and base their opinions purely on *a priori* assumptions. Even among those who have had practical experience in dealing with offenders, there are some who have approached the problem of corporal punishment with preconceived opinions or a strong personal bias which has coloured the views which they believe themselves to have formed purely on the basis of their experience. We have kept this constantly in mind throughout our enquiry, and we have done our best to discount extreme views which appeared to be based more on sentiment or emotion than on reason and experience. Particularly in relation to the question of corporal punishment for young offenders, where we have found it difficult to obtain any other evidence in corroboration, we have been careful to rely mainly on the evidence of those who have studied this problem coolly and dispassionately in the light of a wide experience in dealing with young offenders.

We do not think it necessary to summarise all the arguments which have been advanced by witnesses both for and against the use of birching. We shall refer to the main arguments, both for and against, in setting out the conclusions which we have reached. We think it right, however, to indicate briefly at this stage what views were held by the main groups of witnesses who gave evidence before us.

18. As regards England and Wales, the weight of the evidence was definitely against the use of birching as a method of dealing with young offenders. Among the witnesses from Scotland, on the other hand, the balance of opinion was in favour of birching. This contrast reflects the practice of the courts in the two countries—in England the use of the birch has largely been abandoned, while in Scotland the courts still order birching in a comparatively large number of cases.

We have had the advantage of hearing evidence from a number of Justices and Stipendiary Magistrates who sit in Juvenile Courts in various districts in England and Wales. Some of these were connected with courts in which birching is still ordered on occasion. Those who had had the longest experience in dealing with young offenders had come to the conclusion that, as a punishment administered by order of a court, birching is not a satisfactory method of treatment. Some of them admitted that there are cases in which corporal punishment would be the most appropriate remedy, if it could be applied swiftly and without formality as in schools, but they believed that even in these cases birching as ordered by a court might do more harm than good and they thought it preferable that the summary courts should be deprived of their powers to order corporal punishment. In the words of one witness of wide experience, the abolition of the power of the summary court to order birching "would neither limit the court's usefulness nor jeopardise its authority." The minority who favoured the retention of this form of punishment thought it unwise to deprive the Juvenile Courts of one of the few penalties available to them which involve a marked element of punishment for the offender. As one witness put it, "the birch is felt by the offender himself, and it inflicts no hardship on his family." These witnesses appear to have been influenced to a large extent by the recent increase in the numbers of children charged with offences against the law. They suggested that, at a time when juvenile delinquency appeared to be growing to an alarming extent, every possible expedient should be tried to check the increase and no existing method of dealing with young offenders should be discarded. This attitude is no doubt responsible for the tendency, reflected in the Criminal Statistics for 1936, to revert to the use of the birch in certain towns in the north of England where birching had previously been discontinued. This apparent increase in juvenile crime is a matter which falls outside our terms of reference, and it was not competent for us to consider whether the undoubted increase in the numbers of children brought before the courts reflects a genuine increase in the amount of juvenile delinquency. We understand that a separate enquiry is being instituted into this question; but we are glad to note that the advance figures for 1936 are slightly more reassuring than those of the previous years. There is

still an increase in the numbers of children brought before the courts, but the rise is much less than it was in the years 1934 and 1935 and the figures give some reason to hope that the increase which began after the passing of the Children and Young Persons Act, 1933, has now been checked. The significance of these figures is discussed in Chapter III of the *Report on the Work of the Children's Branch of the Home Office published in January, 1938. As regards the argument that the powers of birching should not be abolished at a time when juvenile delinquency appeared to be increasing, we would point out that this argument is valid only if it is accepted that birching is in fact an effective means of ensuring that the offender will not offend again.

The Children and Young Persons (Scotland) Act, 1932, accepted the principle adopted in England that Juvenile Courts should be constituted from a separate Panel of Justices of the Peace selected as having special qualifications for dealing with young offenders. It provided, however, that this system should be introduced in Scotland only in areas to which the relevant sections of the Act had been applied by order of the Secretary of State for Scotland; and up to now this system has been introduced in only three counties in Scotland—Renfrew, Fife and, very recently, Ayr. In other areas in Scotland, young offenders continue to be dealt with in the Sheriff Courts presided over by Sheriffs and Sheriffs Substitute; and also, in the towns, in the Burgh Courts presided over by Burgh Magistrates, who are drawn from the Town Councils. From the evidence given before us it appears that in the matter of birching there is a marked difference in practice between the Sheriff Courts on the one hand and, on the other, the Burgh Courts and the few Juvenile Courts constituted in accordance with the principles laid down in the Children and Young Persons (Scotland) Act, 1932. The lay Justices and Magistrates who sit in the new Juvenile Courts and the Burgh Courts, though they have not pronounced themselves as being in favour of the abolition of their powers to order birching, do not in fact apply this penalty except on very rare occasions. We heard evidence from members of the Scottish Justices and Magistrates Association, who informed us that their Association was divided on this question and that they were therefore unable to express any definite opinion on behalf of the Association as a whole: but (with one exception) the members of the Association who attended before us were themselves in favour of the abolition of this form of punishment, and they produced evidence which indicated that it was rarely used by those courts in Scotland over which lay Justices or Magistrates presided. This contrast between the attitude of the Sheriff Courts and the Burgh and

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Juvenile Courts was also brought out in the evidence given by authorities responsible for the institution of proceedings against young offenders in Scotland. (We should like to mention here the very great regret with which we heard of the sudden death of one of these authorities, Mr. J. Drummond Strathern, Procurator Fiscal at Glasgow, shortly before the day on which he was to have given evidence before us. We were fortunate in having received from him an unusually detailed written statement of the evidence which he had proposed to give; and we are glad to think that, although he did not attend before us in person, we were not altogether deprived of the assistance of his wide experience as a public prosecutor.) The birchings ordered in Scotland are ordered almost entirely by the Sheriff Courts; and the Association of Sheriffs Substitute of Scotland, from whom we received representative evidence, were unanimously of opinion that corporal punishment should be retained as a method of dealing with young offenders. They regarded it as the most suitable penalty for a number of offences such as wanton damage to property, and they also considered that in many cases it was an appropriate method of dealing with serious assaults by one boy on another and with indecent assaults on young girls. A majority of the members of the Association were in favour of extending the power to order birching so as to apply to all boys under seventeen years of age.

19. The witnesses who gave evidence on behalf of the National Association of Probation Officers were definitely against the retention of any power to order corporal punishment of young offenders. They expressed this view both as individuals (two of them were themselves Probation Officers of long experience) and on behalf of the National Executive of their Association; and, while they had not taken any special steps to ascertain the opinion of all their members, they assured us that this was also the view of an overwhelming majority of the Probation Officers in England and Wales. They based their view mainly on the ground that birching was not a sufficiently constructive method of treatment: it made no attempt to deal with the causes underlying the offence and for this reason had not, in their experience, been an effective means of improving the child's conduct. They had also found that where the courts resorted to the use of the birch there was a tendency to deal with the case at once without giving an opportunity for the probation officer to make full enquiries into the offender's previous history and home circumstances. These enquiries are often lengthy and elaborate and may necessitate one or more remands, but without them it is often impossible for the Court to make a proper diagnosis of the underlying causes of the offence, or to reach a satisfactory decision as to the appropriate method of treatment.

In Scotland there appears to be less unanimity on this question among Probation Officers. Before giving evidence before us

the Scottish Branch of the National Association of Probation Officers issued a questionnaire to all their members, and the replies disclosed a wide divergence of view—some members believing that birching was a valuable deterrent and others, at the opposite extreme, being wholly opposed to it on psychological grounds. The representatives who gave evidence on behalf of the Branch put forward a compromise view which, they assured us, had the support of the great majority of their members. They admitted that there might be a small number of cases in which birching would be the most suitable method of treatment; but they considered that, so long as the power to order it was retained, there was a risk of its being applied in unsuitable cases, where sufficient enquiry had not been made into the circumstances of the offender and his physical and mental condition. Rather than retain the risk that birching might be used in the many cases for which it is unsuitable, they thought it preferable that the very few boys who might benefit from corporal punishment should be dealt with by other methods; and they therefore considered that the balance of advantage lay on the side of abolishing the existing powers of ordering corporal punishment for young offenders.

In certain areas in Scotland the probation work is done by voluntary workers who are not employed as Probation Officers on a full-time salaried basis. Many of these are not members of the Scottish Branch of the National Association of Probation Officers, and we do not know how far they are in agreement with the view summarised in the preceding paragraph. We have, however, received from the Edinburgh and District Juvenile Organisations Committee, which is responsible for organising the voluntary probation work in Edinburgh, a memorandum advocating the retention of corporal punishment as a method of dealing with young offenders.

20. The views of the English Police were put before us by representatives of the Commissioner of Police of the Metropolis, and of the Association of Chief Constables of Cities and Boroughs in England and Wales.

The Commissioner's representative was in favour of birching; but he pointed out that the Metropolitan Police have had little recent experience of the effect of this form of punishment, since its use has been abandoned by the Metropolitan Juvenile Courts. In the Metropolitan Police District it is now used only in the outer districts lying outside the area covered by the Metropolitan Police Courts, and even in these districts cases are comparatively rare. The Association of Chief Constables gave evidence based on the results of a questionnaire which had been completed by 69 Chief Constables in various parts of the country. A substantial majority of these were in favour

of retaining the existing powers of ordering corporal punishment for young offenders, though they emphasised the importance of providing sufficient safeguards to ensure that it is applied only to those offenders for whom it is an appropriate penalty. From our examination of the individual Chief Constables who gave oral evidence on behalf of the Association we derived the impression that this support of birching is due very largely to the anxiety felt by the Police at the recent increase in the numbers of young offenders brought before the courts. There is undoubtedly a feeling among some Chief Constables that this increase may be due in part to a tendency of the Juvenile Courts in recent years to apply more lenient methods in dealing with young offenders, and that the time has now come for the courts to try, even as an experiment only, more drastic methods which might have the effect of checking the increase. As we have pointed out in paragraph 18, this view may be modified to some extent by the statistics for 1936, which afford some ground for hoping that this increase may already have been checked. In any event, even if some more drastic method of treatment were needed, it does not follow that birching would be the most appropriate and effective method to choose. The representatives of the Chief Constables' Association explained that they had advocated the use of birching for this purpose, not because they attached any great merit to corporal punishment as such—indeed they were fully aware of some of its de-merits as a court punishment—but because it seemed to them that under the existing powers of the Juvenile Courts it was sometimes the only penalty available which laid sufficient emphasis on the punitive element. We believe that the views of the Chief Constables would be met if, in lieu of corporal punishment, some additional powers were conferred on the Juvenile Courts to impose penalties involving some element of punishment for the offender. We refer again to this aspect of the matter in paragraph 31.

The Scottish Association of Chief Constables felt unable to accept our invitation to give evidence on this question. We have, however, received a memorandum from the Joint Central Committee of the Scottish Police Federation, which is an elected body representing all members of the Scottish Constabulary below the rank of Lieutenant. This memorandum showed that, on the value of birching as a method of dealing with young offenders, opinion among the members of the Joint Central Committee was sharply divided. The majority considered that corporal punishment by order of a court is an inadequate, and in many cases positively harmful, substitute for parental control; and that when it becomes necessary for a child to be punished by the State, instead of by his parents, other methods of treatment should be used. The minority thought it inexpedient that

corporal punishment should be abolished entirely, and considered that it should be retained for use in suitable cases. The members were almost unanimous, however, in thinking that, if corporal punishment were to be retained, the duty of administering it should not be laid upon the police. They pointed out that the punishment of offenders is no part of the ordinary duties of the police; and they considered it undesirable that any police officer should be compelled to undertake a duty which had the effect of inspiring fear and resentment in the minds of the children in the district, in place of those feelings of confidence and trust which were essential to successful police work among children.

21. On the medical aspect of this question, we have heard evidence from medical-psychologists, psycho-analysts, and doctors who have had practical experience in examining boys ordered to be birched and in supervising the administration of the punishment.

We are satisfied that, from the purely physical point of view, there is no special danger in this form of punishment. As usually administered by police officers to juveniles, six strokes of the birch will do no physical harm to a healthy boy—indeed, from the point of view of securing an effective punishment, the greater danger is that the punishment will not be sufficiently severe—and a medical practitioner who has supervised a very large number of birchings in Scotland has assured us that for a normal boy even twelve strokes, the maximum permitted in Scotland, involve no danger from the physical point of view. There are, of course, some children who are physically unfit for this form of punishment: but we believe that even under the present system, where previous medical examination is not universally compulsory, there are few cases (if any) in which boys are birched who are not physically capable of bearing the punishment. There would be no great difficulty in devising further safeguards which would reduce still further the risk of any physical harm resulting from the use of this form of punishment.

A brief medical examination will normally suffice to decide whether a boy is physically fit for birching: but to assess a boy's psychological and temperamental capacity is a more difficult matter. All our medical witnesses have stressed the importance of this aspect of the matter, and even those who have advocated the use of corporal punishment in proper cases have admitted that some of the boys who are passed as physically fit for birching are definitely unfit for this form of punishment from the psychological point of view. Medical witnesses have stated that the medical examination normally carried out in these cases by an ordinary general practitioner has not always sufficed to prevent a boy suffering from certifiable mental defect

from being birched; and there are clearly many degrees of psychological or temperamental unsuitability, far short of actual mental defect, which should preclude this form of punishment. We deal further with this aspect of the matter in paragraph 25.

The medical-psychologists who gave evidence before us saw great objection to birching as a judicial punishment for young offenders. While they admitted that there might be a few cases in which corporal punishment would operate as an effective deterrent, without doing any psychological harm, they considered that the selection of these suitable cases was a difficult task involving detailed investigation and observation by a skilled medical-psychologist over a comparatively long period. On the other hand, they recognised that corporal punishment, to be effective, should follow as closely as possible after the offence, and they considered that it would usually be undesirable to carry out a birching after the delay involved by the prolonged investigation which they regarded as an indispensable preliminary. A more extreme view advanced by another witness in this group distinguished between punishment for the offence and treatment of the causes underlying the offence. This witness was of opinion that corporal punishment (even by order of a court) was psychologically unobjectionable if it had been made clear to the offender in advance that corporal punishment would follow as a certain penalty for his offence, and he maintained that in those special circumstances the infliction of the punishment previously stipulated would afford a salutary emotional discharge for the offender. He stipulated, however, that after the need for punishment had been satisfied, the child should be subjected to further analysis in every case and should receive such psychological treatment as he might be found to require. The witness considered that some psychological investigation was necessary in the case of every juvenile offender (other than those charged with merely technical offences such as playing football in the streets, etc.) and he admitted that his proposals could not be carried out unless every Juvenile Court could call upon the services of a fully-equipped psychological clinic. We find it impossible to relate these proposals to the practical realities of the existing situation.

The psycho-analysts' view of this question is based very largely on a theoretical analysis of the impulses underlying the desire to inflict corporal punishment. It is very difficult to do justice to this view in the small space which we can allot to it. Briefly stated, it is that the impulse to punish—as opposed to the treatment, reform, or even preventive detention of an offender—derives from an element of sadism which, in a conscious or (more often) unconscious form, exercises an influence over the thoughts and actions of a majority of the community.

Punishment, in so far as it is imposed merely for punishment's sake, is an expression of the hatred felt by the community towards the person who has offended against the laws of the community. This element of sadism, which is present in all punishment *qua* punishment, is accentuated when the punishment takes the form of inflicting physical pain: for corporal punishment is not only an expression of hate impulse, but is also a direct or indirect expression of sexual impulse. Conscious sadism is recognised as a form of sexual perversion, and a system of judicial corporal punishment may pander to unconscious impulses which in essence are sadistic and sexual. The practical implication of this view is that corporal punishment has a bad psychological effect on all concerned—in satisfying sadistic impulses in those who order it or inflict it, and possibly in appealing to masochistic tendencies in those who suffer it. This view applies equally, of course, to the corporal punishment of adults. We do not feel qualified either to assent to, or to dissent from, this theoretical analysis of the impulse towards corporal punishment. We feel compelled, however, to point out that the full implications of this view would affect many forms of punishment other than corporal punishment and would extend far beyond our terms of reference. Psycho-analysis is a comparatively new method and we do not think that its development has yet reached the stage at which its hypotheses can safely be made the basis for a drastic and far-reaching reconstruction of the whole of our penal code. We do not feel that we can go further than to record the view that corporal punishment, whether of juveniles or of adults, may be liable to bring out in certain individuals unwholesome tendencies connected with sadism and perverted sexual impulses. We are unable to base any practical recommendations on the views expressed to us on behalf of psycho-analysts: and we feel obliged to add that none of the witnesses who has had actual experience of supervising the administration of corporal punishment has ever observed any overt signs indicating that either the victim or the person administering the punishment was deriving from it any masochistic or sadistic satisfaction.

22. We do not think it necessary to give any detailed summary of the views expressed to us by individual witnesses falling outside the four main groups with which we have dealt in the preceding paragraphs. We may add, however, that strong representations against the birching of young offenders were made to us (either in oral evidence or in written memoranda) by the Child Guidance Council, the Society of Friends, the Standing Joint Committee of Women's Industrial Organisations and the Women's Co-operative Guild. While our enquiry was proceeding, resolutions against birching were also received, either by the Committee or by the Home Office, from the

National Conference of Labour Women, the National Women Citizens' Associations and from various other organisations throughout the country.

CONCLUSIONS.

23. We have given careful consideration to all the evidence which is available on this question and we have come to the conclusion that the balance of advantage lies on the side of abolishing the existing powers of summary courts to use corporal punishment as a method of dealing with young offenders. The main reasons which have led us to this conclusion are given in the following paragraphs. As will be seen, our conclusion is based on the practice of the more experienced Juvenile Courts, which have discontinued the use of birching not on *a priori* grounds but because they have found it less effective than other methods, and on the moderate views put before us by men and women of mature judgment who have considered this problem dispassionately in the light of a wide experience in dealing with children. We have not been influenced by arguments based merely on an emotional objection to corporal punishment, and we wish to dissociate ourselves expressly from the extreme views commonly put forward by some of those who recommend the abolition of this form of punishment.

24. We wish to make it clear at the outset that our conclusions are not based on any objection in principle to all use of corporal punishment as a method of correction for children. It was not within our terms of reference to consider the use of corporal punishment by parents and schoolmasters, and it would not be proper for us to express any opinion on those uses of corporal punishment. We may point out, however, that our recommendations are in no way inconsistent with the view that corporal punishment by a parent, if used with proper discretion, can be a suitable and satisfactory method of correction for young children as an adjunct to their training and education in the home, or that corporal punishment by a schoolmaster, again if used with proper discretion, can be a suitable method of enforcing discipline in a school. We have referred to this point because we think it important that our recommendations should not be construed as reflecting in any way on the use of corporal punishment in the home or in the school. Those uses of corporal punishment raise considerations which are quite different from those with which we have been concerned, and most of the arguments which have led us to recommend the abolition of birching as a court punishment would have no application to corporal punishment as a means of enforcing discipline in the home or in school. Our recommendations are based on considerations which apply solely to corporal punishment as ordered by the courts.

In our view corporal punishment as a court penalty stands on an entirely different footing from corporal punishment by a parent or a schoolmaster. There are numerous points of difference, but for our present purposes the following are the most important:—

(a) In the home, corporal punishment is administered by the parent, and there is a relation of mutual affection between the child and the person who punishes him. (In cases where there is no such bond of affection between the parent and the child, we should not be prepared to defend corporal punishment, even in the home.) In the school, corporal punishment is administered by a master, for whom the boy feels at least respect and often affection. In both cases, the punishment is usually administered by the person who decided that it should be inflicted and, even when this is not so, by a person who agrees with that decision and is also in a direct personal relation to the boy. In the home the boy realises that he is being punished for his own good, and in the school he understands that the punishment is a part of the discipline which he accepts. When a young offender is birched by order of a court, the circumstances are very different. When the Justices have given the order, they have no further concern with the matter and the boy is handed over to be birched by a police officer who has had no connection with the case. In most cases he has never seen the boy before and will never see him again; he is merely the "arm of the law"—in this instance in a more than usually literal sense—and the administration of the punishment is deliberately made as impersonal as possible. We recognise that this formal and impersonal quality in judicial birching has the advantage of reducing to a minimum the risk that any personal indignation or vindictiveness may enter into the infliction of the punishment: but the risk would not in any circumstances be considerable, and we think that this advantage is more than outweighed by the unfavourable effects which may be produced on some boys by this purely impersonal and cold-blooded infliction of physical pain. It is to be borne in mind that the average age of the boys to whom this punishment is applied is about twelve, and few boys of this age can be expected to recognise even the retributive justification of birching as an expression of society's indignation at a breach of its laws. As has been stated in a very helpful memorandum submitted to us by Dr. Cyril Burt, they might understand a sound thrashing from the victim of their offence: but a judicial birching is more likely to appear as an arbitrary and cold-blooded act of cruelty on the part of an official who has himself suffered no wrong.

This disadvantage was recognised by some of the witnesses who gave evidence in favour of corporal punishment. Several of the Chief Constables would prefer that the birching should not be administered by a police officer; and they, and various

other witnesses, suggested that it would be preferable if it could be done by the probation officer or by the headmaster of the boy's school. Other witnesses have suggested that the Magistrate who orders the punishment should himself carry it out. We are satisfied that these suggestions are all impracticable: and, even if they were not, they could not entirely bridge the gap which divides judicial corporal punishment from corporal punishment in the home or at school.

(b) The second great difference between these two types of corporal punishment is that in the home and in school the relation between the boy and the person punishing is a continuing one. After the punishment the boy is under close supervision by the parent or master, who can see whether the punishment has been taken in the proper spirit and, if this is not the case, is in a position to take other steps to bring the boy into a proper state of mind. After a judicial birching, on the other hand, there is no supervision or aftercare. The boy is birched by a police officer who has no direct interest in his future behaviour; and, when the punishment has been administered, he is—as one witness put it—“thrown into the street,” and, so far as the court is concerned, it is nobody's business to see how he reacts to the punishment. Birching may have different effects on different boys. It may make one humble, another embittered, and in another it may produce a spirit of bravado. Some of these different reactions may have an unfavourable effect on the boy's future conduct unless there is someone at hand to guide him and to drive home the lessons which the birching was intended to teach.

This difficulty was also recognised by some of the witnesses who advocated birching, and, in order to meet it, they suggested that every boy ordered to be birched should at the same time be put on probation under a probation officer. We understand, however, that this suggestion would not be acceptable to the great majority of probation officers. The first task of the probation officer is to obtain the co-operation of the probationer, and most of them feel that their chances of securing this co-operation would be seriously prejudiced if a birching were the preliminary to a period of probation. We agree with this view.

(c) Thirdly, there is the vital question of delay. At home and in school corporal punishment follows very closely after the detection of the offence. In judicial birching there must always be some delay before the offender comes before the court, and a further delay if proper enquiries are to be made to ascertain whether the case is one in which corporal punishment is a suitable penalty. We refer later to the importance of these enquiries.

There is no doubt that some element of delay is inevitably involved by the processes of law. In one case which

was brought to our notice there was a delay of nearly six weeks between the adjudication and the infliction of the birching. Seven boys were charged jointly with housebreaking. Three of them pleaded guilty at the first hearing: but the others pleaded not guilty, and the trial of the whole seven was thereupon fixed for a date some six weeks ahead. On this date those who had pleaded not guilty were found guilty, and six of the seven were ordered to be birched. The birching did not take place until nearly two months after the commission of the offence. This was, no doubt, an exceptional delay and might have been avoided. But the case occurred quite recently, in 1936, and there is no guarantee that similar delays may not occur in future. Any congestion in the work of the Juvenile Courts must tend to prolong the interval between the commission of the offence and the hearing of the charge. Even if it were possible to remove this cause of delay there would still remain the other cause, arising from the necessity for making careful enquiries with a view to ascertaining whether the offender is suitable for this form of punishment. Any attempt to reduce this delay will necessarily involve the risk that birching may be used in a case for which it is not suitable. It has been said that corporal punishment, if it is to be effective, should be certain, swift and exceptional. As a judicial punishment for young offenders it cannot be either certain or swift, and this, we believe, imposes a very great restriction on its usefulness as a court penalty.

25. We have had no evidence of any brutality or cruelty in the administration of birching and, as we have stated already in paragraph 21, we do not believe that birching as administered to juveniles by the Police is a severe ordeal from the physical point of view. There are comparatively few cases in which children are physically incapable of enduring this degree of corporal punishment; and, if birching were to be retained, we are satisfied that quite simple medical safeguards would suffice to ensure that no child was birched who was physically unfit for it. The emphasis laid on this aspect of the matter by some of the more extreme opponents of corporal punishment is, in our view, exaggerated. The average police officer has no liking for the duty of birching a small boy, and there is more risk that the punishment will be too light than that it will be administered with undue severity.

We are, however, impressed by the difficulties of assessing whether a particular boy is suitable for this type of punishment from the psychological and temperamental point of view. This is important on two grounds. Birching should not be ordered (a) in any case in which it might produce detrimental psychological effects, or (b) in a case in which the boy's temperament is such that it would not be effective. We have not had any

positive evidence of cases in which birching has produced serious and lasting psychological injury—though we have been told of some cases in which children have been ordered to be birched who were suffering from certifiable mental defect. The ultimate psychological effects of corporal punishment are obviously difficult to judge; and, from the 'practical point of view, the more immediate consideration is whether the child's temperament is such that corporal punishment is likely to be an effective penalty. In the home, and at school, the persons responsible for maintaining discipline have been in close touch with the child over a period of time and have had opportunities of forming a reliable opinion on this question. They can discriminate between those who will react favourably to this form of punishment and those for whom it will be ineffective or unsuitable. The Justices in a Juvenile Court have not this advantage, and if they are to obtain the data on which to form a considered opinion on this question they must remand the child for a period so that he can be kept under observation with a view to obtaining some insight into his character and disposition, as well as information about his previous history and home circumstances. This is a comparatively lengthy process. We are thus faced with a dilemma. Corporal punishment should follow closely on the offence or, at least, closely on the finding of guilt. But corporal punishment should not be imposed unless the court is satisfied that the boy is temperamentally suited for this type of punishment, and some remand for enquiry and observation will be required before the Justices can reach a decision on this point. After all these enquiries corporal punishment will seem to acquire an importance out of all proportion to its deserts, and will be unlikely to produce the desired effect.

These considerations have led some witnesses to suggest that corporal punishment should be used only in the case of boys who have already been on probation and would therefore be known to the court and to the probation officer. This restriction would certainly obviate the necessity for making elaborate enquiries into the question whether the offender was temperamentally suitable for corporal punishment, but it would have the effect of surrounding birching with an unwarranted atmosphere of importance. Birching is essentially a minor penalty, suitable for offenders who are not in need of any prolonged discipline or training and require only a sharp lesson to remind them of the consequences of misbehaviour. It would be wholly inappropriate to restrict it to children who had previously been placed on probation, since these *ex hypothesi* are children whom the court has already decided to be in need of a period of supervision and training.

26. Another important consideration is that, unless the offender is to be removed from his home, no form of treatment

is likely to be effective if it is impossible to obtain the co-operation of his parents. Probation officers have told us that, when a child is put on probation, their first task is to enlist the sympathy and co-operation of the parents and that, if this is not forthcoming, their chances of exercising a beneficial influence on the child are materially reduced. Except in those cases where the parents ask the court to order their child to be birched—and often they do this merely in the hope that they may prevent a potential wage-earner from being sent away to an approved school—the court cannot, as a rule, obtain the sympathy and support of the parents in an order for birching. The parent may be quite prepared to give the boy a thrashing himself, but he is often unwilling that his boy should be beaten by a policeman by order of the court. The boy who has been birched is often regarded as a martyr by his parents—they may not have condoned his original offence, but it is forgotten in their indignation at the punishment which he has received from a stranger—and where this happens the whole value of the punishment is lost.

There is also a very real danger that a boy who has been birched may be regarded as a hero among companions of his own age. The normal boy wants to take corporal punishment like a man and, whether he has done so or not, he wishes his companions to think he has. If this is his attitude, his main desire will be to show that he has not been intimidated by the punishment; and we have had evidence that, only too often, he seeks to prove this by going off at once and committing a further offence. Cases have been cited to us in which boys who have been birched have committed a fresh offence within a few days of the birching, sometimes even on the same day; and, although re-appearances may not always be due to the type of punishment administered, there is good reason to suppose that in many of these cases the boy committed the second offence mainly in order to re-establish himself in the eyes of his companions.

27. In view of these considerations, and chiefly because they have found it ineffective in practice, the great majority of the most experienced Juvenile Courts in England have discontinued the use of the birch. Clarke Hall, the pioneer of Juvenile Court work in London and an acknowledged authority on the treatment of young offenders, has explained in his book "Children's Courts" that he abandoned corporal punishment in his court, not on *a priori* grounds, but because he was satisfied that it was not an effective method of treatment. His subsequent experience appeared to confirm this view, which he reached as long ago as 1917. In that year 168 boys had been birched by order of his court, and he was afraid that his decision to order fewer birchings might result in an increase in delinquency in

his area. He decided, however, to persevere with his policy and he made increasingly less use of the birch until he finally abandoned it altogether in 1920. In 1917 there had been 1,050 children charged in his court, and by 1924 the number had dropped to 311. He did not suggest that this fall was due to his abandonment of birching, but he claimed that at least his abandonment of birching had not led to any increase in juvenile delinquency. The course adopted by Clarke Hall as an experiment in the years soon after the war was followed subsequently by Juvenile Courts in other parts of the country, when it was found that it led at least to no immediate increase in juvenile delinquency; and in more recent years the use of birching has been abandoned by the great majority of experienced Juvenile Courts in England and Wales. As is shown by the Appendices included in the Introductions to the Criminal Statistics (see, for example, page xxxvi of the volume for 1935) such birchings as are now ordered occur mainly in the country districts and the smaller towns, where the Juvenile Courts have a much smaller experience and in many cases are not so fully equipped from the point of view of probation and the other social services which are so necessary to the efficient working of a Juvenile Court.

28. It is noticeable, in this connection, that some of the courts which still resort to birching are among those which make comparatively little use of probation for young offenders. Attention has already been drawn to this point in the Criminal Statistics, and some figures to illustrate it are given on page xiv of the Introduction to the volume for 1935. The following table compares the use of birching and probation in some of these towns:—

District.	Number of juveniles found guilty of indict- able offences.	Number placed under supervision of a Probation Officer.	Number birched.
Accrington	23	1 or 4.34%	2 or 8.69%
Windsor	35	2 or 5.71%	7 or 20.0%
Warrington	55	3 or 5.45%	*6 or 10.9%
Ramsgate	40	8 or 20.0%	2 or 5.0%
Oldham	93	21 or 22.58%	8 or 8.6%

In all summary courts in England and Wales during the same year, 1935, the total number of juveniles found guilty of indictable offences was 25,442. Of these—12,930, or 50.82 per cent., were placed under the supervision of a probation officer and only 211, or .82 per cent., were ordered to be birched.

It has been suggested to us that birching is an appropriate measure "in cases where probation has failed". The figures given in the Criminal Statistics, and much of the evidence

given before us, indicate rather that in many of the areas where birching is still used probation in its proper sense has never been tried. Probation involves some supervision, and it is unreasonable to suggest that probation has failed where a boy has merely been bound over in his own recognisances, without being placed under supervision either by the probation officer or by any other suitable person. Some witnesses have suggested that birching ought to be retained because the choice would otherwise lie between probation and sending to an approved school, and probation "means letting the child off altogether". In fact, there are various other alternatives available to the courts under the powers conferred by the Children and Young Persons Act, 1933: but the point which we wish to stress is that this attitude, which we believe to be not uncommon in some of the smaller courts, shows a complete misunderstanding of the objects of probation and the results which can be obtained by a proper use of it. In the course of the evidence we have been given various indications that there is room for a great deal of improvement in the probation work in some parts of the country, where it is far from having attained the high standard which has been reached in many of the larger towns. One of the obvious needs is a more adequate number of probation officers—too often the probation officer has so many cases under his care that it is very difficult for him to give to each that individual attention which is an essential part of successful probation work. It is also important that persons appointed to act as probation officers should be properly qualified to undertake this responsible work and able to devote the whole of their time to it. These were among the matters reviewed by the Departmental Committee on the Social Services in Courts of Summary Jurisdiction who, in their *Report published in March 1936, made a number of recommendations for strengthening the probation service. Active steps have been taken to give effect to these recommendations, but it will probably be some time before every court has at its disposal the services of a sufficient number of properly qualified and full-time probation officers. In the meantime, we believe that in some areas the courts could make better use of their existing resources. In particular, we wish to draw attention to the following points:—(a) It is very important that, in placing a child on probation, the court should do nothing to encourage the impression that the child is being "let off". Probation is a serious matter, and the child and his parents should be made to understand this quite clearly. In many courts the Chairman tells the child definitely that he is not being "let off" and explains to him, in terms which he can understand, the precise implications of a binding-over under the supervision of a probation officer. He stresses the fact that, although

* Cmd. 5122. Published by H.M. Stationery Office. Price 3s. 6d.

he is not being punished *to-day*, the power to punish him is merely suspended and makes it clear that, if he fails to be of good behaviour or breaks any of the conditions attached to the order, he must expect to be brought up again before the court and punished for the original offence. It is very necessary that these matters should be clearly explained to the child, and we should like to see this practice adopted by all Juvenile Courts. (b) As we have indicated above, it is also desirable that the same point should be brought home to the child's parents; and in many cases a suitable method of ensuring this is to require the parents to give sureties under the probation order. We believe that this course could profitably be taken in a larger number of cases. (c) In many areas greater use might also be made of the power to attach special conditions to a probation order. This power is commonly overlooked entirely by those who regard probation as equivalent merely to letting the child off. By a careful choice of suitable conditions a probation order can be made to impose quite a strict degree of discipline. These conditions may be varied, or fresh conditions added, during a period of probation; and by this means the disciplinary effect of probation may be varied, in proper cases, in accordance with the progress made by the probationer. (d) Finally, we should like to take this opportunity of stressing the need for courts to hear and take into consideration any representations which may be made to them by probation officers regarding the suitability of an offender for any particular form of treatment. Where a child has previously been on probation, it should obviously be of great assistance to the court to have an opinion on this point from the probation officer who has had the child under his supervision. But in other cases also the probation officer may be able to offer useful information and advice. He may have had a brother or sister under his supervision and for this or other reasons he may know much about the child's family and home circumstances which the court should take into account before deciding how the child can best be dealt with. It is therefore desirable that the probation officer should be given an opportunity of offering information in all cases. Although we have been dealing so far only with children and young persons, we think that this course should be followed not only in Juvenile Courts, but also, as far as practicable, in all courts by which youthful offenders are being tried. In the Juvenile Courts it is already the common practice for the probation officer to be given an opportunity of making these representations, but we understand that in other courts this practice is less common. We have heard of several cases in which a superior court might have passed a different sentence if it had been in possession of all the information about the case which could have been given by the probation officer.

29. The suggestion that birching is now used mainly by the smaller courts is subject to modification in two respects:—

(a) The latest statistics show a slight tendency to revert to birching in some of the larger towns in the north of England. During 1936 there were 13 birchings in Manchester, as compared with 2 in 1935; 7 in Liverpool and South Shields, where there had been none in 1935; and 5 in Huddersfield, as compared with 2 in 1935. From the evidence which we heard, we have no doubt that this increased use of birching is due to the anxiety which has been felt at the great rise in the numbers of young offenders brought before the courts in the large industrial towns in the north of England. This has prompted the feeling that, in appropriate cases, recourse should be had to methods involving a marked element of punishment for the offender, and in a few cases birching has been chosen for this reason. We understand that, in some of these areas at any rate, the birch would not have been advocated if other methods had been available which involved a similar element of punishment for the offender.

(b) In Scotland, birching is still used by the courts in the large towns—in 1936, out of a total number of 230 birchings in the whole of Scotland, 138 were ordered in Edinburgh and Glasgow. As we have pointed out already in paragraph 18, these birchings are ordered mainly by Sheriff Courts, and birching is very rarely applied by the Burgh Courts or by the few Juvenile Courts which have been constituted in accordance with the provisions of the Children and Young Persons (Scotland) Act. We believe that the use of birching would have declined still further in Scotland if more progress had been made in extending the application of the new Juvenile Court procedure and in applying the other methods of dealing with young offenders which are in common use by Juvenile Courts in England. We should be travelling outside our terms of reference if we attempted to review all the methods by which young offenders are now dealt with in Scotland. But we may note that a much smaller proportion of young offenders are put on probation in Scotland than in England. During the years 1929-1935 the numbers of young offenders dealt with by probation in Scotland have risen from 854, or 9.54 per cent., to 2,132, or 15 per cent. In England the corresponding percentage was, on the average throughout the period, well over 30 per cent. Very few counties in Scotland have any salaried probation officers, and we understand that the total number of full-time salaried probation officers in the whole of Scotland is only 34, of whom 22 are in Glasgow. Another index to the position in Scotland is that even in Edinburgh no provision has been made for a separate remand home for juveniles, although there are about eight or nine hundred young offenders found guilty in the City during the course of a year. We feel little doubt

that the greater use of birching in Scotland is due mainly to the fact that the Scottish courts have not fully developed the other methods of dealing with young offenders which are employed in England.

30. In view of all these considerations, and having regard to the opinions formed by persons of long experience and mature judgment, we have come to the conclusion that, as a court penalty, corporal punishment is not an effective method of dealing with young offenders. We do not regard it as a suitable penalty for serious cases: these require constructive methods of treatment, designed to deal with the causes and conditions underlying the offence, and corporal punishment is essentially non-constructive. In other cases—e.g. some simple cases of damage to property or other offences due purely to a spirit of mischief—there is not the same need to train or re-educate the offender, and some form of sharp summary punishment may be all that is required. We believe that there may be a few cases of this kind in which some form of corporal punishment would provide the element of punishment required: but even for these we do not think that corporal punishment, in any form in which it could be ordered by a court, would be a suitable or effective remedy. Judicial birching is surrounded with an atmosphere of importance which makes it quite unsuitable for use in these minor cases. In some respects the existing procedure could, no doubt, be modified so as to make it more appropriate for this kind of case: and, with this in view, some of those who favour the retention of corporal punishment have suggested that the present procedure should be replaced by a more summary method of caning over the trousers. The substitution of caning for birching might make it possible to dispense with some of the ceremonial attaching to the present system and, to this extent, might make the actual infliction of the penalty more appropriate for that class of case in which corporal punishment might be a suitable remedy. It would not, however, affect the more important objections which we see to the use of corporal punishment as a court penalty in these cases.—(a) It would still be necessary to insist on proper safeguards to ensure that corporal punishment would not be applied in unsuitable cases. There would still be the same need, not only for a medical examination, but also for enquiries with a view to verifying that the boy was temperamentally suitable for this form of punishment. In a serious case where constructive remedial measures are to be applied, no harm is done by delaying the case for investigations of this kind. But if, as we believe, corporal punishment is essentially a summary penalty appropriate only for a few minor cases, it should follow as closely as possible after the detection of the offence and should not be postponed while these investigations are made. If corporal punishment is to be used, it is undesirable that the case

should be held up for these enquiries; but, if they are not made, the court is not in a position to know whether the case is suitable for corporal punishment and there is great risk that the punishment will be applied in cases where it may do more harm than good. (b) There would be great difficulty in combining corporal punishment with any system of after-care and, even in minor cases, the effect of corporal punishment might often be bad if the boy were not subject afterwards to any influences which could be relied upon to drive home the lesson which the punishment was intended to convey. (c) The effect of corporal punishment is too often spoilt by sympathy shown to the boy afterwards by his parents, neighbours and companions. (d) There is no effective means of controlling the severity with which it is administered. We believe that there is little risk of its being administered with undue severity: it is more likely to be administered too lightly: but in that event the boy will treat it lightly and corporal punishment will lose its deterrent effect, both for him and for his friends, among whom he will spread the news.

We therefore think it preferable that corporal punishment should not be used by the courts as a method of dealing with young offenders. So long as the power to use it is retained, the risk of its being applied in unsuitable cases will remain a serious consideration; and we therefore recommend that the existing powers of summary courts to order corporal punishment should be entirely repealed. We see no sufficient reason to make any discrimination in this matter between England and Scotland. We recognise that the other methods of dealing with young offenders have been less fully developed in Scotland, and that to this extent the Scottish courts might for a time feel more handicapped by the loss of their present powers to order corporal punishment. On the other hand, the objections which we see to the use of corporal punishment as a penalty for young offenders apply in Scotland with the same force as in England; and we intend that our recommendation for the abolition of this penalty should be taken to extend to Scotland as well as to England.

31. There is one further point to which we desire to refer before concluding this part of our Report. We have heard a good deal of evidence which suggests that under their existing powers the Juvenile Courts find difficulty in dealing satisfactorily with some of those minor cases where the offence is due in the main to nothing more than a misguided sense of adventure. The powers conferred on the Juvenile Courts rightly emphasise the importance of supervision and training in dealing with young offenders, and in cases where these measures are required the courts have already been given suitable powers to ensure that the offender shall receive the type of supervision or training which he needs. Supervision by a probation officer may be used

to supplement ineffective parental control: and, if the home environment is too bad for these measures, the offender can be removed from it by committal either to an approved school or to the care of a fit person. But there are other cases which do not call for any prolonged period of supervision or training: and the courts often find greater difficulty in dealing suitably with this more simple class of case, in which the offence is due solely to a misdirection of the spirit of adventure which should be the natural characteristic of any normal adolescent boy. Committal to an approved school should not normally be used unless the boy requires a long period of discipline and training or his home surroundings are so unsatisfactory that he ought, in his own interests, to be removed from them: and in most of the cases to which we are now referring it would be an expedient out of all proportion to the circumstances of the case to send the boy to an approved school, where he would associate with others who might have committed much graver offences and were in need of a long period of training. For many of these offenders probation is also unsuitable: for probation is a form of non-institutional training, and in many of these cases what the offender really needs is not prolonged supervision and training but some form of short and sharp punishment which will pull him up and give him the lesson which he needs. A fine is a punishment which falls on the parents rather than the child, and is usually an inappropriate method of dealing with young children who are still at school. For the reasons which we have indicated, we do not think that these cases could be dealt with suitably by corporal punishment in any form in which it could be ordered by a court. It therefore seems to be a matter for consideration whether the Juvenile Courts are sufficiently well-equipped to deal effectively with this type of offence, which is due simply to a spirit of mischief or adventure and does not call for any prolonged period of supervision or training or for any other constructive remedial measures.

On a long view, there is no doubt that the incidence of this type of juvenile delinquency can best be reduced by preventive measures. These offences are due to a misdirected spirit of adventure, and the most effective way of checking them is to provide other outlets for the energies and high spirits of the young people who are likely to commit them. Witnesses have been unanimous in paying tribute to the excellent work which is being done in this direction by Boys' Clubs, by the Boy Scout movement and by the other juvenile organisations. The evidence indicates that this type of juvenile delinquency is specially common in newly built-up areas, where Boys' Clubs have not been provided and the other juvenile organisations have not yet obtained a firm footing. Conversely, we have heard of various areas in which the development of these juvenile organisations has been accompanied by a noticeable decrease in this

type of juvenile delinquency. In Norwich, for example, a Boys' Club was established in 1918, at the instance of the Chief Constable, in consequence of the great increase in juvenile crime which had occurred throughout the country during the war years. The amount of juvenile crime in Norwich began to decrease immediately after the establishment of the Club and, after a very marked drop in 1922, it has remained at a consistently low level ever since. The number of juvenile offenders in Norwich is noticeably small in proportion to population—in 1933 the number of juveniles charged with offences was 1.3 per 1,000 of the juvenile population, as compared with the average figure of 5.5 for the whole of England and Wales. In other districts also police officers have interested themselves in the establishment and administration of Boys' Clubs: and the Chief Constables who gave evidence before us were all agreed in attaching the very greatest importance to the development of the juvenile organisations as one of the most effective means of checking delinquency among young people.

The development of these activities will not, however, eliminate this type of juvenile delinquency. There will always be cases in which juvenile misconduct is due merely to mischief or naughtiness, and not to any deep-seated causes requiring remedial treatment; and the evidence which we have heard suggests that some consideration might well be given to the possibility of strengthening the powers of the Juvenile Courts so as to enable them to deal more effectively with cases of this kind which seem to call for summary treatment involving some element of punishment for the offender. Various suggestions have been made to us by witnesses who believe that some additional powers are required for this type of case. All these suggestions are based on the view that some form of punitive detention would provide the element of deterrence which is thought to be required in these cases, but they differ in the form which the detention should take and the period for which it should last.—(a) Some witnesses thought it would be sufficient if the Juvenile Courts were empowered to deprive a child of his liberty on Saturdays, by requiring him to attend for the whole day or half the day at some centre where he would be made to do school-work or some uncongenial manual labour. The essence of this punishment would be the mere deprivation of leisure: it would have all the advantages which detention has among school punishments, and those who advocated it believed that, for the average type of young offender of school age, an effective measure of deterrence would be secured in minor cases by a punishment which prevented him from going to the cinema, or playing football or cricket, on a Saturday. (b) Other witnesses stressed the effect of removing an offender from his home, and advocated a longer period of detention, for

not more than one month, in a special place of detention. Section 54 of the Children and Young Persons Act, 1933, already provides for punitive detention in a remand home for a period not exceeding one month. In practice, however, little use is made of this provision and few young offenders are sent to remand homes as a punishment after a finding of guilt. The reason is, no doubt, that the average remand home is not designed for punitive detention. Its primary purpose is to enable juveniles to be kept in safe custody and, where necessary, kept under observation until the court is in possession of all the information which it requires in order to decide how best to deal with the case. If it is to fulfil this purpose efficiently, it will normally be so arranged and organised that it cannot conveniently serve the secondary purpose of providing a system of punitive detention for the much smaller number of children who may be sent to it as a punishment. The minimum requirement would be that children committed for punitive detention should be completely segregated from the ordinary remand cases, and even this requirement could not be met except in a very few of the largest remand homes. These witnesses have therefore suggested that, in order to make effective the penalty already recognised in principle by Section 54 of the Children and Young Persons Act, 1933, special places of detention should be established, apart from the existing remand homes, where offenders could be kept under punitive conditions for short periods not exceeding one month. In these separate places of detention, discipline would be strict and the inmates would be required to do a great deal of hard work. One of the advocates of this system expressed his object as follows:—"I do not want them to be really unhappy, but I want them to hate the place sufficiently to determine them never to return and, furthermore, to tell the other members of their gang about its unpleasantnesses". If any extended use were to be made of the power to order detention under Section 54 of the Children and Young Persons Act, 1933, we should be in agreement with these witnesses in attaching great importance to the point that the ordinary remand homes should not be used for purely punitive detention of this kind. (c) A third suggestion was that the difficulties in finding an appropriate remedy for some of these cases might be met by an extension of the system of short-term approved schools. An order committing a child to an approved school operates as an authority for the school-managers to detain him for the period prescribed in section 71 of the Children and Young Persons Act, 1933 (normally three years); but the managers may release him on licence at any time after the expiration of twelve months, or before that time with the consent of the Secretary of State. The flexibility of this system has enabled an experiment to be made in providing short-term detention in a few schools specially selected for that

purpose. The Secretary of State has empowered the managers of these schools to license after less than twelve months' detention; and the courts have been informed that children and young persons should not be sent to these particular schools unless they require, not long-term training, but merely a short period of discipline lasting normally from six to nine months. At the present time this system has been applied only to four schools—two for boys and two for girls—and has been limited to boys and girls who are already over school-age. There seems, however, to be no reason in law why it should not also be used as a method of providing a short period of punitive detention for a younger type of child; and some witnesses were of opinion that an extension of this system might provide a solution for the existing difficulty in finding suitable treatment for those offenders who do not require a long period of training.

It is beyond the scope of our terms of reference to examine these suggestions in detail; but we did not feel that we could conclude this part of our Report without suggesting that—especially if, as we recommend, corporal punishment is abolished—further consideration should be given to the question of strengthening the authority of the Juvenile Courts by conferring on them some additional powers to enable them to deal more effectively with those cases which do not call for any form of training or other remedial measures but require merely some form of punishment which will operate effectively as a deterrent.

PART III.—CORPORAL PUNISHMENT BY ORDER OF SUPERIOR COURTS.

EXISTING LAW AND PRACTICE.

32. This part of our Report is concerned with those powers of corporal punishment which are exercisable by courts other than courts of summary jurisdiction—i.e. in England, Courts of Assize and Quarter Sessions and, in Scotland, the High Court of Justiciary and the Sheriff and Jury Court. In law, these powers are applicable, not only to adults, but to all male persons of any age who are dealt with by these courts: but, in practice, young offenders are rarely committed to the superior courts for any of the particular offences for which those courts have power to impose a sentence of corporal punishment and (apart from the special powers discussed in paragraphs 40 and 41 below) this part of our Report is concerned with corporal punishment as a penalty for adult offenders.

The development of these powers of corporal punishment has already been traced, in broad outline, in Part I of this Report; and a summary of the existing law has been given in paragraph 7. The history of each provision will be given in greater detail in the succeeding paragraphs which deal separately with the various offences for which a sentence of corporal punishment may be imposed.

33. In the superior courts, a sentence of corporal punishment is combined almost invariably with a sentence of imprisonment or penal servitude. Whether it is so combined or not, the sentence of corporal punishment is administered in prison and not by the Police; and the manner of its administration is governed by Standing Orders laid down by the Prison Commissioners.

A person sent for trial on a charge which renders him liable to corporal punishment is usually committed to prison while awaiting trial, and during this period he is specially examined by the Prison Medical Officer in order that a report may be included in the pre-trial calendar, which is furnished for the information of the court of trial, on the question whether he is fit for corporal punishment. In deciding this question the Prison Medical Officer takes into account, not only the prisoner's physical condition, but also his mental state, so far as it has been possible to assess it during the time he has been in custody. It is possible, however, that a person charged with an offence of this kind may have been admitted to bail and may not have been in prison while awaiting trial. In that event the Prison Medical Officer may be asked at the time of the trial to give an opinion on the question whether the prisoner is fit for corporal punishment; and he may then be obliged to base his

opinion merely on a physical examination and may be unable to take into consideration the mental condition of the prisoner. These cases are rare. If a prisoner has been passed fit for corporal punishment and a sentence of corporal punishment is imposed, he is examined again by the Prison Medical Officer on being received into prison after the sentence has been passed. Every person convicted on indictment has certain rights of appeal to the Court of Criminal Appeal. The preliminaries to such an appeal must be commenced within ten days of the conviction. It is accordingly provided, by section 7 (2) of the Criminal Appeal Act, 1907, that the execution of a sentence of corporal punishment is to be postponed in every case until after the expiration of the ten days within which notice of appeal may be lodged and, if an appeal is prosecuted, until after the determination of the appeal. In view of this delay, the Prison Medical Officer is required to examine the prisoner a third time on the day on which the sentence of corporal punishment is to be carried out, in order to satisfy himself that he is still fit to undergo the punishment. Thus, every possible precaution is taken to ensure that no person shall suffer a sentence of corporal punishment who is not physically fit to undergo it.

The order of the court specifies the number of strokes to be inflicted and the instrument to be used. This is a statutory requirement in all cases except those under the Diplomatic Privileges Act, 1708, the Knackers Act, 1786, the Treason Act, 1842, and the Vagrancy Act, 1824. Under the first three of these Acts sentences of corporal punishment are not now imposed; under the fourth, it is the practice of the courts to specify the instrument and the number of strokes, as under the Acts which specifically require them to do so. For some offences, sentences of corporal punishment are subject to a statutory maximum. For garrotting and robbery with violence, the law prescribes a maximum of 25 strokes of the birch for persons under sixteen years of age and, for persons over that age, 50 strokes of the cat or the birch (section 1 of the Garroting Act, 1863, and section 37 (6) of the Larceny Act, 1916). These Acts also provide that the corporal punishment shall not be administered after the expiration of six months from the date on which the sentence was imposed; and that, if it is combined with a sentence of penal servitude, the corporal punishment shall be administered before the prisoner is removed to the convict prison where that sentence is to be served. The Larceny Act, 1916, similarly provides that, where corporal punishment is a permissible penalty for certain offences of larceny committed by boys under sixteen, the maximum penalty shall be 25 strokes of the birch. The Criminal Law Amendment Act, 1885, which provides for corporal punishment as a penalty for boys under sixteen convicted

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of having unlawful carnal knowledge of a girl under thirteen, prescribes a maximum of 12 strokes of the birch for offenders under fourteen (in conformity with the provisions of section 1 of the Whipping Act, 1862) but imposes no restriction on the corporal punishment which may be ordered for boys between fourteen and sixteen. The other Acts under which corporal punishment may be ordered by the superior courts—the Diplomatic Privileges Act, 1708, the Knackers Act, 1786, the Vagrancy Act, 1824, the Treason Act, 1842, the Larceny Act, 1861, the Malicious Damage Act, 1861, the Offences against the Person Act, 1861, and the Criminal Law Amendment Act, 1912—impose no statutory limitation on the number of strokes which may be ordered. In modern times, however, sentences of corporal punishment have in all cases been well within the limitations imposed by the Garroters Act and the Larceny Act, 1916; and in practice the courts appear to have worked to a maximum of 36, or even 24, strokes. In recent years, very few offenders have been sentenced to more than 24 strokes.

Corporal punishment is administered either with the birch or with the cat-o'-nine-tails, as the court directs. The birch used for boys under sixteen years of age has already been described in paragraph 10. For persons over that age a heavier type of birch is used, the specifications being as follows:—overall length, 48 inches; length of handle, 22 inches; circumference of spray at centre, 7 inches; total weight, 12 ounces. The cat-o'-nine-tails is composed of nine lengths of fine whipcord, whipped at the ends to prevent fraying, and attached to a short handle. Only one type of cat-o'-nine-tails is authorised, and the precise specifications are as follows:—length of tails, 33 inches; length of handle 19½ inches; weight of handle, covered with cloth, 6½ ounces; weight of tails, 2½ ounces; total weight, 9 ounces. As there seems to be some misapprehension on this point, we wish to emphasise the fact that the tails of the cat-o'-nine-tails now used in administering corporal punishment in prisons are of whipcord, not leather, and are not knotted or weighted in any way.

A prisoner who is to undergo corporal punishment is strapped to an apparatus, known as a triangle, which is best described as a heavier and more solid form of the easel used to carry a blackboard in a school-room. His feet are strapped to the base of the front legs of the triangle. If the cat is to be administered, his hands are raised above his head and strapped to the upper part of the triangle. If he is to be birched, he is bent over a pad placed between the front legs of the triangle and his hands are secured by straps attached to the back legs of the triangle. In both cases he is screened, by canvas sheeting, so that he cannot see the officer who is administering the punishment. The

birch is administered across the buttocks, on the bare flesh. The cat is administered across the back, also on the bare flesh, so that the ends of the tails fall on to the right shoulder-blade. When the cat is to be administered, a leather belt is placed round the prisoner's loins and a leather collar round his neck, so as to protect these parts from any injury which might arise from a mis-directed stroke. Both the Governor and the Medical Officer of the Prison must be present throughout the execution of a sentence of corporal punishment. The punishment is administered by a prison officer selected for this purpose by the Governor of the Prison, and Governors always take care to select for this duty a steady and experienced officer, who can be relied upon to administer the punishment dispassionately. This officer receives a special allowance of 2s. 6d. for this duty. The strokes are delivered at deliberate intervals—the normal rate is not faster than ten or fifteen strokes a minute—the time being counted by the Chief Officer of the Prison. The Medical Officer stands in a position where he can see the prisoner's face, and he has a complete discretion to stop the punishment at any time, if he considers that on medical grounds it is undesirable that it should be continued. If a punishment is so stopped, the remainder of it is remitted. At the conclusion of the punishment local dressings are applied, and the Medical Officer gives any other treatment which may be required. In practice, it is only on very rare occasions that the prisoner needs any attention from the Medical Officer; and there have been very few cases in which he has not been able to walk back to his cell without assistance.

The procedure described in the foregoing paragraphs is that which is followed in England and Wales. The procedure in Scotland differs from this in three respects:—(a) Corporal punishment, whether with the cat or with the birch, is administered by two officers, one standing on each side of the prisoner and each delivering alternate strokes; (b) each of the two officers receives a special allowance of 5s. for this duty; (c) the prisoner is not screened to prevent him from seeing the officers administering the punishment.

GENERAL CONSIDERATIONS.

34. Before we proceed to a detailed examination of the various provisions authorising corporal punishment, it will be convenient to give some preliminary indication of the general considerations which we have borne in mind in reviewing the existing powers of the superior courts to impose sentences of corporal punishment. These do not represent any pre-conceived views on our part—they were not finally formulated until after we had completed the hearing of evidence—but it will tend towards a clearer exposition of our conclusions if we reverse this order in our Report and begin with an explanation of these general considerations.

35. Corporal punishment of adults or adolescents by order of the superior courts is, in our view, a much more serious matter than the birching of young offenders by order of the summary courts. In the first place, it is a far more severe punishment from the physical point of view. As usually administered by the Police, six strokes of the birch may often be a comparatively light punishment for a juvenile—many children may have received more severe thrashings from their parents, and many may have suffered more physical pain from a sound caning by a schoolmaster. As administered in prisons, however, corporal punishment is not a light punishment. Even under the modern practice of the courts, as many as 24 strokes may be ordered—the statutory maximum, where one is imposed, is double that number—and the officer administering the punishment delivers each stroke with the full force at his command. It is commonly supposed that the birch inflicts much less pain than the cat-o'-nine-tails; but we have been assured, by witnesses who have had long experience in supervising the administration of both types of punishment, that as it is administered in prisons a birching is almost, if not quite, as painful as a flogging with the cat.

While emphasising the severity of this punishment, we wish to make it clear that the rigours of a judicial flogging are often exaggerated by some of the opponents of corporal punishment. As we have explained already, the tails of the cat-o'-nine-tails are not knotted, and there is no truth in the suggestion that blood flows freely during the infliction of the punishment. Both the cat and the birch are apt to break the skin, but they cause only minor superficial abrasions, which bleed only to a small extent. Simple emergency dressings are sometimes applied, but the local physical effects of the punishment seldom require any special medical treatment. In 343 cases of corporal punishment administered in English prisons during the ten years 1925-34, there were only four occasions on which the prisoner had to be detained in the prison hospital after the punishment for physical reasons connected with the punishment, and in only one of those cases was the prisoner kept in hospital for more than one day. Nor is there any substance in the suggestion that prisoners often lose consciousness under the lash. It is very rarely that a prisoner who has been passed fit for corporal punishment proves physically incapable of sustaining the full punishment ordered. In the same series of 343 cases, there were only nine in which the punishment was stopped on medical grounds before the full sentence had been carried out. On the rare occasions when the Medical Officer intervenes, he does so because he thinks it possible that the prisoner may faint; but for many years past there have been very few cases in which the prisoner has in fact fainted, either during or after the punishment. Finally, we have not had evidence of any case

in which corporal punishment produced any lasting physical consequences. It is recognised that, if corporal punishment were inflicted on persons suffering from certain organic diseases or disorders, the physical effects might be serious and in some cases permanent injury might result. We are satisfied, however, that the existing arrangements for the medical examination of all persons liable to be flogged provide ample safeguards to ensure that no person shall be passed fit for corporal punishment who is incapable of undergoing this punishment without risk of physical injury. Prison Medical Officers take very great care over these cases, and their bias is towards reporting a man unfit if there is any room for doubt regarding his physical capacity to withstand this punishment. Under the present system there is very little risk of corporal punishment being applied in cases which are unsuitable for it from the physical point of view.

36. Though the physical effects of corporal punishment are only temporary, the mental effects may be more lasting and we have no doubt that, if imposed in an unsuitable case, corporal punishment may have a permanent detrimental effect on the mentality of the person who receives it. The medical examination which is made in every case is sufficient to ensure that corporal punishment shall not be inflicted on any person who is physically incapable of undergoing it: but, from the evidence we have heard, we are satisfied that these safeguards are not sufficient to prevent corporal punishment from being applied in some cases in which the mentality and disposition of the offender make it an unsuitable form of punishment.

Persons charged with offences for which corporal punishment is a possible penalty are usually committed to prison while awaiting trial, and would then be under observation by the Prison Medical Officer for periods which may vary from a few days to two or three months. In very rare cases they may be admitted to bail while awaiting trial, and in that event the Medical Officer would have had no opportunity of keeping them under observation before they came up for trial. Some Prison Medical Officers have told us that, if such a case occurred, they would be disposed to decline to certify whether the offender was fit for corporal punishment merely on the basis of a purely physical examination conducted in the precincts of the court; and would suggest that he should be remitted to prison, even if it were only for a few days during the holding of the Assizes or Quarter Sessions, so that they might have an opportunity for more extended examination and observation. Except in these very rare cases where the Medical Officer may be asked to give an opinion on an offender who has been on bail while awaiting trial, we believe that the period during which the offender is under observation in prison is usually sufficient to enable the Medical Officer to detect any degree of insanity or mental defect

which reaches, or approximates to, the standard for actual certification. Out of 343 persons who received corporal punishment in English prisons during the ten years 1925-34, four were subsequently certified insane and one mentally defective before the end of 1934. In three of these five cases the man was not certified until some considerable time after receiving the corporal punishment. In no case is there any reason to believe that the subsequent insanity was attributable to the corporal punishment; but in two cases there is little doubt that the offender was certifiable at the time when the corporal punishment was carried out, and would have been certified unfit for this punishment if more information about his mental condition had been available. It is rare, however, for the Medical Officer to have so little information, and in the great majority of cases there is very little risk that an offender who is actually certifiable as insane or mentally defective will be passed fit for corporal punishment.

It is a much more difficult matter for the Prison Medical Officer to assess an offender's temperamental capacity for this punishment during the comparatively short time for which he is under observation while awaiting trial. The manner in which a man will react to corporal punishment depends on his emotional and temperamental make-up, and it is very difficult for a Prison Medical Officer to gauge this unless he has a real insight into the man's character, which he can rarely obtain while the man is in custody awaiting trial. This statement is not based merely on our own opinion nor on the general medical evidence, summarised in paragraph 21, much of which applies to corporal punishment of adults as well as of juveniles. In this part of our enquiry we have had the advantage of hearing the views formed by Prison Governors and Medical Officers in the light of long practical experience and based on close personal knowledge of numbers of individual cases in which corporal punishment has been imposed. These witnesses have stated that, in cases where corporal punishment may be imposed by a court, the time spent in custody before trial is often insufficient to enable the prison authorities to form an opinion of the offender's temperament; and that corporal punishment is sometimes ordered by a court in cases which from this point of view are not appropriate for this form of punishment. There are, of course, large numbers of cases in which corporal punishment will have no marked effect on the offender's mentality, either for better or for worse: and there are some rare cases in which it may have a salutary effect in compelling the offender to face the realities of his offence: but it is clear, from the evidence which we have heard, that there are other cases in which the infliction of corporal punishment may do lasting damage to a man's character and personality. In the words of one witness, with very long experience in the Prison Medical

Service, corporal punishment "occasionally hardens the outlook of a tough-minded offender and may, perhaps, occasionally act detrimentally on some who are tender-minded; and there appears to be a risk that corporal punishment may sometimes produce a result which is not intended".

The Prison Medical Officer is faced with the further difficulty that, even if he has had the time and the data to form an opinion on the offender's temperamental capacity for corporal punishment, he may not be given any opportunity of expressing his opinion to the court. The formal report which he is required to furnish for the information of the court must consist of a simple answer, negative or affirmative, to the question "Is this man medically fit for corporal punishment?"; and this answer, in the form of a simple certificate of fitness or unfitness, is incorporated in the pre-trial calendar of prisoners for trial which is prepared in the prison for the information of the Judge or the Chairman of the Court. In giving this certificate, Medical Officers take into account the mental, as well as the physical, condition of the offender, and would certify a man unfit for corporal punishment if he showed signs of insanity or mental defect, or even marked mental instability falling short of the standard for actual certification. But they are not at liberty to certify a man to be medically unfit for corporal punishment merely on the ground that they consider him temperamentally unsuited for this type of punishment. If in such a case there were no medical grounds for certifying him unfit, they would be obliged to certify him fit, for corporal punishment: and if, as is usually the case, they were not asked to give evidence in court in amplification of their written certificate they would have no opportunity of bringing their opinion to the notice of the court. Sentences of corporal punishment are in fact imposed by the courts in cases where the Prison Governor and Medical Officer have, from their observation of the offender, formed the view that he is temperamentally unsuited for corporal punishment.

In the superior courts a sentence of corporal punishment is likely to be imposed, not so much because it is considered the most appropriate form of treatment for the offender, but rather because it is thought to be the penalty appropriate to the offence which he has committed. The criminal statutes are themselves based on the principle that, as a penalty for adults, corporal punishment is appropriate only for certain specified offences; and in exercising their powers of corporal punishment the courts tend to punish the offence rather than the offender.

37. Corporal punishment is purely punitive; and it is out of accord with those modern ideas which stress the need for using such methods of penal treatment as give an opportunity for subjecting the offender to reformative influences. We do

not, of course, suggest that reformatory methods of treatment should not contain any punitive element; but we believe that, in view of modern developments in the treatment of offenders, special justification must be shown for the retention of a penalty which is purely punitive and contains no element of reform. In this connection reference may be made to the following passage in the *Report of the Committee on Persistent Offenders, published in 1932:—

“ The question has been raised by one or two witnesses whether more offenders would not be deterred from incurring the risk of a second experience if prison conditions were made somewhat harder. Imprisonment would be more effective if prison industries were improved and harder work were done in prisons; but a return to the policy of severity for severity's sake would provide no remedy. As the long history of the penal system shows, severity is a double-edged weapon and if the offender leaves prison a worse man and a more embittered enemy of society than he was when he came in, society is injured equally with the offender. The object of modern changes in prison treatment has been to remove or modify the features which conduced to deterioration of mind or character and to make imprisonment, so far as possible, a period of training. This aim is not inconsistent with the deterrent function of imprisonment. In addition to the deterrence resulting from loss of liberty, training—if the system is efficient—is a deterrent experience. It should demand from the prisoner a higher standard of effort in work and behaviour and self-discipline than is demanded by a purely punitive system.”

This point is of particular importance because, in the case of adults, corporal punishment is always combined with a sentence of detention—imprisonment or penal servitude, or even, in some cases, Borstal detention. Not only does the corporal punishment itself contain no reformatory element, but it may also run counter to the reformatory influences which the sentence of detention is designed to bring to bear on the offender. There are a few cases in which corporal punishment puts the offender in a better frame of mind; but these are exceptional, and as a general rule the infliction of corporal punishment at the outset of a sentence of detention must tend to make the offender less amenable to reformatory influences, and thus reduce the chance that the period of detention will have a beneficial effect. Some of the witnesses who advocated the retention of corporal punishment for adults attempted to meet this point by claiming that sentences of corporal punishment are imposed only in cases where the offender is past all possibility of reform. In fact,

* Cmd. 4090. Published by H.M. Stationery Office. Price 1s. 6d.

however, it is not the case that corporal punishment is reserved only for the most hardened and desperate criminals. A review of the 442 persons convicted of robbery with violence during the period 1921-30 showed that, out of 142 persons sentenced to corporal punishment, 22 or 15.5 per cent. were under twenty-one years of age, and 57 or 40.1 per cent. had not previously been convicted of serious crime. Only 23, or 16.2 per cent., had previously served sentences of penal servitude or imprisonment for twelve months or over. In the London area, it is by no means uncommon for prisoners to be received, under sentence of corporal punishment, in Wormwood Scrubs Prison—which is a prison reserved wholly for first offenders and administered on reformatory lines—and we cannot think that the infliction of a sentence of corporal punishment is often a suitable way in which to introduce a first offender to a period of imprisonment which is intended to be reformatory in character.

Many of the witnesses who were opposed to corporal punishment objected to it on the ground that it is a degrading form of punishment. We have not given much weight to this argument in connection with the corporal punishment of juveniles; for, although there are some elements in the present system of administering it which might have a degrading effect on some of the more mature among juvenile delinquents, these objectionable elements could be removed by modifying the system. For young children, we do not think there is anything degrading in corporal punishment as such. For grown men, on the other hand, corporal punishment in any form must often involve some degrading element, some loss of self-respect. We are fully aware that many of the adult offenders who are sentenced to corporal punishment are already degraded and brutal in character; but, as we have indicated above, many of them are young men who are not beyond the possibility of reform and the infliction of corporal punishment will not tend to foster in them the better elements which might respond to reformatory influences. In its own interests society should, in our view, be slow to authorise a form of punishment which may degrade the brutal man still further and may deprive the less hardened man of the last remaining traces of self-respect. As applied to adults, corporal punishment is certainly more degrading than any of the other punishments recognised by our criminal law. This is not a conclusive argument against its retention; but it is a reason for considering very carefully whether it is essential on other grounds to retain a form of punishment which involves this risk that the person punished may thereby be rendered less useful, perhaps even more dangerous, to the community.

38. Appendix V contains a summary of the information which we have obtained regarding the law relating to corporal punishment in fifteen foreign countries and in the British Dominions.

The use of corporal punishment as a penalty for criminal offences by adults has been discontinued in all the fifteen foreign countries covered by this enquiry, with the sole exception of two States in the United States of America, where it is recognised by State law as a penalty for a limited number of offences. It may be said that, as a penalty for criminal offences by adults, corporal punishment has been abandoned by every civilised country in the world except those—i.e. the British Dominions and, to a very limited extent, the United States of America—in which the development of the criminal code has been influenced largely by the example of the English criminal law. This, again, is not in itself a sufficient reason for discontinuing the use of corporal punishment in this country; but it does, in our view, suggest that a strong case must be made out to show why it should be necessary to retain in this country a form of punishment with which almost all other civilised countries have found it possible to dispense.

39. For all these reasons we consider that the retention of corporal punishment, as a penalty for criminal offences committed by adults, could only be justified if a strong case were made out to show that its retention is essential in the interests of the community. On what grounds could such a case be based? The most obvious sanction for corporal punishment is the retributive principle, but it would be out of accord with modern theories of penal treatment to justify the retention of any form of punishment merely on retributive grounds. The *lex talionis* is no longer accepted as a sufficient sanction for criminal penalties. The law must be vindicated, but the form of the punishment imposed must be determined, not by considerations of mere retribution, but by its capacity to reform or to deter. A sentence of corporal punishment is clearly not reformatory, and its retention could therefore be justified only on the ground of its value as a deterrent—either in preventing the individual offender who suffers it from repeating his offence, or in discouraging others from committing similar offences. In our view, the retention of corporal punishment can be justified only if it can be shown (a) that a sentence of imprisonment or penal servitude combined with corporal punishment operates more effectively as a deterrent than a sentence of imprisonment or penal servitude not combined with corporal punishment; and (b) that for some offences or classes of offence sentences of imprisonment or penal servitude are so ineffective as deterrents that it is necessary, for the protection of society, to add a further penalty containing an exceptional element of deterrence. These two points are dealt with more fully in paragraphs 55 to 58. Before proceeding to this aspect of the question, we propose to trace the history of all the existing powers of superior courts to impose sentences of corporal punishment, and to complete, in the light of the general considerations outlined in the last six

paragraphs, our examination of those powers which nowadays are rarely used by the courts and do not call for any elaborate consideration of the deterrent effect of corporal punishment.

SPECIAL PROVISIONS RELATING TO BOYS UNDER SIXTEEN.

40. When the English criminal law was revised and consolidated in 1861, corporal punishment was generally abolished as a penalty for adult offenders but was retained as a penalty for boys under sixteen years of age convicted on indictment of certain offences under the Larceny Act, 1861, the Malicious Damage Act, 1861, and the Offences against the Person Act, 1861. Some of the provisions originally contained in the Larceny Act, 1861, have since been transferred to the Larceny Act, 1916, on consolidation. The actual offences for which corporal punishment may be imposed on boys of this age are as follows:—

Larceny Act, 1861.

Stealing deer in an unenclosed part of a forest, after a previous conviction of any offence relating to deer (section 12).

Stealing deer in any enclosed ground (section 13).

Attacking deer-keepers engaged in the execution of their duty (section 16).

Larceny Act, 1916.

Simple larceny (section 2).

Stealing, etc., metal, glass, or wood fixed to house or land (section 8 (1)).

Stealing, etc., trees or shrubs wheresoever growing of at least 1s. in value, after two previous summary convictions of any such offence (section 8 (2) (a)).

Stealing, etc., trees or shrubs in any park, pleasure ground or garden, etc., of value exceeding £1 or elsewhere of value exceeding £5 (section 8 (2) (b) and (c)).

Stealing, etc., any plant, root, etc., in any garden, orchard, etc., after a previous summary conviction of any such offence (section 8 (3)).

Abstracting electricity (section 10).

Stealing by tenant or lodger of chattel or fixture let to hire with house or lodgings (section 16).

Larceny or embezzlement by clerks or servants (section 17).

Uttering a letter demanding property, etc., with menaces, or uttering a letter threatening to accuse of crime with intent to extort, or accusing or threatening to accuse of crime with intent to extort (section 29 (1)).

Receiving (section 33).

Corruptly taking a reward for helping to recover stolen property without bringing the offender to trial (section 34).

Simple larceny after previous conviction of felony (section 37 (1) and (3)).

Simple larceny or any offence made punishable like simple larceny after (a) a previous conviction of any indictable misdemeanour punishable under this Act; (b) two summary convictions under certain Acts (section 37 (2) and (3)).

Malicious Damage Act, 1861.

- Setting fire to a church or chapel (section 1).
- Setting fire to a dwelling-house any person being therein (section 2).
- Setting fire to a house, out-house, manufactory, farm building, etc. (section 3).
- Setting fire to a railway station (section 4).
- Setting fire to public buildings (section 5).
- Setting fire to other buildings (section 6).
- Setting fire to goods in any buildings the setting fire to which is felony (section 7).
- Attempting to set fire to buildings, or to goods in buildings, if the setting fire to them is felony (section 8).
- Destroying or damaging a house with gunpowder, any person being therein (section 9).
- Attempting to destroy buildings with gunpowder (section 10).
- Destroying goods in process of manufacture, certain machinery, etc. (section 14).
- Destroying machines used in agriculture and certain manufactures (section 15).
- Setting fire to crops of corn, etc. (section 16).
- Setting fire to stacks of corn, etc. (section 17).
- Attempting to set fire to any crops of corn, etc., or to any stack or steer (section 18).
- Destroying hop-binds (section 19).
- Destroying or damaging trees, shrubs, etc., to the value of more than £1, growing in a pleasure ground, etc. (section 20).
- Destroying or damaging trees, shrubs, etc., of the value of more than £5, growing elsewhere than in a pleasure ground, etc. (section 21).
- Damaging trees, wheresoever growing, to the amount of at least 1s., after two previous convictions of any such offence (section 22).
- Destroying any fruit or vegetable products in a garden, after a previous conviction of such offence (section 23).
- Setting fire to a coal mine (section 26).
- Attempting to set fire to a mine (section 27).
- Conveying water into a mine, obstructing the shaft, etc. (section 28).
- Damaging steam engines, staiths, waggon-ways, etc., for working mines (section 29).
- Destroying any sea bank or sea wall, or the bank of any river, canal, etc. (section 30).
- Removing the piles of any sea bank, etc., or doing damage to obstruct the navigation of a river or canal (section 31).
- Breaking down the dam of a fishery or mill (section 32).
- Injuring a public bridge (section 33).
- Placing wood, etc., on railway with intent to obstruct or overthrow any engine, etc. (section 35).
- Destroying or damaging works of art in museums, churches, etc., or in public places (section 39).
- Setting fire to, or casting away, a ship (section 42).
- Setting fire to, or casting away, ships to prejudice the owner or underwriters (section 43).
- Attempting to set fire to, or cast away, a ship (section 44).
- Placing gunpowder near a ship with intent to damage it (section 45).
- Damaging ships otherwise than by fire or explosives (section 46).
- Exhibiting false signals, etc., to shipping (section 47).

- Removing or concealing buoys and other sea marks (section 48).
- Sending letters threatening to burn or destroy houses, buildings, ships, etc. (section 50).
- Making or having gunpowder, etc., with intent to commit any felony against this Act (section 54).

Offences against the Person Act, 1861.

- Sending letters threatening to murder (section 16).
- Causing bodily injury by gunpowder (section 28).
- Causing gunpowder to explode, or sending to any person an explosive substance, or throwing corrosive fluid on a person with intent to do grievous bodily harm (section 29).
- Placing gunpowder near a building, with intent to do bodily injury to any person (section 30).
- Placing wood, etc., on a railway with intent to endanger passengers (section 32).
- Making or having gunpowder, etc., with intent to commit any felony against this Act (section 64).

The three Acts of 1861 provide that for these offences a boy under sixteen may be ordered to be "once privately whipped in addition to a term of imprisonment". Under the Act of 1916, the boy may be ordered to be "once privately whipped in addition to any other punishment to which he may by law be liable". In all cases the court is required to specify in the sentence the number of strokes and the instrument with which they are to be inflicted. In cases under the Larceny Act, 1916, the statute prescribes a maximum punishment of 25 strokes of the birch. For cases under the Acts of 1861 there is no statutory maximum, but for many years past the courts have not exceeded the maximum prescribed for cases under the Larceny Act, 1916.

Conditions to-day are very different from what they were when these provisions were enacted in 1861. At that time the Justices had no power to deal summarily with any of these offences, except simple larceny; and for all other offences of this kind boys under sixteen years of age were committed for trial at Assizes or Quarter Sessions. Nowadays, all but a few of these cases are dealt with summarily in the Juvenile Court. If the boy is under fourteen, he must be dealt with summarily, except in those rare cases where he is charged jointly with an older person who is committed for trial and the court thinks it necessary in the interests of justice that the child also should be committed for trial. If he is between fourteen and sixteen, he may be committed for trial if the court thinks it expedient to commit him or if he himself declines to be dealt with summarily: but even these older boys are rarely committed to Assizes or Quarter Sessions for these offences. During 1935, for example, no persons under fourteen years of age were convicted on indictment in the whole of England and Wales, and the total number of boys between fourteen and sixteen who

were so convicted was only 25. During the same period the total number of boys under sixteen dealt with summarily for all indictable offences in England and Wales was 21,189. There has also been a great change in the methods of treatment available for young offenders. In 1861, the courts had no effective means of dealing with boys under sixteen except by imprisonment or corporal punishment: but since then there has been a revolution in the treatment of young delinquents and the courts now have open to them in these cases a whole range of remedies which were unknown when these powers of corporal punishment were conferred. As a result of these changes, very little use is now made of the special powers of Courts of Assize and Quarter Sessions to order corporal punishment for boys under sixteen years of age. In the eighteen years from 1918 to 1935 these powers were exercised on only twelve occasions in the whole of England and Wales. In some of these cases several boys were convicted jointly and, in all, 20 sentences of corporal punishment were imposed—13 for larceny (usually combined with housebreaking or shopbreaking); 5 for damage to, or endangering passengers on, railways; and 2 for arson. Particulars of these cases are given on pages xxii-xxiii of the Introduction to the Criminal Statistics for 1935.

The question whether corporal punishment is a suitable penalty for young offenders under sixteen must be determined very largely by the considerations which we have discussed in Part II of this Report. We have indicated that, in our view, corporal punishment would not be an appropriate penalty for young offenders unless it could be reserved for minor offences and could follow hard on the detection of the offence; and, largely for these reasons, we have come to the conclusion that, as a court penalty, corporal punishment is an unsuitable method of treatment for young offenders dealt with in the summary courts. If the validity of these arguments is accepted, it follows that corporal punishment is even more inappropriate as a penalty for young offenders dealt with on indictment at Assizes and Quarter Sessions—for two reasons. First, it is available only in those cases for which it is least suited: for it is only in specially serious cases that boys under sixteen are committed for trial on indictment, and serious cases require some treatment far more constructive than corporal punishment. Secondly, it is applied in the least satisfactory manner—i.e. after a long delay and with extreme formality. The boy cannot be tried on indictment until some weeks, if not months, have elapsed since the commission of the offence and his first appearance in the summary court. And, for boys of this age, the formal manner in which a sentence of corporal punishment is carried out in prisons is even more unsuitable than the more summary method used by the police in administering birchings ordered by Juvenile Courts.

We therefore think it undesirable to retain these special powers, now so rarely used, of ordering corporal punishment for boys under sixteen convicted on indictment of these offences under the Larceny Acts, 1861 and 1916, the Malicious Damage Act, 1861, and the Offences against the Person Act, 1861; and we recommend that these powers should be repealed.

For similar reasons we also recommend the abolition of the common law powers in Scotland to punish by whipping boys under sixteen convicted on indictment of offences at common law.

41. By section 4 of the Criminal Law Amendment Act, 1885, a boy under sixteen convicted on indictment of having had unlawful carnal knowledge of a girl under thirteen may be ordered to be whipped, in lieu of being sentenced to imprisonment. The Act applied to these sentences of whipping the limitations imposed by the Whipping Act, 1862—i.e. the sentence must specify the number of strokes and the instrument to be used, and for offenders under fourteen the punishment ordered may not exceed 12 strokes of the birch. This Act applies to Scotland as well as to England. In England the offence is not triable at Quarter Sessions, and a sentence of whipping may thus be ordered only by a Court of Assize.

The power to order corporal punishment in these cases was conferred solely in order to save boys of this age from being sentenced to imprisonment. When the Bill was in Committee of the House of Commons a proposal was made that any person convicted of defilement of a girl under thirteen should be liable to corporal punishment in addition to imprisonment. This proposal was defeated; and an alternative amendment was then put forward providing that, in the case of boys under sixteen convicted of this offence, the court should be authorised to order corporal punishment in substitution for a sentence of imprisonment. The object of this amendment was to prevent young boys from being sent to prison: the mover urged it on the ground that "the whole spirit of legislation had been against imprisonment of young boys and the law had provided that boys might be moderately chastised and saved from the disgrace of imprisonment". The amendment was carried. On the Report stage of the Bill the Home Secretary proposed that, for the sake of consistency, a similar amendment should be made in the clause relating to the defilement of girls over thirteen and under sixteen. Objection was taken to this, however, and in order to save time and discussion this proposal was withdrawn.

This power of corporal punishment is very rarely used. In England it has been used on only one occasion since 1918—in 1919 a boy of fifteen was convicted of such an offence at the Essex Assizes and was sentenced to 15 strokes of the birch. The

objects for which the power was originally conferred have long since been attained by other means. It is no longer necessary, as it was in 1885, to provide a power of corporal punishment in order to prevent boys under sixteen from being sentenced to imprisonment. By section 52 of the Children and Young Persons Act, 1933, a boy under seventeen may not be sent to prison unless the court certifies that he is too unruly or depraved to be detained in a remand home; and in view of the many other methods of treatment which are now available for young offenders there is little risk that a boy under sixteen would now be sentenced to imprisonment for this offence. This power is not only unnecessary, however: it is open to positive objection. All the most experienced witnesses who have given evidence before us have agreed in regarding corporal punishment as a specially unsuitable penalty for sexual offences; and we think it will be generally recognised that, if a boy under sixteen has committed an offence of this kind which is sufficiently serious to warrant his being committed for trial on indictment, the case will call for some form of treatment far more constructive than corporal punishment. He may need detention for purposes both of discipline and of training, and he may also need some sexual education: or, if there is some abnormality, he may require some form of psychological treatment: but it is difficult to imagine a case of this kind which could suitably be dealt with merely by corporal punishment as administered under a sentence of a court. In addition to these special objections, this use of corporal punishment is open to the general objections outlined in paragraph 40. We therefore recommend that this power of corporal punishment should be repealed.

DIPLOMATIC PRIVILEGES ACT, 1708.

42. Section 3 of the Diplomatic Privileges Act, 1708, declares the rule of international law by which no process which might result in arrest or distraint of goods may be taken against an Ambassador or Minister of a foreign State or any of his servants. Section 4 of the same Act provides that any person instituting any such process, any attorney or solicitor acting on his behalf, and any officer executing any writ or process in connection with the action, shall be deemed "violators of the laws of nations and disturbers of the publick repose and shall suffer such pains, penalties and corporal punishment" as may be imposed by "the Lord Chancellor or Lord Keeper of the Great Seal of Great Britain, the Chief Justice of the Court of Queen's Bench, the Chief Justice of the Court of Common Pleas or any two of them".

This provision for corporal punishment is obsolete, and we recommend that it should now be repealed.

KNACKERS ACT, 1786.

43. By sections 8 and 9 of the Knackers Act, 1786, persons convicted on indictment of slaughtering horses and cattle without a licence, or of destroying the hides of animals slaughtered, may be sentenced to such public or private whipping as the court may direct. This Act has never been repealed; but in modern times control over knackers' yards has been mainly exercised by virtue of more recent provisions in the Towns Improvement Clauses Act, 1847, the Public Health Act, 1875, and other Acts, and the power to order corporal punishment for these offences has not been exercised for many years. The law relating to slaughter houses and knackers' yards has recently been under review by the Local Government and Public Health Consolidation Committee, who have been considering the consolidation of the various Acts relating to food and drugs. In their *Third Interim Report, published in December 1937, the Committee have recommended that the law relating to slaughter houses and knackers' yards should be re-enacted in a modified form, and the draft Bill which they have prepared provides for the repeal of the whole of the Knackers Act, 1786, including its provisions for corporal punishment. This power to order corporal punishment is obsolete, and we agree that it should be abolished.

VAGRANCY ACT, 1824.

44. The Vagrancy Act of 1824 is descended from a long line of statutes dealing with rogues and vagabonds and sturdy beggars, which had its origin as far back as the Statute of Labourers, 1349. From the earliest times whipping was regarded as the appropriate treatment for vagrants, and it was freely imposed as a summary penalty. In the time of Henry VIII it was provided that the vagrant should be carried to some market town or other place and there tied to the end of a cart naked and beaten with whips throughout such market town or place till his body should be bloody by reason of such whipping. This procedure was modified to some extent in the reign of Queen Elizabeth, when it was provided that the vagrant was to be stripped naked only from the middle upwards and whipped till his body should be bloody. Subsequent Acts reaffirmed the power of a single Justice to order a vagrant to be publicly whipped (cf. 17 Geo. II. c. 5 section 7). The Act of 1824 effected a drastic restriction of these powers by confining whipping to persons convicted on a second or subsequent occasion of certain specified offences then considered peculiar to vagrancy, and by transferring the power to order whipping from the summary jurisdiction of the Justices to Quarter Sessions. The Act did not specifically prohibit public whipping, it

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prescribed no maximum number of strokes, and it allowed whippings to be inflicted at intervals throughout a sentence of imprisonment. Repeated whippings were forbidden by section 2 of the Whipping Act, 1862, which provided that no person shall be whipped more than once for the same offence; but there is still no statutory maximum for sentences of corporal punishment imposed under the Vagrancy Act, 1824.

The Act provides that any person convicted summarily as an "incorrigible rogue" may be committed to Quarter Sessions, who may sentence him to imprisonment for not more than twelve months and may further order, if they think fit, that "such offender (not being a female) be punished by whipping at such time during his imprisonment, and at such place within their jurisdiction, as according to the nature of the offence they in their discretion shall deem to be expedient". It defines "incorrigible rogue" for this purpose as including (a) every person breaking or escaping out of any place of legal confinement; (b) every person apprehended as a rogue and vagabond and violently resisting any constable so apprehending him and being subsequently convicted of the offence for which he was so apprehended; and (c) every person committing any offence against the Act which would subject him to be dealt with as a rogue and vagabond, such person having been at some former time duly convicted as a rogue and vagabond. Accordingly, any person convicted more than once of any of the numerous offences covered by the Vagrancy Act of 1824, as amended by the Vagrancy Act of 1873, is liable in law to be committed to Quarter Sessions and ordered to be whipped. The offences under the Vagrancy Acts, 1824 and 1873, include the following:—(a) wilfully neglecting to maintain a family with the consequence that they become chargeable to the parish, or running away and leaving a wife and child chargeable; (b) peddling without a licence; (c) gaming in any public place; (d) begging; (e) fortune telling; (f)* sleeping out; (g) wilfully exposing an obscene print or other indecent exhibition; (h) exposing the person with intent to insult any female; (i) possessing housebreaking instruments with intent to break in; (k) being armed with an offensive weapon with intent to commit a felonious act; (l) being found on enclosed premises for an unlawful purpose, and frequenting any public place with intent to commit a felony.

In law a person convicted more than once of any of these miscellaneous offences is liable to be sentenced to corporal

* The scope of this offence was restricted very considerably by the Vagrancy Act, 1935, but within this restricted scope the penalty of corporal punishment is still available if the offender has previously been convicted as a rogue and vagabond.

punishment, and in past years sentences of corporal punishment were in fact imposed for the following offences:—

Offence.	Year.	No. of Sentences of Corporal Punishment.
Sleeping out ...	1904	1
	1905	2
Begging ...	1907	1
	1909	1
	1913	2
Exposing an obscene print or picture ...	1912	1
Being found on enclosed premises for an unlawful purpose ...	1922	1
Leaving family chargeable to the parish ...	1912	1
	1913	1
	1925	1

(In this last case a man of thirty-six was sentenced by the Monmouth County Sessions to three months' imprisonment and to six strokes of the cat at the expiration of two months of the imprisonment.)

In the main, however, this power to order corporal punishment has been used in more recent years only in cases of a second conviction of indecent exposure. The sentences of corporal punishment for this offence have been as follows:—

1903 ... 4	1913 ... 2	1923 ... 2
1904 ... 3	1914 ... 3	1924 ... 2
1905 ... 2	1916 ... 5	1927 ... 1
1907 ... 1	1917 ... 1	1928 ... 1
1908 ... 2	1918 ... 1	1933 ... 1
1910 ... 1	1919 ... 2	1935 ... 1
1911 ... 2	1920 ... 3	
1912 ... 5	1922 ... 2	

Total for 33 years ... 47

In the ten years from 1926 to 1935 there have been only four cases in which men convicted of indecent exposure have been sentenced to corporal punishment. The particulars are as follows:— (a) In 1927, a man of thirty-five was sentenced at York County Sessions to one year's imprisonment and 15 strokes of the birch. He was also sentenced to two years' imprisonment for indecent assault. He appealed against sentence and the Court of Criminal Appeal quashed the sentence of corporal punishment and ordered that the sentences of two years and one

year should run concurrently instead of consecutively. (b) In 1928, a man of thirty-three was sentenced at Oxford City Sessions to six months' imprisonment and 6 strokes of the cat. (c) In 1933, a man of thirty-nine was sentenced at Middlesex Sessions to twelve months' imprisonment and 12 strokes of the birch. (d) In 1935, a man of fifty-nine was sentenced at Birmingham City Sessions to twelve months' imprisonment and 12 strokes of the birch.

45. There can be little doubt that corporal punishment is an inappropriate penalty for these miscellaneous offences under the Vagrancy Act. As long ago as 1898, when the Vagrancy Amendment Bill was under discussion in the House of Commons, the Government accepted an amendment providing for the repeal of "so much of section 10 of the Vagrancy Act, 1824, as authorises the punishment of whipping"; and, although this amendment was subsequently removed from the Bill in the House of Lords, it was so removed, not on merits, but because it was considered inappropriate to make this change in a Bill designed merely to extend the offences to which the Act of 1824 applied. We understand that various Home Secretaries, both before 1898 and since, have been anxious to abolish this provision for corporal punishment, but have found no suitable opportunity to secure its repeal. In recent years the power has only been used on rare occasions, mainly for persistent offences of indecent exposure. We are fully satisfied, from medical and other evidence, that for this particular offence corporal punishment is specially unsuitable. In almost every case this offence is due to some mental abnormality, which may or may not be remediable by medical or psychological treatment but certainly cannot be cured by the infliction of corporal punishment. The witnesses who had practical experience in dealing with persons charged with offences under the Vagrancy Act—Chairmen of Quarter Sessions, probation officers, and prison authorities—were all agreed that the power to order corporal punishment for these offences has long been an anachronism; and we therefore have no hesitation in recommending that this power should now be abolished.

TREASON ACT, 1842.

46. In 1842 public indignation was aroused by incidents which at first sight appeared to be attempts upon the life of Queen Victoria. On the 29th and again on the 30th May of that year a young man named John Francis pointed a pistol at the Queen when she was driving with the Prince Consort near Buckingham Palace—not far from the spot where a similar attempt had been made in 1840. Another incident of the same kind occurred on the 3rd July. In none of these cases was there any genuine murderous intent; the pistol was not loaded with a lethal charge, and the assailant appears to have been

actuated by some form of exhibitionism. As the law then stood, these attacks could be dealt with only as offences of high treason; and the Queen and her advisers felt that similar attacks would continue to be made so long as the assailant could hope to achieve notoriety through the special procedure attaching to a trial for high treason. No time was lost in introducing legislation to deal with this point. Francis was convicted of high treason on the 17th June, 1842, the death sentence being commuted to transportation for life; and the Treason Bill was introduced on the 12th July and passed into law on the 16th July. The primary objects of the Bill were to simplify the procedure for trying such offences of high treason as consisted in compassing or imagining the death or wounding of the Sovereign, and to make it a separate statutory offence, triable as a high misdemeanour, to discharge or aim any firearm etc., at or near the person of the Sovereign. This new offence, created by section 2 of the Act, was made punishable by transportation for seven years or imprisonment; and in addition the courts were empowered to order that, during any period of imprisonment, the offender should be "publicly or privately whipped, as often and in such manner and form as the court may order and direct, not exceeding thrice".

This provision for corporal punishment was secondary to the main objects of the Bill, and there is little doubt that its inclusion was due to the feelings of indignation which were still fresh in the minds of the public. It was welcomed by one speaker in the debate in the House of Commons as "a measure calculated to mark with the contemptuous execration of the whole nation those brutal attempts on Her Majesty's life". We are advised that this power to order corporal punishment is available in Scotland as well as in England (see paragraph 3) but, so far as our information goes, it has never been exercised in either country. It was enacted primarily as a retributive penalty, and its retention could be justified only on retributive grounds. For any person contemplating a serious attack on the life of the Sovereign, it would not operate as a deterrent; for if a man is not deterred by the consideration that he will be hanged if his attempt succeeds, he is not likely to be deterred by the thought that he may be flogged if it fails. For persons who committed such an offence in order to achieve notoriety and without any murderous intent, corporal punishment would not nowadays be regarded as a suitable penalty. Such persons would be suffering from some obsession or other abnormality which, in these days, would cause them to be regarded as unsuited for this form of punishment. In our opinion, the Act would not be any less effective if the provision for corporal punishment were abolished, and we therefore recommend the repeal of so much of section 2 of the Act as authorises the imposition of a sentence of corporal punishment.

IMPORTUNING BY MALE PERSONS.

47. Section 1 of the Vagrancy Act, 1898, provided that any male person who (a) knowingly lives wholly or in part on the earnings of prostitution, or (b) in any public place persistently solicits or importunes for immoral purposes, may be dealt with as a rogue and vagabond within the meaning of the Vagrancy Act, 1824. The effect of this provision was that a person convicted of either of these offences could be sentenced by a summary court to three months' imprisonment and, if he had previously been convicted as a rogue and vagabond, could be committed as an incorrigible rogue to Quarter Sessions, where he might be sentenced to twelve months' imprisonment and might also be ordered to be whipped. By the Immoral Traffic (Scotland) Act, 1902, these offences were made punishable in Scotland by three months' imprisonment, on summary conviction, but no provision was made for corporal punishment. By section 7 of the Criminal Law Amendment Act, 1912, the maximum penalty on summary conviction was increased from three months to six months, in both countries, but it was provided that in England persons convicted on a second or subsequent occasion might no longer be dealt with as incorrigible rogues. Instead, the section provided that persons charged with either of these offences might be committed for trial on indictment and, if convicted on indictment, (a) might be sentenced to two years' imprisonment and (b) if they had previously been convicted of an offence of this kind, might also be sentenced to be once privately whipped. This increased penalty on conviction on indictment and also the provision for corporal punishment, applied to Scotland as well as to England. The statute required that a sentence of whipping should specify the number of strokes and the instrument to be used, but it prescribed no maximum punishment.

The Parliamentary history of this provision has already been given in sufficient detail in paragraph 5. When the Act of 1898 was passed it was not anticipated that the powers of whipping under the Vagrancy Act procedure would be used to any great extent for offences of importuning. By most Courts of Quarter Sessions throughout the country these powers were already regarded as obsolete. In 1912 the penalties for this offence were increased, and the powers of whipping were retained in England and extended to Scotland, as a result of a provision dealing with "persons charged with an offence under the Vagrancy Act, 1898, or the Immoral Traffic (Scotland) Act, 1902". The Act of 1912 was passed as a result of the public alarm about the White Slave Traffic and in debating this provision Parliament had primarily in mind the other offence under the Acts of 1898 and 1902, i.e. living on the earnings of prostitution. The offence of importuning was hardly mentioned during

the course of the debates; and, if the two offences had not been linked together in the Acts of 1898 and 1902, it is unlikely that it would have been thought necessary in 1912 to extend the power to use corporal punishment as a penalty for importuning.

In Scotland no sentence of corporal punishment has ever been imposed for this offence. In England few such sentences were passed under the Vagrancy Act procedure, which was in force from 1898 to the end of 1912. From 1904 to 1912 inclusive, corporal punishment was ordered in only 12 such cases: and of these no less than 11 occurred during 1912, at the height of the agitation which led to the passing of the Criminal Law Amendment Act, 1912. Under the new procedure established by the Act of 1912, corporal punishment has been ordered in a total number of 25 cases in the 23 years from 1913 to 1935. Of these, 15 occurred in the three years immediately following the passing of the Act—5 in 1913, 2 in 1914 and 8 in 1915. Since then corporal punishment has been ordered in a very small number of cases—2 in each of the years 1917, 1920 and 1923; and 1 in each of the years 1922, 1924, 1931 and 1934. During this period there has been no great variation in the numbers of persons convicted on indictment of this offence. The great bulk of these offences are disposed of summarily. On the average throughout the period 1913-35 42 persons were convicted on indictment each year of offences shown in the Criminal Statistics under the heading "Attempts to commit unnatural offences" (which includes, as well as importuning, assaults with intent to commit unnatural offences and indecent assaults on males). During these 23 years the total number of persons convicted on indictment of these offences was 974, of whom only 25 were sentenced to corporal punishment.

48. As these figures show, corporal punishment has virtually ceased to be used as a penalty for importuning. Only two such sentences were imposed in the 11 years from 1925 to 1935. When not disposed of summarily, these offenders are dealt with mainly at Quarter Sessions; and the Chairmen of Quarter Sessions who gave evidence before us, and all the other witnesses who had practical experience in dealing with these cases, were agreed that it is unnecessary to retain the power to impose a sentence of corporal punishment for this offence.

Offences of importuning are committed by three different types of person. First, there are the homosexual types whose offences are due, in varying degrees, to psychological abnormality. Their abnormality may or may not be remediable by medical or psychological treatment; but, even where it is considered that such treatment would be of no avail, we cannot see that in this type of case the infliction of corporal punishment would benefit the community, and we are satisfied that in many cases it would be detrimental to the individual. Secondly, there is the youth who is not himself abnormal but submits to

homosexual practices as an easy means of earning money. For the young male prostitute of this type, purely punitive measures are unprofitable. What he needs is a period of discipline and training in surroundings where he will be subject to healthier influences. A sentence of Borstal detention is the appropriate remedy in many cases; and the Prison Commissioners have found that offenders of this type can be handled effectively in Borstal Institutions and usually respond well to the Borstal training. Thirdly, there are the older men who commit this offence, not primarily because of any abnormality, but mainly with a view to obtaining money, either in payment for their prostitution or, in a few cases, by threats of disclosure. Some of these may be amenable to the reformatory influences which could be brought to bear on them during a period of imprisonment; and, for the remainder, we have heard no evidence to suggest that the fear of imprisonment is so ineffective as a deterrent that it must be supplemented by the use of corporal punishment.

PROCURING AND LIVING ON IMMORAL EARNINGS.

49. By section 2 of the Criminal Law Amendment Act, 1885, it is an offence to procure women or girls for immoral purposes. Until 1912 this offence was punishable, on conviction on indictment, by imprisonment for any term not exceeding two years. By section 3 of the Criminal Law Amendment Act, 1912, it was provided that male persons convicted of this offence might, in addition, be sentenced to be once privately whipped. The statute requires the court to specify in the sentence the number of strokes and the instrument to be used, but does not prescribe any maximum number of strokes. For this offence the Act does not limit whipping to persons convicted of a second or subsequent offence, as it does in the case of the other offences of importuning and living on immoral earnings. As originally introduced, the Bill imposed this restriction on whipping for procuring as for the other two offences; but the Government agreed, under pressure, to leave this point to a free vote of the House and an amendment providing that corporal punishment might be ordered for a first offence of procuring was carried by 136 votes to 132.

As has been explained already, this Act was passed in view of the public apprehension about the White Slave Traffic. The Act was designed to assist the Police to suppress, not only procuring, but also living on immoral earnings. In the Criminal Statistics all convictions of these two offences are grouped under one heading, and for this reason no precise figures can be given to show the extent to which offences of procuring may have decreased since 1912. Experienced witnesses have told us, however, that almost all the convictions grouped under this heading are for living on immoral earnings and that for many

years past the number of persons convicted of procuring has been very small. This view is supported by the following passage from the League of Nations Report for 1927 on Traffic in Women and Children:—"At present there is no evidence of any traffic in women or children between Great Britain and any foreign country." As the outcome of a special enquiry of 1881, which showed that English girls were being systematically introduced into foreign brothels, the Criminal Law Amendment Act of 1885 was passed. The Act was successful in destroying this traffic, and for many years there has been no evidence of any recruiting of women or girls in this country for prostitution abroad. Enquiries in other countries bear out the fact that very few English women are practising prostitution abroad. This indicates that, in the view of the experts, the traffic in procuring had been checked before the passing of the Act of 1912. However that may be, very little use has in fact been made of the power to order corporal punishment for this offence. No sentence of corporal punishment has ever been imposed for this offence in Scotland; and in England there have been only 5 such sentences in the 23 years from 1913 to 1935—2 in 1913, 2 in 1914 and 1 in 1922.

50. We have already described, in paragraphs 5 and 47, the history of the power to impose sentences of corporal punishment on persons convicted on indictment of a second or subsequent offence of living on the earnings of prostitution. The use of corporal punishment as a penalty for this offence was justified in the following terms by the Home Secretary of the day:—"I am, in a matter of this kind, acting on the expert advice which I receive from the police . . . Take London at the present moment. There are, I am informed, a number of young men, almost entirely of foreign origin, who live . . . upon young women to the extent of £15 or £20 a week. They really accumulate fortunes in this way . . . The police say that . . . the trade is so easy that unless you have some power beyond an ordinary term of imprisonment then you cannot hope to put a stop to it . . . The police advise me that after a conviction has been obtained, if there is a power of flogging, there will be nobody to flog. Flogging can only be administered after a second conviction, and after a first conviction not one of these men will remain in this country any longer . . .". In paragraph 57, in discussing the deterrent effect of corporal punishment, we consider how far any decrease in the incidence of this offence may be due to the powers of corporal punishment conferred in 1912: but it will be convenient to indicate at this stage what use has been made of the power to impose corporal punishment for this offence. In Scotland, where this is the only offence for which sentences of corporal punishment have been imposed on adults, no such sentence was passed from 1912 to 1922 and only 12 sentences have been passed in the 13 years

25 strokes of the birch for offenders under sixteen years of age, and for older offenders 50 strokes either of the cat or of the birch. The Act also provided that whippings ordered for these offences should not be carried out after the expiration of six months from the date of the sentence; and that, where whipping was combined with a sentence of penal servitude, the whipping should be administered before the convict was removed to the convict prison where he was to serve his sentence. These provisions are still in force. So far as they relate to garrotting, they are still contained in section 21 of the Offences against the Person Act, 1861, and section 1 of the Garrotters Act, 1863. The corresponding provisions regarding robbery with violence have been transferred, on consolidation, to sections 23 (1) and 37 (6) of the Larceny Act, 1916.

53. As a specialised method of facilitating the commission of crime, garrotting was never very prevalent in this country and has long since ceased to exist. It sometimes happens, however, that in committing an offence—usually a sexual offence or some attempt to cause bodily harm—a man may use that particular form of violence which is covered by section 21 of the Offences against the Person Act, 1861; and in some of these cases a supplementary charge may be brought against him under that section. He then becomes liable to a sentence of corporal punishment. It is to be noted that in this class of case the offender is liable to corporal punishment only if his violence takes the form of attempting to choke or strangle. A person may be flogged if he seized his victim by the throat, but may not be flogged if his violence, though it may have been much more serious, took some other form. This power of corporal punishment is rarely used. In the 18 years from 1918 to 1935, only 8 sentences of corporal punishment were imposed for offences of this kind—4 in 1920, 1 in 1922, 2 in 1925, and 1 in 1934. The power has been exercised mainly in cases of rape aggravated by violence; and the three cases which occurred in 1925 and 1934 are probably typical of those in which corporal punishment has been used. The particulars of these cases are as follows:—(a) In 1925, a man of thirty-eight convicted of rape and of using violence of the kind which brought him within the corporal punishment provision was sentenced to two years' imprisonment and 20 strokes of the cat. (b) In the same year, a boy of sixteen convicted of using this form of violence in connection with an unnatural offence was sentenced to Borstal detention and 18 strokes of the birch. (c) In 1934, a youth of seventeen convicted of rape and of using violence of the kind which brought him within the corporal punishment provision was sentenced to Borstal detention and 15 strokes of the cat.

54. Of all the offences now punishable by flogging, robbery with violence is the one for which sentences of corporal punishment are most often imposed. Appendix II of this Report gives

a complete statement of the total numbers of persons convicted of robbery in each year from 1877 to 1935 and the numbers in each year who were sentenced to corporal punishment. As has been pointed out on page xvii of the Introduction to the Criminal Statistics for 1935, the number of offences of this kind has been much less in the post-war period than in the years before the war. In the ten years 1926-35 there were 656 persons convicted of robbery, as compared with 1,414 persons convicted in the ten pre-war years 1904-13. But in spite of this decrease in the incidence of the crime, greater use has been made of corporal punishment as a penalty in the years since the war. In the first of the two ten-year periods the courts sentenced to corporal punishment only 4·3 per cent. of the persons convicted, whereas in the second period 35·8 per cent. of the persons convicted were sentenced to corporal punishment. The significance of these figures is discussed in paragraph 58, in connection with the general question of the deterrent value of corporal punishment.

In order to obtain a general picture of the use which is now made of the power to order corporal punishment for offences of robbery with violence, we have made an analysis of all the cases in which persons were convicted of this offence in England and Wales during the period 1921-30. This review covered the cases of 440 individuals—of whom 142 were sentenced to corporal punishment and 298 were not—and the results of our analysis are given in detail in Appendix III of this Report. The information contained in this Appendix is of material importance as indicating the type of person who is now convicted of this offence (by reference to age and previous record), and the nature of the sentences now imposed, either apart from, or in combination with, sentences of corporal punishment. Some partial information of this kind had already been given, in respect of sentences of corporal punishment imposed in the years 1926-35, on pages xvii and xviii of the Introduction to the Criminal Statistics for 1935: but the particulars given in Appendix III of this Report make it possible to consider these points in greater detail and, in particular, to make a comparison between persons sentenced to corporal punishment and those not sentenced to corporal punishment.

DETERRENT EFFECT OF CORPORAL PUNISHMENT.

55. For reasons which we have already indicated, we believe that corporal punishment could only be justified on the basis of its value as a deterrent; and we have therefore made every effort to determine the extent to which a sentence of corporal punishment may contain some special element of deterrence which is not provided by a sentence of imprisonment or penal servitude not combined with corporal punishment. As regards the effect

from 1923 to 1935. In England, 14 sentences were passed under the Vagrancy Act procedure in the years 1904-1912, 6 of these being imposed during the agitation in 1912 preceding the passing of the Criminal Law Amendment Act in that year. Since 1912, there have been 32 such sentences, of which 22 were imposed in 1913 and 1914—i.e. since the alarm of 1912 subsided there have been only 10 sentences of corporal punishment for this offence.

The offence of living on immoral earnings may be committed by three different types of man. First, there is the case of the man and the girl who are living together, probably unmarried: the man normally earns enough to support the household but if he falls out of work the girl, who may or may not have been a prostitute before she began to co-habit with him, will resort to prostitution temporarily to keep the household going until times improve. Secondly, there is the case of the regular prostitute who has a lover: there is a genuine bond of affection between them, and she is quite willing to maintain him out of her earnings, either permanently or during periods when he is out of work. Thirdly, there is the case of the man who has some influence over a girl, forces her to resort to prostitution against her will and lives on her earnings. In morality, there are great differences between these three types of case: but in law the man in each type of case is equally liable to be proceeded against for living on immoral earnings. Cases of the third type are now very rare; and those in which proceedings are taken are mainly of the first or second type. Most cases are dealt with by the summary courts, which may pass sentences of imprisonment for not more than six months and have no power to order corporal punishment. Only a few offenders are committed for trial on indictment.

51. Many witnesses have pointed out that corporal punishment has this disadvantage as a penalty that its application is uncertain since it cannot be imposed unless the offender is passed medically fit to undergo it. This disadvantage appears to apply especially in the case of persons convicted of living on immoral earnings; for almost all the witnesses who have had to deal with this type of case have informed us that a large proportion of the men convicted of this particular offence are reported unfit for corporal punishment. Comprehensive statistics on this point could not have been obtained without a disproportionate amount of labour: but we have examined, by way of a sample, the records of the persons committed for trial for this offence at the Central Criminal Court and the County of London Sessions during the five years 1931-1935. Of the total number of 24 committed for trial, 11 were liable to corporal punishment by reason of having been convicted previously of an offence of this kind, and 8 of these were medically examined while in prison awaiting trial. (The other 3 were on bail while awaiting

trial, and no record can now be traced of the medical report given in these cases.) Of the 8 examined in prison, 6 were certified unfit for corporal punishment. These figures appear to confirm the suggestion, made to us by many witnesses on the basis of their personal experience, that for this offence corporal punishment is an ineffective penalty since a considerable proportion of the offenders are reported unfit to undergo it. Offences of procuring would be committed mainly by the same type of person; and it seems likely that, if these offences were more common, it would be found that here also the use of corporal punishment would be seriously restricted by the fact that many of the offenders would be found to be unfit for this form of punishment.

GARROTTING AND ROBBERY WITH VIOLENCE.

52. The circumstances which led to the passing of the Garrotters Act, 1863, have already been described in paragraph 5. This Act applied the penalty of corporal punishment to garrotting and robbery with violence—two groups of offences which were already punishable by penal servitude for life under section 21 of the Offences against the Person Act, 1861, and section 43 of the Larceny Act, 1861. Garrotting consists of any attempt to choke, suffocate or strangle any person (or any attempt, by means calculated to choke, suffocate or strangle, to render any person insensible or incapable of resistance) with intent thereby to facilitate the commission of any indictable offence. Robbery with violence is a general term covering three specific offences—i.e. (a) robbery, or assault with intent to rob, by a person armed with any offensive weapon or instrument; (b) robbery, or assault with intent to rob, by any person in company with one other person or more; and (c) robbery accompanied by any personal violence used either at the time of the robbery or immediately before or after it. These offences are not triable at Quarter Sessions, and the powers of corporal punishment conferred by the Act of 1863 are exercisable only by Courts of Assize. The Act applied only to England and Wales, and in Scotland there is no power to impose corporal punishment for garrotting or for robbery with violence.

In spite of the general prohibition against repeated whippings which had been enacted in the previous year by section 2 of the Whipping Act, 1862, the Act of 1863 provided that persons convicted of these offences might be sentenced to be "once, twice, or thrice privately whipped"; and repeated whippings could be ordered under this Act, and were so ordered in some cases, until 1914, when section 36 of the Criminal Justice Administration Act again provided that no person shall be whipped more than once for the same offence. The Act of 1863 required the court to specify in the sentence the number of strokes to be inflicted and the instrument to be used, and prescribed a maximum of

on the individual punished, there was some division of opinion among the witnesses regarding the extent to which corporal punishment is effective in deterring the person who suffers it from repeating his offence. Some of the representatives of the police were inclined to claim that in this respect corporal punishment is completely effective, or at least very much more effective than any other form of punishment. They stated that, in their experience, a person who had once been flogged was always careful to avoid committing any further offence for which corporal punishment could be imposed—he might continue to lead a life of crime, but he would avoid those particular types of crime for which corporal punishment is a possible penalty. Some witnesses who took this view went so far as to claim that no person is ever flogged a second time, but this extreme statement is not in accordance with the facts. Though they are not numerous, there are cases in which men who have been flogged have subsequently committed other offences for which corporal punishment may be ordered, and in some of these a second sentence of corporal punishment has in fact been imposed. Probation officers and prison officials, on the other hand, were inclined to express a more qualified view on this point, and stressed the fact that corporal punishment affects different individuals in different ways. One Prison Governor recalled two cases in which he had spoken to men who had been flogged for armed robbery—one had said “Next time, I shall take care not to carry a gun”: the other, “Next time, I shall take care to use my gun”. It will be noted that in neither case had the offender any thought of abandoning robbery altogether. None of the witnesses suggested that corporal punishment has the effect of restraining the offender punished from all forms of crime: even those who believed most strongly in the deterrent value of corporal punishment claimed only that it deterred the person punished from continuing to commit those special offences for which corporal punishment may be imposed.

We have given due weight to the opinions which witnesses have expressed to us on this point on the basis of their personal experience: but we thought it desirable to supplement this evidence by obtaining some statistical information regarding the subsequent record of offenders who have been dealt with by means of corporal punishment. Statistics based solely on the subsequent records of persons sentenced to corporal punishment would be defective in two respects. First, they could not show what the man's subsequent career might have been if he had not been flogged. Secondly, as corporal punishment of adults is always combined with a sentence of imprisonment or penal servitude, they could not show how far the subsequent career may have been influenced by the flogging and how far it may have been influenced by the term of imprisonment or penal servitude. No figures could elucidate these two points

completely: but, in order to throw some light on this aspect of the matter, we have obtained figures which enable a comparison to be made between the subsequent record of persons who actually received corporal punishment and that of persons who were liable to corporal punishment but were dealt with by other means. With the co-operation of the Home Office and New Scotland Yard, we have been able to analyse the subsequent records of 440 persons who were convicted of robbery with violence during the period 1921-1930, and in Appendix III of this Report the subsequent record of those flogged is compared in detail with that of those who were not flogged. Of the 142 flogged, two have subsequently been convicted of a second offence of robbery with violence, and in a third case a charge of robbery with violence was dropped when the offender was sentenced to ten years' penal servitude on another charge founded on the same facts. Of the 298 who were not flogged, three have since been re-convicted of robbery with violence: but two of these men were mentally unstable and it seems very doubtful whether either of them would have been restrained from committing the second offence if he had been flogged on the first occasion. So far as these 440 cases are concerned, it appears that a sentence of imprisonment or penal servitude without corporal punishment was no less effective in deterring the offender from committing a further offence of robbery with violence than a sentence of imprisonment or penal servitude combined with corporal punishment. As regards subsequent offences other than robbery with violence, the record of the men flogged was found to be worse than that of those who had not been flogged. Of those flogged 55 per cent. were subsequently convicted of serious crime, as compared with 43.9 per cent. of those not flogged. It might have been assumed that this would be due to the fact that the persons not flogged included a higher proportion of first offenders, who might be less likely to offend again: but when the cases were subdivided into groups according to the previous record of the men concerned it was found that, even among the first offenders, the subsequent record of those flogged was less satisfactory than that of those who were not flogged. It was only among those who had previously had the worst criminal record that the subsequent career of those flogged compared favourably with that of those who were not flogged. Among those who, before their conviction for robbery with violence, had not previously been convicted of serious crime, 33.3 per cent. of those flogged were subsequently convicted of serious crime, as compared with 28.8 of those not flogged. Among those who had previous convictions, 71 per cent. of those flogged committed further offences, as compared with 62.2 per cent. of those not flogged. In the third group, who had previously been sentenced to penal servitude or a long term of imprisonment, 65.2 per cent. of those flogged were again

convicted of serious crime, as against 67·4 per cent. of those not flogged. The record of those flogged is also worse in the special respect of subsequent offences involving violence. Of the 142 persons sentenced to corporal punishment 15, or 10·6 per cent. were subsequently convicted of serious offences of violence, as against 16, or 5·4 per cent. of the 298 persons who had not been sentenced to corporal punishment. As these differences persist even when the cases are subdivided in this way, it seems doubtful whether they can be attributed entirely to a tendency on the part of the courts to impose corporal punishment only in cases where the offender is a dangerous character who might be more likely to offend again. The figures appear to indicate that, in these 440 cases at any rate, men who received corporal punishment—though they may have been deterred from again committing those special offences for which corporal punishment may be imposed—were, if anything, more likely to commit other offences than those who were dealt with by imprisonment or penal servitude not combined with corporal punishment.

The results of this analysis lend some support to the view, expressed to us by probation officers and prison officials, that corporal punishment is apt to produce feelings of resentment and bitterness which may make the offender more anti-social and more, rather than less, likely to commit other offences. It is essentially an unconstructive penalty. At the best, it can exercise no positive reformatory influence: at the worst, it may produce reactions which make the individual who receives it less willing, or less able, than he was before to lead an honest and useful life in the community. We are prepared to admit that a man who has been flogged may take good care to avoid doing anything which might earn him a second flogging: but, in our view, it is not enough that such a man should be deterred by fear from committing again the few offences for which corporal punishment may be imposed if, by the punishment which he has received, he has been made more apt to commit the many other offences for which corporal punishment cannot be imposed. There seems to us to be a great risk that corporal punishment may have this result: and, bearing in mind the general considerations outlined in paragraphs 35 to 39 above, we should not be prepared to recommend the retention of corporal punishment solely on the basis of its deterrent effect on the individual punished.

56. There is, however, the wider question of the deterrent effect on others—how far does the fear of corporal punishment prevent men who have never received it from committing those offences for which it may be imposed, and to what extent can it be said that offences punishable by flogging have been kept in check by the exemplary use of the power to order corporal punishment? It is often asserted that, at a particular time or

at a particular place, an outbreak of crime was suppressed or checked by the use of corporal punishment. When such statements have been made to us in the course of the evidence, we have been at pains to check them by reference to statistics and other available sources of information, and we have found in every case that the facts are not such as to warrant the confidence with which the assertion was made. In some cases the true facts have already been published, but as these claims continue to be made we think it desirable to set out here the results of our enquiries into some of the most common of them.

(a) The oldest and most persistent of these assertions is that garrotting was stamped out by the passing of the Garroters Act, 1863, which introduced flogging as a penalty for this offence. In the period from August, 1862, to January, 1863, there was an unusually large number of robberies with violence in London. At the Central Criminal Court the total number of convictions of robbery with violence in 1862 was 65, as against 45 in 1861, and of these 65 cases 58 were concentrated in the last six months of the year. There were 28 persons convicted in November and December, 1862, and 26 of them were sentenced to penal servitude. It is not possible to ascertain from the statistics the proportion of these cases in which the violence took the special form of garrotting: there was evidently a popular impression at the time that this form of violence was very prevalent, but the Home Secretary of the day, Sir George Grey, told the House of Commons that "there had been great exaggeration in many of the cases alleged to have occurred." But, whether or not there was due cause for the alarm about garrotting, there was some cause for apprehension about the increase in the number of robberies with violence: and, when the outbreak culminated in an attack on a Member of the House of Commons, a Bill was introduced by a Private Member, Mr. Adderley, empowering the courts to punish by flogging persons convicted on indictment either of garrotting or of robbery with violence. This Bill was introduced in February, 1863, and passed into law as the Garroters Act on the 13th July, 1863. But by the time the Bill was in the House of Commons, the outbreak with which it was designed to deal had already subsided. In the months of February, March, April and May the number of convictions of robbery with violence at the Central Criminal Court had fallen to 4, 3, 1 and 6. Moreover, as is clear from the reports of the debates, the public apprehension had also subsided. As was said by the Home Secretary of the day, in the debate on the Second Reading, the Bill was "panic legislation after the panic had subsided." The numbers of persons convicted at the Central Criminal Court of robbery with violence in the years immediately before and after the passing of the Act were as follows:—

1861	...	...	45	1864	...	...	43
1862	...	...	65	1865	...	...	76
1863	...	...	60	1866	...	...	73

In spite of the powers of whipping conferred by the Act of 1863, the numbers in 1865 and 1866 were even higher than those of 1862 which had led to the passing of the Act.

It is clear from these facts that there is no foundation for the story that the passing of the Act resulted in an immediate diminution of the crimes at which it was aimed. What probably happened was that garrotting, which was believed to be rampant in 1862, was seldom heard of later and there came to be a popular belief that the disappearance of garrotting was due to the Act. But if after 1863 there was little robbery by garrotting, as distinct from robbery by other methods of violence, this result cannot be attributed to the powers of whipping conferred by the Garroters Act, for those powers applied, not only to robbery by garrotting, but to all forms of robbery with violence.

(b) It is sometimes said that the activities of the "High-Rip" gangs in Liverpool were brought to an end by the sentences of flogging imposed by Mr. Justice Day at the Liverpool Assizes in the 'eighties. The following table gives, for the period 1887-1894, the numbers of persons charged with robbery with violence at the Liverpool Assizes, and the numbers sentenced to corporal punishment:—

Year.	No. charged with robbery with violence.	No. sentenced to corporal punishment.
1887 ...	60	25
1888 ...	65	8
1889 ...	51	3
1890 ...	40	—
1891 ...	57	10
1892 ...	71	1
1893 ...	57	11
1894 ...	70	17

(In the years 1889, 1890 and 1892 the Assizes at Liverpool were not taken by Mr. Justice Day.)

These figures show that Mr. Justice Day made considerable use of the power to order corporal punishment, but they do not substantiate the statement that these methods stamped out robbery with violence. In the first three years of the period the total number of offenders was 176, and in the last three years—after a prolonged trial of flogging—the total number was 198.

(c) Offences of assaulting and robbing drunken sailors became prevalent in Cardiff about 1908; and it is sometimes said that this outbreak was put down by sentences of flogging. It is true that at the Glamorgan Assizes in March, 1908, 20 persons were convicted of robbery with violence, and 14 were sentenced to corporal punishment. At that time the courts were making little use of corporal punishment—in 1906 the total number of floggings for robbery with violence throughout the whole of England and Wales was five: in 1907, two; and in 1909, three. This large number of floggings at Cardiff in 1908 naturally

attracted a good deal of attention, and it began to be said that these sentences had stamped out robbery with violence in Cardiff. In fact, however, these sentences do not appear to have had any immediate effect in deterring others, for at the following Assizes in July there were 18 persons charged with robbery with violence and, at the Assizes in November, 16 persons were charged with that offence. It is true that in the following year the number of cases fell to 30, as compared with a total of 61 in 1908. But, as no sentences of corporal punishment had been imposed in any of the 34 cases dealt with at the intervening Assizes in July and November of 1908, it is difficult to attribute the fall in 1909 to the floggings ordered in March, 1908. In a local outbreak of this kind the decrease may have been due to the fact that by the end of 1908 many of the persons who had been responsible for the original outbreak were serving sentences of imprisonment.

Enquiries have also been made into the subsequent record of the 14 offenders flogged in March, 1908. Two were subsequently convicted of a second offence of robbery with violence and one was charged with, but not convicted of, that offence. A fourth was subsequently convicted of assault with intent to rob and, later, of living on the earnings of prostitution. A fifth was convicted of larceny from the person. Only two or three are believed to have lived honestly after their conviction in 1908.

(d) From statements made by several witnesses we gather that it is generally believed in Scotland that the offence of living on immoral earnings was stamped out in Glasgow as a result of the passing of the Criminal Law Amendment Act, 1912, which first introduced flogging as a penalty for this offence in Scotland. In fact, no sentence of corporal punishment was imposed under this Act throughout the whole of Scotland from 1912 to 1922; and, if the offence of living on immoral earnings became less common in Glasgow after 1912, this cannot be attributed to floggings actually administered under the Act of 1912. The following table shows the number of convictions of living on immoral earnings in Glasgow during (a) the ten years before, and (b) the ten years after, the passing of the Act of 1912.

(a)		(b)	
Year.	No. of Convictions.	Year.	No. of Convictions.
1903 ...	21	1913 ...	47
1904 ...	32	1914 ...	21
1905 ...	18	1915 ...	12
1906 ...	29	1916 ...	9
1907 ...	20	1917 ...	8
1908 ...	29	1918 ...	2
1909 ...	16	1919 ...	9
1910 ...	18	1920 ...	12
1911 ...	21	1921 ...	3
1912 ...	40	1922 ...	7
	244		130

penal servitude. Of the four persons convicted at Quarter Sessions during this period and dealt with otherwise than by corporal punishment, one has since been convicted summarily of living on immoral earnings and sentenced to 3 months' imprisonment; one has since had two convictions of larceny; and the other two have not since been convicted of any offence.

57. We have seen already that comparatively little use has been made of the power to order corporal punishment for offences of procuring and living on immoral earnings; and we have been unable to find any evidence in support of the view, which is sometimes expressed, that these offences have been checked by the existence of the powers of whipping under the Criminal Law Amendment Act, 1912. The following table shows the number of persons tried on indictment for these offences in England and Wales during the period 1890 to 1934:—

Annual Average: 1890-1894	...	...	10
" 1895-1899	...	...	6
" 1900-1904	...	...	8
" 1905-1909	...	...	8
" 1910	...	...	25
" 1911	...	...	18
" 1912	...	...	14
" 1913	...	...	73
" 1914	...	...	41
" 1915-1919	...	...	9
" 1920-1924	...	...	6
" 1925-1929	...	...	5
" 1930-1934	...	...	12

In the two years immediately following the passing of the Act the numbers were much higher than at any other time throughout the whole period. As we have stated already in paragraph 49, there is reason to believe that procuration had been checked long before 1912, as a result of the Criminal Law Amendment Act, 1885. Offences of procuration are rare, and the great bulk of the offences included in the table above were, no doubt, offences of living on immoral earnings. Any decline in these offences in England after 1912 could not be attributed to the powers of whipping under the Act of 1912, for as regards these offences that Act did not extend the powers of whipping which had been available in England since 1898 by virtue of the Vagrancy Act of that year. The only change made in the penalties for this offence by the Act of 1912 was to raise the maximum term of imprisonment from twelve months to two years.

The great rise in the numbers of persons committed for trial for these offences coincided with the period of apprehension about the White Slave Traffic; and the rise was probably due

in part to increased vigilance on the part of the Police. If there is great public apprehension about a particular form of crime, the Police naturally concentrate special attention on the investigation of such cases, and for a time the number of offenders brought to trial is larger in consequence. The fall in the number of offenders did not become considerable until after the end of 1914, and it seems probable that it should be attributed mainly to causes other than the Act of 1912. When that Act was passed it was said that these offences were committed largely by foreigners. At that time there was no effective control over the admission of foreigners to this country; but since the passing of the Aliens Restriction Act in 1914 drastic measures have been taken to deport undesirable foreigners from this country and to prevent their return. The total numbers of persons convicted of this offence, summarily and on indictment, have been much smaller in the years since the war than they were before the war—the numbers of offences by prostitutes have also been smaller—but this decrease should probably be attributed, not to the deterrent effect of the power to order corporal punishment for this offence, but mainly to the general social changes which have taken place during this period.

58. Robbery with violence has been much less prevalent in this century than it was in the last. This decrease has been brought about by many factors, including the great changes in social conditions, and it is impossible to determine precisely to what extent, if any, the deterrent influence of corporal punishment may have assisted in securing the reduction. It is noticeable, however, that over the full period for which figures are given in Appendix II increased use of the powers of corporal punishment has not been followed by a decrease in the number of convictions. Reference has already been made, in paragraph 54, to the increased use of corporal punishment in the years after the war compared with the years before the war. This is shown by the following table:—

Period.	Average annual number of persons convicted of robbery.	Average annual number of persons sentenced to corporal punishment.	Percentage of convicted persons sentenced to corporal punishment.
1898-1903	199	22.3	11.2%
1904-1908	156	9.0	5.8%
1909-1913	127	3.2	2.5%
1914-1918	67	14.0	20.9%
1919-1923	58	14.6	25.2%
1924-1928	73	32.4	44.4%

It thus appears that the amount of robbery with violence decreased steadily in the years before the war, in spite of a small and decreasing use of corporal punishment, and in recent years has shown a tendency to rise in spite of a much greater and increasing use of corporal punishment.

These figures do not appear to substantiate the statement that this offence was stamped out by the passing of the Act of 1912. The number of convictions in the two years immediately following the passing of the Act was slightly larger than that in the two years immediately before the Act was passed. As regards the later years, it is to be expected that the number of convictions would be much smaller during the war: and in more recent years there have been various other factors, quite apart from corporal punishment, which might be expected to reduce the incidence of this offence. It was not until 1922 that the first sentence of corporal punishment under this Act was imposed in Scotland: and by that time the number of convictions in Glasgow had already fallen from 47 in 1913 to 7 in 1922.

(e) Several witnesses have suggested that a marked decrease which took place after 1934 in the number of convictions of living on immoral earnings in Manchester was due to the fact that in 1932-1934 the Recorder had sentenced several offenders to corporal punishment and had announced in court that future offences would be dealt with in the same way wherever possible. The following table shows the number of cases of living on immoral earnings which were dealt with by the courts in Manchester during the period 1930-1936:—

Year.	Cases dealt with summarily.	Cases dealt with on indictment.	Sentences of corporal punishment.	Total No. of cases dealt with.
1930 ...	6	—	—	6
1931 ...	19	—	—	19
1932 ...	32	2	2	34
1933 ...	32	3	1	35
1934 ...	39	3	1	42
1935 ...	18	—	—	18
1936 ...	6	1	—	7

It is true that there has been a decrease in these offences since 1934, and the Chief Constable has informed us that, in view of enquiries made locally, he is inclined to attribute this to the sentences of corporal punishment and to the warning given by the Recorder. The Chief Constable has the advantage of local knowledge; but, if this is the explanation, the results might be expected to have shown themselves rather earlier. Two sentences of corporal punishment were imposed in 1932, but the number of offenders remained at about the same level in 1933. In that year there was one sentence of corporal punishment, but in 1934 the number of offenders rose from 35 to 42. The numbers did not fall until 1935, and they continued to decrease in 1936, though no corporal punishment was ordered in 1935. Further, the suggestion that the decrease in 1935 and 1936 was due to the sentences of corporal punishment imposed in 1932-1934 does not seem to pay sufficient regard to the fact that the figures for 1935 and 1936 correspond very closely to those for 1930

and 1931, before the Recorder began to order floggings in these cases. In the five years 1925 to 1929, the numbers of persons charged with this offence in Manchester were respectively 5, 3, 7, 6 and 5; and all these cases were dealt with summarily. The normal average number of cases in Manchester is thus about 6 a year. During the years 1931 to 1935 there was a sharp increase, rising to its peak in 1934; and in 1936 the figures returned again to the normal level. The natural interpretation of these figures would be that some new factor, which caused the rise to begin in 1931, continued to be present throughout 1932-1934, exercised a diminishing influence in 1935 and finally ceased to be operative in 1936. The decrease in 1936 being a return to the normal level, it would ordinarily be attributed—not so much to the sentences of corporal punishment imposed in 1932-1934—but rather to the disappearance of some special factor (tending to increase the number of these offences) which operated during the period 1931-1935 but was not present either before or after that period. It is known that among certain types of person this offence tends to become more prevalent in times of severe unemployment (cf. paragraph 50 of this Report), and there may be some significance in the fact that the curve of these Manchester figures corresponds so closely with that of the recent industrial depression.

There may be room for argument regarding the extent to which these sentences of corporal punishment at Manchester were responsible for the subsequent fall in the number of offences, and on this point we are not prepared to express a final opinion. The effect on the individuals punished is, however, a matter of fact. Some of the witnesses who referred to this outbreak claimed that the floggings had not only deterred others, but had also had a salutary effect on the persons flogged; and, in order to test this statement, we have made special enquiries into the subsequent history of each of the men sentenced to corporal punishment. We find that the man who was flogged in 1934 has not since been convicted again of this offence: but the subsequent record of the two men flogged in 1932 is less satisfactory. One of them is the same man who was flogged in 1933. Having already been convicted summarily of this offence on two previous occasions, he was convicted at Quarter Sessions in September, 1932, and was sentenced to 9 months' imprisonment and 12 strokes of the cat. He was released from prison in May, 1933; and in the following August was again convicted of the same offence and sentenced to another term of 9 months' imprisonment and 18 strokes of the cat. The second man was not subsequently convicted of living on immoral earnings; but within a few weeks of his release from prison he was convicted at the Manchester Assizes of rape and causing grievous bodily harm and was sentenced to 7 years'

Most attempts to estimate the deterrent effect of corporal punishment are complicated by the fact that it is impossible to separate the effect of the corporal punishment from that of the sentence of imprisonment or penal servitude with which the flogging is combined. There is, however, one comparison into which this complication does not enter, *i.e.* comparison of the incidence of robbery in England and Wales, where corporal punishment may operate as a deterrent, with the incidence of similar offences in Scotland, where there is no power to impose corporal punishment for these offences. In the following table the numbers of persons charged with robbery, and assault with intent to rob, in England and Wales are compared with the numbers charged in Scotland (otherwise than in summary courts) with offences of robbery, assault with intent to rob and stouthrief.

			Quinquennial average of persons charged.		Percentage of quinquennial average for 1890-94.	
			England.	Scotland.	England.	Scotland.
1890-94	...	...	293	222	100	100
1895-99	...	...	264	180	90	81
1900-04	...	...	236	203	81	91
1905-09	...	...	196	167	67	75
1910-14	...	...	149	72	51	32
1915-19	...	...	62	21	21	9
1920-24	...	...	99	37	34	17
1925-29	...	...	67	14	23	6
1930-34	...	...	96	14	33	6

In both countries there has been a progressive decrease in this type of offence, but the drop has been much greater in Scotland, where the offences are not punishable by flogging, than it has been in England. In England, the figures for the last two five-year periods are 23 per cent. and 33 per cent. of the corresponding figures for 1890-94, but in Scotland they are only 6 per cent. of those for 1890-94. This seems to indicate that over the long period the deterrent influence of corporal punishment has not played any considerable part in reducing the amount of robbery in England.

CONCLUSIONS.

59. After examining all the available evidence, we have been unable to find any body of facts or figures showing that the introduction of a power of flogging has produced a decrease in the number of the offences for which it may be imposed, or that offences for which flogging may be ordered have tended to increase when little use was made of the power to order flogging

* The charge of stouthrief is now seldom used. It is confined to cases where a house is attacked, and resistance by the inhabitants is overcome by violence, either actual or threatened; and to attacks by mobs or combinations of persons, in which property is masterfully carried off, and the lieges are put in alarm.

or to decrease when the power was exercised more frequently. We are not satisfied that corporal punishment has that exceptionally effective influence as a deterrent which is usually claimed for it by those who advocate its use as a penalty for adult offenders. We do not, of course, deny that it has some deterrent effect. All forms of punishment have some deterrent influence, and it is arguable that the more severe the punishment the greater the deterrent effect. This alone, however, would not be a sufficient ground for retaining the existing powers of corporal punishment. If it were, it would also be a sufficient ground for making corporal punishment a possible penalty for many other offences. The final test is, not whether corporal punishment has any deterrent effect, but whether there are offences or classes of offences for which long sentences of imprisonment or penal servitude are so ineffective as deterrents that it is necessary, for the protection of society, to provide whatever additional element of deterrence may be afforded by the further penalty of corporal punishment.

60. Various suggestions have been made to us regarding the type of offence for which corporal punishment might be an appropriate penalty.

The Lord Chief Justice was good enough to consult the Judges of the King's Bench Division on the general question of the powers of superior courts to order corporal punishment and to furnish, for our information, a memorandum summarising their views. (The Lord Justice General was also consulted, but he replied that no sentence of corporal punishment had been imposed by any Judge of the High Court in Scotland for at least fifty years and in these circumstances the Scottish Judges did not feel able to express any views on the questions under consideration by the Committee.) The memorandum furnished by the Lord Chief Justice showed that the Judges of the King's Bench Division consider that corporal punishment operates as a useful deterrent and are of opinion that it is desirable to retain the existing powers to impose sentences of corporal punishment for garrotting, robbery with violence, procuring, living on immoral earnings, and importuning by male persons, and also for offences committed by boys under sixteen years of age under section 4 of the Criminal Law Amendment Act, 1885. In addition, the Judges were of opinion that, if it were thought desirable as a matter of policy to extend the existing powers of whipping, the courts might be empowered to sentence to corporal punishment male persons of any age convicted on indictment of unlawful carnal knowledge of a girl under thirteen years of age and also, perhaps, persons convicted on indictment of rape.

Other witnesses have made other suggestions for extending the existing powers of corporal punishment. The following is a full list of the additional offences for which it has been suggested

that corporal punishment might be an appropriate penalty:— Rape: defilement of girls under thirteen years of age: incest committed by a father with a daughter under sixteen years of age: sodomy or gross indecency committed by older men on young boys: demanding money with menaces: sending or throwing explosive substances and throwing corrosive fluid: serious assaults with razors, bayonets, broken bottles, etc.: serious assaults on wives and children: gross cruelty to animals.

We find difficulty in discerning in this list of miscellaneous offences any common principle which could be accepted as a basis for differentiating between those offences for which corporal punishment is considered an appropriate penalty and those for which it is not. It appears to us that the nearest approach to a common factor in these additional offences for which corporal punishment has been suggested is that they are all, in varying degrees, offences which excite special indignation; and that, to this extent, the suggestion that corporal punishment should be applied to these offences is, in the last analysis, based on a purely retributive principle. The idea that corporal punishment should be used as a special retribution for specially detestable offences has a strong sentimental appeal: but we could not accept it as a safe guide in determining which offences should be made liable to this form of punishment. In our view corporal punishment must be justified by the deterrent, not the retributive, principle: and these suggestions for extending this penalty to fresh offences fail to satisfy the only test which we think it proper to apply—i.e., we have found no evidence to suggest that for these offences long sentences of imprisonment or penal servitude are so ineffective as deterrents that it is essential to add some further penalty for the protection of society.

61. There is the same difficulty in finding any common principle underlying the various offences for which corporal punishment may be imposed under the existing law. These offences have been selected, not by the application of any principle of logic, but merely by historical accident; and in consequence the existing law is full of anomalies. If, for example, in committing a violent rape a man has overcome his victim by seizing her by the throat, he is liable to corporal punishment under the Garroters Act: but if his violence took the form of beating her on the head he is not liable to be flogged. If in snatching a woman's handbag a man pushes the woman away so that she falls, he is liable to corporal punishment for robbery with violence: but a man who commits a much more serious assault on a woman is not liable to a flogging if he does not rob her. The anomalies of the existing law are so obvious that it is unnecessary for us to dwell on them. It is clear that if corporal punishment were to be retained as a penalty for adult offenders, it would be necessary to sweep away the confused and

miscellaneous provisions of the existing law and to build up a new system based on some more logical principle. None of the witnesses who advocated the retention or extension of corporal punishment was able to put forward any principle which would form a practical basis for differentiating the type of offender for whom corporal punishment would be an appropriate penalty from those for whom it would not be appropriate. The only suggestion made to us on these lines was that corporal punishment should be reserved for cases in which gross and brutal violence had been used in the commission of the offence. In our view, however, even this suggestion is misconceived. We have no reason to believe that men who commit offences involving the use of violence are necessarily less amenable to reformatory influences than those who commit other forms of crime. Many persons convicted of offences involving violence are dealt with effectively at the present time by reformatory methods. Even in these cases, probation has sometimes been found an effective remedy—for example, we have been impressed by the evidence which we have heard regarding the measure of success achieved by the probation officers at the County of London Sessions in dealing with persons convicted of this type of offence. It is not to be assumed that, because a person has committed an offence involving the use of violence, he is necessarily more susceptible than others to the deterrent effects of corporal punishment and less likely to be deterred by other forms of punishment. In the last resort, the question whether a man is not likely to be deterred except by a sentence of corporal punishment cannot, in our view, be determined by the nature of the offence which he has committed: it turns entirely on the character and disposition of the man, irrespective of his offence. The suggestion that corporal punishment should be reserved for cases of gross and brutal violence is ultimately based, not on the view that persons who commit these offences cannot be effectively deterred by other methods, but rather on the argument that "violence must be met by violence". In a debate in the House of Commons in 1900, on a Bill proposing an extended use of corporal punishment, the late Lord Oxford met his argument in the following words:—"I regard the suggestions made in this debate as a revival of the theory, at once fallacious and barbarous, that a man who commits a peculiarly brutal offence should receive a proportionately brutal punishment. I can imagine nothing more repugnant to the most elementary principles of justice and common sense than to say that, because a man has committed a savage offence, those whose duty it is to enforce respect for the law should begin that man's punishment with correspondingly savage treatment".

62. We have not thought it necessary to pursue any further the question whether it would be possible to devise any formula

by which to distinguish those offences for which corporal punishment might be considered an appropriate penalty. For we are not satisfied that either for the offences of procuring, living on immoral earnings, importuning, garrotting or robbery with violence, or for any of the other offences to which it has been suggested that the penalty of corporal punishment should be extended, the alternative punishment of a long sentence of imprisonment or penal servitude is so ineffective as a deterrent that it is essential, for the protection of society, to add to it some further penalty which might operate as an additional deterrent. We have given full weight to the opinions expressed to us by those who favoured the retention of corporal punishment; but we have come to the conclusion that the weight of the evidence is in favour of the view that it is not essential in the interests of society to retain, for any of these offences, whatever additional element of deterrence may be provided by the power to impose a sentence of corporal punishment in addition to a sentence of imprisonment or penal servitude. That being so, we think it undesirable to retain a form of punishment which, as applied to adult offenders against the criminal law, is open to the objections which we have described earlier in this part of our Report; and we accordingly recommend the repeal of all the existing powers to impose sentences of corporal punishment on persons convicted on indictment.

PART IV.—CORPORAL PUNISHMENT FOR OFFENCES IN PRISONS AND BORSTAL INSTITUTIONS.

HISTORY AND EXISTING LAW.

England and Wales..

63. In English prisons corporal punishment has always been a recognised penalty for serious offences against discipline; but for an understanding of the origins of the existing law it is unnecessary to go back beyond 1823. In that year Parliament passed Sir Robert Peel's Gaol Act, which amended and consolidated previous legislation regarding local prisons, and in the following year a Transportation Act was passed, prescribing the conditions under which convicts sentenced to transportation were to be detained in this country.

By section 42 of the Gaol Act, 1823, it was provided that in local prisons the Visiting Justices, or any one of them, or any other Justice acting for the county or place in which the prison was situate, might punish by personal correction any prisoner convicted of felony or sentenced to hard labour who, after enquiry upon oath, was found guilty of any repeated offence against the Rules of the Prison or of any offence greater than those which the Gaoler or Keeper of the Prison was himself empowered to punish under section 41 of the Act. This provision was re-enacted in the Prison Act, 1865 (Schedule I, Rule 58). In 1877 the local prisons were transferred from the Justices to the State, and the powers of punishment previously exercisable by any one Justice of the Peace were transferred to the newly-created Visiting Committees, which were composed of Justices of the Peace appointed by the local Bench or by Quarter Sessions to exercise a general supervision over the administration of the prison, to investigate prisoners' complaints and to deal with serious offences against discipline. It was then provided, by section 14 of the Prison Act, 1877, that no prisoner should be punished by "personal correction" except after due enquiry by two members of the Visiting Committee. The powers of the Committees were defined by the Prison Rules made by the Secretary of State on the 19th February, 1878, of which Rule 57 provided as follows:—

"The following offences committed by male prisoners convicted of felony or sentenced to hard labour will render them liable to corporal punishment:—

1. Mutiny or open incitement to mutiny in the prison; personal violence to any officer or servant of the prison; aggravated or repeated assault on a fellow prisoner; repetition of insulting or threatening language to any officer or prisoner.

2. Wilfully and maliciously breaking the prison windows, or otherwise destroying the prison property.
3. When under punishment wilfully making a disturbance tending to interrupt the order and discipline of the prison, and any other act of gross misconduct or insubordination requiring to be suppressed by extraordinary means."

The following table indicates the extent to which corporal punishment was used in local prisons during the last thirty years of the 19th century:—

Year ended.	Daily average number of prisoners.	Corporal Punishment.	Percentage of Corporal Punishment to daily average population.
29.9.1873	13,586	173	1.27
31.3.1884	13,706	136	.99
31.3.1894	12,170	98	.81

In establishments for convicts, the powers of corporal punishment developed on different lines. By section 15 of the Transportation Act, 1824, the Superintendent or overseer of convicts detained in this country was authorised to inflict on any convict guilty of misbehaviour or disorderly conduct "such moderate punishment or correction as shall be allowed by one of His Majesty's Secretaries of State". This power continued to be vested in the Superintendents until 1850, when it was transferred to the Directors of Convict Prisons as regards all persons detained in convict prisons in England (Convict Prisons Act, 1850, section 1). The Rules made by the Secretary of State for the government of convict prisons provided that the Directors might order corporal punishment only for certain specified offences against discipline, and only after enquiry upon oath. The offences were the same as those for which corporal punishment could be ordered in a local prison (*vid.* the preceding paragraph). The Rules prescribed a maximum of 18 strokes of the birch for convicts under eighteen years of age, and for those over that age 36 strokes of the cat or of the birch.

The following table indicates the use which was made of corporal punishment in convict prisons in the last thirty years of the 19th century:—

Year ended.	Daily average number of convicts.	Corporal Punishment.	Percentage of Corporal Punishment to daily average population.
29.9.1873	8,440	86	1.02
31.3.1884	9,059	89	.98
31.3.1894	3,462	39	1.13

64. In 1895 a Departmental Committee on Prisons made the following comment on prison punishments:—"During recent years there has been a distinct move forward in the direction

of mitigating the severity of prison punishments. The use of the entirely dark cell has been discontinued since the publication of the Report of the Royal Commission on Irish Prisons in 1884, and the figures show that corporal punishment has decreased in a striking degree in local prisons. In convict prisons the total number of instances also shows a marked decrease: but the percentage remains about stationary. It must however be noted that the convict population has been much reduced, but that there remain much the same number of hardened criminals of a low type." The Committee referred to Standing Order No. 94 which stated that as a result of experience "discipline is not better maintained by resorting commonly to severe punishment, which should be reserved for use when milder measures have been tried unsuccessfully, and when it is necessary to apply them on particular occasions", but they made no definite recommendation on the subject of corporal punishment. The Report of this Committee led to the Prison Act of 1898. Before that Act was passed, however, the Home Secretary (Sir Matthew White Ridley, afterwards Viscount Ridley) called for a return of all cases of corporal punishment in the year ended 31st March, 1896. This showed that there had been 97 cases in local prisons (19 with the cat and 78 with the birch) and that in only 6 of the 19 cases in which the cat had been inflicted, and in only 17 of the 78 in which the birch had been inflicted, was violence to an officer or prisoner the offence or part of the offence for which the punishment had been imposed. Moreover, the return showed a great variation in the awards at different prisons, e.g. at one prison a man received 24 strokes of the cat for destroying prison property, while at another a man only received 18 strokes of the birch for violently assaulting a prison officer."

As a result of this enquiry a new Prison Rule was made for local prisons, in July, 1897, providing that a prisoner might be ordered corporal punishment only for the following offences:— (a) mutiny or incitement to mutiny; (b) personal violence to any officer or servant of the prison; (c) any act of gross insubordination requiring to be suppressed by extraordinary measures. A circular addressed to Visiting Committees in September, 1897, stated that the third class of offence set out in the Rule was intended only to cover cases in which the offence, though not absolutely amounting to mutiny, was of so mutinous a character that the other means of punishment at the command of the Justices were inadequate to deal with it. As regards the number of strokes the circular stated "although the Secretary of State has thought is undesirable on several grounds to make any alteration of rule, he holds a strong opinion that 24 is a number that should never be exceeded except in the gravest cases, and he is anxious that the Visiting Committees should, as indeed most already do, observe that number as the maximum."

In the convict prisons, where the power to order corporal punishment was concentrated in the hands of the Directors, similar changes were introduced at the same time by administrative action.

65. With the passing of the Prison Act, 1898, the law regarding corporal punishment in prisons was placed on its present basis. In convict prisons the power to order corporal punishment was transferred from the Directors to the newly created Boards of Visitors, which were to exercise functions similar to those discharged by the Visiting Committees in local prisons. The offences for which corporal punishment might be ordered were limited still further, and both in convict prisons and in local prisons every order for corporal punishment was made subject to confirmation by the Secretary of State.

At the present time the position is still governed by section 5 of the Prison Act, 1898, the provisions of which may be summarised as follows:—Prisoners are liable to corporal punishment for prison offences only if (a) they are serving a sentence of penal servitude or *preventive detention, or (b) they are serving a sentence of imprisonment with hard labour, or (c) they have been convicted of felony. Thus, a prisoner serving a sentence of imprisonment without hard labour is liable to corporal punishment if the offence for which he was sentenced was a felony, but not if it was a misdemeanour. The only prison offences for which corporal punishment may be ordered are (a) mutiny or incitement to mutiny; and (b) gross personal violence to an officer of the prison. Corporal punishment may be ordered only by the Board of Visitors (in a convict prison) or Visiting Committee (in a local prison) after enquiry upon oath held by them at a meeting specially summoned for the purpose and consisting of not less than three persons, two of whom must be Justices of the Peace. If the Board or Committee decide to order corporal punishment they are required to submit to the Secretary of State a copy of the notes of evidence and a statement of the grounds on which the order was based; and no order for corporal punishment may be carried out until it has been confirmed by the Secretary of State. The section provides that the Secretary of State may, if he thinks fit, appoint a Metropolitan Magistrate or a stipendiary magistrate to hold such an enquiry in place of the Board of Visitors or Visiting Committee, and a magistrate so appointed has the same powers as the Board or Committee. In practice, no use has been made of this provision, at any rate for many years past, and all these cases are dealt with by the Board of Visitors or Visiting Committee.

* In view of the provisions of section 13 (2) of the Prevention of Crime Act, 1908, persons serving sentences of preventive detention are liable to corporal punishment in like manner as if they were serving sentences of penal servitude.

These statutory provisions are supplemented by Prison Rules made by the Secretary of State under the Act of 1898. The current Rules were made in 1933, but the provisions relating to corporal punishment were substantially the same for many years before that date. The Rules provide that the maximum punishment which may be ordered shall be 18 strokes of the birch for prisoners under eighteen years of age, and for prisoners over eighteen 36 strokes either of the cat or of the birch. The Rules require the Governor and the Medical Officer of the Prison to be present when the corporal punishment is administered. The Medical Officer is required to examine the prisoner immediately before the punishment is inflicted and to satisfy himself that the prisoner is in a fit condition of health to undergo it; and the Governor is required to give effect to any special recommendations which the Medical Officer may think it necessary to make for preventing injury to the prisoner's health. The Medical Officer may stop the punishment at any time after the infliction of it has commenced, if he thinks it necessary to do so in order to prevent injury to the prisoner's health, and the Governor must then remit the rest of the punishment. The Governor is required to enter in a book kept specially for the purpose the hour at which the punishment is inflicted, the number of strokes inflicted, and any orders which he may have given for remission of any part of the punishment.

Scotland.

66. Scottish law has never recognised corporal punishment as a penalty for offences against discipline in local prisons, and in Scotland there is no power to order corporal punishment for prison offences except in the prison for male convicts at Peterhead. Before 1888, there was no convict prison in Scotland; but section 23 of the Peterhead Harbour of Refuge Act, 1886, empowered the Scottish Prison Commissioners to build a prison for male convicts at Peterhead and conferred on them, in relation to that prison, all the powers which were then exercisable by the Directors of English Convict Prisons in relation to convict prisons in England. At that date the Directors of Convict Prisons in England had power (under section 15 of the Transportation Act, 1824, as amended by section 1 of the Convict Prisons Act, 1850) to inflict on any convict "such moderate punishment or correction as shall be allowed by one of His Majesty's Principal Secretaries of State": and, as section 23 of the Peterhead Harbour of Refuge Act, 1886, has not been amended by any subsequent Act, convicts in Peterhead Prison are liable to corporal punishment, by order of the Prisons Department for Scotland, for such prison offences as may be prescribed by Rules made by the Secretary of State for Scotland. At the present time, the position is governed by Rules 5

usually an interval of about seven to ten days between the adjudication and the date on which the Home Secretary's decision is received at the prison. In some cases the interval may be less: it is only very rarely that it is more. In the interval the prisoner does not begin to undergo any other punishment which may have been imposed in addition to the order for corporal punishment—e.g., dietary punishment or close confinement. These are postponed until the Home Secretary's decision is received and, if the order for corporal punishment is confirmed, until after the corporal punishment has been administered. The prisoner is not informed of the confirmation of the order until immediately before the corporal punishment is to be administered. When an order for corporal punishment is confirmed, it is normally carried into effect as soon as the confirmation is received: but cases sometimes occur in which the prisoner, though fit for corporal punishment at the time of the adjudication, has for some temporary cause become unfit for it before the order is confirmed. This temporary unfitness may sometimes be due to action taken by the prisoner himself with the deliberate intention of rendering himself unfit to undergo the punishment ordered. In these cases the corporal punishment is not immediately remitted: it is suspended until it is known whether the prisoner is likely to become fit to undergo it within a reasonable time. Where corporal punishment has been postponed for this reason, reports on the prisoner's health are submitted to the Prison Commissioners at frequent intervals and the punishment is not carried out until further authority has been given by the Home Office. The Standing Orders provide that in no circumstances shall an order for corporal punishment be carried out after the lapse of six months from the date of the order. (A similar limitation is imposed by section 1 of the Garrotters Act, 1863, and section 37 (6) (d) of the Larceny Act, 1916, in respect of sentences of corporal punishment imposed by a court under those Acts.)

As regards the method by which corporal punishment is applied in prisons, and the precautions taken to prevent injury, these are the same whether the punishment has been ordered by the Board of Visitors or Visiting Committee for an offence against prison discipline or by a court of Assize or Quarter Sessions for an offence against the criminal law. They have already been described in the latter part of paragraph 33 in Part III.

68. During the last forty years there has been a steady decrease in the number of cases in which it has been found necessary to resort to corporal punishment as a means of enforcing discipline in prisons. The following table shows the number of cases in which corporal punishment has been imposed for

prison offences in all convict and local prisons in England and Wales during the period 1898 to 1936:—

		Local Prisons.	Convict Prisons.	Total.
Average for 5 years ended 31. 3. 1902 ...		32	12	44
" " " 1907 ...		23	14	37
" " " 1912 ...		21	9	30
" " " 1917 ...		8	5	13
" " " 1922 ...		3	1	4
" " 4 years " 1926 ...		7	2	9
Year ended ... 31. 12. 1926 ...		5	2	7
" " " 1927 ...		7	4	11
" " " 1928 ...		13	3	16
" " " 1929 ...		15	2	17
" " " 1930 ...		7	4	11
" " " 1931 ...		6	2	8
" " " 1932 ...		8	10	18
" " " 1933 ...		5	—	5
" " " 1934 ...		2	1	3
" " " 1935 ...		—	—	—
" " " 1936 ...		3	2	5

More detailed statistics for the period 1910 to 1936 are given in Appendix IV.

In the table set out above a distinction is drawn between convict prisons and local prisons: but since the end of 1931 certain classes of convict have served their sentences of penal servitude in local prisons and it cannot be assumed that the persons who have received corporal punishment in local prisons during these last years were in all cases serving sentences of imprisonment. In order to throw some further light on this, we have analysed the cases of the 158 prisoners who were recommended for corporal punishment during the years 1921 to 1936, and we have found that of these—

- 45, or 28·7 per cent., were serving imprisonment of less than 12 months.
- 73, or 46·2 per cent., were serving imprisonment of 12-24 months.
- 31, or 19·6 per cent., were serving penal servitude of 3-5 years.
- 8, or 5·1 per cent., were serving penal servitude of more than 5 years.

We have also obtained detailed information showing the particular prisons in which corporal punishment has been used in recent years. As was to be expected, we found that cases of corporal punishment occur more frequently in the large local prisons in industrial centres, e.g. Wandsworth, Manchester, Liverpool and Pentonville, and in the convict prisons, Parkhurst, Chelmsford, and Dartmoor. Of 101 cases in which corporal punishment was recommended in the years 1927 to 1936, 81 occurred in these seven prisons. The remaining 20 were distributed over ten other prisons; and in 13 prisons—

to 13 in Part III of the Prisons (Scotland) Rules. These particular Rules are substantially the same as those originally made in 1888, and they are based on the practice then obtaining in convict prisons in England. They provide that an authorised officer of the Prisons Department for Scotland may make an order for corporal punishment against any convict whom he finds guilty, after enquiry upon oath, of any of the following offences:—

(a) Mutiny or open incitements to mutiny; personal violence to any officer or servants of the prison, or to a fellow prisoner; grossly abusive or offensive language to any officer or servants of the prison.

(b) Wilfully or wantonly breaking the prison windows or otherwise destroying the prison property.

(c) When under punishment, wilfully making a disturbance tending to interrupt the order and discipline of the prison.

(d) Any other act of gross misconduct or insubordination requiring to be suppressed by extraordinary means.

As regards the maximum number of strokes, and the powers and duties of the Prison Medical Officer, the Rules prescribe the same requirements as are now in force in England (see paragraph 65). In Scotland, however, the Prison Governor has one power which is not conferred on Prison Governors in England—after the infliction of two-thirds of any sentence of corporal punishment, he may remit the whole or any portion of the remainder, irrespective of any recommendation made to him by the Medical Officer.

EXISTING PRACTICE AND PROCEDURE.

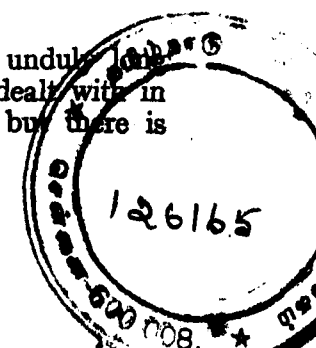
England and Wales.

67. The requirements described above are laid down by statute or by Rules having the force of law. Further points of procedure are regulated by the Standing Orders which are issued by the Prison Commissioners for the guidance of Governors and other officials of the prisons. When a prisoner is reported to the Governor for any of the three offences for which corporal punishment may be ordered, a special meeting of the Board of Visitors or Visiting Committee is summoned forthwith to adjudicate upon the case. The evidence is taken on oath, and the prisoner must be given the opportunity of hearing the facts alleged against him and of being heard in his own defence. The Board or Committee have before them a written report by the

Prison Medical Officer regarding the prisoner's fitness to undergo corporal punishment; and, if the Governor or Medical Officer is of opinion that the prisoner's temperament and disposition are such that corporal punishment would be an unsuitable penalty, any recommendations which either of them may make on this point are also taken into consideration. If the Board or Committee decide to order corporal punishment, their decision is at once submitted to the Secretary of State for confirmation. The statute requires that the Board or Committee shall forward to the Secretary of State the notes of evidence and a statement of the grounds on which their decision was based; but the Standing Orders ensure that the Home Secretary shall also be supplied with supplementary information on a number of other points which may be material to his final decision. The Governor is required to submit the prisoner's record, together with a summary of his more serious prison offences and punishments, and a statement of any previous offence of violence or threats of violence and the punishment awarded therefor. The medical certificate which was before the Board or Committee at the adjudication must also be forwarded, and in any case where he thinks it advisable to do so the Medical Officer may supplement this by a more detailed medical report. In particular, the Governor and Medical Officer are required to call special attention to any case in which the prisoner has any record of previous insanity or any other mental defect. The whole of this information is forwarded at once to the Prison Commissioners, who submit it to the Secretary of State together with their own recommendation on the question whether or not the order for corporal punishment should be confirmed. The Secretary of State may either confirm the order made by the Board or Committee, or authorise a reduced punishment (i.e., a reduced number of strokes or punishment with the birch instead of with the cat) or disallow the order altogether. In the 27 years from 1910 to 1936, in all prisons in England and Wales, corporal punishment was ordered in 302 cases. In 241, or 79·8 per cent. of these cases the order was confirmed by the Secretary of State. In 36 cases (11·9 per cent.) a reduced punishment was authorised; and in 25 cases (8·3 per cent.) the order was disallowed entirely. Where the Secretary of State decided to withhold confirmation, his decision was based in most cases on medical grounds—usually that the prisoner was considered to be mentally unstable or temperamentally unsuited for this form of punishment. When an order is reduced or disallowed, it is the practice to inform the Board or Committee of the reasons for the Home Secretary's decision.

This process of confirmation does not take an undue time. Submissions for corporal punishment are dealt with in the Home Office as matters of special urgency, but there is

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including Maidstone, Wakefield and Wormwood Scrubs—there were no cases of corporal punishment for prison offences during this period. Since preventive detention was first established in 1908, there has been only one case in which a prisoner has received corporal punishment while serving a sentence of preventive detention.

At the present time there are very few cases in which corporal punishment is imposed for prison offences. In 1933, there were five cases in the whole of England and Wales: in 1934, three: in 1935, none: and in 1936, five. We understand that there were only two cases in 1937. Under the statute a prisoner is liable to corporal punishment for any offence of mutiny, incitement to mutiny or gross personal violence to an officer. Offences of mutiny or incitement to mutiny are very rare—during the whole period from 1910 to 1936 there were only 13 cases in which corporal punishment was recommended for these offences. Attacks on prison officers are less rare, but it is only in the most serious cases that corporal punishment is recommended. During the years 1932 to 1936 inclusive there were 120 cases in which prisoners were found guilty of offences for which corporal punishment might have been ordered, but only 37 were dealt with by means of corporal punishment. The other 83 offenders were punished in other ways, and the reasons why corporal punishment was not imposed in these cases were given to us as follows:—in 56 cases, because the offence was not considered sufficiently serious: in 12 cases because of the prisoner's mental condition: in 11 cases because of his physical condition: and in 3 cases because the offender was ineligible for corporal punishment, being neither convicted of felony nor sentenced to penal servitude or imprisonment with hard labour. In the remaining case the prisoner was not dealt with by the Board of Visitors, but was committed for trial at Assizes on a charge of wounding.

Scotland.

69. Under the Prisons (Scotland) Rules the Visiting Committees have power to adjudicate on offences against prison discipline and to impose certain punishments other than corporal punishment. This power is generally exercised in the local prisons in Scotland, but we understand that at Peterhead Prison the Visiting Committee do not in practice deal with any offences committed by prisoners. All such offences are reported to the Governor of the Prison, and he disposes of them himself unless he thinks them sufficiently serious to warrant punishment in excess of that which he himself has power to impose. In that event he reports the offence to the Prisons Department for Scotland. If the offence is one which renders the prisoner liable to corporal punishment, an authorised officer of the Prisons Department for Scotland—in practice the Secretary to the Department or his Deputy—goes down to the Prison and holds

an enquiry, taking evidence on oath, and if he finds the prisoner guilty he may order him to be flogged. In law, the authorised officer of the Department has the final responsibility in the matter and his decision does not require confirmation by the Secretary of State for Scotland: but in practice an administrative arrangement has been in force since 1934 by which a decision to order corporal punishment is reported to the Secretary of State for Scotland before the punishment is carried out. In other respects the procedure in Scotland is similar to the English procedure, which has been described above in paragraph 67. The method of administering the punishment is also similar to the English practice, subject to the variations already noted at the end of paragraph 33 in Part III.

The Rules applying to Peterhead Prison authorise corporal punishment for several less serious offences, in addition to the three which are punishable by flogging in England: but in practice corporal punishment has not been imposed at Peterhead for many years past for any offence which did not involve personal violence to an officer. The following is a complete list of all the cases in which corporal punishment has been imposed for a prison offence at Peterhead from 1912 to 1936 inclusive:—

Year.	No. of Cases.	Corporal punishment awarded.
1912	2	Birch: 36 strokes. Cat: 36 strokes.
1913	2	Cat: 36 strokes. Cat: 36 strokes.
1916	1	Cat: 18 strokes.
1923	4	Birch: 12 strokes. Birch: 24 strokes. Cat: 12 strokes. Birch: 20 strokes.
1926	4	Cat: 10 strokes. Cat: 15 strokes. Cat: 15 strokes. Cat: 18 strokes.
1934	1	Cat: 15 strokes.

Except in the first case, where the offence was incitement to mutiny, all these offences involved personal violence to a prison officer. Since the war, the total number of cases has been only nine—of which six were with the cat-o'-nine tails and three with the birch. The average number of strokes ordered was 14 with the cat, and 18 with the birch.

GENERAL CONSIDERATIONS.

70. A few years ago the International Penal and Penitentiary Commission formulated a code of *Standard Minimum Rules

* Published by H.M. Stationery Office, 1936, price 2d.

for the Treatment of Prisoners. These Rules did not in their entirety purport to describe a model condition of things, but were designed to indicate "the minimum conditions which should be observed in the treatment of prisoners from the humanitarian and social point of view". Rule 36 contained the following statement of principle—"It is desirable to reach a stage where corporal punishment is no longer included in disciplinary punishments". These Rules were approved by the Fifteenth Assembly of the League of Nations in 1934 and were recommended to the attention of Governments. They have been accepted by His Majesty's Government in the United Kingdom.

In these circumstances we conceived it to be our task, in this part of our enquiry, to consider whether the time has yet come when it is possible to dispense with corporal punishment as a penalty for offences against discipline in prisons. If we were to recommend that corporal punishment should be retained as a prison penalty, we thought it necessary that we should satisfy ourselves, by our examination of the witnesses and our consideration of the other evidence available, not only that corporal punishment does in fact deter prisoners from committing the serious offences for which it is imposed, but also that no other penalty exists, or could be devised, which would exercise an equal, or sufficient, influence as a deterrent.

In considering these questions we have had primarily in mind the offence of gross personal violence to a prison officer. This is the only offence for which corporal punishment is used in practice, except for some rare cases of mutiny; and in our view (which was shared by almost all the witnesses) corporal punishment can be justified only in so far as it is necessary for the protection of the life and limb of the prison officer. This consideration is also involved in offences of mutiny or incitement to mutiny, which would necessarily involve violence to officers if they were not checked at an earlier stage: but it is not involved in those other offences for which the existing Rules now authorise corporal punishment in Peterhead Prison. We should not in any event be prepared to recommend that corporal punishment should be retained as a penalty for these other offences: and the arguments in the following paragraphs are therefore directed only to the effect of corporal punishment in deterring prisoners from violence towards officers, either directly in the form of an individual assault or indirectly by mutiny or incitement to mutiny.

71. We have heard evidence from a large number of prison officials—Prison Commissioners, Governors, Medical Officers and senior prison officers—and from representatives of the Boards of Visitors and Visiting Committees. All these witnesses had close personal experience of prison administration, in many

cases extending over a large number of years. Without exception, they were all convinced that corporal punishment exercises a definite deterrent influence in checking offences of violence against officers, but they all stressed primarily the deterrent effect on others. Before dealing with this wider aspect of the deterrent principle, we propose to consider how far corporal punishment has the effect of deterring the individual prisoner who suffers it from committing further violence towards prison officers. This can be gauged to some extent by an examination of statistics; and we have therefore obtained particulars of the subsequent prison record of the 92 prisoners who received corporal punishment for prison offences during the nine years 1926 to 1934. Some of these reached the end of their prison sentence soon after they received their corporal punishment, and in other cases there is no complete record showing their subsequent conduct in prison. We have, however, been able to examine the subsequent prison record of 67 individuals who received corporal punishment for prison offences during this period and, since receiving it, have spent a year or longer in prison. Of these 67 prisoners, 7 were not subsequently punished for any offence against prison discipline and a further 12 were punished only for a few offences of insubordination.

The remaining 48 committed a number of further offences against discipline after receiving corporal punishment—

39 were punished for violence against persons.
22 were punished for violence against property.
46 were punished for insubordination.

Of the 39 prisoners subsequently punished for violence against persons—

25 were punished 1-3 times for this offence.
9 were punished 4-6 times for this offence.
4 were punished 7-10 times for this offence.
1 was punished 12 times for this offence.

It is not to be assumed that all of these subsequent offences of violence against persons involved an assault on a prison officer: in many cases the subsequent offence of violence was an attack on a fellow prisoner. There were, however, 5 cases during this period in which a prisoner who had been flogged for assaulting an officer again committed a serious assault on an officer for which a second sentence of corporal punishment was imposed. In a sixth case the prisoner committed a further assault and was again recommended for corporal punishment, but on the second occasion the recommendation was not confirmed by the Secretary of State. In a seventh case a prisoner who was flogged during this period for assaulting an officer had previously received corporal punishment for a similar offence before the beginning of the period. The following particulars of two of

these cases are given by way of example of extreme cases in which corporal punishment has not operated as an effective deterrent on the individual punished:—

(a) In October, 1926, a prisoner at Dartmoor received 12 strokes of the cat for assaulting an officer. He has since spent five and a half years in prison. In December, 1929, at Parkhurst, he received 18 strokes of the birch for another assault on an officer. Apart from this, he has been punished 4 times for violence against persons, 6 times for violence against property and 29 times for insubordination.

(b) In January, 1933, a prisoner in Liverpool Prison received 18 strokes of the cat for assaulting an officer. In the following June he was punished for assaulting another prisoner. In the following November he again assaulted an officer and received 24 strokes of the cat. During the same sentence of 18 months' imprisonment he was punished once for another offence of violence against the person, twice for violence against property, 5 times for insubordination, and twice for other prison offences.

Some witnesses expressed the opinion that when a violent prisoner has once received corporal punishment he gives no further trouble. The figures which we have quoted do not confirm this opinion: they afford no evidence that corporal punishment effects a marked improvement in the general prison conduct of the individual who suffers it. They do, however, support the more moderate view—which was put forward by the great majority of the witnesses—that in all but a few cases corporal punishment is effective in deterring the individual punished from committing another serious assault on an officer which might merit a second flogging. There are a few men of exceptionally violent and ungovernable temper who cannot be restrained from violence by corporal punishment or, probably, by any other form of punishment; and in the cases which we examined the prisoners who received a second sentence of corporal punishment were all men of this type. In one such case which was brought to our notice a prisoner was flogged on three occasions for violence to a prison officer. These cases are, however, very rare: and we are satisfied, both by our examination of the records and also by the evidence given by persons with long experience of prison administration, that although it may do nothing to improve his general behaviour corporal punishment does, in all but a very few cases, restrain the person punished from committing further assaults for which a second flogging could be ordered.

72. The more important aspect of this problem is the deterrent effect on others—how far does the existence of the power to order corporal punishment deter prisoners who have not been flogged from committing an offence for which flogging may be ordered. This is not a matter which can be assessed

by reference to any statistics, and we have relied necessarily on the views expressed to us by those who have had practical experience in handling prisoners. These witnesses had no doubt that the existence of corporal punishment does in fact deter violent prisoners from committing serious assaults on officers. On this point the evidence of all these witnesses was definite and unanimous. They agreed that during the last thirty years there has been a marked change in the character of the prison population, and that the proportion of violent prisoners has decreased very considerably: but they were all satisfied that there are still some prisoners of a violent and brutal disposition who would not hesitate to use violence towards officers and that these prisoners are at present restrained only by the fear of corporal punishment. At the present time many of the assaults actually committed on prison officers are due to a sudden outburst of temper—the prisoner loses all self-control and strikes out at the officer. The fear of corporal punishment may cause some prisoners to keep a more strict control over their temper and, to this extent, may operate to reduce the number of assaults of this type: but, once a prisoner has lost his self-control, he is not influenced by consideration of the consequences and corporal punishment ceases to operate as an effective deterrent. Its main value as a deterrent is in connection with a different type of assault—i.e., the premeditated and deliberate attack on an officer. At the present time this type of assault is rare, and all the witnesses with experience of prison administration were unanimous in attributing this to the restraining influence of corporal punishment. Many instances were quoted to us of prisoners who had threatened to do serious injury to an officer against whom they had a grudge and admitted that they would put their threats into effect if it were not for their knowledge that corporal punishment would follow. The periodical searches which are made of prisoners' cells sometimes bring to light razor-blades fixed in pieces of wood and other dangerous weapons which prisoners have made from materials which they have contrived to smuggle out of the workshops. These weapons are sometimes used in assaults on other prisoners, and prison officials have no doubt that they would be used in deliberate attacks on officers if it were not for the restraining influence exercised by the fear of corporal punishment. Experienced witnesses have expressed the opinion that in local prisons in Scotland, where there is at present no power to punish prison offences by flogging, deliberate assaults of this kind are more frequent than they would be if corporal punishment were available as a penalty for these offences.

Corporal punishment is a far more certain deterrent for these prison offences than for offences against the criminal law. For persons at large who are contemplating an offence against the criminal law, the proximate deterrent is the fear of being

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caught; and, while they can count on a chance of avoiding detection altogether, the exact degree of punishment which they are likely to receive if they are caught is only a secondary consideration. In prison, however, the man who contemplates an assault on an officer knows that detection is inevitable, and the effective deterrent in that case is the punishment which is likely to follow. The card which hangs in every convicted prisoner's cell includes a statement of the offences for which corporal punishment may be ordered, and every prisoner knows what consequences will follow if he make a serious assault on an officer. A man who contemplates robbery with violence may well hope, first that he will not be caught: secondly, that he may not be convicted: and, thirdly, that his may not be one of the comparatively few cases in which corporal punishment is imposed. The prisoner who contemplates an assault on an officer knows that he is certain to be caught and that, if he is fit and the assault was a serious one, he is almost certain to be flogged.

73. We are fully satisfied by the evidence that the fear of corporal punishment has a strong deterrent influence on prisoners who might otherwise commit serious attacks on prison officers. We have next to consider whether an equal, or sufficient, element of deterrence would be provided by any of the other prison punishments which are already available, or by any new form of punishment which would be less open to objection than corporal punishment.

The considerations which determine the penalties applicable to offences against discipline in prisons are very different from those which arise in connection with the punishment of offences against the criminal law committed by persons at liberty. For the free man the most important punishment is deprivation of liberty: but in the case of the prisoner this sanction has already been applied, and for offences against prison discipline the only alternatives, apart from corporal punishment, are either to lengthen the period of the prisoner's detention or to make the conditions of his life in prison more unpleasant. Both these methods are used at present, either singly or in combination, as punishments for offences against discipline. The first may be applied, in serious cases constituting an offence under the ordinary law, by bringing the prisoner before a court with a view to a further sentence being imposed in addition to that which he is already serving. This course is taken very rarely. It is preferable that offences which consist primarily in a breach of the internal discipline of a prison should be dealt with as a general rule by the authorities responsible for maintaining the discipline of the prison; and we are in agreement with the present policy, by which this procedure of bringing the prisoner before an outside court is adopted only in the most serious cases. The more usual method of prolonging a prisoner's detention is by

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forfeiture of remission marks. Every prisoner may earn, by industry and good conduct, remission of sentence amounting, at the maximum, to one-sixth of a sentence of imprisonment or one-fourth of a sentence of penal servitude. This is calculated by a system of marks, and the loss of remission marks for idleness or misconduct postpones the date of the prisoner's release. As a deterrent for the most serious offences, for which corporal punishment may at present be imposed, prolongation of the prisoner's period of detention is apt to be ineffective for three reasons. (a) The punishment is too remote in time. Its effects are not felt until after the date on which the prisoner would otherwise be released: and, particularly if he is at the beginning of a very long sentence, his attitude may not be influenced very much by the prospect of being detained for a few additional weeks at the end of his sentence. (b) Loss of remission marks is the normal method of punishment for the smaller offences against prison discipline. Unless the prisoner were deprived of all or most of his remission, this punishment would not mark with sufficient emphasis the special seriousness of an offence of assaulting a prison officer. (c) To deprive a prisoner of all his remission removes one of the main inducements to good conduct, and the prisoner, knowing that he has no more to lose and that the date of his release will be unaffected whatever his conduct, is liable to become more difficult to handle throughout the remainder of his sentence.

The second method of punishment is to make the conditions of the prisoner's detention less pleasant. This is applied at present in four forms of punishment—exclusion from working in association with other prisoners, confinement in a separate cell, deprivation of mattress and restricted diet. These take immediate effect, but for medical reasons they are all strictly limited in duration. All the witnesses were of opinion that, within the present limitations, these punishments would not provide a sufficient deterrent for the most serious offences of mutiny and gross personal violence to an officer. It is doubtful whether punishments of this type would be sufficient, even if their duration could be extended; but it is unnecessary for us to consider this possibility as we are satisfied that it would be undesirable on medical grounds to relax any of the limitations imposed by the existing Rules. With the increase of privileges in recent years there has become available a further method of punishment of this type, i.e. deprivation of privileges, which has become steadily more extensive and more effective. For the majority of prisoners and prison offences punishment by way of loss of privileges has proved an effective aid to the enforcement of discipline: but such punishments as denial of the limited facilities allowed for smoking or seeing the newspapers are neither suitable nor sufficient for the serious offences with which we are concerned.

for consideration was whether it is necessary that, for certain offences against the criminal law, the courts should have power to impose a sentence of corporal punishment *in addition to* a sentence of imprisonment or penal servitude; and we came to the conclusion that the fear of imprisonment or penal servitude is itself a sufficient deterrent without adding to it the fear of corporal punishment. But for potential offenders against prison discipline the fear of imprisonment is no longer available as a deterrent. This sanction has already been applied and, as we have indicated, merely to prolong the sentence which the offender is already serving is not an effective method of dealing with a serious offence against prison discipline.

CONCLUSIONS AS REGARDS OFFENCES IN PRISONS.

75. We are thus satisfied that the fear of corporal punishment does exercise a strong deterrent influence in restraining violent prisoners who would otherwise commit serious assaults on prison officers; that no other penalty would operate as an equal, or sufficient, deterrent; and that, as it is imposed for prison offences, corporal punishment is not open to the main objections which can be urged against it as a penalty imposed by the courts for offences against the criminal law. We are impressed by the unanimity with which the witnesses who have had practical experience of prison administration have stressed the necessity of retaining the power to impose corporal punishment for serious assaults on prison officers; and we have come to the conclusion that the time has not yet come when this power could safely be abandoned. We consider that it should be held in reserve as the ultimate sanction by which to enforce prison discipline; but we think that it should continue to be used very sparingly and we hope that in course of time, as the character of the prison population improves and there is less need for purely repressive measures, it will be found possible to dispense altogether with the use of this form of punishment.

While we agree that corporal punishment should be retained for prison offences, we desire to recommend various modifications of the existing law and practice. These are dealt with in the following paragraphs. In order to avoid tedious repetitions, we may state at the outset that all these recommendations relate only to male prisoners.

76. If corporal punishment is retained as a penalty for serious offences against prison discipline, it should apply equally to all classes of convicted prisoners. There is no logic in the existing distinction in England, by which the penalty of corporal punishment is not applicable to persons convicted of a misdemeanour and sentenced to imprisonment without hard labour. The distinction between felonies and misdemeanours has a purely historical basis and no longer corresponds to the

gravity of the offence; and for many years past there has been little difference in practice between imprisonment and imprisonment with hard labour. We therefore recommend that the power to impose corporal punishment for prison offences should apply equally to all classes of convicted prisoners.

Similarly, we recommend that in Scotland this power should apply, not only to persons serving sentences of penal servitude in Peterhead Prison, but to all convicted prisoners in all prisons, whatever sentence they may be serving. The question whether corporal punishment is a proper penalty in any individual case turns, not on the sentence which the prisoner is serving, but on the character of the man and the gravity of his offence. The type of man who may make a serious assault on a prison officer is found as often among those sentenced to eighteen months' imprisonment as among those sentenced to three years' penal servitude. Men who have already served a sentence of penal servitude are often sentenced subsequently to imprisonment, and it is anomalous that they should be liable to corporal punishment during the earlier sentence but not during the later sentence. Moreover, the Prisons Department for Scotland propose shortly to introduce a new scheme of classification which will involve associating convicts and prisoners in four of the larger Scottish prisons, as is done already in many of the local prisons in England. There will be no differentiation between them in matters of prison treatment, and it would be most undesirable that within the same prison the convicts should be liable to corporal punishment and the local prisoners should not. We have been informed by the Scottish prison authorities that at Barlinnie Prison and other local prisons in Scotland it has been felt for some time past that discipline could be maintained more effectively and serious assaults would be less frequent if the power to order corporal punishment were available as an ultimate sanction; and for all these reasons we recommend that this power should be extended in Scotland so as to apply equally to all classes of convicted prisoners.

77. The offences for which corporal punishment may be imposed should be restricted, as under the existing law in England, to mutiny, incitement to mutiny, and gross personal violence to an officer or servant of the prison. Of all the other offences for which it may at present be imposed in Peterhead Prison, only one was defended by the witnesses connected with prison administration in Scotland, i.e. the offence of personal violence to a fellow prisoner. We have considered very carefully whether there should be power to order corporal punishment for this offence, and we have come to the conclusion that such a power is not essential for the maintenance of prison discipline. In England there has been no power since 1897 to order corporal punishment for an assault on another prisoner

We have considered whether any new form of penalty could be introduced in lieu of corporal punishment, and in this connection we have not lost sight of the fact that in certain foreign countries the law does not recognise corporal punishment as a penalty for prison offences. For the reasons already indicated, any new penalty would have to take the form of making the conditions of the prisoner's detention less pleasant; and it appeared to us that, apart from the existing punishments, which we have found insufficient, this could be done only by resorting to forms of punishment which have already been abandoned in English prisons, mainly on medical grounds—e.g., forms of mechanical restraint such as leg-irons, and close confinement in a completely darkened cell. In our view, punishments of this type are open to far greater objection than corporal punishment.

It will be convenient to mention here another important factor which we have borne in mind in considering how far any of the alternative penalties might be a sufficient punishment for serious assaults on prison officers. In England and in Scotland alike, it is a cardinal principle of prison administration that no prisoner is to be dealt with by methods of force unless the circumstances make it imperative to do so in order to preserve discipline among the other prisoners. At the convict prisons at Dartmoor and Peterhead, when prisoners are working outside the walls there are special guards armed with firearms, for use only in case of an attempt to escape; and at Peterhead Prison some of the officers carry cutlasses. Otherwise, prison officers throughout the prisons in England and Scotland are unarmed except for a short wooden staff. They do not carry firearms, rubber truncheons or knuckle-dusters, as is the custom in prisons in many foreign countries. In no circumstances may an officer strike a prisoner, except in self-defence; and, if force has to be used, it must be kept within the limits strictly necessary to overcome the prisoner's resistance of authority. This rule is impressed on every officer in the Prison Service, and any officer who disobeys it is instantly dismissed. It is a necessary corollary that every officer should feel that there is a power to punish in exemplary fashion any prisoner who may attack him. This is a further reason why the penalty for a serious assault on an officer should be sufficient to afford a reasonable degree of protection for the officers who have to deal with the more dangerous types of prisoner.

74. In view of the recommendations which we have made in Part III of this Report, we think it desirable to explain that in our view corporal punishment for prison offences is not open to all the objections which can be urged against it as a court penalty for offences against the criminal law.

In the first place, the consideration that corporal punishment is not itself reformatory and may run counter to reformatory influences has little application, if any, to corporal punishment

as a penalty for a serious offence against prison discipline. The prisoner who renders himself liable to corporal punishment for a prison offence has already had opportunities of benefiting from reformatory influences and has failed to take advantage of them. Prison penalties are concerned, not with failures of morality which may call for constructive treatment, but with breaches of discipline which must be dealt with by punitive measures. Moreover, in practice, corporal punishment is rarely used for prison offences in those prisons which are reserved for prisoners who are thought likely to benefit by reformatory treatment. As we have pointed out in paragraph 68, for many years past there has not been a single case of corporal punishment for a prison offence at the special prisons at Wakefield, Wormwood Scrubs and Maidstone. Even in the ordinary prisons, it is exceptional for a man to be ordered corporal punishment for a prison offence unless he has a serious criminal record and has shown, by his conduct inside prison and out, that he is not amenable to reformatory methods of treatment.

Secondly, there is far less danger that corporal punishment will be used in unsuitable cases. As we have explained in paragraph 36, one of the main objections to corporal punishment as a court penalty is the difficulty of selecting the suitable case and of ensuring that corporal punishment shall not be imposed in cases where it will do no good and may do serious harm. In a court case the Prison Medical Officer will have had little time in which to assess the offender's ability to withstand corporal punishment; and, even where he has found signs indicating that the offender is unsuited for this form of punishment, he may be unable to prevent a sentence of corporal punishment being imposed unless he can certify that the offender is medically unfit for corporal punishment. In a prison case, on the other hand, the Medical Officer will have had ample opportunity of observing the prisoner and will have full knowledge of his temperament and personality. Even though the man may be medically fit for corporal punishment, the Medical Officer can always represent that the case is not one in which this penalty would be appropriate; and these representations will be taken into account by the Board of Visitors or Visiting Committee or, if need be, at a later stage by the Prison Commissioners and the Secretary of State. The Prison Governor is also at liberty to give his views before an order for corporal punishment is made, and the Secretary of State is therefore in a position to arrive at his decision in the light of recommendations based, not only on a purely medical estimate of the prisoner's capacity, but on a close personal knowledge of his character and disposition.

Thirdly, there is the consideration that the man who makes a serious assault on a prison officer is already serving a sentence of imprisonment or penal servitude. In Part III the question

stage; and they have therefore been inclined to add to their original order for corporal punishment such other penalties as would secure that, even if the imposition of the corporal punishment were not authorised, the prisoner would still receive a measure of punishment which would be reasonably severe. In fact, when the Secretary of State has disallowed an order for corporal punishment, the Board or Committee have usually been given an opportunity to substitute some other punishment. The present procedure is not, however, entirely satisfactory in this respect; and we think it should be made clear to all Boards of Visitors and Visiting Committees that, if such an order is disallowed, they will be given an opportunity to review the case afresh and to impose other punishments in substitution. It would also be advantageous if the promulgation of the decision of the Board or Committee could be postponed until after it was known whether the order for corporal punishment had been confirmed by the Secretary of State. If that part of their decision was confirmed, the whole of the sentence would then be promulgated and the order for corporal punishment would be carried out at once. If, on the other hand, the order for corporal punishment was not confirmed, the original sentence need not be promulgated at all and the Board or Committee could meet again to consider what other penalties should be imposed in lieu of corporal punishment. We believe that some procedure on these lines would have many advantages over the present practice.

80. Under the law at present in force in Scotland the power to order corporal punishment for offences against discipline in Peterhead Prison is exercisable only by the Prisons Department for Scotland. Cases which appear to call for corporal punishment are reported by the Governor to the Department, and the Secretary to the Department or his Deputy goes down to the Prison, holds an inquiry upon oath and, if he thinks it desirable to do so, makes an order for corporal punishment. By an administrative arrangement, his decision is reported to the Secretary of State for Scotland before the corporal punishment is administered.

Corporal punishment has been used very sparingly in Peterhead Prison in the past, and we have every confidence that the Prisons Department for Scotland would continue to use a wise discretion in the exercise of these powers. At the same time, we feel that objection can be taken in theory to a system by which the power to impose this exceptional punishment is exercisable by the officials responsible for the prison administration. We consider that there are very useful safeguards in the English system by which this punishment is ordered by the Boards of Visitors or Visiting Committees subject to confirmation by the Secretary of State. It seems to us that the infliction of corporal

punishment as a means of enforcing prison discipline is a matter in which it is desirable that the Minister finally responsible should have the support of a body of independent persons who, though familiar with the problems of prison administration, are not themselves included among the official cadres of the Prisons Service. In any event, we doubt whether the responsibility for ordering this punishment should rest on a single individual; and we attach importance to the requirement, laid down by the Prison Rules in England, that the tribunal for dealing with these cases shall consist of at least three persons, two of whom shall be Justices of the Peace.

Under the Prisons (Scotland) Rules the principle has been established for many years that Visiting Committees in Scotland may impose punishment for such offences against prison discipline as may be reported to them for that purpose by the Governor. In Peterhead Prison the Governor has certain special powers of punishment and, as a result, it has not been the practice for the Visiting Committee to deal with offences by prisoners: but in all other prisons in Scotland the Visiting Committees are already accustomed to dealing with offences against prison discipline. If, as we have recommended, the power to order corporal punishment for certain serious offences in prisons is extended so as to apply to all classes of convicted prisoners in Scotland, we consider that this power should be exercised by the Visiting Committees in all Scottish prisons (including Peterhead). The procedure of the Visiting Committee in dealing with these cases should be the same as that which now applies in England, subject to the modifications which we have recommended in this Report; and there should be a statutory requirement that no order for corporal punishment made by a Visiting Committee shall be carried into effect until it has been confirmed by the Secretary of State for Scotland.

81. Finally, we desire to call attention to four points of less importance:—

(a) When a prisoner is reported for an offence which renders him liable to corporal punishment, the English Prison Rules at present provide that the Chairman of the Board of Visitors or Visiting Committee shall specially summon "as many as possible and in any case not less than three members of the Board or Committee, two of them being Justices of the Peace" to adjudicate upon the case. Many of the Visiting Committees are large bodies, and if the Chairman summoned "as many as possible" of the members the meeting would be much too large to form a suitable tribunal for a judicial enquiry. In practice, it is rare for more than four or five members to adjudicate in these cases: but we think it undesirable that the Chairman should remain under a statutory duty to summon "as many as possible" of the

and, so far as the records show, the power to do so in Scotland has never been exercised. There is a clear distinction in principle between assaulting a prison officer and assaulting a fellow prisoner and, in our view, this extreme penalty should be reserved for cases involving a serious defiance of authority accompanied by violence.

78. We have considered whether it would be possible to dispense with corporal punishment with the cat-o'-nine-tails and to rely entirely on the birch. We have been assured by Medical Officers, and others who have had practical experience in supervising the administration of both types of punishment, that a birching is almost, if not quite, as painful as punishment with the cat. We have also been informed by almost all experienced witnesses that a birching is regarded among the prisoners themselves as the more humiliating form of corporal punishment. A prisoner who has been flogged with the cat is apt to become a hero among his companions; but a man who has been birched is regarded as having received a boy's punishment and tends to be laughed at afterwards by his fellow prisoners. It is undesirable that a prisoner should be regarded as a hero by his companions by reason of his having received corporal punishment, and from this point of view the balance of advantage would lie in favour of birching rather than flogging with the cat. In recommending the retention of corporal punishment, however, we have been influenced, not so much by its effect on the individual punished, but rather by the deterrent influence which the fear of it exercises on all prisoners who might in its absence commit serious assaults on officers. There is no doubt that, from this point of view, the cat is more effective than the birch. The one may be as painful in fact as the other, but among prisoners the cat is generally regarded as a much more severe punishment and it is the fear of the cat, rather than the fear of the birch, which restrains violent prisoners from committing those offences for which corporal punishment may be imposed. We therefore recommend that both forms of corporal punishment should be retained. We do not desire to suggest any modification of the authorised pattern of either instrument.

We think that there should be a reduction of the maximum number of strokes now authorised by the Prison Rules. At present, both in England and in Scotland, the maximum is 18 strokes of the birch for prisoners under eighteen and for prisoners over that age 36 strokes of the cat or of the birch. As long ago as 1897 the Home Secretary of the day expressed the view, in a circular letter sent to all Visiting Committees, that 24 strokes should never be exceeded except in the gravest cases. Since 1910, the average number of strokes authorised has not exceeded 18 except in three years: in 1922 the average

number with the cat was 24, and in 1910 and 1934 the average number with the birch was 20. In recent years Boards of Visitors and Visiting Committees have rarely made an order for more than 24 strokes, and in the very few cases where a greater punishment has been recommended the Secretary of State has reduced the order to a number of strokes not larger than 24. All the witnesses agreed that it is the first few strokes which cause the maximum pain, and experienced Prison Medical Officers have expressed the view that after 18 strokes further punishment is likely to cause injury to the tissues out of proportion to any further pain which may be inflicted. In these circumstances we do not think that more than 18 strokes should ever be given. As it is admitted that birching may be almost as severe a punishment as flogging with the cat, we see no reason to discriminate in this matter between the two instruments; and we recommend that the maximum punishment for adult prisoners should be 18 strokes either with the cat or with the birch. We think it undesirable that the cat should be used in the case of prisoners under the age of 21. For young prisoners we think that 12 strokes is a sufficient punishment, and we therefore recommend that for prisoners under 21 the maximum punishment should be 12 strokes of the birch.

79. When corporal punishment is ordered for a prison offence, it is at present the usual practice of Boards of Visitors and Visiting Committees to impose, in addition, some of the other punishments to which the prisoner is liable. Corporal punishment is combined, as a rule, with loss of remission and stage marks, confinement in a separate cell, and dietary punishment. We recognise that it may be expedient to add to corporal punishment some forfeiture of remission and stage marks: for otherwise, after undergoing the corporal punishment, the prisoner would be in a more favourable position as regards his privileges and his probable date of release than other prisoners who had committed less serious offences for which they had been punished by loss of remission and stage marks. We are, however, of opinion that corporal punishment ought not as a rule to be combined with such punishments as exclusion from associated labour, confinement in a separate cell, dietary punishment, and deprivation of mattress. Corporal punishment is a drastic penalty, and it should be sufficient without the addition of other punishments of this kind.

The evidence indicates that the present practice may be due, at any rate in part, to the fact that when the order for corporal punishment is made the Board or Committee do not know whether it will be confirmed by the Secretary of State. Some of the Committees appear to have been under the impression that, if the order were not confirmed, they would have no opportunity of substituting other forms of punishment at a later

members. We recommend that the Rule should be amended so as to provide that these enquiries shall be held by not more than five nor less than three members, two being Justices of the Peace.

(b) Rule 12 of Part III of the Prisons (Scotland) Rules, which is concerned with corporal punishment for offences against discipline in Peterhead Prison, provides that the Governor, at any time after the infliction of two-thirds of the punishment, may remit the whole or any portion of the remainder. In three cases, in 1912 and 1913, the Governor remitted a number of strokes on the ground that "the convict pleaded for mercy and promised good behaviour in the future"; but since then this power does not appear to have been exercised in practice. It seems to us that when the extent of the punishment has been determined by the persons finally responsible for taking a decision on this point—i.e. if our recommendations are adopted, the Visiting Committee and the Secretary of State for Scotland—it is undesirable that (except for medical reasons) an official who has not shared the responsibility for this decision should have power to modify it by reducing the number of strokes. We are of opinion that the Governor should be empowered to stop the execution of an order for corporal punishment only on a recommendation made by the Medical Officer on medical grounds, and we recommend that the additional powers now conferred on the Governor by Rule 12 of Part III of the Prisons (Scotland) Rules should not be retained.

(c) In England the whole of any sentence of corporal punishment is administered by one officer. In Scotland it is administered by two officers, one standing on either side of the prisoner and each administering alternate strokes. We have not been able to trace the origin of the Scottish practice, or to ascertain why it was thought necessary to adopt this different method in Scotland. We have also been unable to determine which of the two methods results in the more severe punishment, for on this question the medical witnesses expressed different views. The experts being thus divided, we do not ourselves propose to hazard any opinion on the medical aspect of the matter: but on other grounds we are inclined to favour the English practice, and, on the whole, we think it would be preferable to adopt in future a uniform practice throughout England and Scotland by which the whole of any sentence of corporal punishment would be administered by one officer.

(d) At present a special fee is paid to the prison officers who actually administer a sentence of corporal punishment. In England the single officer who administers it receives

2s. 6d., and in Scotland each of the two officers receives 5s. We have been told that the officers selected for this task treat it as being merely a part of their duty—one of the several unpleasant tasks which they are called upon to perform from time to time in the course of their duties. This is the proper attitude for the officer to take, but we do not think it is encouraged by the payment of a special fee. We recommend that the payment of these fees should be discontinued.

Apart from these recommendations, we do not desire to suggest any changes of procedure or any modification of the methods of administering corporal punishment which are now in force.

BORSTAL INSTITUTIONS.

82. Section 4 (2) of the Prevention of Crime Act, 1908, provides that subject to any adaptations, alterations and exceptions which the Secretary of State may prescribe by Borstal Regulations, the Prison Acts, 1865 to 1895, and the Rules made thereunder shall apply to a Borstal Institution as if it were a prison. This has the effect that persons detained in a Borstal Institution in England may be made liable to corporal punishment as if they were detained in a prison: but, by Section 5 of the Prison Act, 1898, corporal punishment may not be inflicted on a prisoner unless he has been either (a) sentenced to penal servitude, or (b) sentenced to imprisonment with hard labour, or (c) convicted of felony; and, as the first two of these requirements cannot apply to him, a person detained in a Borstal Institution is not liable to corporal punishment unless he has been convicted of felony. Thus, under the existing law, an inmate of a Borstal Institution is not liable to corporal punishment for any offence against discipline if the offence for which he was sentenced to Borstal detention was a misdemeanour, but if his offence was a felony he is liable to corporal punishment for the three disciplinary offences of mutiny, incitement to mutiny, and gross personal violence to an officer or servant of the Institution. Apart from this restriction of the classes of inmates to whom it may be applied, the requirements in respect of corporal punishment which are prescribed by the Borstal Regulations, 1936, are the same as those laid down by the Prison Rules in respect of corporal punishment in prisons. Both the procedure and the practice in administering the punishment are as described earlier in this Report in relation to prisons. Under the Regulations a Borstal inmate over eighteen years of age may be ordered corporal punishment either with the cat or with the birch; but in practice the cat is never used in Borstal and in the few cases where corporal punishment has been ordered the punishment has always been administered with the birch.

In practice it has rarely been found necessary to resort to this method of enforcing discipline in Borstal Institutions. As will be

seen from the figures given in Appendix IV, corporal punishment has been imposed in only 26 cases during the 27 years from 1910 to 1936; and in the last 10 years there have been only 7 cases, although in that period the population of the Institutions has nearly doubled. In recent years it has been used mainly in the special Borstal Wing at Wandsworth Prison, which is reserved for youths who have failed to make satisfactory progress after release on licence from another Institution and have been recalled, by revocation of their licence, to undergo a further period of discipline.

In Scotland there is no power to inflict corporal punishment for an offence against discipline in a Borstal Institution.

83. There was some division of opinion among the witnesses on the question whether it is necessary to preserve the power to impose corporal punishment for serious offences against discipline in Borstal Institutions in England. The Prison Commissioners took the view that this power should now be abolished. They considered that under a purely reformatory system such as is now in force in the Borstal Institutions there are so many positive incentives to good conduct that it is unnecessary to rely on the purely deterrent influence of the birch. Borstal training is based on a progressive stage system, and the conduct of the normal youth will be influenced by his desire to retain the position which he has earned and to acquire the right to further privileges, more than by any fear of corporal punishment. In the exceptional case, where a youth is found to be unresponsive to reformatory influences, he can be transferred to the Borstal Institution at Wandsworth for a period of more rigorous discipline; and in extreme cases his sentence of Borstal detention can be commuted to imprisonment by an order of the Secretary of State made under section 7 of the Prevention of Crime Act, 1908. The Prison Commissioners were of opinion that the retention of corporal punishment could be justified only on the ground that it was essential for the purpose of preserving discipline. Both from their general experience of the Institutions and also because this form of punishment has almost ceased to be used in practice, they were satisfied that it is not essential to retain this power of corporal punishment in Borstal Institutions, and they recommended that it should be abolished.

The Conference of Visiting Justices and Boards of Visitors had taken steps to ascertain the views held on this question by all the Visiting Committees at Borstal Institutions, and we were informed that the Committees were of opinion that the power to order corporal punishment in Borstal Institutions should be retained. The view generally held by the Committees was that the power should be kept in reserve as an ultimate sanction, even though it would only be used in very exceptional cases.

The alternatives of transfer to the Borstal Institution at Wandsworth or transfer to prison by commutation of sentence were not, in the opinion of most of the Committees, suitable remedies for the class of case in which corporal punishment might be required. It was not to be assumed that a youth who had assaulted an officer in a sudden outburst of temper was totally unfitted for reformatory treatment and fit only for penal discipline either at Wandsworth or in a period of imprisonment. Some of the Committees were also influenced by the fact that the maximum age at which a sentence of Borstal detention may be passed has recently been raised to 23. This means that the older youths may remain in Borstal until they are almost 26 years of age, and among a number of persons of this age there are likely to be some of the type who now commit serious offences of violence in prisons.

In view of these representations by the Visiting Committees we asked the Prison Commissioners to invite a further expression of opinion from each of the Governors of the seven Borstal Institutions in England. In answer to this special enquiry, five of the Governors stated that they were in favour of the repeal of the existing power of corporal punishment in Borstal Institutions. The other two thought it would be expedient to retain the power, even though they anticipated that it would only be used in very rare cases.

We may add at this point that in Borstal Institutions in Scotland no difficulty has been experienced through lack of a power to impose corporal punishment for offences against discipline, and the prison authorities in Scotland do not desire that any such power should be introduced in the Borstal Institutions under their control.

84. We have been impressed by some of the considerations put forward on behalf of the Borstal Visiting Committees. In particular, it may be that the raising of the maximum age-limit for a Borstal sentence may produce in the senior Institutions a change in the character of the population which may make it necessary to have recourse to a more repressive type of discipline. It need not follow, however, that because a more strict regime is required corporal punishment must be a part of it; and in any event we feel bound to agree with the view, put forward by the Prison Commissioners, that the use of corporal punishment as a means of enforcing discipline is out of accord with the constructive system of training which would continue to be applied in all the Institutions except that reserved for the older class of offender. After giving due weight to the considerations which can be urged on both sides, we have come to the conclusion that it is no longer essential to retain the power to impose corporal punishment for offences against discipline in Borstal Institutions, and we therefore recommend that this power should be repealed.

SUMMARY OF RECOMMENDATIONS.

85. We give below, for convenience of reference, a short summary of our recommendations. We have not attempted to summarise the considerations on which these are based; but we have added, where necessary, further references to those paragraphs in the text of our Report which set out the arguments in support of the particular recommendation concerned.

POWERS OF SUMMARY COURTS.

(1) In view of the considerations discussed in paragraphs 24 to 30, we have come to the conclusion that, as a court penalty, corporal punishment is not a suitable or effective method of dealing with young offenders. We therefore recommend the repeal of all the existing powers of courts of summary jurisdiction to order young offenders to be birched—in England and Wales under section 10(2) of the Summary Jurisdiction Act, 1879, and in Scotland at common law and under section 74 of the Prisons (Scotland) Act, 1860, and section 514 of the Burgh Police (Scotland) Act, 1892 (paragraph 30).

(2) We suggest, however, that consideration should be given to the question whether the Juvenile Courts might not be given some further powers designed to enable them to deal more effectively with those cases in which a young offender does not require prolonged supervision or training but merely needs some form of sharp punishment which will operate effectively as a deterrent (paragraph 31).

POWERS OF SUPERIOR COURTS.

(3) For the reasons given in paragraph 40, we recommend the repeal of the special powers of courts of Assize and Quarter Sessions to impose sentences of corporal punishment on boys under sixteen convicted on indictment of certain specified offences under the Larceny Acts, 1861 and 1916, the Malicious Damage Act, 1861, and the Offences against the Person Act, 1861.

(4) We recommend the repeal of the common law power in Scotland to punish by whipping boys under sixteen convicted on indictment of offences at common law (paragraph 40).

(5) We also recommend the repeal of that part of section 4 of the Criminal Law Amendment Act, 1885, by which a boy under sixteen convicted on indictment of unlawful carnal knowledge of a girl under thirteen may be sentenced to corporal punishment, in lieu of imprisonment (paragraph 41).

(6) We recommend the repeal of the provision in section 4 of the Diplomatic Privileges Act, 1708, authorising the infliction of corporal punishment on persons instituting, or assisting in

the prosecution of, certain actions at law against Ambassadors or their servants (paragraph 42).

(7) We agree with the proposals, made in the Third Interim Report of the Local Government and Public Health Consolidation Committee, for the repeal of the existing power to order corporal punishment for certain offences connected with the slaughtering of horses and cattle under sections 8 and 9 of the Knackers Act, 1786 (paragraph 43).

(8) We do not consider that corporal punishment is an appropriate penalty for indecent exposure or any of the other miscellaneous offences under the Vagrancy Acts 1824 and 1873, and we therefore recommend the repeal of the provision for corporal punishment in section 10 of the Vagrancy Act, 1824 (paragraph 45).

(9) For the reasons given in paragraph 46, we also recommend the repeal of the provision in section 2 of the Treason Act, 1842, which authorises corporal punishment as a penalty for the offence of aiming a firearm etc. at the Sovereign.

(10) As regards the other offences for which corporal punishment is a possible penalty under the existing law, we are not satisfied that the alternative punishment of a long sentence of imprisonment or penal servitude is so ineffective as a deterrent that it is essential, for the protection of society, to retain whatever further element of deterrence may be provided by the fear of an additional sentence of corporal punishment (paragraphs 55 to 59). We therefore recommend (paragraph 62)—in view of the general objections to this form of punishment (paragraphs 34 to 39)—the repeal of the existing powers to order corporal punishment for the following offences:—

- (a) Importuning by male persons (paragraphs 47 and 48)
- (b) Procuring (paragraph 49)
- (c) Living on the earnings of prostitution (paragraphs 50 and 51)
- (d) Garrotting (paragraphs 52 and 53)
- (e) Robbery with violence (paragraph 54)

These powers are contained in sections 3 and 7(5) of the Criminal Law Amendment Act, 1912, section 1 of the Garroters Act, 1863, and section 23(1) of the Larceny Act, 1916.

(11) For similar reasons we do not consider that any fresh powers should be conferred on the courts to punish by flogging offences for which corporal punishment may not at present be imposed. The use of corporal punishment as a court penalty should, in our view, be entirely abandoned (paragraphs 60 to 62).

PRISON OFFENCES.

(12) In view of the considerations discussed in paragraphs 70 to 74, we are satisfied that it is essential to hold in reserve, as an ultimate sanction, the power to impose corporal punishment for serious offences against discipline in prisons (paragraph 75). We desire, however, to recommend certain modifications of the existing law and practice:—

(a) All classes of male convicted prisoners should be equally liable to corporal punishment for serious offences against prison discipline. In England the prisoner convicted of a misdemeanour and serving a sentence of imprisonment without hard labour should no longer be exempt from corporal punishment; and in Scotland corporal punishment should apply to all male convicted prisoners, whether their sentence is one of imprisonment or penal servitude (paragraph 76).

(b) Prisoners should be liable to corporal punishment (as under the existing law in England) only for the three offences of mutiny, incitement to mutiny and gross personal violence to an officer or servant of the prison (paragraph 77).

(c) The maximum punishment should be reduced to 18 strokes, either of the birch or of the cat-o'-nine-tails, for prisoners over twenty-one years of age, and for prisoners under that age 12 strokes of the birch (paragraph 78).

(d) When corporal punishment is imposed, no additional punishments should be ordered except forfeiture of remission and stage marks. It should be made clear to all Boards of Visitors and Visiting Committees that, if an order for corporal punishment is not confirmed by the Secretary of State, they will be given an opportunity of reviewing the case afresh and ordering other punishments in substitution (paragraph 79).

(e) In Scotland, the power to order corporal punishment should in future be exercised by the Visiting Committees, subject to confirmation in each case by the Secretary of State for Scotland (paragraph 80).

(f) The special meeting of the Board of Visitors or Visiting Committee, which is summoned to adjudicate on an offence for which corporal punishment may be imposed, should consist of not more than five nor less than three members, two being Justices of the Peace (paragraph 81(a)).

(g) In Scotland, the Prison Governor should no longer have power to remit the remainder of a sentence of corporal punishment, at any time after the infliction of two-thirds of the punishment (paragraph 81(b)).

(h) In Scotland, as in England, the whole of any sentence of corporal punishment should be administered by one officer (paragraph 81(c)).

(i) No special fee should be paid to the prison officer who administers a sentence of corporal punishment (paragraph 81(d)).

(13) For the reasons given in paragraphs 83 and 84, we do not consider it essential to retain the existing power to order corporal punishment for serious offences against discipline in Borstal Institutions in England and Wales, and we recommend that this power should be repealed.

We have the honour to be,

Sirs,

Your obedient Servants,

EDWARD CADOGAN.

MARGARET AMPHILL.

EDITH A. ASTLEY.

J. L. BRIERLY.

E. FORD DUNCANSON.

ROBT. HUTCHISON.

W. W. McKECHNIE.

MURIEL M. MONTEITH.

H. R. TUTT.

CECIL WHITELEY.

NORMAN BROOK,

(Secretary.)

19th February, 1938.

APPENDIX I.

List of witnesses who gave evidence before the Committee.

- Sir Alexander Maxwell, K.B.E., C.B., Deputy Under Secretary of State, now Permanent Under Secretary of State, Home Office.
 Mr. M. Millar Craig, C.B., K.C., Legal Secretary to the Lord Advocate.
 Sir Edward Tindal Atkinson, K.C.B., C.B.E., Director of Public Prosecutions.
 Mr. Eustace Fulton, Chairman of the County of London Sessions.
 Mr. J. Willoughby Jardine, K.C., Recorder of Leeds.
 Mrs. E. Andrews, J.P., Chairman of the Ystrad Juvenile Court, Glamorgan.
 Mr. Waldo R. Briggs, Stipendiary Magistrate at Huddersfield.
 Mr. E. C. Durant, J.P., Chairman of the Juvenile Court for the Borough of Windsor.
 Lt.-Col. Sir Vivian Henderson, M.C., D.L., J.P., Chairman of the Juvenile Court at Lambeth.
 Mr. Basil Henriques, J.P., Chairman of the Juvenile Court at Toynbee Hall.
 Mr. J. R. Hobhouse M.C., J.P., Member of the Juvenile Court Panel for the City of Liverpool.
 Miss E. H. Kelly, C.B.E., J.P., Chairman of the Juvenile Court for the City of Portsmouth.
 Mr. Percy Macbeth, lately Stipendiary Magistrate at Salford.
 Mr. Leo Page, J.P., Member of the Juvenile Court Panel for Berkshire.
 Alderman J. Pennington, J.P., Chairman of the Juvenile Court at Wallasey.
 Miss Madeleine Symons, J.P., Chairman of the Juvenile Court at Stamford House (West London and Marylebone).
 Mr. Bertrand Watson, J.P., Chairman of the Juvenile Court at Islington and formerly a Metropolitan Magistrate.
 The Sheriffs Substitute Association, represented by Mr. S. McDonald, C.M.G., D.S.O. (Glasgow) and Mr. D. A. Guild, LL.B. (Lanarkshire).
 The Scottish Justices and Magistrates Association, represented by Miss M. M. Paterson, C.B.E., J.P., and Mrs. A. M. Ross, J.P. (Edinburgh), Miss C. Mackenzie, J.P. (Glasgow) and Mr. T. McGhie, J.P. (Lanarkshire).
 Mr. J. MacRobert, Clerk of the Peace for Renfrewshire.
 Mr. J. Mill, LL.B., City Prosecutor at Edinburgh.
 Mr. J. Horwell, O.B.E., representing the Commissioner of Police of the Metropolis.
 The Chief Constables' Association (Cities and Boroughs of England and Wales), represented by Mr. T. Rawson (Chief Constable of Bradford), Mr. J. Maxwell, C.B.E. (Chief Constable of Manchester) and Mr. R. Ogle, O.B.E. (Chief Constable of Gateshead).
 The National Association of Probation Officers, represented by Mr. T. Way (President), Mr. H. E. Norman, O.B.E. (Secretary) and Mr. E. A. Welch (Probation Officer at Lincoln).
 The National Association of Probation Officers (Scottish Branch), represented by Mr. R. Thomson (Vice President) and Mr. J. C. Hill (Acting Secretary).
 Mr. G. E. Neve, Senior Probation Officer at the Central Criminal Court.
 Mr. W. J. Watson, Senior Probation Officer at the County of London Sessions.
 Mr. J. D. Johnstone, O.B.E., Headmaster of the Home Office School at Werrington, Staffs.
 Dr. W. Norwood East, M.D., F.R.C.P., Medical Commissioner of H.M. Prisons (England and Wales).
 Dr. Edward Glover, M.D., Director of the London Clinic of Psycho-Analysis, etc.
 Dr. E. A. Hamilton Pearson, M.B., Ch.B., Senior Physician in the Children's Department of the Institute of Medical Psychology.

- Dr. D. J. A. Kerr, M.D., D.P.H., F.R.C.P. (Edin.), Police Surgeon for the City of Edinburgh and Lecturer in Forensic Medicine at Edinburgh.
 Dr. John D. W. Pearce, M.D., Ch.B., M.R.C.P.E., D.P.M., Honorary Psychotherapist at the West End Hospital for Nervous Diseases and Clinical Assistant at the Tavistock Clinic.
 Dr. G. M. Scott, M.C., M.B., Ch.B., Medical Officer at Barlinnie Prison, Glasgow.
 Dr. H. T. P. Young, M.B., Ch.B., Senior Medical Officer at Wormwood Scrubs Prison.
 The National Council for Mental Hygiene, represented by Dr. Denis Carroll, M.R.C.S., L.R.C.P., and Dr. Doris Odum, M.R.C.S., L.R.C.P., D.P.M.
 Mr. Harold Scott, C.B., Chairman of H.M. Prison Commissioners for England and Wales.
 Mr. N. R. Hilton, Assistant Commissioner of H.M. Prisons (England and Wales).
 Mr. W. Young, Governor of Wormwood Scrubs Prison.
 Major C. Pannall, D.S.O., M.C., Governor of Dartmoor Prison.
 Mr. R. L. Bradley, M.C., Deputy Governor of Wormwood Scrubs Prison.
 Mr. T. Paterson Owens, J.P., Director of the Borstal Association and formerly Governor of Wandsworth Prison and Borstal Institutions.
 Rev. W. L. Cottrell, Senior Chaplain of H.M. Prisons (England and Wales).
 Mr. E. Bartlett, Chief Officer, Dartmoor Prison.
 Mr. H. B. Walker, Chief Officer, Pentonville Prison.
 Lt.-Col. W. Leith-Ross, M.C., Secretary to the Prisons Department for Scotland.
 Capt. J. I. Buchan, D.S.O., Governor of Peterhead Prison.
 Mr. W. Finlayson, Governor of Barlinnie Prison, Glasgow.
 Mr. A. E. Edwards, First Class Warder, Peterhead Prison.
 Lt.-Col. Sir Vivian Henderson, M.C., D.L., J.P., Chairman of the Conference of Visiting Justices and Boards of Visitors.
 Hon. Gilbert Coleridge, J.P., Member of the Visiting Committee at Wandsworth Prison.
 Mr. Arthur Andrews, J.P., Chairman of the Boards of Visitors at Parkhurst and Portsmouth Prisons and of the Visiting Committee at Camp Hill Borstal Institution.
 Mr. J. D. E. Booth, Member of the Visiting Committee at Peterhead Prison.
 The Howard League for Penal Reform, represented by Mr. George Benson, M.P. and Miss W. A. Elkin.
 The Women's Co-operative Guild, represented by Mrs. Ganley, J.P. (Battersea), Mrs. Daws, J.P. (Scarborough), Mrs. Eleanor Barton, J.P. (Sheffield), Mrs. Williams (Surrey), Mrs. Pavitt (Stratford, London) and Miss R. Simpson (General Secretary).
 The South Shields Labour Party and Trades Council, represented by Councillor A. E. Gompertz.

The following submitted written memoranda but did not give oral evidence.

- The Lord Chief Justice of England, on behalf of H.M. Judges of the King's Bench Division.
 Mr. J. Drummond Strathern, lately Procurator Fiscal for Glasgow.
 Dr. Cyril Burt, M.A., D.Sc., Professor of Psychology at University College, London.
 Mr. A. K. Wilson, C.B.E., Chief Constable of Liverpool.
 The Joint Central Committee of the Scottish Police Federation.
 Rev. R. P. McAuliffe, Headmaster of the Home Office School at Redhill.
 The Edinburgh and District Juvenile Organisations Committee.
 The Society of Friends.
 The Standing Joint Committee of Industrial Women's Organisations.

APPENDIX II.

ROBBERY WITH VIOLENCE.

England and Wales. 1877-1935.

The following table shows, for each of the years from 1877 to 1935, the total number of persons convicted of robbery and the number of persons sentenced to corporal punishment for robbery with violence. (The numbers of persons convicted are taken from the figures published in the Criminal Statistics and include certain offences of simple robbery, and simple assault with intent to rob, for which there is no power to impose a sentence of corporal punishment.)

Year.	Number convicted.	Number sentenced to corporal punishment.	Year.	Number convicted.	Number sentenced to corporal punishment.
1877	179	8	1907	139	2
1878	208	18	1908	162	22*
1879	224	14	1909	130	3
1880	188	8	1910	118	—
1881	187	15	1911	124	6
1882	221	13	1912	142	5
1883	212	36	1913	120	2
1884	206	23	1914	67	—
1885	215	17	1915	42	3
1886	247	26	1916	28	—
1887	221	35	1917	44	—
1888	265	26	1918	43	1
1889	228	24	1919	60	6
1890	156	9	1920	98	19
1891	197	17	1921	96	15
1892	225	18	1922	89	25†
1893	235	46	1923	37	13
1894	234	60	1924	57	8
1895	187	32	1925	54	11
1896	183	29	1926	56	14
1897	185	31	1927	50	12
1898	259	35	1928	45	16
1899	177	33	1929	52	18
1900	148	15	1930	87	13
1901	202	20	1931	55	19
1902	218	18	1932	108	61†
1903	188	16	1933	66	42
1904	176	10	1934	82	28
1905	153	6	1935	55	12
1906	150	5			

* 14 of these at Glamorgan County Assizes.

† 9 at Central Criminal Court.

‡ 35 at Central Criminal Court.

APPENDIX III.

ROBBERY WITH VIOLENCE.

Analysis of 440 cases of persons convicted during the period 1921-1930.

1. During the 10 years 1921 to 1930, 442 persons were convicted in England and Wales of offences of robbery with violence under section 23 (1) of the Larceny Act, 1916, for which sentences of corporal punishment may be imposed. Of these, two were found on conviction to be certifiable under the Mental Deficiency Acts and were sent to Institutions for mental defectives. For the purpose of this analysis these two cases have been left out of account. Of the remaining 440 persons—

142, or 32.3 per cent., were sentenced to corporal punishment.

298, or 67.7 per cent., were not sentenced to corporal punishment.

Robbery with violence is a general term covering three statutory offences, each of which is punishable by flogging—robbery armed, robbery in company with others, and robbery with personal violence. Of these 440 persons—

263 were convicted of robbery with personal violence.

108 were convicted of robbery armed.

69 were convicted of robbery in company with others.

The following table shows the extent to which corporal punishment was ordered for each of these different types of robbery with violence:—

	Robbery with personal violence.	Robbery armed.	Robbery in company.
Total number of cases	263	108	69
Corporal punishment ordered.	85 or 32.3%	31 or 28.7%	26 or 37.7%
Corporal punishment not ordered.	178 or 67.7%	77 or 71.3%	43 or 62.3%

In proportion to the numbers convicted, corporal punishment was ordered more freely for robbery in company than for the two other classes of offence. The difference is not, however, very marked and for the purposes of this analysis it is unnecessary to discriminate further between the three different types of robbery with violence. The information given in the following paragraphs is therefore related to the total number of 440 cases of robbery with violence, without sub-division into robbery armed, robbery in company, and robbery with personal violence.

Age-groups.

2. Table I, in the Statistical Tables at the end of this Appendix, gives a summary of the ages of the 440 persons convicted. As might be expected, over 90 per cent. of those convicted were under 40, and over 50 per cent were between 21 and 30 years of age. The sentences of corporal punishment were not quite evenly distributed between the various age-groups: the figures reflect a natural tendency to make greater use of corporal punishment in the case of persons in the age-groups 21-30 and 31-40. Sentences of corporal punishment were imposed on 24 per cent. of those over 40, and 27 per cent. of those under 21; but among those in the age-groups 21-30 and 31-40 the proportions sentenced to flogging were respectively 35 per cent. and 32 per cent.

Sentences of Imprisonment, etc.

3. Table II shows what sentences were imposed on the 440 persons convicted, either alone or in addition to a sentence of corporal punishment.

For this offence corporal punishment is combined almost invariably with a sentence of detention; but in this series of cases two offenders were dealt with by corporal punishment alone. These were two youths charged

jointly with robbery with personal violence: they were both under 21 and had not been convicted before, and they were ordered to receive 10 strokes of the birch, without any additional sentence of imprisonment or other detention.

The figures in Table II appear to reflect a slight tendency on the part of the courts to impose longer sentences of imprisonment in cases where corporal punishment is not ordered. For the purpose of this comparison it would be reasonable to exclude the sentences of Borstal detention and the cases in which the offender was required merely to enter into recognisances. If comparison is made only of those cases in which sentences of imprisonment or penal servitude were imposed, it will be seen that in the cases where no corporal punishment was ordered 72.7 per cent. of the offenders were sentenced to penal servitude or imprisonment for 12 months or over. In the cases where corporal punishment was ordered, the corresponding percentage was 65.7 per cent.

Previous Record.

4. In any attempt to assess the effects of corporal punishment by reference to the subsequent record of the person flogged, it is desirable that allowance should be made for the character and disposition of the individual. Full allowance could be made for this only in an individual study of particular cases: but, for the purpose of a purely statistical analysis, some indication of the character of the persons concerned can be obtained by an examination of their previous records.

In Table III the 440 persons covered by this review are classified by reference to their criminal record before the date of their conviction of robbery with violence. For the purpose of this classification, "persons not previously convicted of serious crime" includes, not only those with no previous convictions, but also those whose previous offences had been dealt with by fine, committal to an industrial school, birching as a juvenile, or under the Probation of Offenders Act. "Persons previously convicted of serious crime" includes all persons whose previous offences had been dealt with by sentences of imprisonment up to 12 months, or by committal to a reformatory school or Borstal Institution. The third group contains those with the worst criminal record, including one or more sentences of penal servitude or imprisonment for 12 months or over.

Of the 440 persons convicted of robbery with violence—

227, or 51.6 per cent., had not previously been convicted of serious crime.

144, or 32.7 per cent., had previously been convicted of serious crime.

69, or 15.7 per cent., had previously been sentenced to penal servitude or a long term of imprisonment.

The following statement shows the extent to which these persons were sentenced to corporal punishment on being convicted of robbery with violence.

Of the 227 who had not previously been convicted of serious crime—

57, or 25.1 per cent., were sentenced to corporal punishment.

170, or 74.9 per cent., were not sentenced to corporal punishment.

Of the 144 who had previously been convicted of serious crime—

62, or 43.1 per cent., were sentenced to corporal punishment.

82, or 56.9 per cent., were not sentenced to corporal punishment.

Of the 69 who had previously been sentenced to penal servitude or a long term of imprisonment—

23, or 33.3 per cent., were sentenced to corporal punishment.

46, or 66.7 per cent., were not sentenced to corporal punishment.

It will be noticed that over one-half of these offences of robbery with violence were committed by persons who had no previous convictions of serious crime: and in 75 per cent. of these cases the courts refrained from passing sentences of corporal punishment. In the other cases, where the

offender had a more serious criminal record, corporal punishment was imposed more freely—about 40 per cent. being flogged and 60 per cent. being dealt with otherwise.

Subsequent Record.

5. *General.*—The subsequent record of these 440 offenders, down to the latter part of 1937, is shown in Tables IV to VII.

The cases have been classified into four groups—(a) those who have not subsequently been convicted of any offence; (b) those who have subsequently been convicted of minor offences (i.e. offences not involving sentences of imprisonment or penal servitude); (c) those who have subsequently been convicted of major offences (i.e. offences, not including offences of violence, involving sentences of imprisonment or penal servitude); and (d) those who have subsequently been convicted of offences of violence (including, not only robbery with violence, but also such offences as wounding or assault).

Table IV gives a general picture of the record of these 440 persons subsequent to their conviction of robbery with violence. Only 23 were subsequently convicted of minor offences and, for all practical purposes, these few cases can be added to those in which the offender has had no subsequent convictions. The real distinction is between those who subsequently committed no offence or only minor offences, and those who continued to commit serious crime. Of the total number of 440 convicted, 231 (or 52.5 per cent.) have not since been convicted of any serious offence and 209 (or 47.5 per cent.) have subsequently been convicted of serious offences. It will be noticed that these figures correspond very closely with those of previous records in Table III. Of the 440 persons under review, 51.6 per cent. had no previous convictions of serious crime, and 52.5 per cent. had no serious convictions subsequently: 48.4 per cent. had previously been convicted of serious offences, and 47.5 per cent. were subsequently convicted of serious offences.

The figures given in Table IV indicate that the subsequent record of those who were sentenced to corporal punishment has been worse than that of those who were not sentenced to corporal punishment. Of those flogged, 40 per cent. have not subsequently been convicted of any offence, as against 50 per cent. of those who were not flogged. And 55 per cent. of those flogged have subsequently committed serious crime, as against 44 per cent. of those who were not flogged. It should, however, be remembered that those who were not flogged included a larger percentage of persons who had not previously been convicted and might therefore be expected to be more likely not to offend again. A comparison of Table III with Table IV shows that the percentages of those not previously convicted correspond very closely with those of persons not subsequently convicted. For this reason the figures have been further analysed in relation to previous records, and any conclusions regarding the effect of corporal punishment on subsequent careers should be based rather on the figures in Table VII, which are discussed in paragraphs 8 to 10.

6. *In relation to age.*—In Table V the subsequent record of the 440 offenders is classified in accordance with their age at the time of their conviction of robbery with violence. There is nothing of any special significance in these figures; but the Table is of some interest as suggesting that corporal punishment may be a less effective deterrent for persons in the higher age-groups. Among those who received corporal punishment, the percentage not subsequently convicted tends to fall in the higher age-groups: whereas, among those who were not flogged, the proportion of those not subsequently convicted remains more constant throughout the various age-groups.

7. *In relation to sentences of imprisonment, etc.*—In Table VI the subsequent record of the 440 offenders is related to the sentences which they had served for their offence of robbery with violence.

The highest proportion of success is among those who received corporal punishment in lieu of any other sentence and those who were bound over in recognisances, without corporal punishment: but all of these were young men with no previous convictions, who might be expected to be more likely to refrain from further crime. Apart from these exceptional cases, the Table shows merely that the subsequent record of those not flogged was better than that of those who were flogged, whatever the period of imprisonment which they had served. Among those who had served between 6 and 12 months, 45 per cent. of those who were flogged as well were not subsequently convicted of serious crime, compared with 68.7 per cent. of those who were not flogged. Among those who had served a sentence of imprisonment of 12 months or over, the corresponding percentages were 49.2 per cent. of those flogged and 55.7 per cent. of those not flogged. Among those who had served a sentence of penal servitude, the proportion of subsequent success was 32.2 per cent. for those flogged and 44.5 per cent. for those not flogged.

8. *In relation to previous record.*—In Table VII the subsequent record of the 440 offenders is analysed in relation to their previous record. Separate figures are given for each of the three groups—those who, before their conviction of robbery with violence, had not been convicted of serious crime, those who had previously been convicted of serious crime and those who had previously been sentenced to penal servitude or a long term of imprisonment. These figures show that, in two out of the three groups, the percentage of subsequent success was lower among those who had been flogged than among those who had not been flogged.

In the first group (who had no previous convictions of serious crime) 71.2 per cent. of those not flogged were not subsequently convicted of serious offences, as compared with only 66.7 per cent. of those who had been flogged.

In the second group (who had previous convictions of serious crime) 37.8 per cent. of those not flogged were not again convicted of serious offences, as compared with 29 per cent. of those who had been flogged.

In the third group (who had previously been sentenced to penal servitude or a long term of imprisonment) 32.6 per cent. of those not flogged were not subsequently convicted of serious offences, as against 34.8 per cent. of those who had been flogged.

As was pointed out in paragraph 5, any conclusions based merely on the general picture given in Table IV would have to be subject to the qualification that those not flogged included a larger percentage of persons with no previous convictions. It might be assumed that a higher percentage of subsequent convictions among those flogged was merely a reflection of the fact that in this class a higher proportion had bad previous records. The figures in Table VII, however, indicate that the higher proportion of success among those not flogged is not accounted for altogether by the fact that these included a larger proportion of persons with no previous convictions. For in the group with no previous convictions the proportion of subsequent failures is larger among those flogged than among those not flogged; and this is also the case in the group of offenders with an indifferent criminal record. It is only among the third group, with the worst criminal record, that those flogged show a slightly better subsequent record than those not flogged. This might suggest that corporal punishment is a penalty more suited to the recidivist with a long criminal record: but of the 142 sentences of corporal punishment imposed in this series of cases only 23, or 16.2 per cent. were passed on persons of the recidivist type who had previously served a sentence

of penal servitude or imprisonment for 12 months or over. 40.1 per cent. of the offenders sentenced to corporal punishment had no previous convictions, and a further 43.7 per cent. had previous convictions involving sentences of less than 12 months' imprisonment.

9. *Subsequent convictions of offences involving violence.*—Of the 142 persons sentenced to corporal punishment, 19 or 13.4 per cent. were subsequently convicted of offences involving violence, as against 37 or 12.4 per cent. of the 298 who were not sentenced to corporal punishment. Further examination of these subsequent offences of violence shows that the serious offences committed by men who had been flogged were more numerous, in proportion, than those committed by men who had not been flogged.

Of the 19 subsequent offences of violence committed by men who had been flogged, 15 were serious offences—

5 were offences of wounding, resulting in two sentences of 7 and 5 years' penal servitude, two sentences of 12 months' imprisonment, and one sentence of 3 years' Borstal detention.

3 were sentences of assault with intent to rape, or indecent assault on a female, resulting in sentences of 2 years' imprisonment.

2 were further offences of robbery with violence. Some details of these are given in paragraph 10.

1 was an offence of manslaughter, for which a sentence of 7 years' penal servitude was imposed.

1 was an offence, by a particularly dangerous criminal, of being in possession of a loaded revolver with intent to endanger life. He was sentenced to 10 years' penal servitude, and a further charge of robbery with violence was not then proceeded with.

1 was a case of demanding money with menaces, and resulted in a sentence of 4 years' penal servitude.

1 was a case of robbery.

1 was an assault on the Police, resulting in a sentence of 9 months' imprisonment.

The other 4 offences were for minor assaults, resulting in sentences of imprisonment ranging from 14 days to 2 months.

Of the 37 subsequent offences of violence committed by men who had not been flogged, 16 were serious offences—

7 were offences of wounding, resulting in sentences ranging from 3 months' imprisonment to 9 years' penal servitude.

3 were offences of robbery (not punishable by flogging) resulting in sentences of 3, 3 and 4 years' penal servitude.

3 were further offences of robbery with violence. Some details of these are given in paragraph 10.

3 were serious assaults resulting in sentences of 6, 6 and 12 months' imprisonment.

The other 21 offences were minor assaults, resulting in sentences of imprisonment ranging from 14 days to 4 months.

The figures of subsequent offences of violence by persons who had not been sentenced to corporal punishment are swollen disproportionately by this number of comparatively minor cases of assault. It is preferable to exclude these minor assaults altogether, in order to obtain a true picture of the serious crimes of violence committed by persons who had previously been convicted of robbery with violence. It then appears that—

Of the 142 persons sentenced to corporal punishment—

15, or 10.6 per cent., were subsequently convicted of serious crimes of violence.

Of the 298 persons not sentenced to corporal punishment—

16, or 5.4 per cent., were subsequently convicted of serious crimes of violence.

10. *Subsequent convictions of robbery with violence.*—Further convictions of robbery with violence were recorded against 2 of the 142 persons sentenced to corporal punishment on the first occasion, and against 3 of the 298 persons who were not previously flogged for this offence.

The following summary gives some particulars of the 3 cases in which a further offence of robbery with violence was committed by a person not flogged on the first occasion:—

(a) First convicted of robbery with violence in 1922 and sentenced to 21 months' imprisonment. Soon after release sentenced to 3 years' penal servitude for burglary. Shortly after release again arrested for burglary and assault: asked the court to order him to be flogged rather than send him to penal servitude: but was sentenced to 5 years' penal servitude. Escaped from Parkhurst Prison and assaulted and robbed a domestic servant. While awaiting trial attempted to commit suicide. Convicted of robbery with violence and sentenced to 7 years' penal servitude. Is now serving 3 years' penal servitude and 5 years' preventive detention for housebreaking. Is regarded as mentally unstable and, although not certifiable under the Lunacy or Mental Deficiency Acts, is kept under special observation in prison because of his mental condition.

(b) First convicted of robbery with violence in 1928. Remanded to prison for special medical report. Showed signs of mental defect—reported unfit for corporal punishment. Sentenced to 17 months' imprisonment. Convicted again, in 1932 and 1933, of larceny from the person. In 1936 sentenced to 5 years' penal servitude for a second offence of robbery with violence (handbag-snatching). Though not certifiable under the Mental Deficiency Acts, he is mentally sub-normal.

(c) First convicted of robbery with violence in 1927 (handbag-snatching) and sentenced to 12 months' imprisonment. Convicted again of a similar offence in 1934 and sentenced to 15 months' imprisonment. He has no other convictions recorded against him and his record has been satisfactory, apart from these isolated outbreaks. Up to the time of his first conviction he had always been in regular work, but afterwards he had long spells of unemployment. Apparently a person of low mentality: on the occasion of his first conviction his father said in court that he had always been regarded as simple.

The following are brief particulars of the 2 cases in which a second offence of robbery with violence was committed by a man who had been sentenced to corporal punishment:—

(a) First convicted of robbery with violence in 1921—a shop hold-up in company with others—and sentenced to 6 months' imprisonment and 18 strokes of the cat. Released January, 1922, and in the following November was convicted again of robbery with violence—having attacked and robbed a man who had offered to pay for his night's lodging. He was sentenced to 12 months' imprisonment and 20 strokes of the cat. In 1927 he was sentenced to 12 months' imprisonment for housebreaking.

(b) First convicted of robbery with violence in 1929, on 7 charges of attacking women in lonely country roads and robbing them of their handbags with personal violence. Sentenced to 12 months' imprisonment and 15 strokes of the cat. Released September, 1930. Convicted again in November, 1932, of a similar offence and sentenced to 3 years' penal servitude and 12 strokes of the cat.

TABLE I.—AGE GROUPS.

Of the 440 persons convicted:—

81, or 18·4%, were under 21.
235, or 53·4%, were 21 and under 30.
87, or 19·8%, were 30 and under 40.
37, or 8·4%, were 40 and over.

The following table shows the total numbers sentenced to corporal punishment and not sentenced to corporal punishment, and the proportions in which the sentences of corporal punishment were distributed among the various age-groups.

		Sentenced to corporal punishment. 142	Not sentenced to corporal punishment. 298
Total numbers	...	...	...
Age-group—			
Under 21	...	22 or 15·5%	59 or 19·8%
21 and under 30	...	83 or 58·5%	152 or 51·0%
30 and under 40	...	28 or 19·7%	59 or 19·8%
40 and over	...	9 or 6·3%	28 or 9·4%

TABLE II.—LENGTH OF SENTENCES.

The following table shows what sentences of imprisonment, penal servitude, etc., were imposed, either alone or in addition to a sentence of corporal punishment.

		In addition to corporal punishment. 142	Without corporal punishment. 298
Number of cases	...	...	...
Sentences—			
Corporal punishment alone	...	2 or 1·4%	—
Recognisances	...	—	16 or 5·3%
Imprisonment: under 6 months	...	8 or 5·6%	8 or 2·7%
Imprisonment: 6 months and under 12 months.	...	40 or 28·2%	64 or 21·5%
Imprisonment: 12 months or over.	...	61 or 43·0%	106 or 35·6%
Penal servitude	...	31 or 21·8%	81 or 27·2%
Borstal detention	...	—	23 or 7·7%

TABLE III.—PREVIOUS RECORD.

The following table shows what type of previous convictions were recorded against those sentenced to corporal punishment and those not sentenced to corporal punishment.

	Sentenced to corporal punishment. 142	Not sentenced to corporal punishment. 298	Total. 440
Number of cases	...	...	...
Previous record—			
Not previously convicted of serious crime.	57 or 40·1%	170 or 57·1%	227 or 51·6%
Previously convicted of serious crime.	62 or 43·7%	82 or 27·5%	144 or 32·7%
Previously sentenced to penal servitude or imprisonment for 12 months or over.	23 or 16·2%	46 or 15·4%	69 or 15·7%

TABLE IV.—SUBSEQUENT RECORD.

The following table shows the subsequent record of the 440 persons convicted of robbery with violence, sub-divided into those who had been sentenced to corporal punishment and those who had not been sentenced to corporal punishment.

B.—PERSONS NOT SENTENCED TO CORPORAL PUNISHMENT.

Number of cases	Not previously convicted of serious crime.	Previously convicted of serious crime.	Previously sentenced to penal servitude or imprisonment for 12 months or over.	Total.
	170	82	46	298
Subsequent convictions—				
None ...	112 or 65.9%	26 or 31.7%	13 or 28.3%	151
Minor offences	9 or 5.3%	5 or 6.1%	2 or 4.3%	16
Major offences	37 or 21.8%	32 or 39.0%	25 or 54.4%	94
Offences of violence.	*12 or 7.0%	19 or 23.2%	†6 or 13.0%	37

* Including two subsequently convicted of robbery with violence.

† Including one subsequently convicted of robbery with violence.

APPENDIX IV.

CORPORAL PUNISHMENT FOR OFFENCES IN PRISONS AND BORSTAL INSTITUTIONS.

England and Wales. 1910-1936.

In the following tables column (2) shows the number of cases in which corporal punishment was recommended by the Visiting Justices, and columns (3)-(5) show how far these recommendations were confirmed by the Secretary of State.

The figures in column (6) refer to the punishment authorised by the Secretary of State and do not take into account those few cases in which the full punishment was not actually carried out.

In almost all these cases the offence for which corporal punishment was inflicted was gross personal violence to a prison officer. Throughout the whole of the period there were only 13 cases where corporal punishment was recommended for mutiny or incitement to mutiny—7 in 1912, 3 in 1932, and 1 in each of the years 1910, 1929 and 1931. In the last case the prisoner was found guilty of violence as well as incitement to mutiny.

PRISONS.

(1) Year.	(2) Awards.	(3) Con- firmed.	(4) Reduced No. of Strokes Con- firmed.	(5) Not Con- firmed.	(6) Punishment Authorised.			
					Cat.		Birch.	
					Cases.	Average No. of Strokes.	Cases.	Average No. of Strokes.
1910	26	22	4	—	12	15	14	20
1911	22	18	4	—	11	16	11	18
1912	27	17	4	6	9	14	12	15
1913	25	19	5	1	10	17	14	18
1914	20	17	2	1	7	16	12	19
1915	5	4	—	1	2	18	2	15
1916	6	6	—	—	2	13	4	15
1917	2	2	—	—	1	15	1	15
1918	3	3	—	—	2	16	1	12
1919	6	6	—	—	3	16	3	14
1920	2	2	—	—	—	—	2	11
1921	8	5	1	2	4	15	2	14
1922	6	3	1	2	1	24	3	14
1923	14	12	—	2	2	12	10	18
1924	10	8	2	—	4	15	6	16
1925	8	8	—	—	3	18	5	13
1926	11	7	—	4	4	14	3	11
1927	12	10	1	1	6	14	5	15
1928	*16	16	—	—	10	15	6	14
1929	†18	14	3	1	6	14	11	15
1930	‡13	8	3	2	7	13	4	11
1931	§8	6	2	—	4	14	4	14
1932	§18	17	1	—	13	18	5	17
1933	5	4	1	—	3	18	2	12
1934	4	4	—	—	3	14	1	20
1935	2	—	—	2	—	—	—	—
1936	5	3	2	—	2	12	3	17
Totals	302	241 or 79.8%	36 or 11.9%	25 or 8.3%	131 or 47.3%	—	146 or 52.7%	—

* 6 cases at Wandsworth.

† 5 cases at Wandsworth.

‡ 11 cases at Wandsworth.

§ 7 cases at Chelmsford.

In this and the following tables all subsequent offences not involving imprisonment or penal servitude have been classified as "minor offences"; and "major offences" does not include offences involving violence, which have been classified separately.

Number of cases	Sentenced to corporal punishment. 142	Not sentenced to corporal punishment. 298	Total. 440
<i>Subsequent convictions—</i>			
None ...	57 or 40.1%	151 or 50.7%	208 or 47.3%
Minor offences ...	7 or 4.9%	16 or 5.4%	23 or 5.2%
Major offences ...	59 or 41.6%	94 or 31.5%	153 or 34.8%
*Offences of violence...	19 or 13.4%	37 or 12.4%	56 or 12.7%

* Among these subsequent offences of violence there are included 5 subsequent offences of robbery with violence. Of these, 3 were committed by persons who had not been flogged for the earlier offence and 2 by persons who had been flogged for the earlier offence.

TABLE V.—SUBSEQUENT RECORD.

(Related to age groups).

In the following tables the subsequent record of the persons under review is related to their age at the date of their conviction of robbery with violence.

A.—SENTENCED TO CORPORAL PUNISHMENT.

Number of cases	Under 21. 22	21 and under 30. 83	30 and under 40. 28	40 and over. 9
<i>Subsequent convictions—</i>				
None ...	14 or 63.7%	28 or 33.7%	12 or 42.9%	3 or 33.3%
Minor offences ...	1 or 4.5%	4 or 4.8%	2 or 7.1%	—
Major offences ...	6 or 27.3%	38 or 45.8%	10 or 35.7%	5 or 55.6%
Offences of violence.	1 or 4.5%	*13 or 15.7%	4 or 14.3%	1 or 11.1%

* Including two subsequently convicted of robbery with violence.

B.—NOT SENTENCED TO CORPORAL PUNISHMENT.

Number of cases	Under 21. 59	21 and under 30. 152	30 and under 40. 59	40 and over. 28
<i>Subsequent convictions—</i>				
None ...	34 or 57.6%	78 or 51.3%	28 or 47.5%	11 or 39.3%
Minor offences ...	2 or 3.4%	10 or 6.6%	3 or 5.1%	1 or 3.6%
Major offences ...	15 or 25.4%	47 or 30.9%	19 or 32.2%	13 or 46.4%
Offences of violence.	8 or 13.6%	†17 or 11.2%	*9 or 15.2%	3 or 10.7%

* Including two subsequently convicted of robbery with violence.

† Including one subsequently convicted of robbery with violence.

TABLE VI.—SUBSEQUENT RECORD.

(Related to the sentences served for robbery with violence).

In the following tables the subsequent record of the persons under review is related to the sentences of imprisonment, etc., which they had served for robbery with violence.

A.—SENTENCED TO CORPORAL PUNISHMENT.

Number of cases	Corporal punishment alone. 2	Imprisonment under 6 months. 8	Imprisonment 6 and under 12 months. 40	Imprisonment 12 months or over. 61	Penal servitude. 31
<i>Subsequent convictions—</i>					
None ...	1 or 50%	4 or 50%	16 or 40%	28 or 45.9%	8 or 25.8%
Minor offences ...	1 or 50%	—	2 or 5%	2 or 3.3%	2 or 6.4%
Major offences ...	—	3 or 37.5%	19 or 47.5%	23 or 37.7%	14 or 45.2%
Offences of violence.	—	1 or 12.5%	*3 or 7.5%	*8 or 13.1%	7 or 22.6%

* Including one subsequently convicted of robbery with violence.

B.—NOT SENTENCED TO CORPORAL PUNISHMENT.

Number of cases	Recognisances. 16	Imprisonment under 6 months. 8	Imprisonment 6 and under 12 months. 64	Imprisonment 12 months or over. 106	Penal servitude. 81	Borstal detention. 23
<i>Subsequent convictions—</i>						
None ...	15 or 93.8%	2 or 25.0%	39 or 60.9%	52 or 49.1%	34 or 42.0%	9 or 39.1%
Minor offences ...	—	1 or 12.5%	5 or 7.8%	7 or 6.6%	2 or 2.5%	1 or 4.4%
Major offences ...	1 or 6.2%	4 or 50.0%	17 or 26.6%	33 or 31.1%	33 or 40.7%	6 or 26.1%
Offences of violence.	—	1 or 12.5%	3 or 4.7%	*14 or 13.2%	12 or 14.8%	7 or 30.4%

* Including three subsequently convicted of robbery with violence.

TABLE VII.—SUBSEQUENT RECORD.

(Related to previous record).

The following tables show the subsequent record of the 440 persons convicted of robbery with violence, the cases being classified according to the record of each offender prior to the conviction for robbery with violence.

A.—PERSONS SENTENCED TO CORPORAL PUNISHMENT.

Number of cases	Not previously convicted of serious crime. 57	Previously convicted of serious crime. 62	Previously sentenced to penal servitude or imprisonment for 12 months or over. 23	Total. 142
<i>Subsequent convictions—</i>				
None ...	35 or 61.4%	16 or 25.8%	6 or 26.1%	57
Minor offences ...	3 or 5.3%	2 or 3.2%	2 or 8.7%	7
Major offences ...	17 or 29.8%	30 or 48.4%	12 or 52.2%	59
Offences of violence.	*2 or 3.5%	*14 or 22.6%	3 or 13.0%	19

* Including one subsequently convicted of robbery with violence.

BORSTAL INSTITUTIONS.

(1) Year.	(2) Awards.	(3) Con- firmed.	(4) Reduced No. of Strokes Con- firmed.	(5) Not Con- firmed.	(6) Birchings Authorised.	
					No. of Cases.	Average No. of Strokes.
1910	—	—	—	—	—	—
1911	—	—	—	—	—	—
1912	5	5	—	—	5	16
1913	1	1	—	—	1	12
1914	6	6	—	—	6	13
1915	1	—	1	—	1	18
1916	—	—	—	—	—	—
1917	—	—	—	—	—	—
1918	1	1	—	—	1	18
1919	1	1	—	—	1	12
1920	1	1	—	—	1	24
1921	3	2	—	1	2	13
1922	—	—	—	—	—	—
1923	1	—	—	1	—	—
1924	—	—	—	—	—	—
1925	—	—	—	—	—	—
1926	1	1	—	—	1	12
1927	—	—	—	—	—	—
1928	2	2	—	—	2	9
1929	—	—	—	—	—	—
1930	1	1	—	—	1	12
1931	2	2	—	—	2	15
1932	—	—	—	—	—	—
1933	—	—	—	—	—	—
1934	1	1	—	—	1	18
1935	—	—	—	—	—	—
1936	2	1	—	1	1	12
Totals	29	25 or 86·2%	1 or 3·4%	3 or 10·4%	26	—

APPENDIX V.

THE LAW RELATING TO CORPORAL PUNISHMENT IN CERTAIN FOREIGN COUNTRIES AND IN HIS MAJESTY'S DOMINIONS.

FOREIGN COUNTRIES.

The following particulars are based on information obtained by the Foreign Office, while the Committee was sitting, by special enquiries addressed to the Governments of the countries concerned. These enquiries were made in 15 countries. In the following 12 countries, corporal punishment is not employed at all as a legal penalty either for offences against the criminal law or for offences against discipline in prisons:—

Austria.—None. Corporal punishment was abolished by the Criminal Code of 1867.

Belgium.—None.

Czechoslovakia.—None.

Denmark.—Under an Act of 1866 corporal punishment could formerly be imposed for any offence committed by boys aged 10-18 and girls aged 10-12. An Act of 1905 authorised corporal punishment for adults (aged 18-55) for rape and indecent assault. All these provisions were repealed by an Act of 1911, and since then there has been no provision for corporal punishment as a penalty for offences against the criminal law.

Corporal punishment for prison offences was abolished by an Act of 1930, which came into force in 1933.

France.—None.

Germany.—None.

Holland.—There is no corporal punishment for offences against the criminal law.

By an Act of 1886 corporal punishment is authorised as a disciplinary measure at Leeuwarden, a prison for persons serving sentences of five years and over. But no use has ever been made of this power since it was introduced in 1886.

Hungary.—None.

Italy.—None.

Norway.—The Penal Code of 1902 does not recognise corporal punishment as a penalty for offences committed against the criminal law, either by juveniles or by adults. When, however, a child under 14 is charged with an offence the prosecution may ask the parent or guardian to administer corporal punishment in the home or the schoolmaster to administer it in the school.

As a penalty for offences against discipline in prisons, corporal punishment was abolished by an Act of 1933.

Portugal.—None.

Switzerland.—None. Corporal punishment is prohibited by Article 65 of the Federal Constitution.

In the following three countries, corporal punishment is authorised by law as a penalty for certain offences:—

Finland.—As a general penalty for offences against the criminal law, corporal punishment was abolished by the Penal Code of 1889: but the law still permits a limited use of corporal punishment as a penalty for juveniles and prisoners. (a) A court which deals with any offence committed by a child between the ages of 7 and 16 may order the parent or guardian to administer corporal punishment in the home, in the presence of a witness; and, if the parent or guardian refuses to comply with this order,

Dominion.	Age-limits.	Offences for which imposed.	Instrument.	Maximum No. of strokes.	Extent to which used.
2. New South Wales— <i>contd.</i>	14-18 (convicted of any offence in (a) to (g) after a previous conviction of any offence; or convicted of a first offence under (b), (c), (f) or (g).		Prescribed by Controller-General of Prisons.	6-20	None in last 5 years.
3. Queensland...	—	Apparently no special provisions relating to juveniles.	—	—	—
4. South Australia ...	16	Riotous or indecent conduct in public. Indecent exposure. Writing obscene words, etc., on walls. Throwing drugs, etc., to danger of any person. Rogue and vagabond. Throwing missiles (second offence). Placing obstruction on railways. Larceny from person with violence, if property worth £5 or less.	Birch ...	25 strokes at each of 2 whippings.	—

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5. Tasmania ...	14	For any offence the court may allow the parent to administer chastisement, and may then dismiss the charge.	—	—	—
6. Victoria ...	16	None ... For any offence the court may allow the parent to administer chastisement.	—	—	—
7. Western Australia...	16	For any offence punishable by imprisonment the court may order whipping.	Cane or birch	Not exceeding the punishment which may lawfully be administered by schoolmasters.	1 case in the last 5 years.
8. Canada ...	16 12 12-18	Being an uncontrollable or incorrigible child. Any indictable offence (except treason, murder or manslaughter). Apparently no provisions relating specially to juveniles: but see under Adults.	— Cane, strap, or birch. "	— 6 12	None in last 5 years. "
9. Eire ...	12	Any indictable offence other than homicide.	Birch ...	6	25 cases in 5 years, 1932-1936.
10. Newfoundland ...	7-14 14-16	Any indictable offence other than homicide. "	Birch (three with rods tied together). "	6 12	At St. Johns, 61 cases in 5 years 1933-1937.

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Dominion.	Age-limits.	Offences for which imposed.	Instrument.	Maximum No. of strokes.	Extent to which used.
11. New Zealand ...	—	As regards juveniles dealt with by the Children's Courts, the power to order whipping was repealed in 1936.	—	—	—
	16	Boys under 16 dealt with in other courts for any indictable offence may be ordered to be whipped; but this power is rarely exercised in practice.	Birch ...	—	From 1932 to 1936 a total of 33 cases.
12. South Africa ...	21	Any offence ...	—	15	—
13. Southern Rhodesia	18	Any offence ...	—	15	This power is rarely used.
	14	Breach of duty by native employee under 14.	Light cane ...	10	In the 5 years 1932-1936, the total number of European juveniles ordered to be whipped was 43. The corresponding number for natives was 1,656 — annual average 331.

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B.—PROVISIONS FOR CORPORAL PUNISHMENT APPLYING TO ADULTS.

The following is a list of all the main offences for which corporal punishment may be imposed in one or other of the various Dominions :—

- | | |
|---|--|
| 1. Rape or attempt to rape. | 24. Robbery with violence. |
| 2. Procuring. | 25. Offences against the person accompanied by cruelty or great personal violence. |
| 3. Living on immoral earnings. | 26. Malicious wounding and causing grievous bodily harm. |
| 4. Unlawful carnal knowledge of young girl. | 27. Aggravated assault. |
| 5. Unlawful carnal knowledge of idiot or imbecile. | 28. Common assault on wife or other female. |
| 6. Unlawful carnal knowledge by fraud or false pretences. | 29. Aiming firearm, etc., at the Sovereign. |
| 7. Unlawful carnal knowledge of young girl by guardian, employer, etc. | 30. Burglary. |
| 8. Permitting girl under 16 to be on premises for immoral purposes. | 31. Breaking and entering. |
| 9. Indecent assault on female. | 32. Breaking and entering dwelling-house armed with offensive weapon. |
| 10. Procuring white woman for intercourse with native. | 33. Placing wood, etc., on railways. |
| 11. Native attempting act of indecency against white woman. | 34. Damage to railways. |
| 12. Buggery and Sodomy. | 35. Damage to works of art. |
| 13. Gross indecency with a male person. | 36. Arson (specified offences). |
| 14. Assault with intent to commit sodomy. | 37. Malicious damage (specified offences). |
| 15. Indecent assault on a male person. | 38. Malicious wounding of cattle. |
| 16. Indecency with boy under 14. | 39. Offences endangering ships. |
| 17. Male person importuning for immoral purposes. | 40. Demanding money with menaces. |
| 18. Indecent exposure. | 41. Destroying buildings by gunpowder, with intent to endanger life. |
| 19. Culpable homicide. | 42. Theft of stock or produce. |
| 20. Attempt to murder. | 43. Witchcraft. |
| 21. Administering poison, or wounding, with intent to murder. | |
| 22. Garrotting. | |
| 23. Administering drugs with intent to facilitate commission of indictable offence. | |

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the punishment may be administered by an official of the court. During the period 1930-1934, the courts ordered corporal punishment in this way in 911 cases—an average number of 182 cases each year. (b) In penal institutions, convicts who commit serious offences against discipline may be ordered corporal punishment if their offences cannot be dealt with by other means. The order is made by the Board of the Institution, and the maximum punishment is 25 strokes. During the years 1930-1934, the average annual number of cases in which corporal punishment was ordered was 22.

Sweden.—Corporal punishment is not recognised as a penalty for offences against the criminal law. It is still an authorised penalty for serious offences against prison discipline by male prisoners serving sentences of hard labour. The power to order corporal punishment is vested in the Prison Commissioners, and the maximum punishment is 40 strokes—for adult prisoners, with a cane; and for young prisoners under 18, with a birch. In 1923 a Commission on Penal Legislation recommended the abolition of this power to order corporal punishment; and during the years 1924-1935 it has been used on only one occasion, in 1926.

United States of America.—So far as concerns offences against the Federal Law, corporal punishment is expressly prohibited by section 325 of the Criminal Code.

The position under State law is governed by the law of the individual States. In 34 of the States corporal punishment is not recognised as a penalty either for offences against the criminal law of the State (by adults or by juveniles) or for offences against discipline in prisons. In the great majority of the other States, corporal punishment is authorised only as a penalty for offences against prison discipline. It is so authorised in the following 11 States:—Alabama, Arkansas, Indiana, Louisiana, Mississippi, Nebraska, North Carolina, Rhode Island, Tennessee, Texas and Virginia.

In two States, Delaware and Virginia, corporal punishment is recognised as a method of dealing with young offenders. In Virginia, a court which deals with any child under 16 convicted of any misdemeanour may, in lieu of other punishment, allow the parent or guardian to administer, in the presence of a witness, such corporal punishment as the court thinks adequate.

In two States, Delaware and Maryland, corporal punishment is recognised as a penalty for adult offenders convicted of certain offences against the criminal law. In Maryland, the only offence for which corporal punishment may be ordered is wife-beating, and the maximum punishment is 40 lashes. In Delaware corporal punishment may be ordered for the following offences—poisoning, maiming, robbery, assault with intent to ravish, wife-beating, certain offences of arson, burglary by means of explosives, certain types of breaking and entering, larceny, selling and receiving of stolen horses, certain offences of embezzlement and forgery, perjury and fraudulent misappropriation of funds. The law prescribes different maximum punishments for the different offences, and the highest maximum is 60 lashes. The law appears to require that the punishment shall be administered in public, at a whipping post.

(This summary does not cover the State of New Mexico, in respect of which no information had been received when this Report was sent to be printed.)

HIS MAJESTY'S DOMINIONS.

The following summary is based on information obtained by the Dominions Office, while the Committee was sitting, by special enquiries addressed to the Government of each of the Dominions.

(The information furnished regarding the law in some of the Dominions was not sufficiently complete to enable particulars to be given under all the headings in this summary.)

A.—PROVISIONS FOR CORPORAL PUNISHMENT APPLYING SPECIALLY TO JUVENILES.

Dominion.	Age-limits.	Offences for which imposed.	Instrument.	Maximum No. of strokes.	Extent to which used.
1. Australia: Commonwealth Law.	—	None	—	—	—
2. New South Wales...	(a) Convicted on indictment. 16 (b) Convicted summarily. 10-14 (c) Convicted of any offence in (a) to (g) after a previous conviction of any offence).	Any indictable offence (a) Wanton assault ... (b) Indecent exposure or other indecent act; or using obscene language. (c) Writing obscene words, etc., on walls, etc. (d) Throwing missiles, etc. (e) Destroying shrubs, etc. (f) Damaging public buildings, etc. (g) Cruelty to animals.	Prescribed by Controller-General of Prisons.	25 at each of three whippings. 18	None in last 5 years. None in last 5 years.

Dominion.	*Offences for which imposed.	Instrument.	Maximum number of strokes.	Extent to which corporal punishment is used.
1. Australia: Commonwealth Law.	None	—	—	—
2. New South Wales ...	1, 4, 6, 9, 12, 22, 23, 24, 26, 33, 34, 35 and 38. Also, on summary conviction, any offence under 2 (e) to (g) in Table A above No information ...	Prescribed by Controller General of Prisons.	50 at each of 3 whippings. For boys under 16, 25 at each of 3 whippings. On summary conviction, 6-20 for boys of 14-18: 10-30 for adults.	None since 1905.
3. Queensland ...	1, 4, 6, 9, 12, 14, 15, 18, 20, 22-24, 30-37, 39 and 40. None	Birch, cane, strap or (for persons over 16) cat. Prescribed by Sheriff.	50 at each of 3 whippings. For boys under 16, 25 at each of 3 whippings. 50 at each of 3 whippings. For boys under 16, 25 at each of 3 whippings.	None in recent years.
4. South Australia ...	1, 4-7, 9, 12, 15, 18, 20, 22, 24, 25 and 41: committed by males over 16.	Specified by court	50 at each of 3 whippings	4 cases from 1932 to 1937.
5. Tasmania ...	1, 4, 5, 7, 8, 13, 16, 22 and 24.	Cane, strap, birch, or cat. Cat not to be used for persons under 18.	25: and 12 for persons under 18.	—
6. Victoria ...	1, 4, 9, 14, 15, 22-24, 28, 29 and 32.	Cat, unless some other instrument is specified by the court.	None	10 cases in the last 5 years
7. Western Australia ...				None in the last 5 years.
8. Canada ...				For 1932-1936, the average annual number of cases was 130 for adults: and, in addition, 55 "spankings" of boys under 16.

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9. Eire ...	As in United Kingdom ...	As in United Kingdom...	None in the 5 years 1932-1936.
10. Newfoundland ...	None (abolished in 1902)	—	—
11. New Zealand ...	1, 4, 5, 9, 24	Cat...	In the 5 years 1932-1936, total number of cases was 6.
12. South Africa ...	9, 12, 13, 15, 19, 24, 27: certain other statutory offences: and on a subsequent conviction of any offence within 3 years of the previous conviction. By the High Court: any common law offence except murder by any person over 16. By Magistrates' Courts: 9, 10-12, 13, 15, 24, 27, 37, 42, 43: and on a subsequent conviction of any offence within 3 years of the previous conviction.	Normally a rattan cane. The cat may be used but only in exceptional cases.	—
13. Southern Rhodesia		Rattan cane or cat	In the 5 years 1932-1936, the annual average number of cases in all courts was 436. In no case was the offender a European.
		15: or in certain cases 18	151

* The numbers in this column refer to the offences in the list at the head of Table B.

C—CORPORAL PUNISHMENT FOR PRISON OFFENCES.

The following is a list of all the offences against prison discipline for which corporal punishment may be imposed in one or other of the various Dominions:—

1. Gross personal violence to an officer.
2. Mutiny or incitement to mutiny.
3. Personal violence to a fellow prisoner.
4. Escaping, or attempting to escape.
5. False charges against an officer or fellow prisoner.
6. Grossly offensive or abusive language to an officer.
7. Wilfully destroying prison property.
8. When undergoing punishment, making a disturbance tending to interrupt the good order and discipline of the prison.
9. Any act of gross misconduct or insubordination requiring to be suppressed by extraordinary means.
10. Refusal to work.
11. Insubordination.
12. Repeated offences against prison rules.
13. Offences more serious than those dealt with by other punishments.

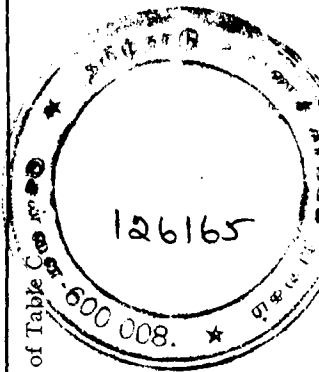
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Dominion.	*Offences for which imposed.	By whom ordered.	Instrument.	Maximum number of strokes.	Extent to which used.
1. Australia: Commonwealth Law.	Governed by the law of the State in which the prison is situate.	—	—	—	—
2. New South Wales...	12 and 13 ...	Two Visiting Justices	—	—	—
3. Queensland...	1, 2 and 11 ...	Visiting Justice, subject to confirmation by the Minister.	Birch, cane, strap or cat.	First offence, 12. Subsequent offence, 24.	None since 1900. None in recent years.
4. South Australia ...	1-7, 10 and 11	Two Justices ...	Cat...	10	Used only for serious assaults, and not used at all for many years.
5. Tasmania ...	None ...	—	—	—	—

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6. Victoria ...	None ...	—	—	—	—
7. Western Australia...	1-5, 7, 9 and 12 ...	Magistrate or two Justices.	—	—	None in last 5 years.
8. Canada ...	1-4, 6-9 ...	Warden, subject to confirmation by Superintendent.	—	—	For 1932-1937 average annual number of cases was 181.
9. Eire ...	1-3, 6-9: but only if committed by convicts.	—	Cat or birch	36 for prisoners over 18. 18 for prisoners under 18.	None in the last 10 years.
10. Newfoundland ...	None ...	—	—	—	—
11. New Zealand ...	None ...	—	—	—	—
12. South Africa ...	No information ...	—	—	—	—
13. Southern Rhodesia	4 ... Any breach of Prison Rules.	Magistrates' Court Superintendent of Prison. Visiting Magistrate	Rattan cane or cat.	18 6 12	Restricted to prisoners under 60. In the 5 years 1932-1936, the average annual number of cases was 39. In only one case was the prisoner a European.

* The numbers in this column refer to the offences in the list at the head of Table C.



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