

## Returning to the beginning of the criminal law theory

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## Returning to the beginning of the criminal law theory

by M. INOUE

George B. Vold asserts in his "Does the Prison Reform?" that "The supreme aim of prison discipline is the reformation of criminals, not the infliction of vindictive suffering". So far as the administration of punishment is concerned, this is unconditionally true. It must be noted, however, that many scholars are strongly opposed to this. Their opposition which is reasonable enough, stands in the way of the development of the practice of Vold's theory. In effect, this controversy amounts to the conflict between the modernist school and the classicist school. No advances in the administration of punishment can be achieved, unless a compromise can be made between the two extreme opposites. Parenthetically, this could readily apply to Japan, since the situation in Japan can't be compared with the situations in other countries. However, I am not prepared to discuss these two theories in detail but will refer to them occasionally. Here, I will first point out some current problems in the administration of punishment and explain the nature of each and also how each country copes with them. I shall then introduce a solution for Japan. Certainly, it is not so easy for me to single out the most important problems because too many problems haunt me as a scholar; so I will confine my discussion to the problems which are common to the whole world.

Vold classifies criminals into the following three types, whose behavior patterns are not so different from those given by Liszt:

- (1) The psychologically disturbed, for whom crime is some sort of symbolic release of persistent and deep-seated mental conflict.
- (2) The unskilled and uneducated but otherwise normal person whose need is to acquire sufficient skill to earn an honest living.
- (3) The psychologically normal and educationally average persons who identify themselves with a different, an antisocial, or a non-law-abiding way of life.

Having characterized the above types of inmates, I can now readily point out up-to-date problems. Concerning the first category, i.e., offenders suffering from mental disease, and habitual offenders must also be included here, these types have in the past provided a great many serious problems.

The second category is that of the average inmate and actually most of the prison populations consist of this type. This results in overcrowded circumstances in prisons. The riots here in America, whose severity surprised me, are a serious problem and one with which the articles by Sanford Bates and J. V. Bennett are basically concerned. These riots originate in overcrowding and idleness in prisons, as pointed out by A. H. MacCormick in "Behind the Prison Riots." In order to cope with them, industrialization in prisons is a possible solution. And in addition to this, youth prisoners should be taken into account here. Youth prisoners have been the cause of very serious problems, with which all countries have had to cope.

The third category causes us to center our attention on the disadvantage of short sentences, or substitutes such as fine and parole.

Finally, the following principle must be emphasized, which is considered

basically common to any treatment of the above behavior patterns. This type of punishment is completely free from vindictive management, and is nothing but rehabilitation, re-education, re-socialization and, in the end, treatment — a sort of cure. This new idea and philosophy takes the place of vindictive management. To achieve effectively this idea, administration of punishment should be based upon scientific methods. In other words, there should be adequate psychological and psychiatric services to uncover the deep-seated mental disturbances; also adequate programs of treatment. Here occurs the problem of probation aiming at individualization and treatment of inmates, thus abandoning institutionalization. It now seems desirable and necessary to adopt the scientific classification of prisoners which has been recognized in all countries. The major problem of probation is that, while post-sentence probation has been adopted, pre-sentence probation can't escape bitter controversy. Ideally, to effectuate individualization of prisoners, it would be desirable to work towards establishing pre-sentence probation. But there is strong resistance to such a movement from the so-called classical scholars, because they regard the court as a guarantee of criminals' rights against arbitrary administration of probation boards.

The classification system can be combined with the progressive system during treatment in prisons, as for example in open prisons, where prisoners without walls can enjoy their freedom to the greatest possible degree.

Now I shall try to explain each problem in detail:

First, the mentally disturbed offenders would be taken into consideration. As I pointed out, this category involves two types; offenders suffering from

mental disease or an analogous mental disease, and habitual offenders.

The former criminals are principally transferred to the mental health authorities for treatment after having been declared free from criminal responsibility by a court: Therefore their treatment seems less problematic. But it should be noted that many patients are released from mental hospitals as improved, but the relapse rates for most mental ill's are very high, and readmission, in relation to first admission, often gives rates not too dissimilar from those found in criminal recidivism statistics. However, I have never heard of post-war prison reforms concerning them except in Sweden. Even in Sweden, the reform consists only of sending many psychopaths to mental hospitals upon a finding of insanity. It is not concerned with the treatment itself in hospitals. Secondly, a more severe problem relating to psychopaths is the treatment of those who could not be found legally insane. In Sweden they are, according to a law of 1927, committed to special penal institutions for relatively indeterminate terms; chronic recidivists are also sent to them in the same way. They could be compared with so-called "security institutions" in Japan, where classification is based on district plans, as in Sweden, and each district has one security institution.

Finally we must pay attention to habitual offenders.

In England the provisions made under the Criminal Justice Act of 1948 for the treatment of persistent offenders may be said to establish a new penological principle. Persistent offenders who have shown that they are neither reformed nor deterred by traditional punishments should be segregated for prolonged periods under a special regime which is preventive rather than punitive. This preventive detention sentence accompanies a normal

pre-release block pattern:

The prisoner lived in a hostel in another town under prison management, and then was granted a conditional release. One of the difficulties with this procedure was due to the court's practice of passing sentences which required them to consider primarily the nature and gravity of the offence rather than the nature and needs of the offender. To enable the courts to get over this difficulty, they were empowered to take the potential persistent offender in good time and give him a sentence of a length and nature to have some constructive effect. The Act provided a new form of sentence known as corrective training. In practice it works as follows: When a prisoner is sentenced to corrective training he is sent as soon as possible to an allocation center for prisoners sentenced to corrective training. There he is observed by an expert staff, who try to discover why he has become a habitual offender and what kind of training will be most suitable for him. He may then go to either (1) an open regional training prison, (2) a closed regional training prison, or (3) an ordinary corrective training prison, according to the degree of resocialization from the most promising to the worst. The maximum sentence for corrective training is four years, but the normal sentence is three years, one third remission or conditional release being given.

In France, they are now engaged in establishing preventive detention and are searching for solutions which would be suited to the exceedingly variable personalities of persistent offenders. During the last few years they have set up for them three specialized observation centers, and five treatment institutions, where the inmates are subjected to strongly individualized regimes ranging from close custody to semi-freedom.

In Sweden, a project exists to set up an institution of a new kind for the treatment of abnormal and habitual offenders.

The exigent problem to be decided was whether they should be distributed or centralized. The planning committee compromised by taking the middle way and erected several institutions close together. But then, it was feared that such a concentration of abnormal offenders might bring trouble. The attitude of the government is not yet clear.

The development of the treatment of special offenders as stated above implies the change of the philosophy of punishment, and shows, of necessity, a complete break with the so-called classical school. But because it might deprive criminals of their legal rights or at least endanger them, safeguards for the protection of the rights of criminals are a very necessary addition to this new philosophy. The great effort to establish safeguards has caused much worry to scholars of the classical school and the hatchet has not yet been buried between the partisans and adversaries of safeguards. Particularly in Japan, where bureaucratism has prevailed, scholars of the classical school have put up strong resistance to the sweeping development of security measures. In practice, mutual concession, resulting from necessity, has limits. All countries have to decide wisely and theoretically to abstain from this doctrinal quarrel.

Next, my explanation will turn to the second behavior pattern categorized by G. B. Vold. This pattern involves the problems of youth prisoners and normal adult prisoners who are unskilled and uneducated. I shall focus primarily on the former.

The special institution at Roxtuna in Sweden will illustrate one of the recently advanced treatments for youth prisoners. Three problems arise in

that connection. First, the group which receives suspended sentence certainly needs help and supervision during probation. Second, there is a group needing a long period of institutional care. These two groups, with the undeniable exception of adult prisoners, have, generally speaking, a great number of aspects in common, and I will not devote any space to them. Between these groups there is an intermediate one for whom special treatments are required, because ordinary treatments seem inadequate or too harsh. But in Sweden, they paid attention to the latter group, i. e., youth prison inmates. The special institution at Roxtuna, since the fall of 1954 has been concerned with that problem. Roxtuna is called the result of both Swedish and American experience and views. It is organized on a small-group principle, which means that 65 inmates are assigned to separate houses with no more than nine in each. The treatment implies vocational training and medico-psychological orientation.

So far as France is concerned, the administration of youthful prisoners opened a school-prison at Oermingen in 1947 for boys and a school-prison at Doullens in 1950 for girls. In 1950 a controlled freedom hostel was opened at Maxeville as an adjunct to Oermingen. The treatment embraces moral, scholastic and vocational training.

These new institutions for youth prisoners indicate also a new idea and philosophy for the punishment of adults. It should be particularly noted, that the age of those committed to the special institutions for youth prisoners has tended to increase.

Then when deciding whether or not to recognize the new idea of punishment instead of the classical one, it must be taken into consideration that, in reality, the idea of punishment would be superseded by that of re-



education. Of course the fact can't be denied that no matter how sumptuous we might make a prison, it would still be a prison. Nothing really compensates for the loss of liberty. But I would like to say man is sent to prison as a punishment but not for punishment. Therefore what must be emphasized is that the form is a punishment but the contents not a punishment.

At least in the case of youth prisoners, emphasis should be put on re-education. Otherwise, their treatment would be very difficult to cope with.

The administration of prisons without a sound policy would be a hopeless task. This can be appreciated when one realizes that in England 4% of the magistrates' courts and 11% of superior courts pronounce sentences of imprisonment.

In Japan we have a special code for youthful offenders. It provides for both criminal procedure and the administration of punishment for them. We have special courts where the procedure is different from ordinary courts. As an illustration of the administration of punishment, there are special prisons; sentences are relatively indeterminate and the death penalty is prohibited. As a major post-war reform, the age of those to whom this special law applies was extended from under 18 years of age to under 21 years. Persons under 14 years of age are innocent of criminal responsibility, but even those persons, if over 12 years of age, can be sent to special reformatories. These reformatories have not only youthful persons who have really committed crimes but also persons who have been suspected of doing so.

Many articles, "The Prison: Asset or Liability?" by Sanford Bates,

"Evaluating a Prison" by James V. Bennett and particularly

"Behind the Prison Riots" by A. H. MacCormick

point out that the years 1952—53 have the dubious distinction of being the darkest years in modern American penal history. The riots of the greatest magnitude and importance began in April 1952, when the violent and destructive revolts that flared up almost simultaneously in the ancient New Jersey prison at Trenton and the huge Michigan prison at Jackson touched off a series of explosive disturbances in prisons throughout the country.

The chronology of riots, strikes, and other serious disturbances in prisons and reformatories for men 1951—53

is shown by A. H. MacCormick. That is, from the 29th of May 1951 to

December 31, 1953. By years:   1951, 6;  
  1952, 21;  
  1953, 12.

He points out as major reasons the instability and the youth of prisoners. But what must be emphasized is that overcrowding and idleness accentuated the problems presented by the unstable and youthful elements in the population, and produced tensions and pressures in the more stable prisoners that made them potential recruits for revolt. For example, Jackson Prison, huge as it was, was so overcrowded at the time of the riots that men were sleeping on cots in the cellhouse corridors. At one time there were 1,780 men idle; an idle population equal to the total population of Sing-Sing Prison. Trenton Prison was so overcrowded at the time of the 1952 riots that 300 of the 1,300 prisoners were quartered in the 92 cells of Wing 4. About 400 men, 30 per cent of the population, were completely idle. He writes as follows: "At Jackson, in the South Side cell houses where the cells face each other across a wide corridor, hundreds of prisoners spent most of their time

pressed against the bars of their cells like animals in a zoo, holding shouted conversations with prisoners on the tiers above and below of across the way; conversations that were hardly more intelligible than the screaming of animals." Thus, we must be concerned with how to cope with the problem of idleness in prisons. The report of the American Prison Association's Committee on Riots, published in May 1953, is concerned mainly with causes that have their basis in maladministration, and with suggestions for prevention and control. After stating that "the immediate causes given out for a prison riot are usually only symptoms of more basic causes," the report lists the fundamental causes and forms of prison maladministration as follows:

- (A) Inadequate financial support, and official and public indifference.
- (B) Substandard personnel.
- (C) Enforced idleness.
- (D) Lack of professional leadership and professional programs.
- (E) Excessive size and overcrowding of institutions.
- (F) Political domination and motivation of management.
- (G) Unwise sentencing and parole practices.

Interestingly enough, this report also points out the idleness in prisons as one of the most important causes for riots. The way in which the problem may be solved is being demonstrated by a number of prison systems, notably the federal system and the system in California. Instead of stultically blaming free labor and industry for all their problems of idleness, they have enlisted their aid in working out a solution that is fair to all concerned. Both systems have organized their prison industries as a manufacturing corporation, and have on the boards of directors representatives of labor, industry, retailers and

consumers, agriculture and the general public. The federal system produces goods for sale to government departments and services only, and California for state departments and agencies.

As to the problem, "Do our prisons cost too much," it is pointed out by M. E. Alexander in an article of the same title, that one of the most costly aspects of prisons is the widespread failure to provide productive employment for prisoners. He continues, that prisoners should contribute to their support to the greatest possible degree, because this idleness in American prisons costs the taxpayers millions of dollars annually. The same consideration I can also find in "Saving Prison Waste" by R. E. McGee. He discusses of the most obvious types of prison waste, and puts emphasis on the waste of the time and energy of thousands of human beings who could produce and, by producing, reduce the public fiscal burden. Their assertion is connected only with the so-called self-supporting system in prisons. J. V. Bennett refers in his "Evaluating a Prison" to the cost per prisoner per day for the ordinary prison. According to a number of samplings shown by him, omitting hospitals for the criminal insane, women's institutions, and small prisons of less than three hundred, it is \$0.655 to \$4.80. Then, putting emphasis on a self-supporting system he shows that as a matter of fact there are a few prisons that are actually self-supporting or very close to being on a self-sustaining basis. But we must be conscious here of two problems. One problem is that a self-supporting system in prisons is taken into consideration mainly because of the need for decreasing the fiscal burden of taxpayers. However, that system should, at the same time, produce some improvements for the prisoners. Secondly, it is worth while to point out here that heavy restrictions were imposed upon a self-supporting system in prisons because of

political activity aimed at eliminating the competition of prison labor with free labor. Prisoners, in other words, should contribute to their support to the greatest possible degree consistent with a philosophy which does not permit exploitation.

Be all this as it may, the blunt question we must ask ourselves is, What can we do about it? R. A. McGee introduces, briefly, a program for the State of California in 1947. This presented a multitude of problems, not the least of which was how to develop employment for several thousand inmates in the face of a long history of active and rather effective opposition to the expansion of prison enterprises within the state. Acting on the theory that the forces at work in the state which had opposed prisoner employment ought to assume a positive responsibility for a government problem to which they themselves had contributed, a small conference of leaders of labor and industry was called by the Governor. They were willing to recognize the problem, but expressed fear that the proposed industries, by what they called "unlimited financial resources of the state", might grow into a socialistic Frankenstein. After a long series of conferences a law was enacted which created a Correctional Industries Commission. The Commission was made up of two representatives of industry, two of organized labor, one of agriculture and one member of the general public. The law emphasized that the Commission should find practical ways to eliminate unnecessary idleness and to provide diversified work activities for the prisoners. To carry into effect successfully sth vital and difficult responsibility requires continuing cooperative relationships with labor and industry. Thus, many organizations were established. With adequate co-operative relationships such as stated above, co-operative services through state committees should

be noted. The next important problem lies in establishing one of the most practical and understandable tests of rehabilitation, by which satisfactory performance in a suitable job is expected. The solution of that prison labor problem, therefore, consists of the integration of the prison vocational training with work experience in a prison productive enterprise and with placement opportunities in free society. Acting jointly on this conviction, the directors of three state agencies appointed a State Coordinating Committee which functioned in accordance with a specific inter-agency agreement. The provisions of this agreement pointed clearly to the fact that there are certain major ends in the rehabilitation of the prisoner which must be achieved if the prison labor problem is to be solved. These ends are:

- (1) Adjusting the prisoner to useful living in prison, with hope for a better life in the future.
- (2) Providing meaningful employment so that the prisoner will not feel he is a forgotten man.
- (3) Assigning the prisoner to a job in a prison production enterprise.
- (4) Securing for the prisoner, on release, placement which will permit him to make the maximum use of his institutional training.
- (5) Developing an understanding and helpful attitude on the part of the public.

Finally, it should be emphasized that the co-operation of labor and industry went so far beyond the negative recognition of the need for the co-operation to the establishment of the most practical methods through the trade advisory committees. In effect, mechanization in prisons has been established principally by the co-operation of organizations with the help of

state agencies and the public. The very co-operation of organizations had provided ways but for which prisoners might not have acquired training, and good work habits. The severity of the problems of idleness in the state prisons tends to fluctuate with the economic cycle. When there is full employment, labor is less concerned about the alleged competition of prison labor. In periods of economic depression there is more public resistance to prison labor. In this sense, the solution in California does not necessarily reveal a widely-accepted fundamental way.

In Japan the committee to amend prison laws has unsuccessfully tried several times to mechanize prisons. Unsound and often irrational as the opposition is in terms of the general public welfare, it has had its way to a large extent, because the public has not been interested and because prison administrators have been almost helpless in the face of the potency of the forces arrayed against them. The only hope lies in a continuous public relations effort with the hope of gaining co-operation. Prison industry must develop friends and supporters in labor and in industry and this can not be done in any way other than through personnel contacts and a co-operative attitude. The public should recognize that perhaps more important than the direct and immediate costs, are the unmeasurable indirect costs which result from the deteriorating effects of idleness in prisons. In most prisons, maintenance, farming, and other training activities cannot provide useful work for prisoners. They cannot achieve the major objective of having prisoners acquire suitable techniques which will be indispensable to maintaining themselves in free society, because there is too much discrepancy between primitive services in prisons and mechanization in a free society. Therefore, in order to cope best with our present requirements of penal philosophy, the

state-use system of industry in prisons should be generally accepted. That system is to supply a reasonable proportion of diversified products used by government agencies. So long as prison industry is confined to the state-use system, self-interested groups should not oppose prison industrial programs and in reality the state-use system is least objectionable to self-interested groups.

Next, the problems of short-sentence will be briefly taken up: English courts don't favor very long sentences. In 1950, out of 27,703 men who received sentences of imprisonment on conviction only 2.6 per cent. had over three years, and thirty-eight men over seven years. While this might be in itself a favorable factor for good prison administration, there are also disadvantages in useless short sentences which now constitute an internationally recognized problem. In the same year, 70.7 per cent. had sentences of not more than six months. Japan has been suffering from the same tendency. One of the most outstanding characteristics of Japanese criminal law should be noted: Japanese criminal law leaves a great deal to the discretion of the individual judge because of the great influence of the modern school. An example is the provision for murder or manslaughter permitting capital punishment, imprisonment for life, or imprisonment for not more than 15 years but no less than 3 years. Thus, judges must take into consideration the degree and kind of crime in question when passing sentence. Because the long history of the administration of justice has set a pattern for sentencing based on criminal liability, the sentence is generally kept within this pattern, while the classical school has incessantly called such a system the second arbitrary punishment similar to that under medieval law. An article by a Japanese scholar concerning the actual status of sentence in Japan shows that sentences have gradually become lighter,



and at present are likely to break below the legally definite minimum on account of extenuating circumstances. In other words, problems of the short-sentence are nowadays a subject of great significance in Japan. It is universally recognized today that short prison terms present serious inconveniences from social, economic, and familial point of view. Here the problem of mutual contamination arises which is produced by the promiscuity resulting from imprisonment in common. It applies particularly to imprisonment for short sentence, when it is said that prisons are not places to which criminals are sent but places from which criminals come. The first attempts to avoid mutual contamination produced solitary confinement. But while cellular isolation can prevent harmful contacts between prisoners, it is powerless to avoid certain other consequences, such as social rejection and loss of employment. Besides, a regime so uniform contradicts modern tendencies toward individualization of treatment. For these reasons, the experiment in France would be conducive to a better handling of the execution of short sentences. Once the sentence has been imposed, the authority responsible for its execution (the state prosecutor) requests opinions from the presiding judge of the sentencing courts and the magistrate who is chairman of the discharged prisoner's aid committee on the advisability of having the sentenced prisoner serve the term immediately. Armed with these opinions and the result of a social investigation, the prosecutor decides either to order the prompt execution of the sentence or to defer it indefinitely. If the prosecutor holds that the sentence should be executed he so informs the chairman of the aid committee, who then chooses one of the following methods: commitment to solitary confinement, placement in an exterior workshop, or commitment to a regime of semi-freedom. In each

case the offender undergoes the particular mode of execution as distinguished from ordinal execution. In France the state prosecutor may consider that, in the interest of the offender as well as of society, there is an advantage in having him avoid all contact with a prison in order to save his job, his place in his family, and if possible his social status. In that case the execution of the sentence is postponed, and the chairman of the aid committee, after written acceptance by the offender, appoints a delegate charged with assisting him, supervising his activities, and reporting anything of a nature to cause a modification or cancellation of the order. This situation definitely appears as a form of probation.

In Sweden the thinking on the problems in prison took a concise and purposive form in the plan for the reform of the treatment of offenders which was drawn up in 1934 by the then Minister of Justice, Karl J. Schlyter. This plan involved the reformation of fines. Fines constitute about 90 per cent. of the punishments in Sweden. In former years, unpaid fines were transformed into imprisonment according to a fixed scale. For instance, eight days' imprisonment equaled a fine of a hundred Kronor (about twenty dollars). The number of persons committed for non-payment of fines ran to about 12,000 or 13,000 a year during the early 1930s. Schlyter's reform of this system, begun in 1931 and completed in 1937, was based on the idea that if the court punishes by a fine, it is to remain a fine and must be collected. The following changes were introduced to achieve this end. First of all, the fine itself was democratized by scaling its amount to the offender's capacity to pay. This is now being done by fixing the fine at a given number of day-fines. The number of days is the same for poor or rich, but the amount of the fine varies with the offender's economic situation. Also, it is possible

to pay the fine in instalments. Nobody is put in jail any more because he is too poor to pay a fine. The fine could involve the same problem as the short-sentence—mutual contamination—if the fine is transformed into imprisonment because of non-payment. The reform of fines in Sweden was based on the motto: “Depopulate the prisons” but, at the same time, it served to avoid mutual contamination. In Japan, the suspended execution of fines was undertaken as a postwar reform, although Japan was suffering from related technical problems. The reform disregarded a number of these problems, but granted the suspension of fines on the ground that imprisonment and fines should equally be subject to suspension of execution.

Finally, the suspended sentence in Sweden should be taken up as a substitute for imprisonment. Gradually the use of the suspended sentence has been extended to include more and more offenders. In 1939, the courts were granted power to suspend the execution of sentences of hard labor under a year and of simple imprisonment under two years. The recipient had to serve that sentence, however, if he had committed a new crime or violated the rules involved. In addition, a form new to Sweden was introduced, namely, the Anglo-Saxon suspension of the imposition of a sentence after conviction. In connection with either form, the court may order probation and fix its conditions. Torsten Eriksson says that in any comparison with other countries with respect to the scope of the suspended sentence, it must be recalled that punishment for theft, fraud, and other property crimes is milder in Sweden than in most countries. In Japan we have no suspension of the imposition of a sentence. But the system of the suspension of execution has functioned very long and was begun at the beginning of this century. Particularly the active function of the waiver of prosecution must be emphasized. Concerning

the waiver of prosecution, however, Japan is lacking in after-care. Of course, the waiver of prosecution of youthful offenders can be compared with the legislation of 1944 of the same in Sweden. As the postwar reforms of the suspended sentence in Japan, courts were permitted to re-pass the suspended sentence upon those who committed a new crime during the period of the suspension, and courts could order probation in connection with the suspension.

Prison Reform is a continuous and uninterrupted task. The history of penal institutions is but the recital of a constant evolution of ideas concerning the basis and the means of administering different punishments, especially that of imprisonment, which has remained the characteristic punishment of modern times. This process of evolution has not ended in any country. Nowhere have penologists declared themselves satisfied. The reform movement, some aspects of which I have tried to describe, is still in progress. Basically, recent developments undoubtedly tend to render prison regimes more humane and give them more possibilities for education. They make prisons less rigid, and in place of rigid prisons, stress the new idea of reeducation. Reeducation must be based upon individualization in prisons, which is opposed to institutionalization. Individualization means carrying out the ideal of classification. I understand, that a simple prison administrator can only tread gingerly when he approaches a problem about which it has been possible to state that the indeterminacy of human personality makes scientific truth about prisoners impossible and also that the most obvious obstacles to the introduction and carrying out of the ideals of classification are the lack of comprehension of human nature and the absence of definite and certain methods for the diagnosis and treatment of personality defects in the inmates of prisons. Nevertheless,

since 1950 the idea of the necessity or utility of scientific observation of an offender, either for the purpose of sentencing him or for the purpose of his treatment, has been affirmed in five international conventions. Here, we should recollect the famous motto "What should be penalized, is not a crime but a criminal." I shall take up in turn each problem: (1) classification, which expresses concretely the administration of punishment based on scientific method, (2) probation, on which scientific classification must be based, (3) open prison and parole each of which implies the important step during the reeducation in prisons.

In America the term "classification" is generally used to describe the arrangement to provide for each prisoner a program of treatment and training within the institution best suited to his individual needs. The English meaning is different. Here it means the division of all prisoners into classes or groups with two purposes: first, to prevent contamination; second, to facilitate the provision of suitable treatment and training. The matter of interest here is the classification of convicted persons, but there is an initial separation into three primary categories — untried civil, and convicted. It has already been noted that the process of classification begins with the sentence of the court, since different forms of sentence will result in different forms of treatment in different types of institution. For prisoners sentenced to imprisonment, the system is based on divisions by two vertical lines and two horizontal lines. The vertical classes are the young prisoners class, the star class (first times, more or less) and the ordinary class. The horizontal divisions are separated according to the length of sentence. It will be observed that this system calls for a full classification of prisons as well as of prisoners. In Belgium, a preliminary classification was made on the basis of the crime committed.

This was only a first step, and contradictory to the principles of individualized treatment. Although it was justified by the necessity for clearing the ground and using summary methods, the available means were few. In Sweden, beginning with 1954, the remedy for the small prisons has been sought in the division of all institutions into seven groups or districts. The largest and best-equipped institution in each becomes the central institution. A number of smaller institutions are attached to it. Classification committees are found in all institutions. Japan is divided into eight districts. Each district has an agency charged with supervising the administration of imprisonment within the district and being responsible directly to the Department of Justice. Within each district, the major attention of the classification system is paid to prisons rather than prisoners. It is somewhat like the classification in England and based on the classification in Sweden.

In the process of the enforcement of criminal law, the conflict of powers between the criminal courts and the administrative bodies cannot be denied, from both theoretical and practical viewpoints. It has led at last to either restrictions or expansions of the role of the judge. As regards the former way, the function of the judge would end with the formal finding of guilt, and the imposition of the sentence would be left to special agencies. They would be just like the treatment tribunals in Finland or the adult authority in California. As a matter of fact, as there are those who fear an abuse of power by the Prison Administration, some legislations are proceeding toward a participation by the judge in the execution of the sentence as a "supervisory judge" like in Italy or in France.

"Substitutes for Imprisonment" by W. C. Turnbladh can be appreciated as a clue to the problem of presentence probation. Although it is the judge's

responsibility to determine what disposition will prevent reoccurrence of criminal behavior in the individual before him, he cannot categorize all offenders, nor can he find a solution in broad generalizations or platitudes. Thus, the term of commitment stems not from the characteristics of the defendant, but from other factors, usually the nature of the offense or the strength or weakness of the case against him. There are other difficulties. Since over 80 per cent of the convictions for major offenses are based on a plea of guilt, the judge, in most instances, does not have even the information about the offense itself which might be brought out in the course of the trial. The statutes of California, Michigan, Colorado, New York, Massachusetts or Rhode Island require, in all or some felony cases, that the court shall order an investigation by a probation officer. In New Jersey approximately 70 per cent of all felony offenders are sentenced on the basis of a presentence investigation by a probation officer. The function of a presentence investigation is, then, and must be far broader than investigation limited to only those offenders likely to be eligible for probation as a disposition. The lack of presentence investigation makes it difficult for a judge to place on probation deserving defendants. However, it has not been possible in Japan to introduce a presentence examination or even probation. Two major reasons may be pointed out. First, as in France, there is the classical school's fear that such a system would be based upon indefinite sentences, relative or absolute, for granting and effectuating the presentence investigation, and it might have the result that a guarantee of criminal's rights against arbitrary administration is disregarded. In order to quiet scruples of this kind, the modern school recommends the presentence investigation to be based upon scientific means (Ref. "Correctional Institution Personnel—Amateurs or Professionals?" by A. A. Evans). Nevertheless,

there remains still another question, particularly in connection with this. The fundamental proposition of the classical school is based upon the principle of each act liability (Einzel-Tat-Schuld). The modern school puts emphasis on the criminal rather than on the crime, and the presentence investigation can serve this objective. In other words, the modern school regards each act as a symptom of the criminal personality. This theory apparently contradicts the principle of act liability. Therefore, the classical school will not recognize and follow the modern school unless this contradiction is resolved. The theory that punishment is different from security measures and that punishment must be based upon (legal or moral) liability. Punishment as liability is undeniable proposition of the classical school. My own theory will be developed later.

Parole should be something more than a mere legal escape route to the outside world. The Hague Congress formulated the problem correctly when it affirmed that the protection of society against recidivism requires the integration of conditional release in the execution of penal imprisonment. This is the manner in which we must view parole, not as an end in itself, but only as the last phase of the punishment, which then ceases to remove freedom and merely restricts it. In an ideal system, the prisoner would be granted parole at the moment when both he and the community could profit most by such a step — taking into account the limitations of the law and the sentence, the effect of institutional life, and the prospect of social rehabilitation. In France, the most important conditions are those that concern placement under the supervision and guardianship of aid committees, charged, with cooperation with social service units, and with the task of coordinating the activities of private agencies.

Swedish parole legislation was reformed in 1943. Two forms of parole



were instituted, one mandatory when fivesixths of a term of not less than six months had been served, and the other discretionary, when two-thirds of a term of not less than eight months had been completed. Discretionary parole cannot be granted unless certain other prerequisites exist.

The California Department of Corrections and the Adult Authority are taking a courageous and significant step forward in testing the validity of intensive supervision in parole, an efficient community correctional service. Fourteen experienced officers have been selected and assigned throughout the state to provide special assistance to newly released men. Each of these officers supervises just fifteen parolees for about three months after release, which is the period when the parolee is most likely to experience confusion and emotional distress. W. C. Turnbladh asserts that the realistic appraisal of this project should be the basis of all parole planning.

Of all the methods by which a prison regime may hope to inculcate self-respect and self-responsibility and in other ways prepare the prisoners for normal life in society, the open institution appears to be proving itself the most effective. Before the war England had only one open prison in the strict sense. At present, out of twenty-one Borstals, ten are open. In addition three closed prisons have satellite open camps. Here, the experience of the "Battle of Coal" in Belgium should be noted. War time collaborators were put to work for private contractors or in the coal mines. This practice led to an initial modification of prison labor conditions in Belgium, and in a sense, it fulfilled the same function as the open prison. However, as an example of the open prison there is none more courageous than Chino prison in California. In 1938, after a serious disturbance at San Quentin prison, the intransigent prison board was removed. With the appointment of a new

board, the way was opened to a more reasonable attitude toward a minimum security institution. "The open Institution," an excellent article by K. J. Scudder is concerned with the process of the establishment and the actual status of the Chino prison. The open prison puts emphasis on freedom of choice, acceptance of responsibility while in prison, and preparation for return to community life. There can be no regeneration except in freedom. The rehabilitation must come from within the individual and not through coercion. In the past several states have made real progress in the constitution of open prisons. Seagoville (Texas) or Walkwill (New York) are splendid institutions.

In Japan one of the postwar reforms was an attempt to construct open prisons. However, the number actually constructed is not worth mentioning. The principal difference between a Japanese open prison and one in America is that Japan limits those eligible to be sent to open prisons to youthful Prisoners who have served most of their sentence with good merit.

The various systems in the administration of punishment stated above undoubtedly result from the theories of the modern school. It does not emphasize crime as an action — it looks at the future of the criminals. It does not take into consideration the past so that it has the effect of disapproving of the criminal liability principle. On the other hand, the classical school puts emphasis on crime itself. It takes into account the past. Assuredly, in the process of the administration of punishment, the value and effect of re-education is not to be disregarded. However, this is rather incidental for the classical school, since the classical school bases its theory on the principle of liability which, in turn, is based on the act itself. The value and effect of re-education is so immaterial to this basic theory of the

classical school that strong attack and criticism by the modern school is unavoidable when it tries to deal with the systems developed by the modern school. This contradiction between the classical school and the modern school was demonstrated by the controversy between Liszt and Birkmeyer. In Japan, Dr. Takikawa, president of Kyoto University, recently emphasized this controversy in his article on the history of criminal law theory. I do not think that it would be proper for criminal law theory to draw only on the modern school, and to ignore the classical school. Although it depends on one's individual philosophy which school of criminal law theory is preferred, I think, it is a meaningless contradiction to speak of punishment without liability. While the value of security measures for dealing with certain persons cannot be disregarded, they have no place in the system of criminal law. Nevertheless the value and merit of most of the modern school systems developed for the administration of punishment cannot be denied even by the classical school. The classical school will insist on the principle of liability. This principle does not consist only of the vindictive function in punishment; it does not only hark back to the primitive definition of punishment. How should one deal with this dilemma arising in the contradictions between the theoretical and practical aspects of the classical school? The same kind of suffering could equally apply to the modern school, if they completely ignore the theory of criminal liability. The emphasis of the modern school on the need for reeducation as a treatment in prisons, if it would remain a simple generalization, is not sufficient to persuade the opposing school.

Finally, I will briefly refer to my own theory. Until quite modern times

the expression "criminal science," if there was one, was taken to mean no more than a study of criminal law. The nature and the method of criminal science at this stage are best illustrated by the well-known words, that "crime is not an entity in fact but an entity in law; it is not action but interaction." The personality of the delinquent, the origin of crime, the nature and the efficacy of punishment, the relationship between society and criminal justice—problems, which now constitute such an important part of criminal research—for many decades remained completely outside the scope of criminal science as then understood.

To take first the case of the delinquent himself. The advance made in the last half-century by allied sciences, which deal with the study of man, enable us to see a mistake made by the early investigators into the criminal personality. They examined only certain particular aspects of the personality and tried to show that the individual causation of crime exists in one of these aspects. To-day it is well known that the whole personality must be examined in all its manifestations and reactions. We must consider, for example, the contribution of heredity and we must ascertain the effects of any bodily abnormality or weakness, of any glandular peculiarity, and of any instability of mind, temperament or character. We must see what the individual's reactions are to external stimuli and impacts. That is to say, we must have recourse to the science of heredity, anatomy, physiology, psychology, pathology and the science of character in order to analyse what we may call the constitution of individual personality. Turning next to the second element in the study of the causation of crime, the social environment of the delinquent, it must be emphasized that this, too, as in the case of the personality, is a complex of different, but mutually interrelated

influences. We must, for example, seek to discover to what extent it is necessary to recognize as factors in crime such influence as climate, racial association, composition, density and distribution of population, nature of employment, economic conditions, class and group stratification, domestic and educational surroundings, general cultural influences, and political organization. All these are the elements which together make up the general structure of the wrongdoer's personality, on which crime is based. Personality, here, means briefly the psycho-physiological structure—experiences based upon hereditary elements. Thus, taking into consideration, the theory of criminal liability, I have developed the theory of culpability from the viewpoint of the wrongdoer's personality. There are not a few scholars, who stand by more or less the same kind of theory. To proceed in accordance with this theory we must first obtain the most complete and precise knowledge of the whole personality of the delinquent, and secondly we must ascertain to what extent and in what way his criminality can be explained by his personality. The first element could be called criminal biology, a branch of criminal science. It could ultimately open the way for the classical school to follow the new idea in the administration of punishment developed by the modern school. The second element, nevertheless, enables us to recognize the existence of criminal liability which is denied or less regarded by the modern school as a dogma of the classical school. That is to say, while the theory of criminal liability stems from and is monopolized by the classical school, it can also gain access to the modern school. Turning to other aspects, this theory is closely concerned with the theory of negligence. In Roman Law, generally speaking, only an act with intention (science dolo malo) is penalized. Ever since, in actual practice, "impetus", which should be less penalized

than "dolus", and, at the same time, "culpa" out of "casus" have been constituted. However, the concept of culpa means both negligence and recklessness which should be separated. In order to separate the two concepts, various principles are unsuccessfully tried—*Doctorina Bartori*, *Dolus in Gene re* or *Dolus Indirectus*. It was only in mediaeval Italian Law that the concept of negligence, comparable to the modern one, was developed.

However, this concept does not really include adequate reason why negligent conduct should be punishable. Some prevalent theories find the basis of the culpability of negligence in the will of wrongdoers, because criminal liability means liability of will. Other theories base liability on either the emotional factor or the element of understanding in wrongdoers. The third group of scholars, attempting to avoid the complexity in negligence, at last arrived at the theory that negligent acts should not be penalized. Jerome Hall, in particular, concludes: "Negligent harms may validly be brought within the range of corrective law; this is also defensible, within limits, in torts, but such harms should be entirely excluded from criminal law." Out of those complexities we draw the conclusion: It is validly understandable to avoid unconsciously the occurrence of harms prohibited by law, while conscious consideration effectuates it much more; it is, however, not possible and not desirable to pay attention all the time to everything surrounding us; it is, then, necessary and sufficient to recognize the fact; that one can unconsciously behave carefully when confronted with the imminently possible occurrence of certain harms. How would it be possible? Here, I think, the important key to solving the problem of negligence may be discovered in the theory of personality. Thus, the theory of negligence, which originally occupies nothing but a narrow corner in criminal liability, as criminal law does not necessarily

penalize all negligent acts, rationalizes the theory of criminal liability, opening the way to criminal biology. I think, the theory of criminal liability cannot survive by itself, but, in effect, it must gain support in criminology. A theory derived from the viewpoints of personality could resolve severe conflict of this sort. My space cannot permit me to explain this theory at length, as it needs much more explanation and rationalization. In effect, it could be recognized that this theory renders the new idea in the administration of punishment tenable and it could bring the end to the controversy between the classical school and the modern school, which has been assumed to be permanent.

However, would it not be contrary to the principle of liability? As I briefly stated above, criminal liability is recognized, insofar as criminality can be explained by personality; insofar as the relation between personality and action can be concerned; insofar as conduct is a manifest explanation of personality. Our theory, therefore, does not go so far beyond the principle of liability as to impose punishment on those who are legally innocent, on the ground that they are dangerous to society. The security measures, which deal with those persons, must be different from and not confused with punishment. Thus, in effect, new idea in the administration of punishment is taken into consideration to the greatest possible extent, so far as it is compatible with the theory of liability. In what system are these seemingly opposite extremes actually embodied?

Here emphasis should be put on presentence examination. In the process of the finding of guilt, judges are expected to follow the basis and ground of the classical school, that there is no crime without liability. Such an assertion can function as the important protection of the defendant against

society—against the arbitrary abuse of power. However, after a finding of guilt, the imposition of punishment should be excluded from the scope of the judge and entrusted to a special board. Then the problems namely whether relatively or absolutely indeterminate punishment is theoretically and practically more desirable, and whether or not a judge should be charged with a scope of supervision, are not so important. They are not problematic, so long as the system of presentence examination is generally recognized. Our theory spans the gap between the opposite extremes with the bridge based upon the criminal biology on the one hand and upon criminal liability on the other hand.

In Japan, the strong resistance of the classical school against the new idea in the administration of punishment has rendered the practice confused. In spite of reforms in the administration of punishment, it remains negative, and does not validly meet the idea. I will prove this, referring to the system of parole in Japan.

Before proceeding to this subject, it would be significant to summarize the history of the administration of punishment in Japan. It begins with the prison reform movement in 1872, under the strong influence of both England and America. This influence was embodied in the architectural style of some prisons constructed upon the Pennsylvania system. Later the influence of Continental Law, was paramount until the new idea of indeterminate punishment and of the progressive system or reeducation in prisons was asserted by K. Tomeoka on his return from America. This idea validly dominated the new system in the administration of punishment which developed in close connection with the special treatment of youthful prisoners. The postwar reform was completely subject to the overwhelming



influence of the idea from America. Meanwhile the traditional idea based, in effect, on continental law survived to some extent. The postwar reform, as already briefly stated above, is concerned with the treatment of youthful prisoners and the overwhelming import of probation, but it does not in the least touch on treatment in prisons itself. With respect to the treatment of youthful prisoners the establishment of special courts should be emphasized. Youthful cases in the past have so far been dealt with by an administrative boards and not by the courts. Under the influence of the new Constitution, courts have taken the place of administrative boards, separate, however, from ordinal courts. The other major reasons leading to establishment of the new youth law of 1948, should not be disregarded. That is to say, Japan was struggling with a vast number of youthful cases after the war, due to the social and spiritual conditions at the time. This law shows various important trends which are worth while explaining. Besides the few points stated above, it also includes the following provisions: (1) the youth court is empowered to determine whether a certain case should be committed to the special procedure of the youthful court or to ordinary criminal procedure. (2) The contents of the protective disposition imposed by the youth court are arranged and simplified. (3) In order to examine youthful cases, scientific investigation is emphasized including the establishment of special facilities.

The prewar system of probation was so insufficient as to deserve explanation. On the other hand, the number of parole or suspension of execution was remarkable. An illustration will be shown by the statistics on hand. Jan. to June 1948, 22%; July to Dec. 1948, 23, 2%; Jan. to June 1949, 23,9%; July to Dec. 1949, 22,4%; Jan. to June 1950, 18,5%; July to Dec. 1950, 14,2%. This percentage is the rate of those who have been recommitted

to prison for new crimes during the parole. Of those granted parole the per cent punished again is remarkably high. These are only the rates in one prison in Tokyo, but the conclusion would be similar in the whole country.

Parolees constitute more than half of all prisoners. The same statistics are shown in turn by years: 489/895; 629/1013; 460/796; 498/918; 340/941; 556/1181.

Next, we shall take into consideration the rates of suspension of execution in three big cities last year. Tokyo 41%; Osaka 33%; Fukuoka 37%; average rate in the whole country 41%. The statistics show that the avowedly major objective of the administration of punishment would be basically corrupted if parolees would all be at large without any system of probation. Thus, legislation concerning these problems was set forward as a postwar reform.

The legislation of probation for those granted parole and the legislation of probation for those whose execution of punishment is suspended should be noted. The former was established in 1949 and the latter in 1954.

Japan so far is completely lacking in probation for those with suspended sentence, except for youthful persons for whom an insufficient probation system has been established. The former law of 1949 was concerned only with those under the age of 18 years the execution of whose sentence was suspended. In 1953 the partial amendment of criminal law referred to the probation of those whose new punishment during the suspension was again suspended. In 1954, the system of discretionary probation for those first suspended was established, as well as legislation of probation for those suspended not included in the legislation of 1949. The conditions for probation which those suspended must follow are less strict than those under probation by parole. The cancellation which could result from the violation of conditions imposed upon the parolee, is only discretionary, depending on inadmissible circumstances. Then, what

rate is factually shown of those submitted to probation during suspension? It is but 7.5% in the whole country. This is taken to result both from the judges lack of concern with probation, and the dilemma between criminal trial and the administration of punishment which is recognized as an exigent problem to be solved. I will later refer to this matter, which I think could apparently reveal the weak points in criminal trial briefly suggested above.

A special institution has been established to deal with probation, for parole and for suspension. The functionaries are experts and aids. Their job is, however, limited to the execution of probation, and is not concerned with the determination of parole itself. The special committee for the determination of parole is not necessarily made up of experts. Such an insufficient committee accounts for the serious problem for parole, which contradicts rather than pursues, the idea. In other words, the system of parole would not be in compliance with the essential in the new idea, but only incidentally, cope with the motto "Depopulate the prisons"? I will now take up the statistics in our island (Kyushu) to illustrate a common tendency in the whole country. Kyushu island an area of 42,044 square k. m. and a population of about thirteen million, has a population of 14,401 in prisons. This population is considered to be overcrowded by about four thousand inmates more than the legally fixed capacity of imprisonment. Particularly during the confused times after the war, the problem of overcrowded prisons was very serious. The statistics in the past four years should be taken into consideration. The population of prisons in the whole country is: 1950, 112,657; 1951, 105,836; 1952, 100,309; 1953, 87,441. In spite of a legal size of 2 square m. per prisoner, which would not be sufficient, the recent status is exceedingly below it. Criminal law provides several conditions as prerequisites of parole. Among

them the following condition is required: two-thirds of the term of imprisonment must have been served. The paroling authority should, for instance, take into account the circumstance of crime, the offender's previous conduct, his conduct in the institution, and the situation facing him on release. They are, however, all disregarded. Factually, so far as the least necessary prerequisite of term was completed, parole was generally given, irrespective of other conditions. This practice amounts to and is nothing other than a project to 'Depopulate the prisons.'

This contradicts and distorts the idea and significance of parole. It was beyond dispute, that, then, the situation confronting the prisoner on release, was not given attention at all. It should be worth taking into consideration where the import of parole exists. In Continental Law parole is not necessarily concerned with the so-called progressive system, while in Anglo-American Law, on the contrary, it is closely related to progressive system. In Japan, following broadly the progressive system, parole must mean the ultimate stage of the process of reeducation. The lack of the significance of parole in practice accounts for its automatic function. Did the postwar reform, based on the recognition of the meaning of probation, provide an administration of punishment such as ground in the criminal ideal? In 1954, out of a population of 63,589 in prisons 32,882 prisoners were given parole. I will show the rates of parolee by years: 1946, 28,117; 1947, 33,803, 1948, 42,609; 1949, 40,134; 1950, 42,191; 1951, 41,665; 1952, 46,203; 1953, 33,403. Since 1949, when the legislation of probation was first enacted, no change in the granting of parole could be realized, because the authorities were only interested in the depopulation of prisons.

This conclusion would be much more understandable, if the, relation

between the rates of those suspended and those on probation is examined. What would it illustrate, if only 7.5% are committed to probation out of the suspended? In effect, judges as well as administrators of punishment have not been accustomed to scientific investigation. It is, thus, likely to lead them to account less for the significance of scientific examination, which would encourage the role of probation.

They say that in America over 80% of the convictions for major offences are based upon plea of guilt. Then, presentence examination would be necessarily required. In Japan, on account of the different system, which recognizes a court sentence-inflicting agency, it would be validly confronted with strong opposition, if presentence examination was enforced by statute. Can judges actually take the place of presentence examination in the process of trial? The chief characteristics of the new Code of Criminal Procedure since 1949 should be, here, noteworthy. They are: the abolition of the preliminary examination system, the adoption of the principle of proceedings centering around the public trial in the first instance, the adoption of rigid rules of evidence and the strengthening of the principle of direct examination, the promotion of the principle of equality of both parties to litigation, etc., to the effect that the role of judge is more or less that of a sort of umpire. Therefore, it would be difficult for judges to have information about the offender, unless the prosecutor actively brings it out in the course of trial. However the principles and system of the code the classified process of proof and so on, restrain prosecutors from complying with such a requisitions, actually they do not help the judges and regard themselves only as accusers. While, thus, presentence examination should be required, it is not put into practice. The major reason for this exists, as stated above, in the long

tradition, of continental law in Japan. The most important cause should not be underestimated. Although probation, reeducation in general, would factually effectuate the idea of punishment to protect society; however then remains the judges' fear that the new idea in the administration of punishment might infringe on prisoners' rights. Such scruples are factually embodied in the process of the infliction of sentence. Granting the suspension of execution, judges used to be caught in the following doubt, the suspension with probation is more disadvantageous and prejudicial to the suspended, because it imposes on the suspended special conditions and incubuses. Such a fear contradicts and rather, interrupts the new idea of probation. Insofar as the complete break with the classical thought and the Copernicus revolution of classical thought are not complete the new idea in the administration of punishment is always exposed to obstacles in practice. The classical school has, of necessity, an unconditionally true aspect, but it must realize its own limits. The modern school cannot unconditionally be supported, but it has served the practice of administration of punishment to a great measure. Here must occur a reconciliation. The classical school should recollect the motto "Imprisonment is as a punishment but not for punishment." The modern school should not ignore the aspect of punishment, which is unavoidably survive in prisons. An automatic adoption of new systems with no concern for fundamental values brings many disadvantages.

That the recent practice in the administration of punishment was to some extent successful, can be proved by two kinds of statistics. The population of prisoners in Japan has gradually decreased from 1950 to 1953; by years, 1950, 80,589; 1951, 78,441; 1952, 63,278, 1953, 64,558. The most major reason, I suppose, lies in the active use of parole, which has been encouraged by the new system

of probation. The rates of recidivism, too, should at the same time be taken into account; by years, 37.7%; 37.9%; 34%; 23.4%. In 1954, its rates were reduced to 8.6%. How should this satisfactory progress, the gradual decrease of recidivism in the past few years, be understood? How should the rapid decrease of recidivists in Japan be interpreted? The rates of recidivism before the war generally fluctuated between 30% and 45%. I suppose, this illustrates the effect of parole under probation. Parenthetically, I introduce the rates of the revokes of parole on the grounds that parolees violate parole conditions. By years, 1947, 5.52%; 1948, 6.72% 1949, 9.39%; 1950, 8.52%, 1951. 6.69%. The following statistics are concerned with a famous prison in Tokyo.

	imprisonment within half year	within a year	Total
Jan.-June 1948 (discharge after serving sentence) (parole)	32.3% 22.0%	8.8% 8.2%	41.1% 30.2%
July-Dec. 1948	31.5% 23.2%	9.6% 7.4%	41.1% 30.6%
Jan.-June 1949	34.8% 23.9%	8.0% 7.3%	42.8% 31.3%
July-Dec, 1949	36.1% 22.4%	5.2% 6.0%	41.4% 26.5%
Jan.-June 1950	30.2% 18.5%	8.4% 7.0%	38.7% 25.5%
July-Dec. 1950	29.3% 14.2%	8.2% 5.7%	37.6% 19.9%

All the statistic, stated above, could be interpreted as follows: (1) since July 1949 (when the law of probation was enacted), the revoke of parole has increased, which may be the result of the active supervision of probation officers. (2) At the same time the rates of recidivism have decreased. Although the same rates of those ordinarily discharged have followed the

same tendency; the decrease of the former is remarkable. They all mean that parole under probation is meaningful and effective. If the concern about the meaning of probation is validly realized and is placed under scientific investigation, a rapid decrease of recidivism could be expected. Could the same tendency of decrease be shown in the future, in Japan where the scientific examination is accounted less, such as stated above?

In effect, the persistent resistance of the classical school stands in Japan in the way of the establishment of the new ideas of the modern school. In the administration of punishment, Japan is now confronted with many serious problems—presentence investigation, indeterminate punishment, defective detention and prison labor conditions. Unless it can be shown that the new ideas of the modern school theoretically could be to some extent reconciled with the criminal liability theory, no progress can be made. Traditionally, courts in Japan have properly been regarded as a guarantee of public liberties against arbitrary administration, and it is reasonable, because the rights of the individual must be put ahead of the protection of society in Japan, where bureaucratism has remarkably and unexpectedly influenced the recent deplorable history.

However, I don't think that a reconciliation, even a theoretical one, is impossible. In this paper I, while upholding the classical theories, have tried to point out the advantage and possibilities of the new prison systems which have been developed by the modern school.