MODERN PENALITY:
A Study of the Formation and Significance of Penal-Welfare Strategies

DAVID W. GARLAND

Ph.D.

University of Edinburgh

1983

I, David Garland, declare that the dissertation which follows is my own original work, and has not previously been presented for any other degree.

D. Garland

ACKNOWLEDGEMENTS

The present work has taken almost five years to complete, during which time I have run up a number of personal and intellectual debts which, if they cannot be repaid, should at least be acknowledged. The Department of Criminology at Edinburgh has been an excellent institution in which to work, both in regard to the intellectual quality of its staff and students and to the relaxed and friendly atmosphere in which it conducts its affairs. The interest and constant encouragement of Derick McClintock and Kit Carson have been especially helpful in making this dissertation seem worthwhile - and whatever the truth of that view, it would seem to be a fiction necessary to the completion of any such task.

Peter Young has been, quite simply, the best supervisor possible for a project such as this. His own work and ideas stimulated my initial interest in this area, and his criticism of my work has always been incisive, stimulating and helpful. His sociological knowledge and analytical abilities have been freely shared with his colleagues and friends, and I am not alone in having benefitted greatly from this.

Thanks are also due to Lydia Lawson for her excellent work in the preparation and typing of the finished dissertation and to the staff of the National Library of Scotland for their considerable help over the years. Finally I would like to thank Anne Jowett for her help in making the task of writing this thesis a pleasure as well as a desire.

ABSTRACT OF THESIS (Regulation 6.9)

Name of Candidate DAVID WILLIAM GARLAND

Address

Degree Ph.D. *Date* November 1983

Title of Thesis Modern Penality: A Study of the Formation and Significance of Penal-Welfare Strategies

This thesis argues that the modern system of penal regulation is significantly different from that of the Victorian period and attempts to explain the transformation which brought about these differences. Its particular focus is upon those sanctions and representations which combine penal and welfare elements and the political and penological positions upon which they depend.

It is argued that the development of penal-welfare strategies is related to parallel changes which took place in other social institutions in the 1900s, and the thesis investigates the conditions which provoked these transformations. Having identified these transformative conditions, the dissertation proceeds to describe the possible forms of change that were available by looking at the range of programmes of reform which existed in that period.

After an analysis of these programmes and their social implications, the thesis reconstructs the actual process whereby these programmes were either rejected, compromised or adopted in the realm of official discourse and institutional practice. The dissertation ends with an analysis of welfarist strategies in both the penal and social realms, and discusses the significance and effects of these in regard to the circumstances of the past and of the present.

Use this side only

TABLE OF CONTENTS

PREFACE

The following work poses two major questions, one historical and the other sociological. The first asks, how is penal change possible, and how does it come about? The second asks, what is the relationship which holds between "punishment" and "social structure", or rather, between forms of penality[1] and the forms of social organisation within which they operate. It sets about answering these questions - and a number of subsidiary ones such as the relation of theory to practice, and of knowledge to power - by reference to a concrete historical 'event', namely, the transformation of British penality which took place at the beginning of the present century.

This empirical approach is adopted, not through any distrust of theoretical abstraction, but rather out of respect for the limits of such theorisation, and a belief that theoretical work can only proceed pari passu with the development of a detailed and concrete knowledge of the field under study. Consequently, if this enterprise has been at all successful, it will necessarily be a contribution at the theoretical as well as the empirical levels of understanding and knowledge.

By choosing to study the transformation of penality which occurred in the early 1900s, it was hoped to achieve a number of objectives. First of all, it was thought that a focus upon this historical moment could illuminate the formation and development of 'penal-welfare strategies', a form of sanctioning and representation which has been of great importance in modern penality, and which has recently been put in question. It was hoped that an analysis of this formative period could clarify the political conditions and presuppositions upon which these strategies rest, and allow a deeper understanding of the present crisis in British penal policy.

Secondly, a focus of this kind seemed to allow an investigation of the way in which a new knowledge - namely, the 'science of criminology' - infiltrated and influenced the realm of official discourse and practices. It seemed to me that only through a concrete study could the subtlety and complexity of this process be adequately traced and reconstructed. In fact, it soon became clear that criminology was not the only new discourse which informed these penal changes, and that, moreover, the processes whereby 'theories' became 'practicable' were suffused through and through with political and ideological characteristics.

Finally, it was believed that such a study could illuminate the relationship between penality and other social institutions, given that both "punishment" and various other apparatuses (most notably the Poor Law) were subjected to transformation in this same period. In the event, the present study has clearly shown the necessity of conceiving penality in its relation to the 'external' social institutions which surround and support it. Indeed it will be argued that penal institutions are functionally, historically and ideologically conditioned by numerous other social relations and agencies, which are, in turn, supported and conditioned by the operation of penal institutions. I have argued elsewhere[2] that 'the penal' and 'the social' cannot be conceived of as separate and exclusive realms, since the two are both interpenetrating and interdependent. That theoretical position is substantiated again and again in the pages that follow.

As the dissertation proceeds it presents a number of different forms of argumentation and methods of analysis. The early sections are historical and comparative, while the central chapters of the thesis involve the reconstruction of a number of reform programmes and discourses which were operative in this historical process. These discourses, and their relation to historical and institutional

developments, are the subjects of the later chapters, which talk, therefore, of the relationship of theory to practice and of knowledge to power. In the course of these chapters, the analysis moves frequently from abstract, social analysis of institutions and their functioning, to detailed and often intensive investigation of texts, discourses and knowledges. This movement between levels is rather unusual and causes certain difficulties of balance and of exposition. However, it is believed that only through such an approach can one substantiate arguments about the influence of various discourses and ideologies in the construction of penal practice, or indeed, give evidence of the significance and effects of penality in the realms of politics, ideology and social organisation.

Chapter One sets up the issues at stake by identifying a radical difference between the forms of penal sanction and representation which are prevalent in the late Victorian period, and those which dominate in the modern era. Having established these differences, and the period in which this transformation came about, Chapter Two investigates the conditions which brought about the fact of penal change, and the forms which it adopted. This investigation involves an analysis of the social, political and ideological conditions which underpinned Victorian penality, and the process of their transformation, which began in the 1880s. Having traced the developments which disrupted the logic and functioning of the Victorian institutions, the thesis poses the question of how the new logics and patterns of modern penality came to be assembled. In Chapters Three, Four and Five a number of sources are identified as contributing to this new development, the major ones being the programmes of reform offered by criminology, eugenics, social work and social security.[3] These reform movements, and the discourses which they mobilised, are reconstructed and analysed in programmatic terms before describing in

Chapter Six their varying fortunes in the face of political and ideological resistance. The final two Chapters describe the eventual outcomes of these politico-discursive struggles, showing how the will to political power interrupted the logic of theoretical argument to produce the penality (and some of the versions of criminology) which we know today. The dissertation concludes with an analysis of the actual operation of penal-welfare strategies and the extent to which they achieved their penal and political objectives.

CHAPTER 1

Modern and Victorian Penality: The Differences

(1) Introduction

The general concern of this dissertation is to examine some of the fundamental features of the system of penality which operates in Britain today. In particular it is concerned with the 'penal-welfare' elements of that system - elements which have been strategically and ideologically crucial to penality in its modern form.[1]

Such an aim involves something other than a phenomenological description of the sanctioning practices, policy formulation and day to day decision-making which take place in modern penal institutions. It requires an exploration of the framework of assumptions, logics and objectives which supports these routine operations and allows them to exist as such. This framework clearly does not exist in the form of an explicit code or set of policy documents, nor does it reside in the theoretical formulations of any one school or any one science. Nevertheless it will be argued here that the practices of modern penality rest upon a determinate framework of objectives, techniques and discourses which in turn presupposes a specific field of political forces. A central objective of this work will be to describe this underlying generative structure, along with its political conditions; to show how it operates to fix the parameters of the penal complex; and to investigate its penal and social significance.

What is this underlying structure? How can we describe this entity which is inscribed in practices and decisions without being anywhere acknowledged, like the grammar of a language which is acted upon but rarely articulated? Perhaps the most effective way of

discerning the characteristics of this framework is to show what the phenomenon is by first of all demonstrating what it is not. A number of such methods are available - for example the "imaginative" production of logically possible alternatives as points of contrast, or else a more empirically controlled comparative method which can demonstrate differences with regard to other systems which do in fact exist. The method employed here, however, will be primarily historical. The structure or basic pattern of the modern system will be set in contrast with that which preceded it, thereby allowing a more precise and controlled form of comparability. Moreover an historical analysis has the advantage of providing the material for an examination of the original programmes, struggles and objectives which lie behind the formation of our present-day institutions, and give them their distinctive character.

Of course the investigation of these materials does not necessarily offer an"explanation" or even a privileged description of the present in terms of its "origins", since these originating projects and their objectives may since have been subjected to change, reconstruction, partial success or downright failure. Nonetheless the documents and sources which are available to us from the period of transition can produce important information. For example, they can reveal the competing ways in which the "penal problem" was variously formulated; the choices available between different objectives, institutions and techniques; the struggles and concerns which decided these choices, and the wider issues which were seen to be at stake in these calculations and struggles. It is these differences, choices and struggles between the 'old' and the 'new', between competing alternatives and social forces, which make this moment of transformation and reconstruction an important point of departure for

our analysis.

But where is this "moment of transformation" to be located? At which point did the "modern system" come into existence as an entity distinct from that which had gone before? Clearly the response to this question cannot be theoretically innocent since it presupposes the more general question of what specific features characterise the present system. To state when "modern penality" began is to know what modern penality <u>is</u>, and that question is one of the main issues at stake in this thesis. Consequently, the basis for our periodisation, and the arguments which support it, will not be presented now, but instead will be developed in the substance of the thesis and its exposition.

Nor is this simply a formal point emphasising the theoretical determination of historical periodisation. Other writers, concerned in their various ways with modern penality, have specified quite different historical moments at which the "present system" began. Thus the conventional penological understanding of the modern era as the "epoch of rehabilitation" puts its starting point just after the Second World War, when evangelical reform and paternalism gave way to a more technical form of social engineering.[2] Sociological writers such as Durkheim and Foucault on the other hand, locate the origins of the modern system - for both of them an origin signalled by the birth of the prison - much earlier, at the beginnings of industrialised, urban society;[3] while Marxist writers such as Rusche and Kirchheimer or Melossi and Pavarini equate the period of modern penality with that of the capitalist mode of production.[4] Other commentators such as Cohen, Scull and Mathiesen suggest a more recent origin inasmuch as they argue that the developments which have occurred over the last decade or so, especially the new "hidden discipline" of community

corrections, amount to a qualitatively new and different pattern of penality.[5] Clearly the longevity of the "present" and the way in which it is conceived, are far from uncontentious.

The thesis which will be argued here locates the actual formation of the present system in the brief period between the Gladstone Committee Report of 1895 and the start of the First World War in 1914. Its argument will be that during this period the various elements which together compose the basic structure of modern penality were first assembled in a distinctive pattern which is discontinuous with the Victorian system while being continuous with that of the present day. This is not to assert that there was some kind of total rupture in which the previous practices altogether disappeared to be replaced by an array of newly-invented institutions carrying no trace of their past.[6] Such "breaks" have little in common with the process of historical change. On the contrary, many of the sanctions, institutions, and practices which had existed within the Victorian system still survive and play an important role in the modern complex. Indeed even the new institutions which emerged in this period such as probation, Borstal, Preventive Detention and "individualisation" have obvious precursors and parallels in the previous period or even earlier. Nevertheless it will be argued that the pattern of penal sanctioning which was established in this period, with its new agencies, techniques, knowledges and institutions, amounted to a new structure of penality. This new structure displayed a distinctive pattern of sanctions, strategies and representations which ranged across an altered and extended domain. In particular, it involved a new logic of 'penal-welfare' which as we shall see, had profound consequences for the overall operations and representations of the penal complex. Within this new structure, surviving elements of the Victorian system such as

the prison, after-care or the fine, were subjected to internal transformations as well as being allocated a new position in the penal network.

The following section will begin to substantiate this proposition by identifying the various elements which make up each of those two penal networks, as well as the form of their internal organisation and interplay. Thereafter there will follow a preliminary consideration of the different logics and modes of operation which underpin each of these two structures. This contrast between the Victorian and Modern systems will take the form of a point by point comparison of elements, objectives and organisation rather than employing the more dramatic Foucauldian device of stark juxtoposition, which sets the symbolic essence of the 'old' against that of the 'new'.[7] While losing out on figurative effect, this form of exposition is perhaps better suited to maintaining empirical accuracy and balance. In fact the differences which mark off the modern penal complex from its Victorian antecedents become clearer and more pronounced by the middle of the twentieth century, but since a qualitative or structural transformation is being asserted, and not merely a gradual shift of direction or emphasis, it should be possible to demonstrate this using evidence from the transition period itself.

The following account of Victorian penality and the modern system which replaced it will form the general background to our analysis of the transformation which separates them. In the course of that analysis it will be necessary to examine specific practices and institutions in a detailed and thorough manner, but for this preliminary comparison, less detail is required. Instead a general overview of the two systems will be outlined, mentioning their major elements and characteristics in order that these may be kept in mind during the

more specialised analyses which follow. The system which will be described, in convenient shorthand, as "Victorian penality" is that one which had been assembled by the 1860s and remained in that same form until after 1895. The formative processes and conditions of existence of this system will not be dealt with except where they are clearly relevant to our analysis.

(2) The Late Victorian Penal System (1865–1895)

(a) The range of sanctions

The main penal sanctions which were legally authorised in the late nineteenth century for the punishment of offenders were as follows: (1) Death, (2) Penal servitude, (3) Imprisonment, (4) Detention in a Reformatory School, (5) Corporal punishment (whipping for adults, birching for juveniles), (6) Release on Recognizances, and (7) Payment of a fine. In addition to these, though not strictly classed as a "punishment" nor restricted to offenders, was (8) Detention in an Industrial School.

In terms of its frequency of use, the death penalty had diminished in importance since the beginning of the century. The range of capital offences had been greatly reduced by the reforms of the 1830s and both executions and commuted sentences of death had subsequently decreased in number during the years that followed.[8] The popular impact of the capital penalty was also transformed by the cessation of public ceremonies of execution in 1868, and although it retained its symbolic significance as the ultimate sanction, the judicial execution was, by the 1880s, a rare and infrequent event.

Corporal punishment, at least in the case of adults, was also a

rarely used sanction by this period. The Act of 1861 virtually abolished it as a judicial penalty for adults, after which it remained only for a few special offences such as shooting at the Sovereign, and for males convicted as incorrigible rogues under the Vagrancy Act of 1824. In 1863 the Garotters Act restored corporal punishment for robbery with violence, and Acts of 1898 and 1912 extended it to male persons convicted of offences related to immoral earnings and procuration. These curtainments of corporal punishment did not, however, apply to the birching of juvenile offenders which was regarded as a valuable alternative to imprisonment in a period when few others were available. The courts retained power to order the birching of boys under 14 convicted summarily of any indictable offence and for boys under 16 convicted of indictment of larceny, malicious damage and certain offences against the person.[9]

The generalised restriction of these punishments of the body was paralleled by an increasing reliance upon incarceration as the central mode of sanctioning employed against adult offenders, especially after the decline of transportation between the 1840s and 1867.[10] By the 1870s and 1880s the prison had become the "ordinary, mechanical punishment for every new offence created by the Legislature"[11] and it was routinely deployed throughout the whole range of statutory and common law offences and offenders, from the most trivial to the most serious.

"Imprisonment" is to be distinguished from "penal servitude" inasmuch as the former involved sentences of up to two years with or without hard labour (which after 1865 was uniformly enforced whether or not the court had explicitly ordered it) and was served in a local prison. "Penal servitude" on the other hand, was to be served in a convict prison such as Millbank or Pentonville and carried a minimum

term of five years (or seven years for a recidivist convict).[12] It also entailed a form of police supervision for those convicts who were released on "tickets of leave", although this supervision appears to have been somewhat uneven and irregular in enforcement, depending upon the practice of local police forces.[13]

Although the minimum sentences of the 1864 Act were intended to increase the deterrence value of penal servitude, their ironic effect was to curtail the use of penal servitude and to make imprisonment in local prisons the mainstay of the whole system.[14] At the same time the indiscriminate use of imprisonment throughout the whole range of offences ensured a very large number of short sentences:

> "At the end of the nineteenth century, detention in penal institutions had still been the mainstay of the entire system. The annual number of offenders received in prison in 1904 was as high as 190,000, at least two-thirds of whom were undergoing short sentences of two weeks or less, whilst not even one per cent of the total were serving sentences of over twelve months." [15]

It should also be noted that the prisons of this period contained a large number of offenders who would later be deemed inappropriate for prison treatment and removed to specialist institutions - categories such as children and juveniles, but also 'inebriates', 'habituals' and the 'feeble-minded'.[16]

From the 1850s onwards, children and juvenile offenders were increasingly incarcerated not in prisons but in institutions which combined penal detention with educational provision in various proportions. These Reformatory and Industrial Schools were privately run, charitable institutions which were certified, inspected and partly-financed by central government.[17] Young offenders between 12 and 16 years of age, convicted of an offence which was punishable in the case of an adult by imprisonment or penal servitude, could be sentenced to detention in a Reformatory for a period of three to five

years - a sanction which carried with it a preliminary sentence of 14 days imprisonment. Industrial Schools were used to detain children under the age of 14 who had been referred to court for begging, vagrancy, having "bad or neglectful" parents or residing in a "disorderly house", as well as for young offenders under the age of 12 years. Committal to these schools was for an indeterminate period, but no child was to be detained beyond the age of 16 years.[18] Both types of institution maintained supervisory control for a period after release - up to age 19 for ex-Reformatory inmates and to 18 for those released from Industrial Schools - with the sanction of recommittal if supervisory conditions were breached. A Departmental Report of 1913 estimated that there were approximately 18,000 children then currently detained in such places, and a further 12,000 under their supervision.[19]

The major alternative to incarceration at the end of the century was the imposition of a monetary fine. While imprisonment was used about two-and-a-half times more frequently than the fine for indictable offences, it appears that then, as now, the fine was the predominant sanction used in summary, non-indictable cases.[20] It is misleading though, to juxtapose fines and imprisonments as simple 'alternatives' during this period. In the absence of any regular system of instalments or time to pay, fines very frequently had the effect of a penalty of imprisonment given the widespread inability of offenders to find the means to pay.

The only other non-custodial sanction that was regularly deployed at the end of the century was release on Recognizances. Again this was used mainly in the lower courts and for summary cases, though some 5,653 indictable cases were dealt with in this way in England and Wales during 1893. This sanction sometimes involved the giving of sureties to guarantee the offender's good behaviour, and occasionally

depended upon the intercession of notables or 'respectable persons' who would offer to supervise the offender on behalf of the court. From 1876 this practice of intervention was taken up on a regular basis in London and elsewhere by the Police Court Missionaries of the Church of England Temperance Society as part of their voluntary rescue work. However, despite the Acts of 1879 and 1887 which extended and encouraged this common law practice, the actual supervisory powers of the missioners had no general statutory basis, depending instead upon the discretion of the magistrate in recognising the services of this private and otherwise unauthorised agency.[21]

(b) Organisation and control

The organisation and control of Britain's prison institutions had by 1865 been subjected to a process of centralisation and rationalisation brought about through the mechanisms of state inspection, regulation and financial subvention.[22] The passing of the Prison Act of 1877, finally transferring ownership of the country's local gaols to central government, marked the termination of this protracted local/central power struggle and the commencement of a system which was centrally organised, uniform and subject to a strict and detailed regulation.

The administrative hierarchy established by the Act of 1877 was headed by a Prison Commission (appointed by, and responsible to the Home Secretary) which was given total responsibility for the administration and control of the country's penal institutions.[23] To this Commission each individual prison governor was directly subordinate and accountable. The Prison Inspectorate (established in 1835) continued to exist as a quasi-independent agency of review, though its powers were limited to the presentation of annual reports and recommendations, which appear to have been subject to alteration by the Commission.[24] At the local level,

and despite great protest, the role of the Visiting Committee was reduced to a limited and formal power of inspection and of adjudication in matters of internal discipline. Apart from these two 'external' agencies of review, the prison command structure was centralised and decidedly vertical, and this steep hierarchy was continued throughout the lower tiers of authority. Prison warders were organised on a military ranking system and a large number of the prison staff - from ranking officers to members of the Commission - were selected on the basis of their previous military training and experience.

The powers of the Prison Commission, and through them, the central government, thus came to dominate the realm of penality and to dictate the direction of reform and administration with regard to the treatment of serious crime. However there was nonetheless a residue of local powers which continued for some time after the 1877 Act. Thus the more minor sanctions of fining, recognizances and birching were left in the administrative control of the local court authorities, as indeed was the decision to promote and maintain special institutions for juveniles and inebriates in keeping with the Acts of 1854 and 1898. This situation allowed a continuing unevenness in the administration of these lesser sanctions, but it also left space for the local initiatives which led to the development of police court missions in London and the early juvenile courts in Glasgow and Birmingham.

(c) General objectives

Although as we have seen, the repertoire of sanctions available during this period included a number of capital, corporal and non-custodial sentences, the primary emphasis in official policy was upon incarceration and the prison. While a large number of lesser offences were dealt with by corporal or financial sanctions, a few petty

offenders entrusted to the care and supervision of Police Court Missioners, and a fewer number of grave offencers to the less tender mercies of the executioner, these sanctions were displaced into secondary importance at the level of policy discussion and penological debate.

The penological favour shown to the prison can be understood both in terms of its disciplinary potential[25] and, as we shall see, by reference to the deep ideological affinity which linked this "deprivation of liberty" to the political institutions of Victorian Britain. However the official emphasis upon imprisonment also reflected the organisational pattern described above. The nineteenth century process of centralisation ensured that national policy initiatives would come primarily from the central State agencies, and since these agencies were in direct control of prisons - but not of fining, whipping, recognizances, etc. - a focus upon the prison was politically, as well as penologically, favoured.

This carceral focus is particularly evident in the official Reports, writings and administrative acts of this period in which it is taken as self-evident that the prison is the most important apparatus of penality and that the central task of the nation's penal administration is simply to improve its functioning. In this discourse, penology becomes virtually synonymous with Prison Reform, and the diverse issues of penal control are reformulated into the narrower and more determinate of la Science Penitentaire. The issues which surfaced in the penal debates of the Victorian period - the choice of silent or separate regime; the issue of prison labour and its character; the endless problems of administration which were accorded such detailed attention - were thus issues posed by the established problematic of imprisonment.

If then, we try to identify and examine the main objectives of the national penal system and its governing agencies in this period, our discussion thereby becomes prison-centred and concerned with the aims and priorities of the Victorian prison regime.[26]

Like all complex institutions, the prison of this period had a multiplicity of discernible objectives which were inherent in its practices and routines. The formal priority of any prison regime is, as Sir Edmund Du Cane put it, "the repression of crime", and as we shall see, the Victorian prison employed a number of techniques and practices which were explicitly geared towards this deterrent effect. However when Du Cane was appointed Chairman of the Prison Commission in 1877, his stated concern then, and for the next eighteen years, was with the administrative and institutional conditions under which this repression was carried out.

The process of centralisation had put the Prison Commission in charge of an exceedingly disparate and heterogeneous set of penal establishments throughout the country, with enormous variations of regime from prison to prison. Consequently, the main objective which underpinned the actions of the Commission were to be rationalisation, economy and uniformity. In the years immediately following 1877, the network of local gaols was streamlined by the closure of those most infrequently used, while the remaining stock was gradually refurbished or rebuilt to conform to the prescribed standards of architectural and sanitary design. Routine administrative and communication procedures were given a standard, national form by the publication of standing orders and uniform documentation. The appointment, training and payment of officers was transformed to ensure a uniformed, salaried and disciplined staff which met the minimum requirement of literacy, numeracy and physical ability. And finally, the doctrine of less-

eligibility was firmly reiterated as a general precept throughout the system, both as a costing principle and as a proper penological goal.[27] The consequence of these changes was a standardised and more economical prison network which produced annual reports and statistical returns to document its operations and to justify its annual budget.

This process of economy and rationalisation clearly had effects beyond the efficiency of the administrative machinery, insofar as these changes also affected the conditions endured by the prisoners themselves - who were, after all, the ultimate objects of administration. This is the case with health and sanitary conditions which were greatly improved, and with identification procedures which became more effective as the system's logistics and communications grew in efficiency. It also applies to the less-eligibility doctrine which has an obvious penological significance and effect. Clearly then, one cannot easily distinguish between "the administrative" and "the penological" when a prison is the institution in question. This point must be borne in mind when we come to discuss the detailed effects of the Commission's third objective, that of "uniformity", since what appears to be no more than an administrative concern to produce standardisation and homogeneity, does in fact carry a heavy penological and ideological significance which has frequently been overlooked.

(d) Detailed objectives: Practices and Techniques

When we move to the level of the prison regime itself, we can best identify its day to day objectives by considering the practices, conditions and techniques through which these operated. Whatever the claims of the authorities, it seems clear from these practices that the primary concern was with the production of a disciplined and orderly regime; a regime which enforced an intense form of obedience through a

number of uniformly distributed conditions and procedures.

The fundamental condition for this regime of discipline and obedience was an architectural one - the cellular prison building. The device of housing each prisoner in a separate cell of standard dimensions and minimal furnishings ensured a number of simultaneous effects such as isolation, prevention of communication and contamination, and ease of surveillance and control. This first principle of good prison discipline was rigorously enforced throughout the national system, and although a number of different architectural forms were used for prison buildings - such as the "hub and spokes" model, or the "pavillion" model, each of which involved elements of the "panoptican" - the basic unit of each of these was the individual cell.[28] Although the "silent system"[29] had previously been operative in a few local gaols, and a system of associated labour (following on from a nine month period of solitary confinement) continued to be practised in convict prisons, the general regime of local prisons from 1877 onwards was the "separate system" under which inmates worked, ate and slept in their cells removed from any contact with their fellow prisoners.

Within this framework of existence each element was rigorously and uniformly regulated. Thus sleep itself was officially timetabled and delimited while the wooden plank which formed the inmate's bed was the subject of precise regulation as to materials and dimensions. Likewise with the diet of the prisoner, which was a topic of some considerable concern, being the specific focus of a number of official reports and investigations.[30] The regulation diet, which was uniformly provided for all prisoners (subject to modifications by way of punishment or ill-health) was scrupulously calculated to provide the minimum necessary level of nutrition for subsistence, thereby conforming

to the principles of less-eligibility and uniformity, or, as Joshua Jebb more prosaicly put it, of "hard work, hard fare and hard bed".[31] The question of the prisoner's labour was also the subject of careful planning and calculation on the part of the authorities. The Prison Act of 1865, following the recommendations of the Carnarvon Report on local prisons, had specified Oakum-picking and work at the crank or the treadwheel as the recommended forms of labour to be undertaken by prisoners, and during the Victorian period these were generally used throughout the English prison system.[32] Labour was thus generally unproductive and of a harsh and menial character, designed not to teach particular skills, but to enforce discipline, work-habits and obedience. However, it is important to note that this element of "unproductivity" was, so far as the Carnarvon Report was concerned, actually secondary and inessential. The choice of treadwheel and crank as the most appropriate apparatuses of labour was based not on their uselessness, but upon their capacity to exact a precisely measured quantity of labour, thereby promoting the goal of uniformity in this aspect of the prison regime as in all others.[33]

The only interruptions to this strictly regulated and silent regime of eating, sleeping and labouring, consisted in a few hours per week of cellular visits by the Chaplain, the education officer or a philanthropic visitor, being for the purposes of elementary education and moral improvement. Discipline - which attended to the very slightest of deviations - was enforced by a system of graded punishments which could involve reduction of diet, increased work periods or the corporal punishment of whipping.[34]

One point which emerges clearly from this brief description is the importance of what the Webbs termed "the fetish of uniformity".[35] This notion of the universal standard affects not just architecture,

sanitation and cell conditions, but also diet, clothing, labour, education and discipline. And the problem of how to achieve this uniformity recurs again and again throughout the official Reports and papers of this period.[36] The Victorian penal system should thus be viewed as operating a mass regime with a general objective which is, as D. C. Howard said:

> "the very reverse of that sought in any modern penal institution: namely the treatment of all offenders exactly alike." [37]

This general objective, however, operated at the most detailed level of particulars:

> "The size and structure of the cell, the form of labour ... scale of dietary, so nicely adjusted ... as if the weight of the body were a greater concern and business for the State than the saving of the soul; ... rules of discipline by which every movement was regulated according to plan, and woe betide the wretch who deflected by an inch from the prescribed path of conduct ... a multitude of details which now seem to us foolish and unnecessary." [38]

The author of these last remarks is Sir Evelyn Ruggles-Brise, who was to preside over the transformation from the regime we are describing to the modern system of penal practice. The purpose of quoting him here is to show that while Victorian prisons exhibited a close and detailed form of <u>discipline</u> or "dressage", they did not manifest a concern with <u>individualisation</u>. On the contrary, each individual was treated "exactly alike", with no reference being made to his criminal type or individual character. As Sir Edmund Du Cane put it:

> "A sentence of penal servitude is, in its main features, and so far as it concerns the punishment, applied on exactly the same system to every person subjected to it. The previous career and character of the prisoner makes no difference in the punishment to which he is subjected." [39]

Of course this absence of individualisation did not preclude the operation of some forms of classification and categorisation. Prisoners were differentiated according to age, sex, sentence length, and even from

1879 onwards, according to the presence or absence of previous sentences of penal servitude. There were also separate categories for the unconvicted, for debtors, and for first class misdemeanants guilty of sedition, all of whom were accorded modified treatment on account of their ambiguous legal status. However, these differentiations were mainly administrative and segregational, carrying little importance in terms of treatment or conditions. The main classification system categorised each prisoner as one more individual to be subjected to the uniform and universal regime It was thus a system which recognised <u>individuals</u> but <u>not individuality</u>.[40]

In this respect the Victorian prison corresponded precisely to the tenets of the so-called 'classical criminology' and its view of the criminal actor. Unlike subsequent criminologies which based themselves upon a particular characterisation of "the criminal" and its differences from the non-criminal, the classical theory recognised no such entity or differentiation. Criminal acts, like any other actions, were the outcomes of individual choice and volition on the part of human subjects. Criminals differed from non-criminals only in the contingent and non-essential fact of their law-breaking. In fact to call the work of writers such as Beccaria, Voltaire, Bentham and Blackstone a "criminology", is altogether misleading. Their work is essentially the application of legal jurisprudence to the realm of crime and punishment and it bears no relation to the "human sciences" of the nineteenth century which were to form the basis of the criminological enterprise. The voluntarist and rationalist theory of action, which formed the centrepiece of this jurisprudence, borrowed from utilitarian psychology the idea of the free and calculating individual engaged in the pursuit of pleasure and the avoidance of pain. Each individual, with the exception of the mad or the infant,

possessed these faculties of will and freedom and could choose his or her own destiny. Criminals then, were to be presumed to have calculated that crime would serve them well, and were to be shown that in a civilised social order, this was an erroneous calculation. Hence the emphasis upon less-eligibility, "deterrence" and a voluntarist process of reform, all of which presuppose a freely calculating and reasoning subject. The universal, rational subject-at-law is thereby carried over into the penal realm without modification.

It was precisely this entity which would be referred to disparagingly by later writers as the "type abstract" of the law - a conception which misrecognised its subjects and prevented penality from undertaking its proper function of individualisation:

> "The prison, as formerly established, was based on the now exploded idea that crime is an abstract and uniform entity, the special characteristics of the criminal himself being a negligeable quantity: thus the prison was not adapted for the individualisation or even the classification of criminals." [41]

It was also this entity which ensured the absence of any detailed investigation of the criminal, precluding any mental, moral or familial inquiry or any semblance of the question which asks "who are you?" of the individual criminal. As we shall see, Foucault is partly correct when he says that modern penality revolves around this very question, but he is wholly wrong when he goes on to state that, in the classical system, the criminal was not even an element in the judicial equation.[42] In fact, as we have already shown, the criminal was a definite and important element in this "equation", but it was one which was not variable and therefore need not be questioned or explicitly stated. The question was not asked because the answer was always already known - there was the assumption that the accused was necessarily a legal subject with all the presumed attributes thereof. Authors of

criminal acts who were not at the same time legal subjects could only be children, madmen, companies or animals - all of whom could be relied upon to display this fact prima facie and without question.

(e) Official representations of penality

Finally in this brief description, we should consider the form in which the Victorian penal system was publicly represented by those in authority. This is difficult to define since there is no singular or authorised form of representation but rather a diverse collection of statements which range from the rhetorical to the apologetic and which address a number of different audiences. However some key terms, themes and priorities can be assembled from the official reports and documents of the period which together form the basic elements of Victorian penal ideology.

The primary framework in which these statements were couched was that of legal justice. Offenders were to be accorded their just deserts in the form of a proportional measure of retribution. However it was well established that the question of proportion and desert must be considered along with the question of deterrence, since justice partakes of social prudence as well as the natural order. Consequently this framework of justice, with its social contract basis, promoted the twin goals of "deterrence" and "retribution". These two terms occur again and again throughout all the official representations of penality in the nineteenth century. As Lord Cockburn put it in 1878, the object to be realised by sentencing was "suffering inflicted as a punishment for crime, and the fear of repetition of it".[43] Indeed throughout most of this period the phrasing of the standard prosecution plea everyday proclaimed that justice should be done"so as to deter others from this offence in all time coming".[44] But this invocation

of the social contract and the doctrines of utility did not exclude a different kind of representation which appealed not to Reason but to moral Righteousness:

> "The criminal law proceeds upon the principle that it is morally right to hate criminals, and it confirms and justifies that sentiment by inflicting upon criminals punishments which express it." [45]

In fact contrary to Foucault's assertions,[46] in the Victorian period punishment was not yet an altogether shameful and self-effacing thing. A sufficient measure of religious belief still persisted to allow earthly sanctions to appeal to a higher authority and hence to be explicit about Its expiatory purposes.

If justice was the basic term of penal representation, and deterrence and retribution its two primary elements, there was also a third element which was constantly present and presented - that of "reform". Much care was taken over the precise status of this third element, and in most official statements it appears as a subsidiary or secondary aim or else as an object to be hoped for, but with little certainty.[47] Nonetheless in each authoritative statement, from the 1779 Penitentiary Act and the 1823 Gaol Act through to the Reports and Statutes of the 1890s, the moral reformation of the offender is specified as a concurrent if subsidiary aim of penality. Even the Carnarvon Report, the reputation of which rests upon the severity of its deterrent principles, endorses reformation as a proper if not primary objective. So too does Sir Edmund Du Cane's work, The Punishment and Prevention of Crime, despite the strict limits which he sets upon the State's responsibility in this regard.[48]

Now to point out that "reformation" featured as an element in the official representations of penality is not to claim that it existed as an operational objective in penal practices. However it is significant that the British authorities did not follow Beccaria in the

view that justice and a respect for individual rights actually excluded reformation as a proper goal.[49] The dominant philosophy was much closer to Bentham's in asserting that imprisonment and punishment in general should be concerned to "grind rogues" by way of deterrence and retribution. If, by doing so, it should grind them honest, then so much the better.

To run ahead a little, we might say that the prison, penal law and the judicial process of this period effectively transferred the concepts of economic liberalism into the realm of punishment. In direct replication and support of broader ideologies, their practices combined to constitute the offender as an individual subject, the carrier of responsibility, reason and liberty. The twin doctrines of individual responsibility and presumed rationality formed the basis for the judicial findings of guilt - since in free-market society the criminal actor, like his economic counterpart, was deemed to be in absolute control of his destiny. Reason and responsibility were absolute and essential attributes, and since freedom was guaranteed by market society, there could be neither excuse not mitigation for crime - at least none short of absolute insanity.[50] Illegality, like poverty, was an effect of individual choice. Accordingly, punishment took forms appropriate to its object. The proper response to the rational criminal thus constructed was a policy of deterrence and retribution, the former to deny the utility of crime, the latter to reconstitute the social contract after its breach. And it was precisely this policy which structured the penal institutions of Victorian Britain.

The actual forms in which this policy was realised were equally specific in their ideological signification. Considerations of less-eligibility, derived from the logic of political economy, underpinned the strategy of deterrence which was expressed in the general conditions

of the prison, its diets, labour and discipline. The means of retribution also assumed an ideological significance: the central technique of State punishment took on the form of a rigorously uniform system of solitary confinement in individual cells, as if in its uniformity the regime was constantly celebrating the equality of all before the law, its solitary cells repeating the message of individual responsibility. By means of a careful prison architecture and a rigorous silence, interrupted only by the softly spoken exhortations of governors, chaplains and philanthropic visitations, the offender was made to look inwards, to contemplate the causes and consequences of his crime and thus allow his essential reason to prevail. And of course the fact of incarceration itself spoke directly to the basic principles of social organisation. In its deprivation of liberty the prison struck directly at the essence of the free subject and thus repeated that this liberty was after all contingent upon a tenuous social bond. The very existence of the Victorian prison was an open appeal to the political philosophy of the social contract.

We might also note that the fact of nineteenth century punishment is an exclusively <u>legal</u> event. The crime, its causes, its trial and punishment are all established and understood entirely within the categories of the law. In this process of punishment there is no reality beyond that one determined by legal discourse: all individuals are free, equal, rational and responsible. They are judged and punished accordingly. Knowledges (such as psychiatry, economics, sociology, medicine) which challenge or deny this reality are quite literally ruled out in court.[51] There is thus an exact symmetry between the legal and the penal which expresses the ideological centrality of legalism in the age of <u>laisser-faire</u>. It is bourgeois formal justice in perhaps its purest form.

In its ideology and representations this carceral style of punishment alludes to certain definite conceptions of the State and the nature of State power. At the same time it characterises the object of punishment in a very specific manner. The offender is defined as a legal subject, a citizen inscribed with rights and duties, entitled to equal treatment before the law. The State which punishes does so by contractual right in accordance with the terms of a political agreement. Its power to punish has its source in the offender's own action - it is the agreed consequence of a contractual breach. The State has here no intrinsic dominance or superior right. It meets the citizen on terms of equality and must not encroach upon his or her rights, person or liberty except in circumstances which are rigorously and politically determined in advance - nulla poena sine lege. In this penal vision we meet the ideology of the minimal legal State, the liberal dream, guardian of the free market and the social contract. Its power is of a strictly legal nature and each instance of that power, each punishment, is publicly justified in the terms of this political ideology.

(3) The Modern Penal Complex

If we turn now, by way of contrast, to the framework of penal sanctions, institutions and representations which had been assembled by 1914, we can begin to identify a quite different pattern of elements and relations between them.

(a) The range of sanctions

In the relatively short period between 1895 and 1914 the number of sanctions available to the criminal court was practically doubled.

This extended range of dispositions included the following new sentences: (1) Probation orders, (2) Borstal training, (3) Preventive detention, (4) Detention in an Inebriate Reformatory, (5) Detention in an institution for the mentally defective, (6) Various forms of licensed supervision, and (7) Supervised fines.

The Probation of Offenders Act, 1907, transformed the previously ad hoc practice of notables and evangelical missioners into a statutory provision which specifically empowered the court to make probation orders, and the local authorities to appoint professional probation officers. Its provisions thereby established a non-custodial, supervisory sanction for both juveniles and adults which was to be used in cases where the character of the offender or the nature of the offence made "punishment" inexpedient. The duration of this supervision was variable up to a maximum of three years, and its conditions involved regular reporting to the supervising officer, the avoidance of "undesirable persons or places" and the maintenance of regular employment. The Criminal Justice Administration Act of 1914 extended the range of possible conditions to include "abstention from intoxicating liquor", specific directions as to residence, and upon "any other matters" which the court considers necessary. Any breach of these conditions, or even a general failure to "lead an honest and industrious life", was to result in the officer referring the case back to the court, which could thereupon sentence the offender for the original offence.

The new sanction of Borstal training involved a semi-determinate custodial sentence of between one and three years at an institution which was to provide "such instruction and discipline as appears most conducive to his reformation and the repression of crime". It was available for offenders between the ages of 16 and 21 who were shown

to manifest "criminal habits or tendencies" but were also deemed "likely to profit" from the training provided. The date of release was specified not by the judge but by the Prison Commissioners and was to depend upon their estimation of the offender's progress and reformation. Release was followed by a period of licensed supervision, its duration being a minimum of six months plus the unexpired period of the three year sentence, and its conditions being supervised by agents of the newly established Borstal Association. Any offender who failed to comply with the conditions of licence was to be recommitted to the institution to serve the remainder of the three year sentence or else a further three months if the full sentence was already completed.

The Prevention of Crime Act of 1908 which enacted these Borstal provisions for young offenders also dealt with "habitual criminals" by way of a new sanction of preventive detention. This too was a semi-determinate sentence, though of the much longer duration of five to ten years. Moreover the period of preventive detention was to follow on from the term of penal servitude which was deemed appropriate to the offence for which the habitual was initially committed, thus establishing a kind of "double-track" sentence. The Act defined an habitual criminal as anyone "leading persistently a dishonest or criminal life" and having been three times convicted of a criminal offence since the age of 16. After serving the required period of penal servitude, such offenders were to be transferred to a regime of "less rigorous treatment" where they would be detained under "disciplinary and reformatory influences". The date of the habitual's release from P.D. could be determined by the Secretary of State, who "if satisfied that there is a reasonable probability that he will abstain from crime and lead a useful and industrious life" could allow release on supervised licence. Otherwise the offender would remain for

the maximum term of ten years and would thereafter be subject to a period of five years under supervision.[52]

The Inebriates Act of 1898 had earlier introduced similar provisions to deal with persons deemed to be "habitual inebriates" who could be sentenced to detention in an Inebriate Reformatory for up to three years. Again this sanction depended upon the character and antecedents of the accused rather than the specific offence which had led to his or her committal and such detention could be imposed in addition to any punishment addressed to the immediate offence. In much the same way the Mental Deficiency Act of 1913 gave courts the power to place in an institution for the mentally defective any person found guilty of any criminal offence who fell within that Act's rather wide definition of "mentally defective". Such orders of detention were to be for one year in the first instance, thereafter renewable for successive periods of five years according to the findings of the Board of Control set up by the Act.

Supervision licences were not in fact independent sanctions but were important adjuncts to the Preventive Detention and Borstal regimes, and as such have already been described. In 1911 this policy of licensing, which was designed to combine the provision of 'after-care' with the continuation of surveillance and control, was extended to convicts released from sentences of penal servitude. In that year the Central Association for the aid of discharged convicts was set up, and the ex-convict's duty of reporting to the police was suspended on the condition that he or she followed the guidelines laid down by the Association. As ever, the threatened penalty for licence violation was a return to the institution from which the offender had previously been released. Another form of supervision was introduced by the Criminal Justice Administration Act 1914 which allowed the court to

impose a supervision order upon any person aged 16 to 21 who had been ordered to pay a fine. Such supervision was to persist throughout the period of repayment and to have regard to the offenders conduct as well as his means.

As well as the introduction of new sanctions this period saw the abandonment of certain old ones as well as the modification of some others. Thus the Children Act of 1908 altogether abolished penal servitude in the case of children and young persons, and restricted imprisonment to young persons between 14 and 16 whose character was "so unruly" or "depraved" that detention in a Reformatory was deemed unsuitable. Similarly the 14 day period of imprisonment which formerly proceeded a Reformatory School committal was abolished by the Reformatory Schools Amendment Act of 1899, having already been made discretionary in 1895. The minimum period of five years which had been previously attached to a sentence of penal servitude was decreased in 1891 to three years, while the 1898 Prison Act introduced a new graded sentence of imprisonment which empowered courts to place an offender in one of three 'divisions' or categories of imprisonment, according to character, offence and antecedents. Finally, the Criminal Justice Administration Act of 1914 allowed offenders the option of instalment payments and a specified time to pay any fine that was imposed, if their means made immediate payment impossible. Default after a number of instalments was to reduce proportionately the length of any prison sentence served in consequence.

(b) Organisation and Institutions

This expansion and diversification in the repertoire of penal sanctions was accompanied by the creation of a number of new agencies, institutions and organisational patterns which substantially altered

the field of penality and its functioning.

The Acts of 1907 and 1914 marked the beginnings of a national, professional probation service by instructing each court to appoint a special probation officer for its jurisdiction. These officers were to be selected according to certain guidelines - thus they should not be police officers for example, although they could be selected from one of the approved voluntary agencies such as the C.E.T.S.. They were to be paid at the specified level of remuneration, either directly or through their particular agency, and had a number of statutory duties to perform at the court's behest, such as providing information on the offender's background and conduct, supervising orders and enforcing their conditions. By 1912,at the instigation of the Home Office, there was established a National Association of Probation Officers (NAPO) and the beginnings of specialist training programmes and courses of instruction.[53] The previously ad hoc and private pattern of rescue work by unauthorised "missioners" was thus quickly replaced by a public, national agency with statutory authorisation and administrative powers of reporting and recall.

A very similar shift from the private, ad hoc and charitable to a more systematically organised, publicly funded, national agency also took place in regard to the after-care and supervision of offenders released from the various institutions. As we mentioned above, the Central Association was set up in 1911 to organise and regulate the supervision of all released convicts. A similar body, though with less supervisory power, was set up a few years later to organise the provision of after-care to those released from local prisons. The Borstal Association and its allied organisation in charge of supervising habitual offenders, completed this newly-organised and centralised field of after-care and surveillance which emerged in the years before

the First World War.

As well as providing new sanctions and agencies, the reforms of this period produced a number of new institutions in the penal realm. These new institutions were of a variety of sorts, designed to house a variety of different sanctions, but each one shared a common feature of specialisation and classification. Each was designed for a specific category of offender and was intended to provide a regime particularly appropriate to its inmates. In that sense each was marked off as quite distinct from the "general mixed prison" of the Victorian era. Thus the new Camp Hill P.D. institution for habitual offenders was to offer conditions which were secure but less rigorous than those of regular prisons, on the basis that the preceding term of penal servitude had exhausted the punitive element of the offender's sentence and this subsequent detention was merely preventative. Similarly the new Borstal institutions were designed (or refurbished) to facilitate a reformative and training regime which offered scope for intensive physical exercise, industrial training and educational facilities, as well as dormitory accommodation which formed the basis of the celebrated "House System".[54] The new institutions for feeble-minded offenders and for inebriates were also to be specialised in function, concerned with the classification of inmates and the differentiation of treatment. The provision of these asylums, and their day to day management, was left to the enterprise of private bodies or local authorities, on the basis that this would produce a differentiated network of specialist institutions, catering for the various localities and types of inmate. However the central authorities certified, regulated and subsidised these institutions and themselves provided State Reformatories in order to contain those inmates who posed discipline problems elsewhere in the system.

Another important specialist institution, this time established by the Children Act of 1908, was the juvenile court which was given jurisdiction to hear the cases of children and young persons under the age of 16 years. Although one or two cities such as Glasgow and Birmingham had previously set up separate courts to deal with criminal proceedings involving children, this was the first time that such a separation had been ordered by statute throughout the country. The juvenile court was to be staffed by magistrates with a special knowledge or concern in regard to children and was directed to take account of the child's welfare in any dispositions which it made. Its jurisdiction was from the start extended beyond criminal offences to include cases where children were deemed to be in need of care or protection.[55]

Although most of the developments and initiatives which occurred in the 1895 to 1914 period took place outside of the prison system, involving extraneous agencies and institutions, these changes clearly had a large impact upon the prison and its functioning. Many of these new sanctions such as probation, or instalment-fines were conceived as direct alternatives to imprisonment, while others functioned to remove certain classes of offender out of the domain of the prison and into specialist institutions. The consequence was that the prison was de-centred - shifted from its position as the central and predominant sanction to become one institution among many in an extended grid of penal sanctions. Of course it continued to be a sanction of major importance, but it was now deployed in a different manner, for a narrower section of the criminal population, and often as a back-up sanction for other institutions rather than the place of first resort. Moreover these external changes led to a recomposition of the internal prison population which now included less offenders who

were inebriate, weak-minded or "habitual", but also less who were young, short-sentence, or first-offenders and therefore more likely to reform. In other words the prison actually increased its proportion of "normal" criminal recidivists.

Along with these indirect changes there was a number of developments which directly affected the administration of the prisons and also their internal regimes. An important development brought about by the 1898 Prison Act allowed the Secretary of State to enact administrative changes or new prison rules without undertaking the normal Parliamentary procedures, thereby leaving more scope for executive decision-making and less for public policy discussion. The same Act, along with a Home Office Circular of 1895 directing prison governors to adopt a number of the Gladstone Report's recommendations, led to a number of official changes in the standard prison regime. Unproductive labour was officially abandoned, to be replaced by work which was both useful and educative; labour and education in local prisons were put on an associative basis, in line with the traditional practice of convict prisons; and the silence rule was replaced by a discretionary granting of permission to talk under certain conditions and for a stated period. The "mark system" of gratuities (given in return for hard work and good discipline) and a new system of remission in local prisons were also generally adopted, thereby establishing a form of internal discipline which worked by means of small reward-incentives and the threat of their withdrawal in contrast to the older purely negative system of punishment for misbehaviour.[56] Finally, there was a proliferation of new divisions and classifications in both convict and local prisons. When these were added as, they generally were, to the traditional groupings which had existed in the Victorian period, the result was a fairly complex pattern of prisoner categorisation. Thus Ruggles Brise,

writing in 1910, could specify 22 separate categories of prisoner without including in his list any mention of female, lunatic, feeble-minded or inebriate prisoners or their subdivisions.[57]

(c) General objectives

With the decentring of the prison and the formation of an extended grid of sanctions and institutions in the modern period,it becomes even more difficult to define the objectives which underpinned the range of penal practices. Different sectors of the complex operated quite different regimes, often with quite specific categories of offender and varied forms of resources and techniques. However one can at least infer from this fact that a general objective which inheres in this structure is that of assessment and classification. As we pointed out above, the practice of classification is hardly an invention of the 1890s, and so long as there was a choice of sanctions available to the court, or even a discretion as to length of sentence, the task of assessing the appropriate class of penalty was necessarily operative. Nonetheless, the new range of specialist institutions, and the possibility, since 1898, of a classified prison sentence, meant that the importance and complexity of classification was greatly extended. Moreover there was a qualitative change in the criteria of assessment insofar as many of the new sanctions directed attention towards the type of character and antecedents possessed by the offender rather than the gravity of the offence.[58] Classification between and within institutions was thus a key practical objective of the modern system even as early as 1914.

As for the various individual sectors, these must be considered one by one. There is good reason to believe that despite the changes to its population structure and the revision of its "official aims"

which will be discussed shortly, the prison continued to operate its traditional objectives of security, uniformity and strictly enforced patterns of obedience, albeit with important modifications in its disciplinary techniques.[59] Other sectors, while no doubt sharing a general concern to promote disciplined behaviour and obedience to authority, also displayed other, more particularised objectives. Thus the privately-run network of Inebriate Reformatories, attempted to "dry out" their clients and to promote a curative regime which might prevent continued alcoholism, just as the institutions for feeble-minded offenders displayed a more psychiatric and educational orientation in their various regimes. The State Reformatories, on the other hand, were more concerned with the containment of their inmates, and their secure confinement, rather than with any more ambitious aims. The preventive detention regime at Camp Hill was similarly designed to provide a "segregative facility" and its original design appeared to deny the very possibility of reformation insofar as its inmates were, by definition, incorrigible.[60] The Borstal institution was designed to promote certain loosely defined aims of "reformation" and "training" which it pursued by means of physical exercise, moral instruction, industrial or agricultural training and reward-incentive schemes, the precise pattern of training being decided on the basis of various forms of assessment, involving extensive reports and inquiries. Probation officers and the agents of after-care societies hoped to produce this same reformative effect, but using a number of different means, ranging from detailed surveillance, control of associations, and interventions in the offender's family or home life, to old-fashioned personal influence or even religious conversion. The system of instalment payment for fines carried a negative objective which most of the other sanctions implicitly shared to some degree - namely

"the abatement of imprisonment" - but it also had a more positive aim inasmuch as it could regulate the offender's (and often his or her family's) expenditure over a considerable period of time, thereby making criminogenic leisure pursuits, such as the consumption of alcohol, more difficult for that duration.

It will be apparent by now that in modern penality the "type abstract" so beloved of classical jurisprudence has been radically undermined, along with the strict uniformity of treatment which its notion of justice entailed. From the point of view of this new system there no longer exists a universe of free and equal legal subjects which coincides with the sane adult population. Now there are categories which pose exceptions to the rule, classes which exhibit only limited degrees of freedom and a large population of "special cases". Neither "Reason" nor "Responsibility" can any longer be simply presumed in the presence of juveniles, vagrants, habituals, inebriates or the feeble-minded. The modern system's "recognition" of these diverse populations, and the new "criminologies" which encouraged this enlightenment and sought to extend it, together prompt the question of "who are you?" whenever an offender enters their gaze. However in contrast to the certainties of the past, the answer to this question cannot now be known in advance. Inquiries are necessary, including extra-legal inquiries, and officers are now authorised to continue the investigation beyond the court and to relay back their assessment.

So although the law retains its central place in modern penality, it is no longer a singular discourse which excludes all others. The new system accords a place to the judgements of non-judicial personnel such as probation and after-care officers or the Borstal and P.D. authorities. It invites information and advice of an extra-legal kind

whenever it demands social background reports, character judgements or the certification of experts. The findings of the "psychological sciences" are allowed to enter into circulation, particularly in regard to the category of the "juvenile-adult" and its treatment in Borstal institutions. Likewise the medical definitions of alcoholism and "feeble-mindedness" come more and more to prevail in the legal treatment of inebriate and mentally-deficient offenders. There is even a discernible tendency in the regimes at Borstal and elsewhere to see "reformation" less as a deliberate choice on the part of offenders and more as an effect of the physical or psychological practices brought to bear upon them.

(d) Official representations of penality

These notions of classification and the production of individual change through applied practices of reformation were well described by Ruggles-Brise when he insisted that:

> "... each man convicted of crime is to be regarded as an individual, as a separate entity or morality, who by the application of influences, of discipline, labour, education, moral and religious, backed up on discharge by a well-organised system of patronage, is capable of reinstatement in civic life." [61]

Here we have the new Chairman of the Prison Commission designating "individualisation" as "the principle from which we can all start forward today in our campaign throughout the world", in stark contrast to his predecessor's absolute exclusion of that principle in the name of justice itself.[62] And while Du Cane and the Victorian Regime gave the objective of reformation a subsidiary and tenuous place in the practices and representations of penality, the official rhetoric and representations from the Gladstone Report onwards cited "reform" as the central and organising aim of modern penal practice. This aim of

reform or social readjustment was clearly the designated principle of the new institutions of Borstal, probation and State-funded after-care, but even the prison was now characterised more and more as a complex machinery of reform. As Havelock Ellis put it, while previously:

> "the prison was not adopted for the individualisation or even the classification of criminals, [it] is now becoming recognised that the prison must have in it elements borrowed from the hospital, the lunatic asylum and the technical school." [63]

In the public pronouncements which appeared in the Reports, Parliamentary debates and official documents of the period between 1895 and 1914, there thus emerges a new style of penal representation which, although it shares elements with that of the Victorian period, is quite different in its overall signification. Thus while the notion of legal justice continues to form a basic element of the image which is produced, it is no longer presented as the primary means by which penality should be judged. Certainly there is no explicit challenge to the authority or centrality of "the Law", but it appears more and more as a background feature, a necessary but not sufficient characterisation of what penality has become. Moreover, if legal justice itself stands unchallenged, at least one of its elements - that of uniformity of treatment - is explicitly questioned and increasingly denied in almost every official pronouncement from Gladstone onwards.

"Deterrence" and "Retribution" continued to be presented as proper goals of the system, appearing as regularly as before whenever the official aims of punishment were rehearsed. However the moral sentiment which had underpinned these terms in the Victorian system - "the principle that it is morally right to hate criminals", as Stephens had put it - was now quite foreign to the realm of penal representation. Criminals are presented as individuals to be pitied, cared for, and if possible, reclaimed. Whenever apparently punitive

or deterrent measures are under discussion, they appear as last resorts when all else has failed, as unpleasant but unavoidable evils out of keeping with the general tenor of the system. In this new system punishment has indeed become a shameful thing.

"Reform" on the other hand, had by this time moved from being a subsidiary term in a series of aims to become the central and predominant signifier in the new penal discourse. Moreover it could assume this position of dominance without undermining the other "concurrent" aims of deterrence and retribution, since what was being presented was not just a more civilised or liberal penality, but also a more preventative, reformative and efficacious form of social control. The connotations of "reform" thus reached simultaneously in two directions: to moral progress, civilised enlightenment and the liberal conscience, but also to the benefits of a more efficient and economical discipline, guaranteed by "acquired experience and recent scientific research".[64]

(4) The Differences: A Preliminary Discussion

It should be clear from the points made above that, at least in particulars, there is a substantial series of differences between the Victorian and the Modern systems of penality. In this section we will begin to suggest that these differences are of a more major and fundamental character than mere particulars. To this end, we will abstract a number of general features of the two systems and present a preliminary discussion of their differences. This differentiation and discussion will be continued and developed, at a number of different levels, as the dissertation proceeds, the present section being merely a first approximation.

Perhaps the best place to start this discussion is with the distinctive shape and contours of the two systems and their different modes of operation. From what has already been said, we can see that the general repertoire of penalties and the manner in which individual sanctions are selected for specific offenders have both undergone a change of form. There has been a move from a calibrated, hierarchical structure (of fines, prison terms, death) into which offenders were inserted according to the severity of their offence, to an extended grid of non-equivalent and diverse dispositions into which the offender is inscribed according to the diagnosis of his or her condition and the treatment appropriate to it. This change entails a greater diversification in the field of penal practice, the development of a more complex language of differentiations (between types of offender, classifications, characters, treatments, etc.) and the possibility of greater discrimination and refinement in sentencing. But it signifies more than just an increased range of options and possibilities: it marks the beginnings of a new mode of sentencing which claims to treat offenders according to their specific characteristics or needs and not according to a scheme of metaphysical equality. Of course this is not a total transformation in actual practice: the Victorian system went some way towards making the penality appropriate to the offender (through judicial discretion, extenuating or aggravating circumstances, the 1879 Act, etc.); and the Modern system's consideration of "specific characteristics" is strictly limited to those formally recognised in law (inebriacy, feeble-mindedness, youth, etc.). But the important change is at the level of the logic or philosophy which underpins the system. As a result of this shift it became a respectable and established policy to disregard the formal equality of legal subjects and instead take account of their peculiarities as specific individuals.

There is thus a move from individualism to individualisation which alters the penal field fundamentally.

An immediate consequence of this move is an alteration in the structural position of the prison. In this transformation the prison shifts from the very centre of the penal realm to a kind of terminal position, forming the endpoint on an extended network of "alternatives to imprisonment" and specialist establishments. At the same time, the law, in recognising knowledges beyond itself (the psychological problems of adolescence, the medical nature of alcoholism, the economic difficulties of some offenders, etc.) abandons its own claim to be the exclusive form of penal discourse. And of course once this exclusivity is disturbed, and the absolute tenets of law are opened up to qualification, the way is open for a continuing struggle between the law and the various "human sciences" which claim the right to speak on issues of personal character and conduct.

The clearest illustration of this conflict is perhaps the contest between law and psychiatry over the question of madness and crime. In the Victorian system there was an absolute separation between these two categories, formalised in the notorious M'Naughton Rules which, as The Times was later to put it, assumed "that anyone who is not the victim of manifest delusions is to be treated as an entirely free agent".[65] In such a system the mad could be absolutely distinguished from the criminal. The subsequent recognition of degrees of responsibility served to replace this absolute separation by a graduated continuum, at least in non-capital cases which involved inebriates, mental defectives, juveniles, and so on. From being strictly separate and removed from the court's consideration, questions of madness begin to become inextricably linked with questions of crime, and this relationship becomes crucial in the sentencing of a whole range of

offenders.

This transformation in modes of penal sanctioning was characterised by Raymond Saleilles as a shift from Vergeltungsstrafe - a mechanical and exact retribution - to zweckstrafe - a form of sanctioning characterised by its instrumental or utilitarian purposes.[66] But while this distinction usefully draws attention to the uniformity of the first mode and the more extensive utilitarian ambition of the second, it unfortunately limits their differences to the level of objectives. As we shall see, this transition also involved a shift in the form of regulation. It moved from a reliance upon the forms of legal prohibition and penalty, to a new mode of normalisation which specified more detailed normative requirements and sought to bring offenders into line with them through positive techniques of intervention. As we will demonstrate in Chapter Seven, this new form of regulation is of immense importance because it altogether transforms the scope, range and penetration of legal control.

One feature of this change which is relevant to our present discussion concerns the relationship between penality, knowledge and the public. For Victorian penality there was no attempt to adopt the sanction to fit the peculiarities of the offender, and consequently no need to "know" or recognise these peculiarities - hence the absence of formalised procedures of social inquiry or penological assessment. The law's categories were uniformly applied without seeking any special knowledge of the offender. On the other hand, the certainty and fixity of punishment was intended to convey a definite knowledge to the public, especially those sectors of the population who could be tempted into crime. As Bentham and Beccaria had made clear, the measured severity of sanctions, together with their uniform certainty of application, gave the public reason to know and fear them, and in turn

promoted a general effect of deterrence. Victorian penality was thus blind to the particular offender, but well known by its public.

For modern penality, on the other hand, sanctions require a knowledge of the offender, of his or her background, family and character, in order to achieve maximum effect. They demand a series of inquiries, investigations and procedures of assessment before the disposition can be properly made. In this sense, penality changes from being a blind, repressive discipline to being a more perspicacious, knowledgeable form of regulation. Where it previously produced a knowledge by the criminal population, it now more and more demands a knowledge of it as well.[67]

This move from blind repression to a more informed 'normalisation' can even be seen in the precepts of the modern prison. The phrase 'prison reform' now takes on a new meaning which denotes the purpose of the institution and not, as formerly, its limitations.[68] Classification procedures take on a more positive purpose relating to training allocation rather than administrative segregation; prison labour is asked to change its effect from that of a punitive imposition to that of a basic element of an educational and training regime,[69] and disciplinary practices are henceforth to place their emphasis upon the positive incentives of "hope" with its possibilities of moral regeneration, instead of the negative conformity produced by fear. In all this, the responsibility for producing reformation begins to shift away from the individual offender and his free-will to the prison regime, its knowledge, and its curative techniques.

Finally, as we have already indicated, the official representations of penality and its meaning undergo an important transformation during this transition. We do not mean by this that the whole corpus of Victorian representations was suddenly discarded and replaced by a

completely new configuration. Representational figures of this kind - "ideologies" - are deeply embedded in the practices and discourses of institutions and public knowledge; they are not singular images which can be totally repainted or rewritten at will. Rather the transformation of these complex ideological configurations comes about through the discursive revision of signifiers, the gradual production of new connotations and the re-structuring of the existing representational practices.

We will describe this restructuring process in some detail in later Chapters, but for the present a brief outline of the new ideology is all that we require. If, for the moment, we reduce these complex formulations to a few basic terms, it is possible to express the fundamental image of official penal discourse in the form of a three term statement involving the State, the offender and the relationship of censure which holds between them.

It is the contention of this thesis that each of these three terms was transformed in the movement from Victorian to Modern penality. We have seen how the "offender" is reconstructed in the categories of the new penality, not as a free and rational legal subject but as an "individual" with particular characteristics, an uncertain degree of rationality, and a character of a specific type, be it normal, criminal, defective or whatever. Similarly, the relationship between State and offender is no longer presented as the exercise of a contractual obligation to punish but as a positive attempt to produce reform and normalisation for the benefit of the individual as well as the State. Finally, the implicit characterisation of the State and its power - a characterisation which inheres in all penal discourse - undergoes a transformation. The new State relates to the individual not as an equal but as a benefactor, an assistantial expert,

intervening to relieve the conditions which detract from formal equality, "rescuing" its subjects from vice and crime. Its power is legitimated not in contractual terms but in terms of a natural ascendancy marked by its resources and knowledge, its ability to care. If Victorian penality suggested the image of the ideal Liberal State, then one can trace in this new ideology the first semblances of what was later to be termed the "Welfare State".

(5) Summary and Implications

What we have described then, is a transformation. On the far side of this is the Victorian penal system and on this side is the modern system of penal practice and representation which continues today:[70] two distinct forms of penality separated by their distinctive agencies, objective, ideologies and modes of operation. The importance of this "marvellous transformation" (London Times, 28 June 1911) is unquestionable.[71] It lays the foundations for the system of penality which has dominated Britain, and indeed, the whole of the industrialised Western World, throughout the twentieth century.[72] However, as was suggested above, this moment of transformation has not been recognised in theoretical analysis. In particular the work of Michel Foucault has argued, with great influence, that the present form of penality was constructed a whole century earlier with the development of the modern prison and its "disciplinary" forms.[73] He insists that the functions of disciplinary reform and normalisation were not "added on" at a later date but were from the outset an essential aspect of the Prison. In his analysis, the prison is from the start a technique of transformation and not a "punishment"; directed at the criminal's nature and not his act.

In this Chapter we have begun to demonstrate that, at least for the case of Britain, Foucault's thesis is incorrect. While the prison as an apparatus of penality has always offered a potential space for "reform" and transformative practices, the constraints of legal practice and political ideology denied any serious development of this potential throughout the nineteenth century. The legalistic insistence upon "uniformity", "equality of treatment" and proportionality ensured a mass regime which could allow a marginal place to generalised, reformative practices, but which refused any serious concession to individualisation. The development of specific practices of normalisation, of classification, categorisation and discrimination between criminal types simply did not occur in Britain until after 1895. Moreover this development was neither natural nor inevitable, nor was it the simple unfolding of penality's true essence. It required a definite struggle between contesting forces - a struggle which demands specific analysis and explanation.

There are, however, a number of writers who have acknowledged this transformation, and to a greater or lesser extent, endeavoured to explain its occurrence. Thus Nigel Walker suggests that the development can be understood in terms of the increasing "flexibility" and "sophistication" which modern systems gradually attain,[74] while Morris and McIsaac account for the change by reference to the impact of positivist criminology upon legal practices and policy.[75] Gordon Rose, in a more detailed account, offers an explanation rooted in the "social conditions and attitudes" of the time:

> "These trends were firmly based upon a gradual change in attitudes towards the misery of the poorer sections of the population. It is not easy to put this into words but one cannot but be conscious of the growth of thought, which had not existed before, for human life and human beings. Respectable people were moved, for the first time, by the sufferings of the children, the poor, the disabled

> lunatics, defectives and criminals (and also of animals) ...."

Penal reform was thus "interpreting ... a trend towards greater humanity in dealing with social misfits".[76] We can sympathise with Rose's difficulty in articulating the ineffable progress of the liberal spirit of the age without accepting his mystical theory of historical change, and equally we can accept that "positivist criminology" and "increasing sophistication" played a part in the transformation without mistaking these points for an adequate explanation.[77]

The subsequent Chapters of this thesis will begin to explore the terms of this transformation and to provide an explanation of its conditions of possibility and emergence. Something like a "genealogy" of the present system will thus be attempted, focusing upon the moment of transition in order to illuminate aspects of penality which are now buried under a residue of familiarity, repetition and official representation.

CHAPTER 2

Victorian Strategies of Social Regulation

(1) Introduction

Throughout the nineteenth century the developing logic of British penality centred around imprisonment and the principles of prison discipline. And while the protracted struggle between local and central government had a deeper constitutional and political significance, it was in part at least, a struggle to disseminate and extend this logic.[1] By 1877 that struggle had been won and a new set of disciplinary principles based upon the prison had been inscribed into the national system of penal administration.

The penal strategy established then, and the network of uniform and centrally-controlled prison institutions which formed its centrepiece, continued in a stable and settled form for the next twenty years. However this stability was suddenly disrupted in the years after 1895, and in a very short space of time the system which had been worked for and slowly assembled throughout the century was altogether transformed. One by one its institutions, practices and representations were transformed in a process which quickly deconstructed that system's logic and set another one in its place.

This Chapter attempts to explain that transformation, to investigate its conditions and its dynamics and to render them intelligible. It asks "how was this change possible?", and "why did it happen when and as it did?". It seeks answers to these questions by first of all examining the social location of Victorian penality, its external relations and strategic supports, identifying the institutions, ideologies and social forces which formed its external

conditions of existence. It will be argued that in the 1880s and 1890s, these various conditions of existence were themselves disturbed and transformed in the context of a crisis of social regulation. This broader social transformation, its causes and its implications for penality, will form the framework of our general explanation.[2]

As we said in the Preface, there is no absolute demarcation to be drawn between penality and its 'outside'. These external forces and institutions were supported and, in part, reproduced by penality's own practices and vice versa; each one forming an element in an interdependent social network, not a dependent variable in a causal chain. Consequently we must also examine the 'internal' dynamics of penality during this transition period. We must look at the specific features, problems and contradictions of penal institutions as well as the penal implications of more general developments. As we shall see, by the 1890s the British penal system was itself experiencing a number of serious difficulties which were exacerbated by the more general social crises to which they, in their turn, contributed. Again these specific problems, their causes and their implications for change, will be identified and discussed in the course of our argument.

It was suggested in Chapter One that the practices and representations of Victorian penality were closely linked with more general social patterns and forms of organisation and that the penal system replicated and supported broader ideologies and institutional strategies. But what was the precise nature of this relationship? How were the social and penal spheres conjoined? How did the particulars of penal regulation relate to the general field of social management and control?

Perhaps the best way to approach this question is to examine the social functions of the penal complex and the type of problems and

populations its institutions administered. By doing so we can see penality's practices and objectives in more abstract social terms and ascertain whether it shares these general concerns with other social institutions.

(2) The Social Functions of Victorian Penality

Official representations of Victorian penality state that the fundamental problem it faces is the problem of crime and its control. Likewise the population it administers and regulates is simply the population of criminals and offenders, whoever they may happen to be. But this is at once too simple and too limited. To begin with, Victorian penality, like that of the present day, did not concern itself with every crime or with all crimes equally. The illegal activities of the business world and of middle-class society appear, then as now, to have been less closely policed than crimes of the working classes.[3] Similarly many acts which had substantive 'criminal' characteristics - deliberate law-breaking, serious social harm, violence, personal injury, etc. - were administered not by the criminal law but instead by the civil procedures of the factory inspectorate or the inland revenue.[4] So already political and ideological considerations overlay the simple duties of penal regulation, refining and redefining its functions and practices.

But more importantly, when we talk of the population of criminals dealt with by penality, we should not mistake this for a diverse amalgam of individuals randomly distributed throughout the general population. Penality deals, and has always dealt, with a population overwhelmingly drawn from the working classes. By the late nineteenth century, however, its major 'problem population' was no longer even the

working classes in general.[5] Instead the penal institutions of the late Victorian era largely concerned themselves with the lowest sections of the working classes - the poor, the lumpenproletariat, the 'criminal classes'. Surveys of the prison population at the time of Du Cane suggest that the vast majority of offenders were illiterate, unskilled and often unemployed workers or their dependents - a population drawn from a very particular stratum of a very definite class.[6]

This fact in itself was partly due to the effects of the Victorian penal system. Indeed it was hailed as something of a triumph by the likes of Edmund Du Cane and Gabriel Tarde.[7] The prison, together with its allied disciplinary institutions (the police, the workhouse, the school, the labour market ...) had successfully concentrated criminality into the lowest sectors of the population and produced a definite social division between these groups and their more 'respectable' peers. By the 1880s, the individuals who wound up in prison tended to be drawn from the same families and neighbourhoods, and to return again and again, while large sectors of the working population displayed the behaviour of well-disciplined moral subjects, rarely if ever transgressing the laws of property and propriety.[8] Equally significant, the early confusion of politics and crime which brought large numbers of workers into the prison for 'protest offences' such as arson, conspiracy or sedition, tended to fade as the century wore on.[9] The prison thus became an institution for the truly criminal, marked off from their class by the prison brand, while the political protests of the working class were channelled through forms less dangerous than criminal behaviour and breach of the law.

Of course this social division between the classes which fed the prison and those which did not was not solely a moral one. It also depended upon an economic division which had come into play by this

time. The skilled workers of the so-called "labour aristocracy" had managed, by means of their special scarcity and organisational strength to establish for themselves a social position of relative favour and security which cut them off from the mass of unskilled workers.[10] This economic difference was used as the basis for a series of moral, cultural and political differences which overlaid and extended its impact, creating significant social divisions such as the one we have described.

It would be overstating a complex process or practical negotiation and compromise to claim that this favoured section was 'co-opted' into "becoming bourgeois" as Engels and many subsequent writers have done.[11] But it is certainly the case that the institutions of this sector - the mechanics institutes, friendly societies, co-operatives, temperance societies and methodist chapels - often embodied the central bourgeois values of respectability, self-help and thrift, albeit in a form adapted to those workers' distinctive conditions.[12] Moreover for a lengthy period after 1850, its political stance towards employers and the authorities was one of co-operation and compromise - "Defence not defiance" as one slogan had it.[13] These features produced a definite gulf between 'respectable' and 'rough' elements of the working classes, a separation clearly understood by the individuals involved, and often expressed in explicit terms.[14]

This division, and the respectable lifestyles, responsible opinions and respectful attitudes which it upheld, were major achievements of the forces of discipline and moralisation. And the practices of penality, the Poor Law, the charities and so on, ensured that these divisions were maintained by the threat of punishment or pauperisation for those who traversed the moral divide. But this separation, once established, was by no means secure. Its line of division was always

precarious, dependent more upon short term economic fortune than deep-rooted cultural commitment. There was thus a continuing problem of containment and quarantine. Once concentrated in this small class, criminality and its related vices had to be kept there, within its fixed and manageable bounds. Having narrowed the field of disorder, penality and its allied institutions strove to prevent its redispersal.

This problem was particularly acute in regard to the large middle sectors of the working classes who were generally in employment and respectability but were less well-placed and secure than the labour aristocracy. Composed mainly of semi-skilled workers, low-grade clerical staff and tradesmen in seasonal or casual trades, these sectors[15] formed a kind of "perishing class" subject to the effects of trade cycles, seasonal unemployment and economic depression and continually in danger of 'demoralisation' and social 'failure'.[16] In relation to these groups, the residuum[17] were seen to form a permanent danger, a constant source of contamination always ready to "foul the record of the unemployed" and to "degrade whatever they touch".[18] As Helen Dendy warned the Economic Club in 1843:

> "At every turn of their daily lives [these] two classes meet and influence each other, they are connected by every tie of service and disservice"

and distinguished only by the tenuous moods of 'character' and "disposition".[19] Such promiscuous intermingling, and the social dangers it entailed, made the work of separation and containment all the more important and all the more difficult.

The institutions of penality supported this crucial division by dealing with its underside. They administered the residuum, helped establish and police its boundaries, and formed important channels of recruitment, since the status of ex-convicts virtually condemned them and their dependents to membership of this class.

There were, of course, other dangers presented by this residuum besides the problem of criminality and contamination. In the eyes of the ruling classes this population was without morality or manners, disdaining the disciplines of respectable family life, religious duty or steady employment.[20] In a sense it existed outside of society's regulatory institutions, free from moral constraint or obligation and therefore "beyond control", existing in a state of "total irresponsibility".[21] Such a paradoxical 'freedom' had definite political dangers:

> "In political commotions, the uneducated pauper has neither principle nor motive to induce him to respect or defend the state of society, the benefit whereof he has not been taught to appreciate. He is prepared for any alteration in the state of things, fearless of change, and indifferent as to consequences." [22]

Consequently, it provides "the ready materials for disorder when occasion serves", and perhaps more menacingly, the stark human evidence used by "socialist agitators" and "sensational writers" to organise political opposition to the status quo.[23]

Excluded by laws and property, marginalised by the labour market and political forces, this class stood outwith respectable Victorian society, devoid of social attachment and the constraint it entails. It stood on the very margins of the system of production, in turn exploited or excluded, but this marginality carried with it the menace of the unpredictable and the unattached. The destitution of this class was also its danger.

This then was the population administered by penality and the nature of the problem it presented. "Crime and punishment" or "law and order" were the signs beneath which this administration was conducted, its rubric of legitimation and official concern, but the real significance and dimensions of the problem went well beyond criminality. Indeed

the penal complex was by no means the sole administrator of this problem-population. On the contrary, it was only one element in a network of social institutions which addressed themselves to the disciplinary, moral and political regulation of these lower classes. This network supported a definite framework of social action aimed at the poor, a framework composed of shared principles, methods and objectives which, taken together, formed a definite strategy of social regulation.

(3) The network of Social Regulation: Victorian Ideology and the lower classes

As well as penality and the prison, the Victorian network of regulation also involved the national poor law and the parish or union workhouses, the elementary schools and a number of private agencies of moralisation such as charities, temperance societies, settlement missions and so on. Of course each of these institutions had a distinctive function, each claiming a separate jurisdiction and sphere of competence, each administering a particular aspect of the individual's life, with particular ends in view. But, as we shall argue, these distinctive functions and modes of operation were arranged in a network which displayed a number of common characteristics and an important element of co-ordination. There was, for example, a common problem-population and field of incidence which was the general concern of each of these agencies. Each shared a set of fundamental social values, objectives and political principles with the others. Moreover their joint actions together formed a loosely co-ordinated pattern, each one depending upon and supporting the operations of the others, each existing in the spaces left by their allied agencies and orienting

their practices to complement or underpin the rest of the institutional field.[24] The overall effect of this amounted to a loosely organised but nonetheless distinctive disciplinary strategy aimed towards the poor.

The crucial linkage which held this strategy together was a common ideology, or more specifically a common ideological regard which fixed the problem-population of each institution in fundamentally similar terms. Despite the varied, individual characteristics of these institutions, and their separate concerns and criteria, they each shared a common ideological conception of the class they administered and the dangers it posed. This class was never defined in its own terms, by its self-declared welfare needs, or its educational aspirations or even its views on law and morality. Instead it existed for these institutions in the terms by which it had been defined in the ideologies of the ruling bloc. For this network of institutions and its operational strategy, the position and significance of this class was fixed by the dominant bourgeois ideology in the images of danger, demoralisation and contamination described above. It was this, ideologically-defined object which was the common focus of all of these institutions.[25] They shared a definite ideological viewpoint which specified the nature of the problem, and its implications for social action were subsequently operationalised in the specific practices of the various agencies involved.

In a moment we will describe these practices and their impact upon the working classes generally, but before doing so it is necessary to chart the terms of this dominant ideology and to give some indication of its basis in the social organisation and structures of Victorian society.

The dominant ideology of British society in the years between 1850

and the 1880s was structured around three main supports - classical economics, utilitarian philosophy and evangelical religion (in various conformist and non-conformist forms).[26] These elements were drawn together and given cohesive force by the all-encompassing notion of individualism which permeated every aspect of bourgeois life, from economics and philosophy to law and philanthropy.[27] In terms of everyday social philosophy, the values of work, thrift, respectability and above all, self-help formed the basis of Victorian common sense, while the theories and precepts of a vulgarised political economy were commonly taken for universal logic and Reason itself. But while there is an obvious spuriousness about an ideology which represents particular bourgeois values as universal or natural, the fact that these values had been inscribed into reality in the organisation of the economy, the policies of the State and the practices of its institutions, gave this ideology a practicality and hegemonic potential, at least for those classes whom its values favoured. It was an ideology with its own regime and hence its own practical "truth".[28]

Thus if we look at the economic position of Britain in the 1850s and 1860s it becomes easier to appreciate the ideological emphasis upon "freedom" and its corrolaries of free enterprise, free trade and the freedom of the individual. By 1850 Britain had achieved a virtual monopoly of world industrial production and her trade routes and export markets were secured by a vast colonial empire and her post-1815 naval dominance.[29] The production relations which underpinned this imperial supremacy consisted of an exceptionally "free" economy of small-scale, owner-managed, competitive private firms (normally partnerships or family concerns) in an environment free of mercantilist trade restrictions and rich in exploitable resources, particularly

coal, iron ore and labour power.

In this context, the liberal values appropriately represented the interests and position of the dominant class, and did so in a coherent and legitimatory manner - a manner which "made sense". The ideologies and institutions of this class consequently endeavoured, with considerable success, to universalise these values, imbricating them in the daily practices and beliefs of all classes. The outcome was an institutionalised ideology of individualism which characterised each person as a free, rational, responsible subject, choosing and acting in accordance with utilitarian calculation, in possession of his self and his destiny.

Similarly, in the political aspect of this ideology, each individual was again fixed in his freedom. Each person was characterised as free and equal, unconstrained by arbitary power or hierarchical rank, possessing all the freedom of speech and action of a free-born citizen. And once again there was a degree of substance in these representations, a necessary core of "truth" which was then extended and universalised in the distortions of ideology. For each individual (by which the Victorians meant each male, adult, British-born individual) was indeed a citizen, in possession of a full range of civil rights - to vote, to own, to contract, to sue, to avoid arbitrary arrest and so on. However, these civil rights implied no necessary capacities, no given political or social entitlements. A citizen who lacked property would thus have all of the rights specified above, but would lack any capacity to exercise them. Excepting of course the capacity to contract and sell the only asset he owned - his personal labour power. But then in that case a freedom or right was scarcely distinguishable from a pressing necessity.

This concept of the individual free subject - which is of course

the necessary basis of capitalist commodity relations and their representation[30] - was prominent throughout all the philosophical, religious and cultural discourses of the mid-Victorian period.[31] Thus the doctrines of the Christian Churches specified that, though God was indeed all powerful, He had created human beings with an absolute freedom of choice in the hope that they would freely choose their Master.[32] Even the societies of care and Christian charity, with all their experience of the forces and effects of destitution, chose to assert that individual moral choice was indeed the basis of social failure and also the necessary lever of subsequent rescue work. But it was primarily the law which cemented this idea into the fabric of society, both in its public representations of freedom and liberty and in its practical regulation of men's social relations and wordly affairs. Symbolically and practically the law fixed the category of individual freedom and created the world in this bourgeois image. It demanded and enforced freedom of contract, freedom of trade, freedom of ownership, of movement and of choice. But at the same time, if with less display, it named the rules of private property as the condition and guarantee of each of these freedoms - a condition which entailed the massive unfreedom of the whole propertyless class.

When we turn to the criminal law we find the same figure writ large, this time appearing as the guilty subject, fully responsible and held to account for a crime that was always freely chosen:

> "... a crime is caused by the inscrutable moral free-will of the human being, doing or not doing the crime, just as he pleases; absolutely free in advance, at any moment in time, to choose or not to choose the criminal act ... the sole and ultimate cause of crime." [33]

Here, above all, resided the "free subject" of Victorian ideology, its liberty and freedom dogmatically upheld against all the evidence of common experience. A freedom rivalled only by the fundamental liberty

of paupers to choose their poverty. In the discourses of penality and pauperism in Victorian Britain, the free subject reigned supreme. Of course this entailed an obvious and less than gentle irony since the criminal and pauper populations were manifestly the least free and the least equal in the social universe. So how was this paradox maintained?

Not because of error or lack of evidence, to be sure. Contrary to Radzinowicz's suggestion that this notion derived from "an underlying belief in human equality",[34] there was rarely a firmly-held belief in the truth of these universal freedoms. Instead there was a certain belief in their status as necessary fictions. They were prudential axioms of bourgeois social organisation, necessary for disciplinary and ideological rigour, rather than credible truths about human nature and social conditions. Judges and their spectators knew of the "extenuating circumstances" and limited freedom of offenders as the decisions of juries frequently showed[35] and poor law authorities were well aware of the conditions which enforced unemployment and destitution (as they were forced to admit in the 1890s when their election was opened up to the working classes). But it was a fundamental principle of bourgeois ideology that the essential freedom of each individual should be "recognised", even when least apparent. After all, if the unfreedom of the poor should be recognised how could they be punished for their crimes or blamed for their poverty? And how could this oppression, once admitted, be justified or maintained? Put simply, this fiction of freedom was "convenient for princes and states and the laws they supported",[36] and never more so than in the age of laisser-faire.

In the terms of bourgeois thought, the corollary of this maximum freedom of the individual is a minimal "interference" on the part of

the State, and this "non-interventionist" conception of the State's role formed a prominent element in Victorian ideology. Now of course to suggest that the State in capitalist society should somehow refrain from "intervening" is quite unthinkable. In a capitalist Society, the agencies of the State are the central institutions through which power is ordered, populations regulated and social relations reproduced. Any capitalist State must at minimum be "involved" in the provision and maintenance of a legal system which sanctions certain forms of property and definite forms of contract, a relatively peaceful order in which production and exchange can occur, a money supply, defence, external relations and so on. Besides these basic functions, the Victorian State was already deeply engaged in regulating the general conditions in which the labour force was maintained and reproduced, as the existence of Poor Law, Factory Acts, the Board of Health, Education Acts, legislation on Vaccination and Pollution, etc. all clearly show. And of course all of this government activity was financed by taxation, customs and excise and involved a considerable staff of public employees.

Yet in spite of this, it remains true that in both the economic and social spheres, Victorian Britain was remarkably limited in its degree of State intervention. Such State action as did occur was mainly <u>regulatory</u> - undertaken to facilitate market mechanisms and free enterprise, not to inhibit or supplement them.[37] Moreover, it was usually entered into reluctantly and on a minimal basis, justified as a necessary and instrumental evil rather than a positive end in itself. Whenever the principles of laissez-faire had of necessity to be breached, the political discussions and Parliamentary debates involved would centre upon this issue of ideological principle, abhorring its violation and reaffirming its universal value, so that even where this liberalism was violated, its fundamental validity was

upheld in the very act of transgression. In the terms of the State's official pronouncements and representations then, there was an important distinction drawn between the spheres of public and private life, a distinction which affirmed that, with a few special exceptions, the economic, moral or religious welfare of individuals was strictly a matter for private arrangement.

"Laissey-faire" individualism was thus the "philosophy in office" during the period between the 1850s and the 1880s, and it was a philosophy closely suited to the conditions of British economic and political life at that time. Of course there were sections of the population which did not appear to benefit from this environment of untrammelled liberty - the poor, the unemployed, those in casual or seasonal employment, and so on. But even where this was recognised, the problem was restated in terms of individual failing, requiring not State aid or market controls but rather the inculcation of habits of self-help, discipline and thrift. As one contemporary put it:

> "All forms of State support are founded on erroneous conceptions of the relation between the State and the individual. It is the duty of every man to make provision for himself and for those dependent on him; and of the State to see that no obstacles hinder his doing so. Where the State does more, or the individual less, there is nothing but disaster in store for both." [38]

It was in these terms, and according to the principles of this ideology, that the Victorian network of disciplinary institutions understood and dealt with its problem population. Its strategy adamantly refused any recognition of the conditions which produced unemployment, poverty, criminality and destitution, preferring instead to operationalise in concrete forms the doctrines of individualism, self-help and freedom. In this way the abstract conceptions and philosophical preferences of the ruling classes were pressed upon the social world, and realised through the practices of institutions.

Precisely at the moment of maximum unfreedom, at that instant when the destitute individual was forced to turn to crime, to seek parish relief or to beg for charity, he or she was greeted by a discourse of liberty and moral choice and was administered according to its terms.

(4) Institutions and Ideologies

We have already seen in Chapter One how penality, and above all the Prison, operated within the terms of this dominant ideology. Not only did the criminal law proclaim and enforce the "freedom" of the subject - in order to justify an end to that freedom - but the very architecture, practices and techniques of the prison represented the figure of individualism in their every aspect. The basic administrative principle of less-eligibility presupposed that the prison, like everything else, was a market option, chosen by free individuals if its attractions outweighed those of other calculable choices. Great care was thus necessary lest imprisonment became preferable to the relations of production and exploitation in the 'free' world outside. The irony of this "choice", and the significance it lent to the "freedom" and "equality" of working class life, could not have been more obvious, were it not for the dogma of political economy, and the necessity of its fictions.

As for the ideology of the minimal State, this too resonated in the practices and representations of penality. Of course the penal system, by its very nature, was "interventionist", involving the State in serious forms of prohibition, regulation and interference with personal liberty. But these interventions were conducted and presented in the minimalist terms of the social contract: only these acts publicly specified and prohibited in law could trigger a penal

intervention and that penalty must be limited to the "contractual equivalent" proportional to the crime. Penality represented itself as policing a specified code of minimal conformity and punishing illegality on a limited and proportional basis. No "interference" was allowed beyond this. Thus the morality, attitudes or norms of behaviour of certain individuals might be reprehensible or even dangerous, but until they resulted in breaches of law, penality was seen to be powerless.[39] The ideology of liberalism, and its strict division between public and private spheres, specified that such questions of morality and welfare were private matters, unsuitable for State concern. Accordingly the welfare and reform of the offender remained a matter for his or her own conscience and for any private agencies which chose to offer their aid.

Much care was taken to ensure that the agencies dealing with the welfare of offenders - reformatories, police court missions, discharged prisoners aid societies and so on - retained their private status and reputation, even when they were a <u>de facto</u> element in the normal routines of penal practice. Thus while private rescue work might be facilitated, it was made quite clear that the moral welfare of the offender was in no sense the duty, responsibility or proper concern of the Liberal State.[40]

If we turn now to the Poor Law in this period and examine its relation to this overall strategy and its ideological framework, we find a number of direct continuities. Like the prison and penality, the practices of Poor Law institutions operated in accordance with the doctrines of less-eligibility and self-chosen impoverishment. In the long period which followed the 1834 Report, the practices of virtually all the Poor Law Unions in Britain completely excluded able-bodied males from out-relief.[41] This line of exclusion operated by means of the

workhouse 'test' which stipulated that relief would be afforded to this category of applicant only on the basis of entry into workhouse detention. The conditions of less-eligibility which characterised the house regime - close supervision, segregation of family members, minimum diet, disciplined labour, etc. - ensured that the test effected an automatic division between the 'truly destitute' and the 'vicious mendicant' (or else those who still retained sufficient dignity and self-respect to refuse its degradations). Moreover, this practice, like the routines of Victorian penality, operated without the requirement of knowledge or investigation:

> "[It] favoured a particular kind of blind, repressive discipline without knowledge. Investigation of pauper cases was rejected on the grounds that it only set up clumsy and partial barriers against fraud and misrepresentation. The correct procedure was not to investigate but simply to offer all applicants relief in a disciplinary workhouse. Such an offer was 'a self-acting test of the claim of the individual. ... If the claimant does not comply with the terms on which relief is given to the destitute, he gets nothing; and if he does comply, the compliance proves the truth of his claim - namely his destitution'." [42]

This Poor Law practice was to continue in operation for almost 60 years, but in 1870 the line of exclusion was extended, in accordance with the Longley Report, to prohibit all categories of outdoor relief (including women, children, old people, the sick, etc.). This "crusade against out-relief", which was accompanied by the general publication of benefit rules and assessment criteria[43] - a didactic device to create a knowledge by the poor - was less successful than the strategy of 1834. It failed in its aim to 'educate the poor' or to transform their habits, and in practice the pedagogic aspect of the strategy was soon omitted. But as Williams points out, this failure did not make the 1870 developments a "non-event" or a 'debacle':

> "The perpetual failure to achieve educational ends allowed a displacement of goals whereby crudely repressive ends were promoted and became predominant. Because the Longley strategy never worked, the outdoor strategy of the crusade was in practice redefined as dispauperisation by any and every means. ... In five years from 1871 to 1876 the total number of outdoor paupers fell by 276,000 - or some 33%." [44]

The ideological basis of this practice of repression and exclusion, as with that of penality, involved a denial of the effectivity of structural or economic conditions and a complementary assertion of individual freedom. However we must stress again that this was a calculated political position - a strategic posture - rather than any false belief or lack of awareness. The various systems of public relief operating before 1834 had acknowledged the play of seasonal forces, economic cycles and trade depressions and had considered these in their calculation and distribution of relief.[45] The 1834 Report and the strategy which it inaugurated also recognised these forces but chose instead to exclude them from consideration. In doing so, it explicitly acknowledged the repressive effects of this policy on a section of the population, but argued that the groups affected were a "small disreputable minority, whose resentment was not to be feared, and whose favour was of no value".[46] As Jordan remarks:

> "... in order to ensure industrious habits among labourers and the free-play of economic self-interest, an unknown proportion of the population was to be treated with intentional severity, regardless of their individual merits." [47]

How did this calculated repression square with the liberal ideology of citizenship, freedom and equality? Quite simply, by posing as a chosen alternative. Poor relief was not an aspect of the normal rights of citizenship as it was to become in the twentieth century.[48] It was instead a denial of citizenship, an alternative to it which involved the individual in a disavowal of the rights of freedom and franchise in exchange for the minimum necessities of life. To claim state aid was

to relinquish private freedom, to quit the political community and choose the status of outcast or pariah. Nor was there, before the 1890s,[49] any positive attempt to reform those who entered the workhouse. Individuals were free to come and go as they chose, the workhouse strove to restructure that choice, not the individual who made it.

Penality and the poor law, the prison and the workhouse then, framed the negative, repressive axis of the disciplinary network which operated in Mid-Victorian Britain. The other axis of this strategy, its positive, restorative aspect, was left to the elementary schools on the one hand, and to private agencies of moralisation on the other. Together these institutions attempted to dismantle the culture of immorality, intemperence and promiscuity which they recognised in the lower classes and to install in its place the values of self-help, sobriety, respectability and hard work. For most of the nineteenth century the State took responsibility only for the education of vagrant, criminal and pauper children, the rest of the population being either untutored or else schooled privately. However the dangers of an "unprincipled" and hence irresponsible populus, prompted an expanding provision of elementary education, privately run at first, but later subject to various forms of State inspection, regulation and subsidy.[50] These schools operated as:

> "... a means of securing public morality and preventing crime; a means of forming a population with useful habits though the instrument of good principles in order to secure a moral foundation for governmental and religious authority." [51]

As Jones and Williamson point out, by the middle of the century these elementary schools had ceased to give priority to the inculcation of religious and moral principle, instead engaging in the more secular practice of training up individuals who would be fit in terms of

physique, mental development and political attitude to take part in the culture of working-class respectability. They did so by means of a basic curriculum which endeavoured:

> "To instruct in reading, writing and accounts; to preserve from idleness; to induce habits of industry, subordination and order." [52]

This curriculum and its lessons were inculcated by means of more than just the skills and persuasion of teachers or the enthusiasm of young scholars. A number of disciplinary techniques such as the monitor system, the Madras system, and the careful spatial arrangement of classes were employed, all of which ordered the movements and conduct of pupils in a rigorous and closely supervised fashion.[53] And for those children who proved too unruly for this normal system of schooling there was always a resort to the Industrial and Reformatory School system which provided the network with a more explicitly disciplinarian form of education. Thus the field of elementary education functioned to provide important skills of literacy and numeracy to children who would not otherwise have had them, but at the same time to extend a form of discipline and cultural policing to a population which was at risk. It was organised:

> "as a project to eliminate the topographies of the dangerous classes on the one hand, and ... to improve and prevent the decay of the perishing classes on the other." [54]

If we examine the practices of the various philanthropic and voluntary agencies of this period we find that here too, the work of moralisation owed as much to the desire for political order as to the tenets of Christian charity. There was of course a wide range of such agencies, representing various denominations and specialising in specific areas, types of client and aspects of lower class life. Each one therefore organised its relief practices according to specific criteria, usually accompanied by moral exhortation and sometimes by

private forms of discipline such as rent control, church attendance, the temperance pledge - or even marriage.[55] However for all their differences, these agencies generally shared an allegiance to the dominant ideology of individualism and the political strategy outlined above. In the early 1870s the indiscriminate alms-giving of previous years came to be largely replaced by a more careful, calculated form of charitable relief which sought to avoid the problems of "demoralisation" and mendicacy which unconditional relief was said to produce. This movement (running parallel to the official Poor Law strategy of the Longley Report) was led by the Charity Organisation Society which campaigned for the introduction of a strict economic rationality into the field of charitable giving.

In many ways the COS epitomised the bourgeois perception and treatment of the poor in the age of laisser-faire. Composed mainly of middle-class intellectuals and professionals, with a particularly rigorous adherence to self-help individualism and a determined hostility to any extension of State or municipal aid to the poor,[56] the COS was set up in 1869 with the explicit aim of centralising, rationalising and professionalising the organisation of charity. Subsequently all applicants for charity were to be subject to general, publicised rules, dealt with through a central agency and individually investigated by trained case-workers. Central to COS practice was a distinction between the "deserving" and "undeserving" poor which restricted aid to those who merely required "to be put back on their feet again" after some temporary and exceptional hardship.[57] As for the others - those who's homes or characters failed to achieve the requisite level of respectability, who were deemed feckless or spendthrift, or who had relatives who were liable (though not necessarily able) to give support - they were simply refused relief and reminded of the necessity

for self-help, hard work and constant thrift. For the COS and its allied agencies the primary object of the exercise was not Christian charity and welfare aid but rather the enforcement of the principles of economic liberalism and the constitution of the poor as disciplined, self-helping individuals.[58] Any other form of charitable aid was considered subversive insofar as it both interfered with the free play of market forces and jeopardised the ideology of freedom and equality upon which these forces stood.

The general effects of these agencies of moralisation is not easily discerned with any accuracy, nor is their success in transforming the values and culture of the population they addressed. Most probably the results were uneven and diverse, varying according to the situation, background and prospects of the individuals concerned. Certainly there was no general success, no massive transformation of the culture of the lower orders, no end to the stream of destitute and impoverished individuals which filled the prisons and the poorhouse. But perhaps that was to be expected. It is more likely that the success of this crusade was to be measured not in absolute, but in relative terms. Its effect was not to convert the whole working population but to establish and reinforce a division within that mass which rendered it more manageable and more easily contained. The basic conditions for security or destitution - the labour market, housing provision, wage levels, all the factors which produced an economic divide between the casual poor and the labour aristocracy - were entirely ignored. Instead all of the endeavours of these agencies were directed to the moral and cultural elements which overlaid and reinforced this economic division; trying to show that the problems of the poor were moral problems, that social differences were differences of character and morality, of righteousness and responsibility. Thus a major

effect of these institutions was a symbolic one, contained in their constant affirmation that the hierarchies and divisions of the social world did indeed correspond with men's morals, their merits and their just deserts.

Whatever the reassuring impact of these practices upon those in higher ranks of the working class, it seems fairly clear that these head-on ideological assaults met with little success among the casual poor and the unemployed, the clientele of the workhouse and the prison. According to Stedman Jones, the culture of these lower classes, "proved virtually impervious to evangelical or utilitarian attempts to determine its character or direction".[59] For while this philosophy of self-help might make good sense to workers in a situation of stable, secure employment, often with high wage levels and positions of authority over subordinate workmen, it would make no sense at all to the mass of unorganised workers and their families who periodically entered the ranks of the unemployed and the destitute through the effects of trade cycles and seasonal fluctuation. Nor could it impress those who lived permanently in a state of struggle as they tried to carve out an existence below the poverty line. To those classes - and Booth estimated that in London they numbered as many as one-third of the whole population - facing appalling housing conditions, bad sanitation, seasonal and structural unemployment and frequent malnutrition, the notion of the individual in control of his or her own destiny was simply unsustainable, as were notions of "temperence", "respectability" and all the other symbols of the alien culture. As Mayhew pointed out:

> "Where the means of subsistence occasionally rise to 15s. per week and occasionally sink to nothing, its absurd to look for prudence, economy or moderation. Regularity of habits are incompatible with irregularity of income ... it is a moral impossibility that the class of labourers who are only occasionally employed should be either generally industrious or temperate." [60]

In other words the dominant ideology was incapable of winning over the poor because for them it was simply impractical. On this terrain, self-help individualism suffered the limitations of its class basis, failing to find any economic rationality in which to anchor its significance and sense. Moreover, the actual processes of moralisation and supervision whereby these values and principles were to be imparted, themselves reeked of class distance and superiority. For all their good intentions, the philanthropists, missionaries and settlement workers could not disguise their own social standing, and this factor undermined their major technique of moral suasion - that of personal influence. As Hobson pointed out:

> "... few persons who are members of a richer and better educated class can really influence their poorer neighbours for good. ... The little differences of manners and even dress form an aloofness which chills the atmosphere of free familiarity in which alone the deeper individual facts emerge. ... A single breath of 'suspicion', the unconscious emission of a class point of view, the betrayal of some little difference in feeling, and all hope of influence is lost." [61]

Because the axis of positive moralisation was this limited and partial in its effects, the major thrust of the overall strategy towards the poor was one of coercion. Together the agencies of penality and the poor law, operated to enforce a line of repression and exclusion against the lower sectors of the working class. These sectors became "outcasts", a "dangerous class" excluded from the political community and unrepresented in the dominant ideology - a social danger posing a problem of management and domination. As far as this group was concerned, the relation of State to individual was one of force and not authority, a relation of coercion typified and symbolised by the workhouse and the prison.[62]

This strategy of repression and exclusion had a number of positive and negative effects. Most practically it displaced or

dispersed any political threat by isolating and detaining individuals, breaking up neighbourhoods and families, deterring resistance by threat of force and making impoverishment shameful and degrading. However it also produced an important ideological effect, reaffirming the dominant values in the face of opposition. Potentially at least, the very existence of a whole class of destitute or deviant individuals presented a fundamental threat to the legitimacy of the social order and its values of equality and freedom. The prison and the workhouse diverted this threat. Their categories routinely displaced the problem to the level of individual morality, thereby denying the structural effects of unfreedom and any implied demand for the State to counteract them. At the same time this orthodoxy prevented any rupture in the dominant ideologies of individualism, political economy and social laisser-faire. These two institutions formed a kind of market policing mechanism - a security net which was the inverse of the "social security net" which developed in the twentieth century. Far from recognising the social contradictions of the market and repairing them by means of welfare provision, penality and the poor law rigorously upheld the principles and integrity of 'free enterprise', removing those human elements who proved unable or unwilling to accept its terms.

On the other hand, and negatively from the point of view of power, this strategy involved a number of serious costs. In terms of finance, and despite rigorous adherence to "less-eligibility", these institutions represented an expensive pull upon local rates and national expenditure.[63] Moreover, as we shall see, these institutions increasingly appeared to <u>reproduce</u> and <u>expand</u> their problem populations and the financial and political costs which they entailed. Far from diminishing the residuum, their practices seemed to fuel its expansion, producing

increasingly high rates of recidivism, pauperisation and demoralisation. Perhaps more crucially, the very nature of this system precluded the "consent" or voluntary submission of the submerged population which was its target. As we have seen, its ideological terms were difficult or impossible for its recipients to live their lives by and consequently failed to transform lower class culture or morality. The result of this strategy was thus the social exclusion and coercion of a large and growing sector of the population. The hegemonic domination which characterised the bourgeoisie's relationship to other classes (such as the landed gentry, the intelligentsia and new professionals, the 'respectable' working class, etc.) - their ideological mandate to rule - was thus seriously flawed. A whole class of people was caught up in a relation of exclusion/repression which gave them no stake in the social system and every reason to oppose it. The result was the continued reproduction of a Victorian "dangerous class" towards whom the only available response was further repression.

(5) Social Developments and the Disruption of Victorian Strategies

We have seen then, that the Victorian penal system was constructed around the categories of a strict individualism (individual responsibility, the free and equal subject, legalism, a classical criminality of reason, etc.) and directed at a particular social class. We have also seen that penality was not alone in this, but rather formed one element within a generalised disciplinary strategy involving a number of institutions, ideologies and diverse practices. These external supports and related agencies shared a basic framework with penality and to some extent functioned in co-operation with it. Moreover, the tenets of this strategy - its political objectives and

ideological values - were grounded in an individualistic and hierarchical form of social organisation dominated by the bourgeoisie and its allied forces. In the years between 1895 and 1914 all this was to change, as we have seen from Chapter One. So how are we to explain the transformation of this system and of the forces, ideologies and institutions which formed its conditions of existence? What were the developments and events which brought about this transition?

As we have indicated already, the effect of the Victorian State's social and penal policies was to maintain an ideological rigour and a social discipline, but at a cost of the political alienation of a considerable sector of the population. Viewed abstractly, these policies therefore presupposed (1) the importance and viability of the ideology of laisser-faire individualism and the "free market" which it upheld and (2) the disorganisation and powerlessness of this repressed class. In the 1880s and 1890s a whole series of developments, struggles and events occurred which fundamentally undermined each of these presuppositions and the policies which they supported. Nor was this transformation restricted to penal policy or the field of social regulation. The developments of this period and their repercussions amounted to a social reordering which extended far into the domains of economics, industrial relations, political power and social philosophy.

Our primary concern here is not with these diverse developments so much as their political repercussions and their precise impact upon the ruling bloc's disciplinary strategy and penal practice. Nonetheless a brief summary of these changes is required if we are to come to terms with the external conditions of penal change.

At the end of the nineteenth century the economic and political structures of Victorian Britain underwent a period of transformation

which marked the end of liberal, free-market capitalism and a transition into a new epoch of monopoly capital. By the 1890s the drive to combine capital on an increasingly social scale in order to economise on the means of production and to outstrip the productivity of competitors had led to a concentration of industrial capital which considerably altered the economic field. Individual industrial firms began to combine to form monopoly groups and cartels in an attempt to promote a degree of planned production and market control and the family firm or partnership, hitherto the dominant unit of production, gave way to a rapidly increasing number of corporate or joint-stock firms.[64] These movements of industrial consolidation and of corporate organisation were paralleled and stimulated by the increasing centralisation of finance which was also taking place during the 1870s and 1880s. The free-market economy of individual production which grounded the whole ideology of laisser-faire individualism was thus transformed as a result of its own essential dynamic - the will to profit.

At the same time other critical factors impinged upon Britain's economic position. In terms of external trade, her dominance was challenged by the incursions of Germany, the United States of America and Japan into the world market, while at home the rate of industrial profit began a marked decline as a joint result of underinvestment and a revived working class militancy.[65] The period of the Great Depression (1873 - 1896), following upon an era of prolonged prosperity, further undermined the assumptions of laisser-faire capitalism and the inevitability of "progress" within its terms. The effects of this depression were felt not so much in real economic terms as in the crisis of confidence which it induced and the challenge to liberal orthodoxy to which it gave rise. In particular the depression caused a

significant shift in the relationship of the various sectors of the working class to the ruling bloc, destabilising the fragile relations of compromise and co-option which had been evident in the 1860s and 1870s. The influence of socialist ideas and organisations also proliferated in this period,[66] provoking alarm within the established political parties which were already anxiously mindful of the changing balance of political forces which followed the extension of the working class vote.[67] In particular they feared that these emergent socialist groupings might in future win the support, not just of the poor and unemployed but also of the vital leading sectors of the working class whose favoured position was now in jeopardy as a consequence of rapid mechanisation, extensive unemployment and the decline of traditional skilled working practices.[68]

At the same time, the depression and the falling rate of profit, bringing the greatest pressure to bear upon the lowest groups of unorganised, unskilled workers provoked a startling growth of unionisation amongst these sectors. The new, militant "Unionism for All" brought about a wave of labourers' strike action in the last years of the 1880s and for the first time in this country the lowest sectors of the working class acquired the potential of acting as a united, organised social force.[69] Between 1888 and 1892 trade union membership actually doubled from 10% to 20% of the workforce and the formation of the Independent Labour Party in 1893 marked the first step towards an autonomous political party representing the newly enfranchised workers at national level. The Local Government Act of 1894 further extended the local franchise and opened the way for greater participation by the working class in the administration of municipal facilities such as housing, transport and poor relief. The effect of these changes was to bring into question the stratification

and divisions amongst the working classes which had been so crucial to the strategies of Victorian rule. Particularly in London there was evidence to suggest that the insanitary housing, overcrowding and high rents which had previously afflicted only the casual poor was now beginning to encompass the better-off artisans and skilled workers as well, as a result of extensive unemployment and a chronic housing shortage. The enforced proximity between the respectable working class and the disreputable poor had put in danger the fragile cultural divide which had taken so long to establish and confirm.[70]

This social crisis was highlighted and exacerbated by a series of revelations which emerged from the new public and political focus upon the "social question". Empirical social surveys and journalists' reports told of a massive population in the heart of the large cities living in conditions of the utmost deprivation,[71] and well-known figures wich as the Barnetts and Charles Booth confessed the impotence of charity in the face of such problems.[72] Moreover there was a developing conviction that these conditions were producing degeneracy and physical deterioration amongst the working population, and causing a sharp decline in the efficiency and vigour of the nation.[73]

By the 1890s it was becoming apparent to all but the most reactionary sections of the bourgeoisie that any adequate solution to the social problem would involve large-scale State intervention in the shape of welfare provision, housing improvements, medical care and unemployment relief. Moreover these could not be undertaken without being accompanied by a dramatic re-interpretation of the distinction between the deserving and the undeserving poor. In other words the political repercussions of these developments involved a fundamental breach of laisser-faire individualism and the Victorian strategy of social regulation. The consequence was that the social question became

the nodal point of a major ideological crisis. In point of fact such a crisis was in the making throughout the previous decade, as changes in production relations and the economic field began to undermine the foundations of free-market liberalism and its associated ideologies. However the social question served to displace this crisis from the theoretical sphere where it was previously expressed (in the work of Marshall, Hobson and T. H. Green, for example) to the political arena itself.

In the years that led up to the twentieth century an increasingly successful assault was mounted against the Cobdenite orthodoxy of economic liberalism. Given the social importance of this ideology, this critique struck at the very foundations of Victorian society and its political relations.[74] For the first time the 'natural laws' of the market came to be viewed as inadequate to the task of maintaining social stability and social justice. Theorists such as Alfred Marshall, T. H. Green and David Ritchie reoriented orthodox political economy to talk in critical terms about "unrestrained capitalism" and the positive potential of State action.[75] New perceptions of the social problem and its underlying causes were formulated and contributed to the call for an extension of State intervention in the social sphere and in the labour market. These included theories of urban degeneration and eugenics, which as we shall see, were of immense significance in the formation of social policy in the 1900s. Following upon the massive depopulation of the countryside - the movement from the land to the debilitating conditions of urban life - the notion that the Imperial Race was threatened with decline and degeneration rapidly worked its way into political discourse.[76] Official complaints about the poor quality of military recruits during the disastrous Boer War and concern at the greater efficiency of the German workforce served to amplify these

fears, as did the growing likelihood of an Imperial war in Europe. In these circumstances, the call for serious government intervention in the social sphere came not just from Fabians and the various socialist groupings but also from a broad range of 'Social Imperialists' whose allegiances cut right across the normal party boundaries. To this was added the increasingly vocal demands of the new social stratum of professionals, technicians, scientists and intellectuals, calling for "the professionalisation of government, the accumulation of expertise, the solution of problems by the application of reason and the creation of an administrative State".[77]

This rapidly changing ideological climate had major effects upon the manifestoes and programmes of the established political parties. The Liberal Party - the party of Free Trade and Non-conformism - had previously commanded the vote of the industrialists and businessmen and, after 1867, those of the enfranchised working class as well, but by the 1890s both of these sectors had begun to disaffiliate. Some industrialists followed Chamberlain and his Tariff Reform League in demanding protection for British industry from the threat of foreign competition, while increasingly large sectors of that class began to acknowledge that the new realities of economic life demanded expression in political terms contrary to those of traditional liberalism. Meanwhile the Liberals working-class vote was depleted by the new independent Labour groupings (the SDF, the ILP, the Fabians, etc.) which openly demanded the reorganisation and expansion of the State.[78] In response to this challenge a group was formed around the theorists Marshall, Hobson and Hobhouse, calling itself the New Liberals and adopting the role of a progressive pressure group within the larger party. Its founding statement of 1896 expressed its purpose as being to:

> "Unify the multiplicity of progressive movements, to come to grips with that 'huge unformed monster' the social question, and to implement a specific policy of reconstruction based on a new conception of economic freedom, the conscious organisation of society and an enlarged conception of the functions of the State." [79]

In fact this left-wing liberalism indicated more than simple concessions to the labour movement under threat of losing the working man's vote. By injecting an element of social reform and non-laisser-faire ideology into the Liberal Party, it marked an accommodation to the new facts of British life and the first steps towards a modern political strategy. Soon the majority of politicians and all of the major parties were agreed upon the advisability of some measure of State welfare legislation, particularly in view of the success which Bismarckian policies had met in unifying the German nation and undermining the growing tide of socialism.[80] Social Imperialists began to influence even conservative politicians with their arguments that the State's role in protecting British capital abroad must be matched by a policy of social welfare at home in order to guarantee internal stability, to combat socialism and to improve the efficiency of the workforce. Thus Balfour in 1895 could boldly declare that:

> "Social legislation, as I conceive it, is not merely to be distinguished from Socialist legislation but it is its most direct opposite and its most effective antidote. Socialism will never get possession of the great body of public opinion among the working class of those who wield the collective forces of the community show themselves to be desirous to ameliorate every legitimate grievance and to put society upon a proper and more solid basis." [81]

(6) The Political Repercussions

These diverse developments of the 1880s and 1890s with their various sources and particular effects, had thus the consequence of raising for revision a number of fundamental political questions,

particularly questions concerning the character and proper role of the State and the manner in which the social problem of the poor was to be administered. From now on political prudence would demand that the lower classes be somehow addressed and treated as full political subjects whose power was recognised and whose conditions would not be allowed to fall below a certain standard. Moreover any such strategy would be administered primarily through the State and by means of the regulation of markets and the provision of welfare.

The subsequent responses to those questions - the transformations which occurred in British society as a result of these developments and crises - amounted to a fundamental social transformation. As we shall see, this changed not only penality and the social regulation of the poor, but also the operation of markets, the organisation of class relations and the role of the State and its agencies. It produced new modes of addressing the poor and the unemployed, new discourses of administration, and new ways of organising the social field, using technologies of insurance, of labour regulation, of social work and the welfare sanction. Together these changes transformed Britain from a market society of laisser-faire individualism to a form of sociality constructed around mass democracy, monopoly capital and an interventionist State. In doing so they provided the conditions for a form of social organisation which persists to the present day.

Subsequent Chapters will return to the effects of this transition, describing some of the social technologies and strategies which it set in place. However for the moment our concern is with the overall effect of this transition on the fields of penality and social regulation. For this purpose we can summarise the effect of these diverse developments as amounting to a breakdown of the free-market form of social organisation and its corresponding disciplinary apparatus.

What this came to imply, in political terms, was a fundamental displacement of certain social regulatory functions from the realm of civil society to the realm of the State.

On the one hand, the "automatic" and unorganised market distribution of resources (of employment, wages, housing, health care, etc.) was no longer politically or economically tenable, nor could the system be repaired by private or ad hoc initiatives such as charity, philanthropy or emergency doles.[82] Henceforth distribution would be supervised and part-regulated by an "interventionist" State and a new apparatus of intervention and provision of some kind.

On the other hand this displacement implied a disciplinary problem[83] - a breakdown of the control strategy which had previously operated. This modification of the "free-market" and its mechanisms not only undermined the social control inherent in unemployment, poverty, debt and so on: it also destroyed the rationale of the market's back-up institutions - penality and the poor law - each of which had been based upon the very principles which were now in question. Our argument will be that many of the Official Reports, administrative discourses and criminological developments of the late nineteenth and early twentieth centuries should in fact be read as responses to this "disciplinary problem", or at least as having been influenced by it. We will see in subsequent chapters how a number of reform programmes addressed themselves to the problems of this period, proposing a variety of projects for reconstituting the social and penal domains, and we will trace in detail the process whereby a new set of institutional strategies was gradually established, utilising elements from these programmes and from elsewhere. However the remainder of this Chapter will concern itself with the disciplinary problems which were at this time disrupting the more specific field of penality. We will thus examine the dynamics and conditions of change

which were internal to penality - its own specific problems, contradictions and failures - and how these related to the external dynamics we have already discussed.

(7) The Crisis of Penality in the 1890s

The first, and most important internal condition of change was undoubtedly a growing recognition, by the 1890s, of the serious failure of the prison as a disciplinary institution. Now it has been argued by Michel Foucault that the prison was an acknowledged failure virtually from the moment of its inception in the eighteenth century and so, in these terms, this disillusionment has the status of a constant condition, not a new and effective cause of change. However it is necessary to take issue with Foucault on this, and to insist that the phenomenon in question was indeed a novel one when it occurred in the 1890s. For while the history of the prison has indeed been laced with criticism and pleas for reform, these criticisms took on a rather different and more fundamental nature in this later period.

Throughout most of the nineteenth century, the problems of imprisonment were viewed as being organisational, administrative or technical. The ideal of the well-ordered prison house, and a firm belief in its efficacy, lay behind the long struggles of central governments and penal reformers to rationalise and impose a uniform standard upon the various gaols and lock-ups of the local authorities. So long as these issues remained unresolved, in other words up until 1877 and the implementation of full centralised control, any "failures" or problems of incarceration were laid at the door of inefficient buildings, staff or administration. The model of the prison itself went virtually unchallenged. By the 1890s, however, there had been

almost 30 years of efficient, rationalised prison administration, using a network of well-ordered institutions and a proper staff of salaried officers. In this context it became increasingly apparent that the continuing problems of imprisonment - its failure to deter, to reform, to reduce criminality, etc. - were characteristic of the prison itself and not merely accidents of a flawed administration.[84]

In the penological literature of the 1890s and early 1900s almost every text endorsed this critique of imprisonment in some form or other.[85] Thus Garofalo:

> "... imprisonment, especially that of brief duration, is a stimulus to crime. ..." [86]

Morrison:

> "[Imprisonment] ... aggravates the conditions which tend to make a man a criminal ... it not only fails to reform offenders but in the case of less hardened criminals and especially of first offenders it produces a deteriorating effect." [87]

Carpenter:

> "... to consign a man to prison is commonly to enrol him in the criminal class ... prisons the world over produce the very thing they are designed to prevent." [88]

and so on through the texts of Saleilles,[89] Holmes,[90] Lewis,[91] and numerous others. In his compendium of the axioms and laws of the new "Science of Penology", Henry M. Boies could put it thus:

> "It may be stated as a penological law, that temporary imprisonment must never be imposed as a penalty when any other can be made to satisfy the conditions. The stigma of the prison, the corruption of the associations, the long days of idleness, the physical deterioration, work a speedy and total ruin of the tainted character." [92]

Nor was this recognition of failure limited to the critics of the penal system or the reformers and academics of the new penology. As The Times declared in March 1898, "Administrators, no less than irresponsible critics, own that every prison is more or less a failure."[93] And if we sift through the official reports and documents of this

period we find the Prison Commissioners themselves doubting the efficacy of imprisonment as regards the professional or habitual criminal,[94] the young prisoner under 21 years of age,[95] the short sentence prisoner,[96] the vagrant,[97] the inebriate,[98] and finally, the feeble-minded offender.[99]

This general concern over the failure of the prison was focused particularly around two specific issues - the question of short sentences and the problem of recidivism. Some indication of the frequency with which short sentences were used is given by the fact that in 1898 the average duration of all prison sentences in England was only 28 days, while in Scotland it was as low as 15. This practice of using the prison as a sanction of first resort (and therefore using it for very minor as well as more serious offences) was increasingly criticised in terms of its high financial costs, its repetitive and time-consuming administrative effects and the overcrowding which it frequently caused. Moreover it was seen to be detrimental to many young and first offenders for whom early imprisonment meant contamination, demoralisation and subsequent criminality. Penologists in the 1890s made much of the discovery that most habitual criminals were "made" between the ages of 16 and 21 - and needless exposure to the degradation of imprisonment was seen as a primary aspect of this formation.

The other issue - that of recidivism and habitual crime - was if anything, even more serious. The problem of short-sentences could perhaps be regarded as an inappropriate use of the prison sanction, with no necessary implications for the prison as an institution. Recidivism, on the other hand, and "the hundreds of thousands who flock to the local prisons over and over again",[100] was a failure which went right to the essence of imprisonment itself. As early as the

Gladstone Report in 1895 the increasing number of habitual recidivists was registered as a serious problem, particularly in the local prisons and in regard to offences against property. As the Report pointed out, the recommittal rate for simple larceny was as high as 78% (79% for larceny from the person) and more than half of all those convicted at Assizes or Quarter Sessions had undergone a previous conviction. By 1898 the Scottish Commissioners could report that over 500 of those committed in that year to Scottish prisons had been there more than 50 times before.[101] Writers such as Tarde, Du Cane, and even R. Brise argued that this phenomenon need not necessarily be regarded as a question of failure since it might indicate that criminality had been concentrated into a specific class which, presumably, would soon die off, thereby effecting "the whole object of punishment".[102] However the fact that this class of habituals was clearly on the increase, continually fed by young offender recruits and showing no signs of a future diminution, ensured that arguments such as these were viewed as mere apologetics of little substance.[103]

Some indication of the alarm and concern caused by this problem in the early 1900s is given by Sutherland in the Preface to his 1908 text on recidivism:

> "Perhaps at no time within living memory has there been such activity and anxiety as is at present manifested by Ministers of State concerned with Home Affairs, by the executives responsible to them, by judges and magistrates, by social reformers, by the Salvation Army, by Churches, by philanthropic agencies, by publicists and by the press, to check recidivism." [104]

Of course one would forgive an author for believing that his peculiar concern is also that of the world at large, but the evidence of Official Reports, Prison Congresses, parliamentary debates and other penological texts suggest that Sutherland was correct in his estimation of the general view. Recidivism was indeed viewed as a very serious problem

requiring urgent measures.

This phenomenon of mass recidivism in the nineteenth century had a range of contributory causes. That the use of the death sentence had drastically diminished and transportation altogether ceased were obviously important here, as were the absence of organised after-care and the growing efficiency of Britain's police forces and their techniques of identification.[105] However it was undeniably the case that the real headsprings of recidivism lay in the prison itself - in its contamination, its brutalisation, its stigmatisation and demoralisation. Prison was seen to produce that which it should prevent, to manufacture delinquents instead of mending them.

This alarm about prison's effects upon its inmates also spilled over into other lines of social concern. The growing public concern over the increasing level of feeble-mindedness among the lower classes (a phenomenon identified and in a sense produced by the new educational complex)[106] led to a number of alarming survey-estimations of a very high number of feeble-minded persons in prison.[107] The same pattern followed with the question of 'urban degeneration', and investigations of the health and physique of the prison population showed a very high proportion of 'degenerate' and 'unfit' inmates.[108] The recognition of these large categories in the prison population led to further questions about the prison itself: was it contributing to this deterioration? Was it an appropriate institution for these types of offender? Should it not attempt to provide restorative treatment? and so on.[109]

If these were the problems of the prison, Victorian penality's main apparatus, there were also other less publicised problems elsewhere in the penal field. Thus at the level of sentencing there was a major difficulty which had operated increasingly since the Penal Servitude Act of 1864.[110] This Act, passed in the midst of a major panic about law

and order following the cessation of transportation and a series of celebrated "garotting" attacks upon London notables, had increased the minimum term of penal servitude to five years.[111] However this brand of severity brought its own difficulties, since the next possible prison term below the five year mark was a two year sentence of ordinary imprisonment in a local gaol: the result was a distinct lack of middle-to-long term sentences. Judges were thus frequently forced to choose between a sentence which was markedly higher or else lower than that which seemed appropriate. In the event it appears that judges most often chose to use the shorter sentence and the local prison rather than to be seen passing 'unjust' or 'over-severe' sentences of penal servitude, but it is clear from a number of judicial statements and Home Office documents that this was deemed to be a very unsatisfactory practice. Even when this minimum was reduced by the Act of 1891, the pattern of sentencing which had by then been established proved difficult to alter. As Ruggles-Brise put it:

> "There is ample power; but it is useless for a code to prescribe effective sentences when the public sentiment, of which the Judges must be to a large extent the interpreters, is opposed to severity of punishment." [112]

Another problem also concerning penal servitude was the sanction of police supervision which this sentence entailed since the 1879 Act. As we saw in Chapter One, this auxiliary sanction was most uneven in application and by the 1890s had markedly declined in use. The reasons for this decline were partly to do with the lack of uniformity in police practice and the reluctance of many local forces to take these duties seriously. However one important factor in this was the view held by many magistrates, penologists and members of the public, that the police were an inappropriate agency of supervision. The problem was that any police inquiries or visits to the ex-convict's neighbourhood,

employer or landlord would publicly reveal the past record of the individual concerned and ruin his or her chances of rehabilitation. Thus in the case of police licencing, as with the minimum sentence terms, the fact of over-severity placed definite limitations upon the use of the sanctions concerned, given the constraints of "public opinion" or else the judgement of individual penal agents.

Thus we have limitations of severity on the one hand, and the ineffective rigours of prison on the other, together constituting the problems of the field of penality as it stood in the 1890s. However there was also a growing feeling expressed in Departmental Reports, Home Office documents and the writings of the press that this field of penality was also too narrowly circumscribed; that its parameters were not sufficiently wide to contain deviance and disorder in all its forms; that there was a growing number of deviant groups who were literally "beyond control" as things stood. Thus there were categories and groups which presented a definite social danger - of disorder, degeneration, contamination, etc. - but which did not necessarily transgress the criminal law: groups such as moral imbeciles, the feeble-minded, inebriates, the unfit and so on.[113] Again there were categories who did come within the scope of the law, and were dealt with accordingly, but for whom the "proportionate punishment" was not sufficient - groups such as vagrants, petty offence recidivists, habituals and "hooligans",[114] whose social danger was deemed greater than their degree of punishable criminality. So long as penality was defined in its present legal terms, there were thus categories - dangerous categories - who would escape its discipline and defy its terms.

In this context of over-severity and under-achievement moral outrage flourished.[115] The middle years of the 1890s saw a remarkable

public outburst which severely criticised the penal system, its institutions, principles and authorities. The most notable and perhaps most effective element of this protest was the series of articles and editorials which appeared in The Daily Chronicle in January 1894 under the title "Our Dark Places". The anonymous author of these statements[116] criticised in detail the shortcomings of the prison system, its general failure to reform, its contamination of juveniles, its alarming recidivism rates, its lack of scientific method or classificatory technique and so on. Moreover he took great trouble to describe and criticise the autocracy and secrecy of the central prison administration, arguing for a more open system which would entail structures of local control and regular access for M.P.s and the public. These articles, together with the revelations of other penal reformers and organisations, provided the basis for a popular wave of protest against the methods and institutions of penality. This "sweeping indictment" as it was called by the Gladstone Report, rocked the standing and legitimacy not only of Du Cane's administration, but of the British penal system itself.

The immediate response to this outcry was the appointment of a Departmental Committee of Inquiry to take up these allegations and to review the principles and practices of the whole penal field. And far from being a mere device to delay or defuse the issues, this Inquiry seriously addressed itself to those problems of penal practice and to the equally crucial question of penality's public image. As we shall see, the long term effect of this and other developments was a series of transformations which reconstituted the penal complex in a form designed to repair its disciplinary deficiencies and to re-establish legitimacy and public support.

At the end of the nineteenth century then, there was a period of crisis and transformation produced by a complex series of intersecting events and developments. This crisis centred around two related issues: the proper role and function of the State in relation to the economic and social spheres, and the condition and regulation of the lower classes. The penal complex, being a series of State agencies dealing overwhelmingly with the poor, was clearly implicated in this crisis - its ideological foundations and strategic position being undermined by the breakdown of market society and its political balances. Moreover, penality was simultaneously undergoing a serious crisis of operation and of public legitimacy which provided an additional force of transformation.

In later Chapters we will try to show how this two-fold crisis was resolved by the development of the "Welfare State" on the one hand, and the "Welfare Sanction" on the other. However, our immediate task is to show the means by which the new penal complex was assembled in the 1900s, and how this construction related to the problems and conditions which have been identified. Although we have talked of the operation of disciplinary strategies, these should not be understood as emerging from the global calculations or battle-plans of an omniscient ruling bloc. As we will show in detail later, there is no question of a strategy existing first as "intention" and later being implemented as "fact". Consequently the modern strategy of welfare-control which was assembled in the years after 1900 is not to be discovered fully-formed in the texts, speeches, or agendas of the authorities of that time. Instead there occurred a fragmented series of responses to perceived problems, responses which were constructed and struggled over within the limits set by the political situation, according to the various objectives involved and using the various knowledges and programmes of

action available. The term "strategy" will be used to refer to the distinctive and structured pattern of practices and effects which was the outcome of these struggles, a pattern which will be identified as the dissertation proceeds.

As a first stage in our discussion of how the modern penal complex was assembled, the next three Chapters will set out the details of the articulated programmes of reform which became available at this time, and the implications these had for penal and social reconstruction.

CHAPTER 3

The Criminological Programme

(1) Introduction: On Programmes of Reform

The social crisis of the 1890s and 1900s provoked a complex series of political responses and initiatives. These political movements of calculation, realignment, transformation and reaction were - at least at first - neither uniform nor coherent. There was no easy resort to a self-adjusting social balance or to a ready-made strategy imposed by the ruling bloc. Instead a complex pattern of responses emerged at a variety of different points and levels in the social formation: institutions reconsidered and adjusted their practices, political parties altered their direction and manifestoes, individuals and voluntary agencies pressed for specific forms of political action and governments responded in more or less pragmatic fashion by means of legislation, propaganda, the appointment of Inquiries and the deployment of force.

We shall argue in later Chapters that out of this complex and fragmented field of forces emerged a new set of strategies and political balances - a new hegemonic project - and the struggles and tactics employed in this construction will be discussed when we get to that point. However, our immediate intention is to examine the basis of these political responses as they emerged in the crisis period. If it is true that new forms of calculation and practices were proposed (e.g. for social work agencies, for penality, for the State generally) and were eventually established in a re-formed hegemonic structure, then it is important to examine the source and nature of these innovations. For new developments such as these do not just occur,

they depend upon the availability of definite materials - knowledges, ideologies, institutional forms, techniques, etc. - as discursive and technical resources, and upon the promulgation and utilisation of these resources by specific social forces. The following Chapters will try to describe some of the major new ideational materials which were made available at this time and which were subsequently employed (directly or indirectly) in the re-assembly of a stable network of social regulation - the new "order of the social".

We have referred here to "discursive resources" and "ideational materials" not simply to emphasise the materiality and limited availability of these social products, but also to avoid the unfortunate connotations evoked by the notion of "ideas". "Ideas", at least those which come to inform social relations, are not free-floating, a-political products of individual inspirations. "Ideas" are always inscribed within definite discursive (and hence social) practices, and those 'ideas' which we shall discuss in these Chapters, far from being free-floating, were the constituent elements of definite social movements which developed and carried them, pressing their claims as solutions to the problem of social regulation.

Our suggestion is then, that the "ideas" which played a decisive part in the transformations of the 1900s were those which attracted the support of definite social forces and found a place within an organised programme of social reform. We will therefore refer to particular programmes or schemes of social action, their discursive and technical resources and their organisational basis and social support.

In the years between 1890 and the First World War - the period of social crisis and its resolution - it is possible to identify four major programmes which addressed themselves to the social question and pressed particular means for its solution. Each of these programmes had its

own analysis of "the problem", its own objectives, a repertoire of discursive and technical resources and a definite social support. Each was organised to a greater or lesser degree, and through a variety of means, its supporters sought to establish their programme as the basis for a new strategy of social regulation. The schemes in question will be termed the Criminological programme, the Eugenic programme, the Social Security programme and the Social Work programme.

There were of course other movements and proposals for social reform which were presented in these years: socialist programmes, Christian fundamentalist schemes, feminist and syndicatist formulations, as well as other less organised and articulated proposals. However, these failed to gain the social basis and organisational strength necessary to impress themselves directly upon the political field. At most their impact amounted to providing lines of resistence set against certain kinds of development or else winning concessions to their views within the four major programmes of social change.

It was pointed out in Chapter Two that the crisis of the 1890s centred upon a dual problem of the social regulation of the poor and the proper role of the State. Each of these four programmes addressed these crucial issues and proposed various levels and forms of State intervention, various techniques for the regulation of the lower classes and various schemes for the general re-organisation of the social realm. However, despite this common concern with the State and the social domain, and despite certain other shared features (e.g. overlapping social support, some common techniques, etc.) these programmes may be analysed as distinct entities which sometimes complemented and sometimes opposed one another. As we shall see, there were great differences in their specific objectives and political positions. For instance, regarding the level and quality of State

intervention demanded, the social work and criminological programmes called for specific forms of social hygiene and aid to be provided by the State, while the Social Security and Eugenic programmes, in their different ways, insisted upon a much deeper and more far reaching form of State regulation, the one covering the whole labour market and the other, the reproductive practices of the population. In terms of their level of operation, some of these programmes sought to re-order the whole spectrum of economic and social relations, while others concentrated upon specific aspects or areas of social life. As for their target populations - the social groups which the programme sought to administer - these also varied from programme to programme; the Social Security scheme addressing the whole workforce, the Eugenic attack being launched primarily at "the unfit" but also at reluctant parents among the middle classes, the Criminological and Social Work programmes focusing their concerns upon the lower classes generally and their 'dangerous' elements in particular.

Nor were these programme-movements homogeneous in formal character, point of origin or mode of operation. Eugenics, for example, was a tightly organised movement or recent origin, centring upon a powerful Association and a very definite conceptual discourse. The Social Work movement, on the other hand, was much more diffuse, operating through a large number of separate agencies, with a programme which cohered around a number of concerns, techniques and proposals rather than a systematic conceptual system. And while these two movements were British in origin, the Social Security and Criminological programmes relied heavily upon the experience and innovations of the European countries, and to a lesser extent, the U.S.A..

Although the Social Security programme owed much to a number of distinguished New Liberals (particularly Beveridge, Hobson, Hobhouse

and Masterman) and also to Fabians such as Sidney and Beatrice Webb, none of these schemes were 'political programmes' in the Party-political sense. Certainly each aimed to influence and be recognised by the established parties, as a means of effecting their objectives, but generally they existed outside of the formal political system. In consequence their channels of influence were those available to most pressure groups - the mobilisation of public support through popular texts, press articles, the persuasion of professional opinion, evidence of official committees, informal lobbying, "insider influence" and so on.

As for their origins, it would be misleading to say that these schemes were produced by the crisis of the 1890s. To begin with, some of these programmes, particularly criminology and social work, were already being formulated before this time. More importantly, such social crises can only provide the conditions and the political desire for such programmes, their actual production is always a different matter, involving the development of discursive resources, techniques and political mobilisations. Nonetheless, we shall see that each of these programmes was deeply affected by this crisis and indeed some of the material and political developments described in Chapter Two made positive contributions to their construction. Thus the failures of prison and philanthropy nonetheless produced information and technical experience which could be employed within new schemes, while the social surveys and investigations which caused so much alarm also provided valuable information which could be utilised in solutions to the very social problems which they exposed. Similarly the new forms of economic calculation, political argument and ideological discourse which accompanied the economic and political changes of the 1880s and 1890s, both contributed to the crisis and provided resources for the

new programmes which that crisis provoked.

By and large though, these programmes owed their existence to conditions far beyond the immediate political context in which they came to prominence. As we shall see when each programme is individually discussed, they were made possible by information gleaned from institutional practices, the data of experimental research, the invention of new techniques and the provision of new materials (social data, survey results, market trends, etc.). Above all they depended upon the general development of "the sciences of man" which took place in Europe during the nineteenth century, particularly in the fields of medicine, psychiatry, genetics, economics and sociology, developments which provided the methodologies, concepts and models of knowledge which formed the basis for these practical offsprings.[1]

This Chapter and the two which follow will be concerned with a discussion of the criminological, eugenic, social work and social security programmes, their content, support and social implications. The most detailed attention will be afforded to the first of these four, the criminological programme. The programme of "criminology" merits this emphasis because it presently lacks the critical historical literature which exists for the others and also because its precise relation to the penal reforms of the 1900s is, as yet, barely understood. However, this special attention does not mean that we consider the criminological programme to be the only, or the most influential, element in the construction of the modern penal complex. As we argued in Chapter One the penal reforms of the 1900s were one aspect of a more general re-ordering of the social realm which involved much more than criminological issues. Moreover as will become clear in the following Chapters, there is good reason to suppose that other programmes such as social work and eugenics had as much immediate impact upon the penal reforms of the 1900s as did

the criminological movement itself.

The discussion of these programmes will include an examination of the various organisations and individuals which provided their social support and political energy. It will also discuss the way in which the existing network of institutions, agencies, ideologies and professional or political interests provided lines of resistance, opposition or assistance to the goals of each programme. In other words we will attempt to provide a kind of diagram of the field of forces in play around the social realm in the 1890s and 1900s, to be set against the background of crisis described in Chapter Two.

(2) The Criminological Programme

The last few decades of the nineteenth century witnessed the formation of a new form of knowledge which has become familiar to us as the "science of criminology". Within a remarkably brief period, perhaps no more than twenty years after the appearance of Lombroso's L'Uomo deliquente in 1876 - this knowledge developed from the idiosyncratic concerns of a few individuals into a programme of investigation and social action which attracted support throughout the whole of Europe and North America. This explosion of interest in the "criminological" enterprise[2] led to the publication of hundreds of texts, the formation of dozens of national and international congresses, conferences and associations, and the assembly of an international social movement which pressed the claims of "criminology" upon the legislatures and penal institutions of virtually every western nation.

The widespread success of that movement in establishing criminology as an accredited discipline in the institutions of government, penality and education, means that a detailed description of that programme might

today appear to be unnecessary. The character and concerns of this knowledge are well known. Its premises and implications have been frequently discussed, either with approval or, more recently, with some dismay.[3] Its concepts and recommended practices, for better or for worse, underpin many of the penal sanctions and institutions of nations throughout the modern world.

But for all that it is a familiar and established discipline in today's world, it would seem that its history and development have escaped the close and critical scrutiny usually afforded to powerful social knowledges. There has yet to be produced a serious history of the discipline, either in terms of its internal development or else its social effects.[4] This failure of criminologists to reflect critically upon their own practice, has, with a few honourable exceptions, meant that our knowledge of criminology's development is sparse and inadequate. We are left with, on the one hand, hagiographies of "the founding fathers" and their "scientific mission",[5] and on the other, wholesale dismissals of the "reactionary purpose" and legacy of "positivism" with all the simplifications and overstatements which these entail.[6] What is missing is any detailed account of the formation of the criminological programme, its internal characteristics and conflicts and most importantly, of the processes whereby this programme entered into the strategies and institutions of government in Britain and elsewhere. The following account does not claim to make good this absence. But it does attempt to take these issues seriously and to deal with the evidence of concrete texts, statements and events. Moreover it attempts to trace the precise paths whereby this programme (and others) entered into official practice, rather than simply assume such an entry was inexorably guaranteed - either by criminology's scientific character or by its reactionary attractions.

(3) Conditions of Existence

The emergence of this new form of knowledge, with its concepts, objects and methods of study, required for its possibility much more than the ecstatic discoveries of an Italian doctor in the prisons and asylums of Pavia.[7] Similarly its ability to attract the attentions and support of so many powerful individuals and organisations rested upon a certain resonance between the concerns of this new discipline and the preoccupations and affairs of men of science and public office in this period. The following section will give a brief outline of some of the conceptual, institutional and political conditions which made possible the emergence of this new criminological movement, its discoveries and its desires.

No new form of knowledge is ever without a line of precursors and a hazy ancestry of analogous practices and objectives. And if we consider particular features of this knowledge, for example the commitment of the criminological programme to a practice of correctionalism, reform and rehabilitation, then this ancestry becomes obvious. Thus as Saleilles points out, the Ecclesiastical law of penance prefigured the new criminology in focusing not upon the individual's act but rather the personal state (of sin or of grace) from which the act arose. This state of the soul was to be the target of ecclesiastical intervention and transformation - "the conception of 'castigatio' was [to be] allied to that of 'discipline' and 'remedium'"[8] - just as punishment was to be alligned with correction within the new criminological programme. A more immediate precursor of this correctionalism was the reformative schemes of men such as Howard and Bentham. As we pointed out in Chapter One, the notion of reform - in either its evangelical or utilitarian form - had been a constituent objective of penality for more than a century, at least in the rhetoric of officials and

reformers. But although this line of precursors provided historical echoes and "precedents" which gained support and authority for the new movement, the parallels involved were far from exact. As we shall discuss shortly, the conception and methods of correction involved differed markedly between the old and the new. The basis of crime no longer lay in sin or in faulty reasoning but in an aberration or abnormality of the individual. Similarly the process of reform no longer attended upon the visitation of God's Grace or the return of true reasoning, but instead mobilised its own positive techniques of intervention and human transformation.

Again if one considers its project of tracing patterns of behaviour and action back to a source in the physical constitution of the criminal, then we find another historical precursor in the work of F. J. Gall, and J. C. Spurzheim. These two writers were the leading exponents of "phrenology", a form of knowledge which conceived mental faculties as localised brain functions, thereby allowing the analysis of personality to take place by examining the shape and contours of the individual's cranium.[9] Quite clearly the work of Lombroso, Boies, Ellis and Goring, as well as many other criminological writers gained support from this earlier form of 'physicalism' and from what DeQuiros terms "the old longing to discover in man the relations between body and soul, the correspondence between spirit and matter".[10]

Between the early "physicalism" of the phrenologists and the opening up of the criminological field lay one very important attempt to answer this ancient question. The search for scientific explanations of human and social life, for the discovery of the laws of movement of 'man' himself, was in the nineteenth century expressed in the methods and concerns of "scientism" in general and "positivism" in particular. And although the criminologists of the 1880s and 1890s sought to

distance themselves from the particular philosophy and historicism which characterised this positivist movement in its Comptian form, there can be no doubt that the project of positivism (in a more modest form) and its corresponding methods, formed the broad intellectual basis for the criminological programme.[11] As we shall see later, observation, classification and procedures of induction, quantitative methods, "naturalism" and the formulation of causal laws, were all aspects of this positivist inheritance which fundamentally shaped the configuration of this new knowledge.

In addition to these historical continuities, and the intellectual heritage and social support derived from these traditions, there were a number of more proximate and immediate conditions which allowed the emergence of "criminology". Above all, the criminological genesis was tied to three main conditions: (1) the development of statistical techniques, survey methods and the national and local data thereby produced, (2) the advances made in the realm of psychiatry and the growth of that knowledge in intellectual and social standing, and (3) of greatest importance, the existence of the prison as an institutional surface of emergence for the concerns, techniques and data of the new discipline.

To take these in turn, the development of statistical information and method was obviously an important precondition for a discipline which sought to classify and differentiate a population on a quantitive and 'scientific' basis. Of course the formulation of precise techniques and conceptual means (e.g. chi-square tests, regression techniques, correlation procedures) had to await the work of Karl Pearson and R. A. Fisher in the early years of the twentieth century,[12] but the production of statistical data preceded its scientific interpretation. In fact the collection and collation of data - on births, deaths,

marriages, crimes, migration, incomes, etc. - developed correlatively with the growth of the modern centralised State and its increasing desire to regulate its subject population.[13] By the 1830s and 1840s this state science had become more ordered and regular, producing census materials, Blue Books and annual statistical reports from the various official agencies (including prisons, police, asylums, judiciary, Poorhouses, etc.). These resources were employed not just by governments and their institutions but also by private individuals and associations who grasped these figures as evidence for particular programmes of social regulation or reform. Thus in France the "moral statisticians", Quetelet and Guerry,[14] established patterns of regularity in the levels of crime, pauperism, marriage, etc. and proposed appropriate calculations on the part of government, while in Britain a Statistical Society was formed to expand the production of social data and thereby further the campaigns of its membership for social hygience and institutional reform.[15] By the 1890s this movement had been augmented by the detailed social surveys of the likes of Mayhew, Booth and the COS and by the increasing generation of data provided by the expanding State sector.[16] These resources, which allowed quantitive comparisons to be drawn between the characteristics of particular categories (say prisoners, or the asylum population) and the population at large, were to be the basic raw material upon which criminology worked. Nor was the absence of rigorous methods of interpretation which could specify the real significance of this material perceived as a major limitation to the claims of the criminologists. On the contrary, this absence of rigour was overshadowed by the prestige accorded to the "facts" of statistical data - and the technical limitations of their mode of production, the crude manner in which they were interpreted and the massive speculations involved in

the processes of induction, were perceived as no more than minor considerations which barely detracted from achievements of this new "positive" science.

The second major basis for the development of criminology lay in the claims and concepts of psychiatrists and psychiatry. From its inception to the present day, criminology has relied upon the data and the prestige of the psychiatric movement to support its own propositions and concerns, to provide 'hard', 'scientific' evidence or more often, to derive a certain social power from the quasi-medical image of that discipline. In a sense, criminology has ridden upon the back of the psychiatric institution, using it as an ally and support for its more eclectic and social policy-oriented concerns. As with the philosophy of "Positivism", there was never a complete identification between criminology and its psychiatric support, but particularly in the early years, a considerable "borrowing" of concepts, proposals and social standing took place.

Between about 1845 and 1880 the new medical specialism of "alienism" or "psychological medicine" succeeded in establishing itself as an independent and institutionalised discipline known as "psychiatry". The national network of lunatic asylums formed after the 1845 Acts, together with the formal organisations of alienists formed in the same period, provided an institutional enclosure and an organisational basis for the development of this area as a career specialism.[17] Moreover the development of physiological investigation into the field of brain functions appeared to give a scientific basis to psychiatry's theories and correspondingly advanced its social standing.

The early criminologists leaned heavily upon this newly established science and its propositions. Not only was the concern with observation, classification and 'positive data' endorsed and emulated, but specific

theories and categories were taken over and employed in criminological discourse. Thus the application of determinist principles to human behaviour and the consequent rejection of free-will doctrines were presented by early criminologists such as Ferri and Garafalo as conclusive and indisputable findings provided by the psychiatric sciences. Similarly, categories such as "the moral imbecile", "moral insanity", "degeneracy" and "feeble-mindedness" were taken over wholesale from the work of Maudsley, Pritchard, Morel and Nordau and used as a basis for criminological argument.[18]

However, this systematic borrowing was not without its advantages for the psychiatrists whose terms were thus repeated and reproduced. The psychiatric movement, in the late nineteenth century, saw its major line of expansion as lying in the judicial domain - not just in dealing with criminal lunatics and the insane residents of Broadmoor, but in pronouncing upon the psychiatric state of <u>all</u> accused persons before the courts, the petty as well as the monstrous.[19] In this it found an important ally in the criminological movement which pressed these claims for psychiatric intrusion in the context of a more general programme of penal reform. Thus while psychiatry provided conceptual conditions for the emergence of criminology, the latter promised in exchange to promote psychiatric knowledge and expertise in the judicial field.

Finally, there is an important sense in which the emergence of criminology owes its possibility not to an intellectual movement or a theoretical discovery but to a particular <u>institution</u> - namely the prison. Just as the clinic formed the real basis for the development of medicine, and the barracks, the monastery and the schoolroom supported the foundation of a disciplinary knowledge and practice, so the prison acted as an institutional surface of emergence for criminology and its particular concerns.[20] The prison provided a kind of

experimental laboratory, a controlled enclosure in which the new knowledge could develop. It provided the possibility for the long term observation of criminals who could be examined, measured, photographed and catalogued in an organised and rigorous manner. It produced statistical data on conviction rates, recidivism patterns and criminal careers which were invaluable criminological materials unavailable elsewhere. It even allowed a degree of experimentation insofar as various regimes of labour, diet, discipline and so on could be compared with one another to assess the effects of each upon the prison population and the causes of crime.

There was a natural link between the prison as an institution which sought to deter and reform offenders and a knowledge which posed the question of what an offender _is_. As Ruggles-Brise clearly saw, "_la science penitentiaire_ develops gradually into the science of the discovery of the causes of crime - the science of criminology".[21] Hence the _international_ emergence of this new knowledge (prisons being established throughout the Western World) and hence the abiding criminological concern with prison populations and the data drawn from them.[22]

But there is one more linkage between the prison and its criminological offspring, a linkage which goes straight to the heart of the criminological enterprise and ties it firmly to a particular project and a definite politics. The linkage concerns the dual concepts of _individualisation_ and _differentiation_, two terms which establish the very basis of the criminological project and shape the methods, concepts and techniques which are most characteristic of this knowledge. We will be discussing the significance of these terms later, so our purpose here is merely to locate their institutional origin, to indicate how these theoretical terms were promoted by their institutional

context. To take "individualisation" first, it should be apparent from the description of the prison presented in Chapter One, that the primary unit of the prison, its basic term, is the individual cell containing the individual prisoner.[23] When criminological investigation is brought to bear upon the prison, and its population, the very architecture of the institution has thus already inscribed the individual as a proper unit and object of analysis. It is an object written into the prison and its cellular design. But as we saw in Chapter One and again in Chapter Two, this fixing of the individual as penal and criminological object is not without its social and political conditions and connotations. All the premises of bourgeois individualism - of private responsibility for action and crime, of free-will and liberty in the face of social forces, of the individual source of criminality - are thus reproduced in the prison and its criminological product. And although as we shall see, criminology would drastically revise these notions of responsibility and action, at no point did it question this institutional fixing of the individual as the source of crime and the proper object of study and correction.

As for "differentiation", there is a clear sense in which this theoretical project also exists 'readymade' in the context of the prison. In the nineteenth century, when incarceration was the primary sanction employed by the criminal law, the clearest and simplest demarcation between the criminal and non-criminal populations was provided by the prison walls Those who were placed behind these walls were, by this fact alone, members of a distinctive criminal class. Consequently, as we said above, the characteristics of the criminal could most easily be ascertained by observing the prison population, while the control groups of the non-criminal would be drawn from the free population outside - from army recruits, undergraduates, boys' club members or whatever.

This convenient demarcation and basis of comparison was used by the early criminologists as indeed it continues to be used today, albeit in a more closely controlled manner. But the direction of this research and the special characteristics which were hypothesised (and duly found) involved the covert introduction of a definite premise into the argument; for it was assumed that the difference in legal status and social placing which marked off the prison population from the population "at large" corresponded to a constitutional difference between the individuals who composed the two groups. In other words the prison demarcation became a natural demarcation which criminology first presupposed and then "discovered".[24]

To explain this process we need to show more than its practical convenience and possibility: we need to show that its direction and assumptions were likely or probable in these circumstances. And to do this we need look no further than the strategy of social politics which prevailed in Britain and elsewhere in Europe in the late nineteenth century. The urge to differentiate and individualise the criminal (which establishes not only the methods and concepts of criminology but also its purposes and politics) is nothing but the intellectual expression of the political strategy of differentiation which we described in Chapter Two.[25] It is a strategy which sought to divide and demarcate the masses against themselves, to specify and enforce divisions the better to control a general population. Without this 'desire' and its institutional and strategic surface of emergence, there is no basis for the criminological enterprise. Why should it be supposed that criminals are constitutionally abnormal or "different" when common sense and previous philosophies suggest the opposite? Why should there be a science of the individual criminal and his differentiation when there is no science which differentiates the

rich, or the poor, or the law abiding or the masterful? Why? Simply because a configuration of social, institutional and intellectual conditions made it at once possible and manifestly desirable.

(4) The Critique of Classicism and the Status Quo

One other obvious condition which facilitated the rise to prominence of this criminological programme was the social and penal crisis of the 1890s. The failure of the existing strategy to deal effectively with crime was used as a tactical point of entry for the new programme which offered a radical critique of the current strategy, its institutions and particularly its classical jurisprudence. Thus Enrico Ferri:

> "It is our experience (noted every day, in every country, on both sides of the ocean) that the penal laws inspired as they still are by the traditional doctrines, are powerless to preserve civil society from the scourge of criminality." [26]

And Baran Garafalo:

> "It is useless to protest against verdicts of acquittal or the leniency of judges. What we see is, after all, the triumph of judicial logic, but a triumph which is at the expense of social security and morality." [27]

This political failure was referenced again and again in the work of the new criminologists, and its source was each time traced to the philosophical framework of classicism and the procedures and practices which it implied. In fact if we are to describe the elements of this new programme and the themes and concerns which its exponents shared, then there is no better place to begin than with the critique of classicism. The assault upon this jurisprudence was pursued by virtually every text in the field, as much to establish the practical advantages of a penality based on positive 'criminology', as to

demarcate the differences between the two forms of discourse. And one should emphasise that this was indeed an assault. In its early stages the new programme sought no accommodation with classicism, no revision or reform or discursive compromise.[28] Instead it attacked the very heart of classical philosophy, and established its own discursive space and right to exist against the traditional principles:

Against the doctrines of free-will and responsibility which formed the basis of the whole legal edifice, there was counterposed the conclusions of science. Thus Ferri:

> "Positive psychology has demonstrated that the pretended free-will is a purely subjective illusion." [29]

No need for argument or contestation here, science has had its say. But of course the practical consequences were the real issue at stake: if free-will was illusory then "responsibility" and "guilt" were equally suspect and need no longer limit the exercise of penal control. Thus Emile Faguet of the French Academy:

> "It is not at the point of culpability that one must place oneself. That is too obscure and metaphysical. ... It is not necessary to consider criminals as responsibles, demi-responsibles, irresponsibles - that concerns only the philosophers. It is necessary to consider them as very dangerous, dangerous, semi-dangerous and not dangerous. Only that, and nothing else should be considered." [30]

'Free-will', 'responsibility', 'guilt' and 'punishment' - not just fictions out of favour with science but metaphysical concepts which posed a danger to society's security, leaving society "practically defenceless against the most dangerous criminals and failing to provide effective protection".[31] Saleilles put it best when he counterposed the exchange logic of retribution to the utilitarian design of social defence: seen in this light, the classical way with penalties is:

> "the most dangerous theory for society ... because, though it attempts to make criminals pay for their debts, it does not succeed in preventing them from contracting new and

equally irresponsible ones." [32]

Against, therefore, 'penal proportion' and its attendant 'metaphysics'. To reject free-willed responsibility is to relieve penality of the task of measuring justice in these "impossible" terms. And once freed of these burdens it can concentrate upon its proper defensive tasks: thus Enrico Ferri:

> "... penal justice, instead of having a mission of measuring the 'moral fault' of the delinquent (a measure which is unalterably impossible), and of measuring a 'proportionate punishment' (a proportion which is impossible, because, for instance, science and practice can have no absolute criteria by which to determine whether the proportionate punishment for murder should be death, life imprisonment, or imprisonment for a certain number of years), instead of this mission, penal justice can only be a tactical defence against the danger and injury represented by crime." [33]

The abuse of this 'metaphysics' was a favourite tactic, used by psychiatrists like Maudsley and Robertson as much as their criminological allies.[34] In place of this speculative contemplation its "straight lines, regularities and fictions", [35] the criminologists insisted upon "the positive study of the facts".[36] The new programme aimed:

> "to substitute the realities of experience for purely judicial abstractions; to give fact a place above law, the spirit of observation a place above the legal spirit." [37]

And if the rejection of these metaphysics implied that the doctrine of individual rights should also be abandoned then this was hardly a calamity, even for such well-established figures as F. H. Bradley, since:

> "The old metaphysical doctrine of individual's rights became obsolete early in this [nineteenth] century [and] can hardly today be considered a rational principle." [38]

Against uniformity of punishment, its assumptions and effects. Up until now, the prevailing system of penality had been premised upon these mistaken principles - penal proportion, individual rights, equality of treatment. The consequence was the 'uniformity' of penality, now seen not as an achievement but rather as a lack of

refinement or discernment - "the promiscuous consignment to the common form of imprisonment"[39] - the "antiquated blunderbuss of punishment".[40] Not only was there a lack of diversity in the available sanctions, but within prison itself there was no adequate classification or differentiation. Penal classification was "just as legal, abstract and final as the sentence itself".[41] The new criminologists protested against this "uniformity" and its egalitarian assumptions. The findings of "anthropology" were summarily asserted to disprove this well-intentioned fiction[42] while its egalitarian effect was stood on its head:

> "It has been said that in prison all men are equal; but their natural inequalities are not removed by putting men in custody; they are only ignored; and prison treatment, being uniform is therefore unequal treatment of individuals." [43]

But the consequence was more than a uniform inequality: it involved a failure of prison to reform or even to incapacitate society's most dangerous elements. The prison was presented as a breeding ground for delinquents, a regime in which le bon detenu was also le mauvais sujet,[44] where "the ideal of a 'good prisoner' is the recidivist, the veteran, the habitual criminal, whose prison experience and the docility he has acquired are guarantees of his orderly conduct". [45] Not content to assert "science" against metaphysics, the new criminologists securely tied the practical failure of the prison, its recidivism rates and its various malfunctions, to the inadequacies of its classicist foundations.

Finally, there was one more aspect of the status quo from which the new programme wished to assert its distance. It proclaimed itself wholeheartedly against the compromises of "neo-classicism" and its recommended practices. The neo-classical school (Joly, Rossi, etc.) and its revision of the classical doctrines had some success in

establishing itself within the judicial systems of Europe in the late nineteenth century. Concepts such as "diminished responsibility" and "extenuating circumstances" appeared to prefigure the new programme and to represent one way in which its demands might be met.[46] Against this the new criminologists resolutely set their face. While Ferri contemptuously dismissed this "compromise with reason"[47] Garafalo addressed himself to the practical logic of the neo-classicists and its potential results. As far as he was concerned neo-classicism had modified the rules of classicism in a manner which actually weakened their capacity for social defence. Notions of "partial responsibility" and of "extenuating circumstances" remained firmly in the jurisprudential paradigm of responsibility, guilt and punishment while simultaneously reducing the degree to which offenders would be sanctioned. In terms of logic and practice this compromise had less in common with the new criminology than did classicism itself, as Garafalo indicates in the following reductio ad absurdam:

> "Now there are but few cases in which the offender is without some 'extenuating circumstances'. In fact there is no crime in which it is not easy to discover them. It requires but a slight investigation and they swarm on all sides. In short, the only criminals who appear to us to be without excuse, are those for whom we have not taken the trouble to find it." [48]

And of course the effect of this infinite regress into the realms of good excuse would, for Garafalo, seem to be:

> "... the acquittal of the most ferocious type of murderer [for] once establish his extreme natural brutality or the irresistability of his criminal impulses, and no shred of moral responsibility remains. The outcome of every case would be the proportionate diminution of punishment, according as the causes of the evil inclinations become better known." [49]

In terms of its conceptual logic and in its practical implications for sanctioning, the neo-classical compromise was seen as an impediment to the new programme rather than an early form of its

implementation. As such it was criticised and ridiculed along with the other elements of the judicial status quo. However, there was one very important (if unacknowledged) sense in which neo-classicist concepts and procedures did prepare the ground for the new programme, acting as an intermediary between classical jurisprudence and the scientism of criminology. This concerned the question of knowledge.

If there had to be a single term which was to stand for the difference between the old system of criminal jurisprudence and the new criminology, this would be, above all, the element of "knowledge" in regard to the offender. We have already discussed how the premises of classicism - of rationality, responsibility, freedom and so on - obviated the need for any inquiry to be put to the accused. These qualities were deemed to be known in advance, an a priori assumption without need of positive proof. As far as the new criminologists were concerned, this judicial attitude was merely a prejudiced ignorance with regard to the criminal - an absence of knowledge masquerading as intuitive truth. No wonder classicism had failed in the war against crime - it preferred to indulge its prejudices rather than recognise its foe:

> "... to fight with any hope of success we must know our enemy. The enemy which we are called upon to face is unknown to the followers of the judicial school. Knowledge of him comes only from long-continued observation in prisons, penitentiaries and penal colonies." [50]

Criminology's mission was to supply this precious knowledge; to extend the inquiries of penal science "into regions where our fathers could see nothing at all ...".[51] Albert Wilson put it nicely when he said:

> "When a criminal is caught ... his case should be sifted from before the time when he saw daylight. The questions to settle are: Who are you?

How are you?
Why are you?
What are you?" [52]

This inquiry, and the "vast field of re-examination"[53] which it opened up, was to be the proper domain of criminological science. Indeed criminology was just this knowledge, in the same way that classicism was the framework of judicial premises which were now in question. And the point to be made about the neo-classical revision was that it formed a kind of bridge between these two forms of discourse and procedure. Of course it retained the premises of classicism while modifying their practical application - and it was this reformist retention which was so heavily criticised. But the fact was that this modification introduced, in a routine and systematic way, questions of knowledge in regard to offenders: questions regarding their degree of responsibility (and consequently their mental state, their personality, etc.); questions regarding their circumstances (and so their history, their finances, their families). And though the basis and terms of inquiry proposed by criminology were quite other than those of this compromise position, there can be no doubt that neo-classicism supplied a definite opening through which criminology would later approach the judicial establishment.

(5) Discursive resources - arguments, concepts and evidence in the criminological programme

Up until now we have characterised the new criminology negatively (against classical jurisprudence) and historically (emerging from a number of conditions of existence). In this section we will begin to describe the positive content of this new programme by reference to its discursive resources and principles. In the process of demarcating

the discursive contours of this programme, two points will be made which might appear to be in contradiction to one another, so consequently a preliminary word on this is perhaps necessary.

On the one hand, we wish to assert that the multitude of texts and arguments and discussions which began to appear in the 1880s, setting forth this new discursive orientation in regard to crime, did in fact amount to an independent and distinctive discourse. To insist upon this point is to assert that there is some identifiable and distinctive principle or principles which these disparate texts held in common and which justify their collective characterisation as "criminological". The present section will endeavour to justify this assertion and to set out the common principles and positions which structured the discourse of criminology.

On the other hand, having asserted this discursive unity, it will also be argued that this criminological corpus was marked by internal differences, theoretical conflicts and contradictory positions. At a level of detail which lay beneath the shared principles and programme, the texts and proposals of the early criminologists displayed a number of serious divergences and differences inter se. These internal differences are important, and not merely because they give the lie to any statements which refer to "early positivism" as if it were all of a piece. As we shall see in Chapter Six they played a crucial part in the re-alignments and manoeuvres which occurred as the criminological programme struggled to become established in practice. These points of conflict and difference within the criminological programme will be set out in the section which follows the present one.

If one reads through the vast range of criminological literature which appeared in the late nineteenth century, the most notable feature

which emerges is the remarkable unity which characterises those texts. Despite their international origins and the differences of detail which have just been noted, they express a remarkable unity of purpose and of principle. This unity goes beyond a common commitment to positivist methods and eclectic procedures to include many other shared positions, arguments and recommendations which are not entailed by their 'scientific' orientation. This common discursive structure emerged from a general commitment to a number of positions which could be listed as differentiation and individualisation, pathology and correctionalism, and finally interventionism and Statism.

However these general positions did not appear as such in the texts themselves. Rather they were implicit in the premises of arguments, the selected objects and objectives of research, or else the particular choice of recommendations which followed. Consequently, if we wish to present evidence of these shared positions, we must do so at the level of the explicit textual arguments which were presented, showing what these arguments were, and how they entailed the general positions which have been listed. Before doing so, however, we might simply note that these shared positions were supported by more than the discursive logic of individual texts. The criminological enterprise was a self-conscious social movement, geared to a very definite practical programme and supported by a number of motivated organisations and institutions. The uniformity and repetitiveness of criminological discourse owed as much to this movement and its scientific crusade as to its own internal logic.

We have already referred to criminology as the field of inquiry and knowledge which follows from the question 'what in fact is the criminal?' This question, which forms the basis of criminology, already presupposes a number of operations which allow such a problem to be

meaningfully posed. Thus as we have seen, it assumes a position of individualisation which fixes the individual as the proper object and unit of analysis,[54] and of differentiation which hypothesises a qualitative and substantiated difference between the criminal individual and his law-abiding counterpart.

The first of these two positions - individualisation - is not difficult to comprehend. As we saw, it was written into the established system of law and of penality and was a position shared by the classical jurisprudential framework. "Differentiation", however, is a position quite at odds with that jurisprudence and its specified system of law, even if, as we saw, it was promoted by the prison and by contemporary political strategies. In classical jurisprudence the only difference between criminal and non-criminal is a contingent event: one has chosen, on occasion, to behave in a criminal fashion while the other has not. This difference of conduct reveals nothing beyond itself. The individual in each case is assumed to be similarly constituted - as a free, rational, human subject.

Criminology founds itself in a re-interpretation of this logic. Having rejected the "metaphysics" of free-will and chosen action, the "difference" between criminal and non-criminal takes on an entirely new significance. The law of universal determinism abolishes the realm of contingency and freedom and demands that phenomena - even human phenomena - be viewed in terms of cause and effect. As Spinoza put it, "consciousness of our liberty is but ignorance of the causes which make us act".[55] Consequently the difference between an individual who offends and one who does not is no longer a contingent or formal matter. It is a difference of substance and necessity. A criminal offends because he is caused to do so in a way which a non-criminal is not; "crime is a detected sign, symptom and result of a human personal

condition".[56] In a single operation "freedom" is replaced by determinism, the criminal is differentiated in a qualitative fashion, and the search for the causes of crime begins.

If we follow this operation through its various stages we can clearly see how the criminological enterprise is discursively established. First of all, the critique of human "freedom", based as we have seen, upon the method of positivism and the data of psychiatry:

> "Free-will is a delusion. Human movements, the actions of men, like the other movements of the world, obey natural laws ... the first of these laws is that nothing is created out of nothing. All things are engendered." [57]

Following from this, a move from a <u>philosophy</u> of freedom to a <u>psychology</u> of human behaviour and its determinants.[58] This move entails a radical re-ordering of the elements of human action. It rejects the spiritual notion of the Ego as Sovereign, "the absolute monarch of Consciousness and of Will".[59] It rejects the idea of an intangible and unknowable point of creativity and choice - the human soul. In place of this spiritual essence is fixed an entity which has a definite substance, definite conditions and is amenable to investigation and perhaps even change - the <u>personality</u> or <u>character</u> of the individual. This personality "is not one and independent" but is rather complex and "<u>constituted</u>".[60] Thus Garafalo:

> "We know that the Ego cannot create itself, and that the character has already been formed by a series of anterior facts." [61]

and Claye Shaw:

> "It is personal character that is the ultimate cause of volition. ... Instead of will being free, it is, in fact, a determined process." [62]

This "personality" or "character" depends for its construction upon "hereditary, physiological and social circumstances",[63] and forms the basis and proximate source of individual conduct.

The implications of this philosophy-to-psychology shift are complex and wide-ranging. To begin with, it promotes the possibility of a positive knowledge of human subjects. As Saleilles put it, "In the newer view the personality ... becomes amenable to a precise psychological analysis",[64] and it is upon this knowledge that criminology stakes its claim to be a superior form of discourse regarding the criminal. Secondly, it provided a new object to be assessed and administered in the courts of law:

> "The terms of free will and responsibility must be reconsidered in the light of fresh knowledge. We are but machines of varying potential, endurance and capacity, and according to the quality of the mechanism so we should be judged." [65]

Finally it opens up the possibility of techniques which can transform this object and its determinants. As De Fleury vividly put it, "... the soul is there, under our scalpel".[66]

The next stage in this operation is a simple question of logical differentiation. If personality or character is the basis of individual behaviour, then different forms of behaviour signify different forms of character. The criminal act now signifies more than itself, being a sign of the criminal character from which it sprang. As Boies phrased it, "Criminal moral depravity is an actual condition of individual character, not a transitory passion or disposition".[67] And for criminologists at least, this logic was amply confirmed by experience: as Marro put it, "all who deal with the physical study of the criminal are forced to the conclusion that he is a being apart", to which Garafalo adds, "Few who have ever visited a prison or penitentiary will maintain the contrary".[68]

Thus by a process of differentiation and classification, tracing effects back to causes, criminology arrives at the distinctive "criminal character".[69] At this point we see the introduction of the "pathological

principle".[70] According to the logic of the operation so far, we have the identification of a character-object and its classification according to the type of behaviour it promotes. As yet, there is no hierarchy of character-types. The introduction of the notion of pathology fixes a definite norm of social and individual "health" and places the criminal character below that norm. It becomes a "theorem" of criminology:

> "that criminality is a diseased condition of human character." [71]
>
> "the delinquent is not a normal man; ... on the contrary he represents a special class, a variation on the human race through organic or physical abnormalities, either hereditary or acquired." [72]
>
> "... crime is always the effect of an anomaly or of a pathological condition. ..." [73]

We should note that the uncontentious entry of this principle marks another point at which social and political criteria are directly inscribed into the categories of criminological discourse. Criminology is thus fixed in its place as a correctionalist discipline, fundamentally uncritical of existing legal and social relations.

We have then, the notion of criminal behaviour as a product and expression of a distinctive pathological entity, "the criminal character". Or rather, since the personality is deemed to be complex and not singular, we have "criminality" as a pathological element of individual character. In this concept of "criminality", criminology finds both its raison d'etre and its practicable object. For if criminality is the source of criminal behaviour, then a systematic knowledge of it - a criminology - is obviously necessary. And once known and identified, this object should clearly become the target for - the practicable object of - investigation, observation and finally transformation.

In claiming to have discovered "criminality" in the bodies or the brains or the "milieux" of criminals, criminology claimed a social and scientific space for itself. In the century that has passed since that discovery that space has been expanded and extensively worked over, and the position and character of "criminality" has been repeatedly revised and relocated. It has been seen as an entity which completely characterises an individual as "the criminal type", or more recently, as a more limited characteristic which can affect individuals, families or even neighbourhoods. Nevertheless, criminologists have remained committed to this particular object for the simple reason that without its existence there can be no grounding for criminology as an independent discourse or discipline. The discovery of criminality then, is the discovery of criminology itself. Henceforth its mission would be, in its theoretical phase, to investigate criminality, and in its practical phase (qua penology) to eliminate criminality from the individual and from society itself.

(a) The investigation of criminality

If the discovery of criminality founds a science of its further investigation, it also sets in place the need for further investigative procedures, apparatuses and qualified personnel. Consequently it was a constant demand of the criminological programme that the legal system should open itself up to the entree of a staff of non-legal experts. The precise nature of the required expertise varied according to the predelictions of the criminologist in question - thus B. Hollander (himself an M.D.) maintained that "crime calls for intelligent and scientific treatment which lies with the future learning of the medical profession",[74] while Albert Wilson insisted that criminals "require careful examination ... not by the police, the

lawyer or even the judge but by the expert psychologist",[75] and Lydston recommends "the direction of wise and experienced men of broad information and a thorough knowledge of the physical aspect of crime and of the principles of sociology".[76] Other demands were less specific, calling for "medico-psychologic examinations by psychologic physicians" or merely "highly and specially trained persons", but the consistent thrust of the programme was for the introduction of an expert staff of a non-legal character.

Indeed the desire of the criminological argument was to shift the very object of forensic investigation away from "the criminal fact" and towards "the criminality of the agent as revealed by the fact".[77] And if lawyers, judges and judicial procedures had been adequate to the investigation of acts and 'facts', the investigation of criminality required quite others means. Hence the demand for assessment centres, "mental and physical observatories", "court clinics" and a revised criminal procedure which accorded these apparatuses their due authority.[78] Hence the call for:

> "The development of machinery adequate to the requirements of the psychiatric point of view in criminal trials and hearings including court clinics and psychiatrists and ultimately a routine compulsory psychiatric examination of all offenders with latitude and authority in the recommendations made to the court as to the disposition and treatment of the prisoner." [79]

If, as Ferri claimed, "the great truth of the present and the future for criminal science" lay in "the individualisation of penal treatment - for that man, and for the cause of that man's crime"[80] then this individualisation implied a very definite process or procedure. It implied firstly <u>observation</u>, and on that basis, the <u>production of information and knowledge</u> concerning the individual and his criminality. From this springs the demand for an investigative apparatus which would provide the materials for criminology as a positive scientific knowledge

and for penology as the application of that knowledge in the practical sphere. It then implied a system of assessment, classification and differentiation, which entailed the demand for trained 'diagnostic' personnel, and the endless production of classificatory schemes and typologies.[81] Finally, as we shall see, it implied a wide and differentiated array of sanctions, dispositions and treatments which would be adequate to the different categories, forms and types of individual criminality.

(b) The elimination of criminality

We have emphasised throughout our discussion of the criminological programme that criminology was no innocent academic pursuit but in fact an applied, disciplinary discourse which aimed to establish itself in the institutions and practices of power. We also noted that the object which formed the focus of scientific investigation - namely "criminality" - was at the same time a practicable object, the focus of policy demands and practices. Criminality was thus an object of 'disinterested' research but also the target for penal practices and forms of regulation. It was a scientific problem but also a social problem to be addressed, attacked and transformed. In view of this crucial unity of "theory" and "practice" it comes as no surprise to find that the criminological programme was heavily committed to a definite penology, and that moreover, the common theoretical and discursive positions identified above were tied to a shared programme of practical demands and recommendations.

Having identified "criminality" as the real source of criminal behaviour, the practical programme of the criminologists addressed itself solely to this object and its extermination. Whereas the old system had punished the criminal for having "chosen" crime and then had

set him free to make the same choice again, the new criminology aimed to remove his criminality once and for all. Given the existence of criminality, three separate modes of extermination were available. First of all, criminality might be reformed. The individual criminal might be transformed in some way which brought about his social adaptation or re-attachment - his character might be transformed and his criminality cured.[82] Secondly, where such reform was impossible or impractical, criminality might simply be eliminated. Thus the incorrigible criminal could be executed, transported, or else permanently segregated in such a way as to remove his criminality from the social body. Finally, for the future, criminality might be prevented. If the determinants and causes of criminality could themselves be altered or eliminated, then new generations could be immunised against the condition and its gradual extermination could be achieved.

In fact all three of these modes or objectives were concurrently proposed by nearly all of the criminological texts and manifestoes. Thus Henry Boies:

> "The unintermitted, continual restraint of the incorrigible criminal, the reformation of the curable, and the wholesome rearing of every child constitute the triplicate solution by Science of the social problem of Criminality." [83]

and again:

> "The problem is resolved into three elementary phases, those of prevention, of reformation, and of extinction - the last the most important of all." [84]

or the 1906 Turin Congress:

> "To instruct ignorant criminals,to reform the corrigible, to prevent the incurable from offending, are the duties which the State must fulfil with loyalty and zeal." [85]

and finally Enrico Ferri:

> "In sociological medicine, the great classes of hygienic

> measures (preventive means), therapeutic remedies (reparative and repressive means) and surgical operations (eliminative means) form the arsenal which enables society to face the permanent means of its own preservation." [86]

Criminality was thus to be exterminated, either by prevention, reformation or elimination. This triple strategy required not only procedures of assessment and classification which could identify offenders as corrigible or incorrigible, but also a diversity of dispositions, sanctions and techniques to implement these objectives. Thus we find that a major demand of the criminologists was for an extended repertoire of penal sanctions and institutions,[87] including juvenile reformatories, preventive detention institutions, institutions for inebriates, for the feeble-minded, a variety of prison regimes, forms of supervision, conditional liberation, indeterminate sentences and "pre-delinquent interventions".

And although there was a degree of variation between different individuals in their lists of recommended sanctions - particularly in regard to more controversial innovations such as sterilization or execution - by and large most of these sanctions were given general endorsement.[88]

There was thus a remarkable consistency in the positions, arguments and recommendations proposed by the various proponents of the new criminological programme. Indeed if we were to take this further and identify the specific topics which were most discussed by criminologists we would discover that it was the same few issues and problem-categories which are discussed over and over again in the literature. Nor was this choice arbitrary or coincidental: the favoured items of discussion - juveniles, habituals, the feeble-minded, the inebriate - were precisely those items on which either "science" or social policy had

most to say. The most "easily explained" categories (the undeveloped juvenile, the disturbed defective) or else the most dangerous (the habitual, the professional thief) were those used to provide exemplary models of criminality which could then be extended to other, less well-discussed types of offender.

What was the basis of this consistency? How could this new discourse establish such stability and uniformity in such a small space of time and over such a large, international terrain? The answer to such a question can only be tentative and to a certain degree, speculative. Nonetheless, we would suggest that the consistency of this early criminological discourse does not lie in scientific truth, frequently discovered, but is a product of (1) the simple repetition or paraphrasing of earlier work, and (2) the theoretical implications of the ideological ("social problem") basis of the discourse. If one reads closely the texts of the criminological programme in this period, there is a surprising shortage of any actual research or positive data underlying their statements. More often these texts are simply commentaries, compilations or glosses upon other, earlier texts. Despite its claims to be a positive science, criminology in this early period more nearly resembles a new theology with its dogmas, glosses and evangelists. Hence the remarkable degree of repetition and the static nature of the discipline through time.[89]

As for its theoretical foundations, criminology had tied itself to a search for the antecedent, observable causes of criminal behaviour. Its commitment to a positivist methodology of observation, correlation and induction meant that it was fundamentally <u>eclectic</u> in character, prepared to encompass any number of factors in its explanations. Consequently, different causal explanations, involving different "factors" and determinants,were not always seen as competing

or contradictory accounts. As we shall see, after the initial period of debate between proponents of biological and of social factors, most explanations took on an eclectic multi-factorial approach which simply listed a multitude of factors in a bid for comprehensiveness rather than coherence.[90] This additive, eclectic character is well illustrated by Ferri's text Criminal Sociology which was 160 pages long when it first appeared in 1884, but by the fifth, 1900 edition, had reached 1,000 pages through the accumulation of other "relevant factors" derived from the growing literature on crime. This massive eclecticism was in turn possible because, as we have seen, criminology's object and direction of inquiry were dictated not by scientific discovery but by practical social policy concerns. "Criminality" was a social problem demanding a "scientific" solution and its investigators were committed more to that solution than to any single or coherent theory of human behaviour.[91]

This social problem orientation brings us to our final point in this section. Underlying the concern to provide new principles and procedures for penal regulation there is the constant figure of the State as the presumed subject of this enterprise. Just as classical jurisprudence had organised itself around a liberal conception of the State/individual relation, criminology too assumed that the State and the individual were the proper subject and object of this process - though the nature of these terms and their relationships were fundamentally revised. As we shall see in Chapter Six, criminology's arguments were explicitly directed towards an increased interventionism on the part of the State, as well as a new conception of the individual and the means employed against him. But the assumption that the central State is indeed the proper subject of this process (and not private organisations, or even localised administrations) is so basic

as to go mostly unspoken. At one point we see Saleilles object strongly to the private nature of Brockway's experiments in the U.S.A., insisting that only the State can be entrusted with the penal function,[92] and occasionally Conference resolutions are explicit about "State establishment and control".[93] However in his statement of the "Principles of Scientific Penology" Boies supplies us with an expression of this basic principle and demonstrates that not only the politics but also the practical ambitions of criminology necessitate the State as their subject:

> "Scientific Penology is impossible, all social penal effort is futile, or worse than futile, unless it is initiated, directed and controlled by the State, so that it shall include every unit of the population within its constant scope and care." [94]

(6) The internal variations and conflicts of the criminological programme

So far in this Chapter we have described the central elements of the criminological programme and emphasised the remarkable consistency with which these elements and themes appear in the texts and manifestoes of this movement. We will now comment briefly upon one or two of the disputes or arguments which took place within this movement during its formative period.

In any programme or discipline there are bound to be numerous points of variation, debate or disputation upon which even committed advocates of the programme are divided. Each author, each organisation and each text will assert particular formulations which differ either in substance or in nuance from other positions in the field. Thus in criminology there were endless disputes over modes of classification, preferred forms of sanction and exact causal priorities, as well as

over the terms and formulations to be employed.[95] Disputes such as these though were matters of detail and refinement which may have been of vital concern to the practitioners of the discipline, but signified little in terms of that discipline's public profile or its practical repercussions in the social world.

For our purposes then, there would be little point in detailing the exact variations between the different authors, in terms of their formulations, arguments, degrees of rigour, originality and so on, although such differentiations undoubtedly existed. Nonetheless there are a number of these disputes which <u>are</u> of relevance to our project and whose significance stretches beyond the internal 'house talk' of criminology. As we shall see in Chapter Six, these contestations and variations played an important part in the maneouvres and tactical movements whereby criminology sought to establish itself socially. It will therefore be helpful for our later understanding of that process if these issues are mentioned briefly now.

The first such debate is well known and may be characterised simply as the nature/nurture dispute which was argued - in these general terms - at the early congresses of criminal anthropology and to a lesser extent, in the first criminological texts.[96] This still-familiar issue counterposed the influence of "the environment" (a position supposedly championed by the French) to those of the individual constitution (the "Italian" position). Much has since been made of this contest and its national protagonists but in fact, as we have noted above, criminological writers realised early on that there was little substance to this rhetorical debate since the two positions need not in fact be contradictory. The practical solution lay in the additive formulae of an individualistic eclecticism which held the individual as the central object of inquiry, and merely listed together

the constitutional and environmental influences which acted upon him.[97] A mono-causal dispute of substance thus became a mere question of priorities within a multi-factorial approach, and as the texts of Lombroso, Ferri, Tarde and the others went through their numerous editions one can clearly see this movement occur.[98]

But if this early dispute was easily resolved there were related issues which were more significant in their continuing and practical effect. In particular the question of the "born criminal" continued to evoke important conflicts,even after it was reduced to one 'type' among many. So too did the related question of 'corrigibility' and the potential scope of rehabilitation.

The notion of "born criminal" or the "criminal by nature" was probably the criminological term best-known to the lay public and, as we will see, it was to have important ramifications in the ideological struggles which surrounded criminology's promotion to institutional practice. Its public notoriety however, was matched by a continuing internal dispute which centred around the concept and its practical implications. The idea that "criminal man" was an identifiable constitutional type represented a claim of great significance for the programme, but its implications were not altogether unproblematic. In one sense it represented criminology's strongest scientific and practical theme: if such an entity existed in nature, then its discovery and investigation did indeed herald the opening up of a scientific discipline.[99] Moreover if, as some criminologists claimed, these born criminals could be identified <u>before</u> they first offended, then a real preventative policy was a practical possibility. As one commentator put it, comparing the born criminal with the image of Calvin's doctrine of the Elect, even "Calvin could not indicate the elect and non-elect, while Lombroso says he can ...".[100] At the same

time, however, this doctrine undercut its own policy advantages by asserting that "if crime is really a fatal consequence of certain constitutions which are naturally predisposed to it, it is then almost irremediable ...".[101] The other side of this confident doctrine - endorsed by writers such as Garafalo, Ferri, Tredgold, Ellis and Maudsley, as well as Lombroso - was thus a therapeutic defeatism, which implied that criminals of this type were "absolutely irreformable".[102]

The extent of this "defeatism" varied enormously between writers. Lombroso himself affirmed that there was a range of criminals who could be improved by remedial measures even if the born criminal could not,[103] while Garafalo - who is less often associated with the doctrine - was actually less optimistic:

> "There are certain psychologists who believe in the possibility of modifying character by education. ... In fact it seems clear that education is an influence which acts only upon infancy and early youth. ... Once fixed, the character, like the physiosnomy, undergoes no further change during life. And even in the period of early childhood, it is doubtful whether education can create a wanting moral instinct." [104]

Against this defeatism was focused a major thrust of the criminological programme. Writers such as Saleilles, Morrison, Holmes, Ruggles-Brise and others emphasised the goal of rehabilitation and its possibility in most if not all cases, dismissing the conception of the born criminal as mere "superstitution", unfounded by evidence.[105] As we shall see in Chapter Six, this particular dispute was of major importance in the struggle to implant criminology in the institutions of government.

A related conflict with very similar origins and consequences involved the question of "determinism" versus "free-will". Although it was a mark of the criminological programme that it rejected the classical conceptions of "freedom", "will" and "chosen action", there

was little agreement as to how an alternative position should be framed. The theoretical conflict revolved around the precise characterisation of 'the Ego' or the personality, with writers such as Ferri, Garafalo, Ellis, and Smith and Schlapp vehemently asserting a logic of determination and behavioural reaction while the likes of Saleilles, Prins, Von Liszt, etc. proposed a compromise formulation.[106] For these latter writers "freedom" and "determination" were both operative in the human personality since people were seen as "free" to develop their moral character, but once this character is formed, "the fundamental law of physical causality prevails. Freedom prepares the soul, determinism receives the seed and makes it fruitful".[107] And of course the practical implication of this debate lay with the question of criminal "responsibility" and the possibility of reform:

> "... without freedom, there is no hope of a return to virtue, and thus arises the tendency to recognise only criminals by nature, to regard them all as beset with an incurable criminality, as belonging to the lost." [108]

Another issue which promoted serious divisions within the criminological corpus was the question of eugenic sanctions and their employment against offenders.[109] On the one hand were writers such as Garafalo,[110] Battaglini,[111] Ellis,[112] and Bradley[113] who openly endorsed various forms of "elimination" or "social surgery" which aimed "to prevent the procreation of individuals who in all likelihood would turn out to be vicious and deprived".[114] As Boies put it:

> "Society must take cognizance of the reproduction of the race and correct the tendencies to degradation, as a measure of self-preservation. It is idle and foolish to waste energy, sympathy and money in the hopeless effort to cure and restrain what should never have been permitted to exist." [115]

They were supported by less explicit eugenists such as R. F. Quinton,[116] Thomas Holmes[117] and Dr. Goring.[118] Ranged against this position were a number of writers such as James Devon and J. F. Sutherland who took

issue with it on grounds of evidence and of principle. They challenged the conception that habitual criminals are either prolific or capable of transmitting criminal traits to their offspring and they altogether refused the morality of the eugenic argument. Sutherland thus sought to displace the preventative arguments away from the individual, when he argued that "before society decrees this kind of surgery, if ever it does, it must have clean hands itself",[119] while Devon resorted to irony and ridicule when he pointed out that:

> "If some of the Apostles of Fitness had any sense of humour they would hold their tongues and hide themselves, for neither intellectually nor physically do they show much claim to present an ideal standard." [120]

Finally, it is worth emphasising here that the "individualisation" which was identified as a central characteristic of criminology did not at all proclude discussion of the "social" aspects of crime-causation and the possibility of social reform. It will be recalled that one of the three programmatic responses to "criminality" was actually "prevention" - and the strategy involved a strong social element in at least some of its formulations.[121] Indeed in a few of the early writings there was a definite emphasis upon the re-organisation of social relations as a preventative means, and several of their recommendations were radical or even socialistic in character as the work of Bonger or Ferri amply demonstrates.[122] The point of stressing this fact here is that at later stages in the development of criminology this radical-social aspect has tended to disappear, as the focus of inquiry and policy decision has narrowed to frame only the offender or at most the offender's family.[123] Moreover recent histories of "positivism" and early criminology have excluded all reference to the more radical or social aspects of the initial programme.

Against this tendency it is worth recalling that social reform

elements in the programme were stressed not only by Enrico Ferri and Bonger, but also by Devon, Sutherland, Holmes, Tallack, Morrison and Ruggles-Brise. Thus Ferri insisted that the abnormality which gives rise to criminality lies "in society itself",[124] as well as in the individual, and he demands that these "social pathologies" (including many of the central elements of capitalism) be addressed and transformed. Similarly writers like Holmes and Sutherland attacked inequalities of wealth, unemployment, bad housing, etc. as fundamental causes of crime which had first to be removed before individuals could be reformed.[125] Of course some writers gave merely token attention to social questions or else presented a radical analysis critical of property, social inequalities and so on, only to conclude by recommending penal reform which centre exclusively upon the offender.[126] And of course social reform could mean for Ferri, a transition to socialism and for Ruggles-Brise, the social programme of the incoming Liberal government:

> "What is summarised by criminologists under the title of 'l'hygiene preventive' comprises all those social and political reforms which make up the 'Social Programme' which is engaging the attention of our statesmen today. Better housing and lighting, the control of the Liquor Traffic, Cheap food, fair wages, insurance, even village Clubs and Boy Scouts ...".[127]

Nonetheless there were serious arguments for social change, and a number of radical recommendations such as Sutherland's demand for the appointment of official "environmental observation officers" to report alongside the psychological or medical observers in criminal cases,[128] or else the call for working class judges in criminal trials, proposed by "Investigator" and Arthur St. John as well as by M. Magnaud at the 1906 Criminal Anthropology Congress.[129]

The fact that these demands receded and the "social aspect" all but disappeared from the programme is no reason to pass them over as if they had never existed. On the contrary, it raises a problem to

be explained and the reasons for this development will be examined more closely in Chapter Six.

(7) Criminology's Social Implications

Having described at length the criminological programme, its conditions, structure and elements, the last few sections of this Chapter will briefly indicate the kind of social implications, this movement entailed and the social base of support which it commanded. We began by emphasising the pertinence of criminology (and the other three programmes) to the social crisis of the 1890s. This pertinence lay in the regulatory and ideological possibilities offered by the new programme, possibilities which allowed the extension of effective disciplinary control while doing so in a manner which had strong claims to legitimacy. As we have seen, criminology allowed a differentiation to be produced which would mark off the field and population of "criminality" in stark contrast to the universalism of classical jurisprudence. The classical insistence that all men are equal, free and rational (derived from Christian humanism as well as from liberal theory) put definite limits upon the operation and presentation of regulatory forms. All subjects in law had to be seen to be treated equally, impartially and without differentiation. Only by their acts could they be judged and on that basis alone the law was empowered to intervene in their affairs.[130] As a form of discipline then, the traditional criminal law is severely limited. It functions through the specification and prohibition of definite acts and is thereby limited to the policing of these acts rather than the general inspection/control of individuals themselves. Moreover the criminal law is inextricably bound up with the question of legitimacy. Its

prohibitions are a public declaration of the limits of individual freedom and require to be justified as such. Its intersection with the discourse of political obligation precludes it from functioning with the requisite discretion, flexibility or penetration. The advantages of criminology lay in its rejection of this formal liberal egalitarianism. It insisted upon a qualitative differentiation which would trace out the dangerous classes and the real contours of criminality. But where this strategy differed from previous attempts to do this in the realm of charity or the Poor Law was in its terms and justifications. It abjured the blatant moralism and class basis of distinctions such as "deserving/undeserving" or "Respectable/rough" which had anyway become politically intolerable by this time. Instead it phrased its divisions in the terms of a "scientific" discourse which excluded any reference to politics or morality. The unspoken advantage of criminological discourse in this troubled period was its capacity to differentiate in terms of "abnormality", "pathology" and the unquestioned norms of physical and mental "health".

At the end of the nineteenth century the indiscreet class bias of penal sanctions was an embarrassment which failed to disguise the grave economic and social inequalities which the law reproduced. Criminology provided a different explanation which relieved this legitimatory deficit. The existence of a class which was constantly criminalised - indeed the very existence of an impoverished sector of the population - could now be explained by reference to the natural, constitutional propensities of these individuals, thereby excluding all reference to the character of the law, of politics or of social relations.

So differentiation was possible within more acceptable ideological terms. But this discursive shift also allowed a new and extended basis for disciplinary intervention and regulation. Firstly, because

the range of the "abnormal" can exceed the "criminal", criminology allowed a wider scope for control than did the criminal law. Its proponents argued that the law was not an absolute measure of normality nor even the best one available. Individuals could behave within the terms of the law and yet be abnormal, dangerous and in need of control. In contrast, the terms of criminology permitted - indeed demanded - the firm regulation of all those groups such as inebriates, the feeble-minded, vagrants, epileptics and habituals which were previously 'within the law' and hence "beyond control".[131] It even allowed the extension of this logic of pathology and normalising regulation to include the whole class of "paupers" and the destitute poor, as writers such as Henry Boies and the eugenists made perfectly clear.[132]

Secondly, criminology's purported ability to identify "criminality" in the bodies of criminals (and not merely in their acts) opened up the possibility of an <u>anticipatory</u> form of regulation. It produced the categories of the "predelinquent", the "near-criminal" or the "presumptive criminal" and accompanied them with arguments for pre-emptive intervention:

> "It is evident, then, that the supreme function of the Science of Penology is the discovery of the infected members of society <u>before</u> their disease has become an actual offence." [133]

Finally, the shift of focus from the offender's act to the offender himself implied a new and more penetrating form of intervention. Sanctions were to be aimed not at meeting degrees of guilt but at transforming aspects of character. Questions of the duration, nature and seriousness of the sanction were not to be limited by considerations of desert or proportionality. Moreover sanctions should be <u>personalised</u> or <u>individualised</u>, seeking to address the very fabric of the offenders person in a manner which need not be embarrassed by liberal considerations

of individual freedom and privacy.

"The act", "guilt","desert", "proportion", all of these were dismissed as the marks of an outdated and metaphysical system:

> "The new penology is no longer activated by vengeance and does not look at the moral gravity of the offence. ... 'Judge not' is its maxim." [134]

In place of these judicial notions, criminology proposed standards of health, doctrines of utility, and measures of social defence. In this new logic the measure of an offence was not its intrinsic moral seriousness, but its capacity for repetition, its potential for generalisation, its symptomatic value.[135] "Punishment is measured by the perversity of the criminal" and not his crime, and accordingly attempt is no different from action and proclivity no less dangerous than actual practice.[136]

But if the framework of judicial reasoning was to be abandoned, along with the limitations and restraints of legality, what stood between penality and a completely arbitrary power? In fact this vital question was all but absent from the discussions of the criminologists, being explicitly framed only by Raymond Saleilles who warned against replacing the "objectivism" of the classical regime with a "subjectivism" which would allow complete and arbitrary discretion.[137] But Saleilles' solution to this problem, and the solution which most criminologists assumed without the necessity of argument, was an objective code of scientific norms and standards which prescribed the proper ideals of moral, mental and physical health. It is an important testimony to the nature of this movement that these norms and ideals - the actual values and standards which were presupposed whenever pathologies or differentiations or rehabilitation were discussed - were never explicitly identified or adequately described. Usually these norms were simply assumed, unstated, on the basis that reasonable men from

a similar social situation were talking one to the other, sharing a framework of values and ideologies which could go unsaid. Bradley illustrates this assumption well when, in his argument for "social surgery" and the 'unrestricted right' of the community in this regard, he begins:

> "We may leave welfare undefined, and for present purposes need not distinguish the community from the State." [138]

It was thus left to the wisdom of science and the mutual understandings of reasonable men to quietly identify and act upon "objective" standards of social health. Law was to be replaced by "normalisation"; punishments by the"straightening out" of characters, the identification and repair of behavioural abnormalities; but no one saw any need to debate or even describe the actual norms to be imposed through these procedures.

Perhaps the major implication of the criminological programme was this social engineering capability which it claimed to offer. Criminology would replace the ineffectual niceties of legal punishment by practical technologies involving diagnostic, preventative and curative instruments and institutions. Criminality was now a knowable positive entity which, with the aid of scientific investigation and appropriate practical techniques could be removed from the social body. But if we examine these claims carefully we find that the programme repeatedly offered <u>arguments</u> and <u>legitimations</u> for intervention, but actually offered few effective <u>means</u> of carrying this out. In fact if we consider the techniques and apparatuses proposed at this time, it becomes evident that the powerful claims of criminology in this regard were somewhat lacking in technological substance.

(8) Techniques

Perhaps the most repetitive aspect of what is generally a rather repetitive literature is the section in each text devoted to penological techniques. One finds that again and again the same items appear on the pages - "reformative" prisons, indeterminate sentences, supervisory orders, preventive detention of one form or another, partial or complete "elimination" through deportation, sterilization or even execution. And while these recommended sanctions may differ from those displayed by the classical system, they hardly amount to a technical repertoire of prevention and rehabilitation. Certainly the demand for reformatories, indeterminate sentences, supervision and so on, provided a space for characters to be transformed, but the point is that very little discussion addressed the question of exactly how this transformation was to be achieved. Criminology, despite its claims, provided few techniques of its own to support its social engineering ambitions.

There were of course grand-sounding schemes involving "neuro-electricity in the service of penitentiary work", lie-detectors ("plethysmographs"), or else special regimes of physical exercise for the training of adolescents, but these were invoked by way of impressive illustration and were never discussed in any detail.[139] Instead rehabilitation had to rely upon the unspecified effects of "personal influence" and "the power of a normal or healthy personality" to overcome criminal tendencies.[140] Prison training should involve physical, intellectual and moral aspects - but then it always had done, with little notable success.[141]

In fact the only area in which any real technical advance took place concerned the development of identification techniques. Anthropometry, finger-printing, the Bertillon system, elaborate

systems which marked the bodies of ex-offenders with a sign language of indelible marks, and various other ID techniques, were extensively discussed and developed, not least because they had the full backing and support of police, and prison authorities in every country.[142]

The technical armoury provided by the criminological movement thus amounted to a number of elaborate identification techniques, a range of eliminative means such as deportation, labour colonies, preventive detention, etc. which owed little to criminological theory, and a faith that medicine and psychiatry could be relied upon to provide effective rehabilitative techniques, if not now, at least in the near future. In terms of its technological profile then, the criminology programme offered an effective social defence - through eliminative means and police techniques - but little in the way of prevention or rehabilitation. However much it described itself as a curative programme, what was actually on offer was a technology of segregative control.

A final social implication which may be noted here is the promotion of an extended Statism, which in turn entailed the promotion of certain professions and functionaries at the expense of others.[143] Criminology implied an elevation in the status and power of the likes of prison executives, forensic scientists, psychiatrists and other "penological experts". It widened the fields of medicine, psychiatry and even sociology to cover what has previously been a judicial domain, and sought to effect a shift of power away from the judiciary and towards a non-legal executive staff.[144] In part then, the theoretical debates between criminology and classicism concealed a competition between professions seeking to advance or defend their positions in the social division of labour.[145] But the significance of this debate was not confined to the level of theory or even to the level of

professional competition in the "administration of deviance". The challenge which criminology posed to legalism, and the rival principles and values carried by these contesting professions, had a profound ideological significance which, though rarely acknowledged, was at the very heart of this struggle. As we shall see, the challenge posed by criminological discourse to established concepts such as individual "freedom", "responsibility", "rationality" and "rights", raised major political and ideological issues and offered important possibilities for the wider field of social politics and legitimation.

(9) The Social Base of Support

It was indicated earlier that the criminological movement was more than just a discursive event insofar as it involved a definite social base of organisational and individual support. The characteristic elements of this infrastructure will now be briefly mentioned.

First of all, of course, criminology enjoyed strong support from those groups and professions which were directly and positively implicated in its programme. It thus derived strength from the ambitions and beliefs of prison administrators, police scientists, social scientists and a number of statisticians, anthropologists and biologists. Best organised of these supporting professions was that of psychiatry which, already possessing its own domain, used this as a basis from which to promote the criminological programme. Thus the Medico-Psychological Association, the Medico-Legal Society and publications such as The Journal of Mental Science and Transactions of the M-LS devoted much time and energy to arguing the criminological cause.

But the programme also developed an organisational basis of its

own, establishing regular Conferences and Congresses at an international level as well as the theoretical schools and professional pressure groups which operated on a national or more local basis. Conferences of Criminal Anthropology and Sociology, the International Union of Criminal Law, the International Penitentiary Congresses, and the International Criminological Association all attracted large, often official, national delegations to their regular meetings, each one publishing reports of their papers and debates and pressing the claims of criminology upon national governments and an international audience. Britain was represented at most of these Conferences after 1895 (having been host to the very first Penitentiary Congress in 1872 and thereafter withdrawing support during Du Cane's period of office) and Ruggles-Brise, the ~~Head~~ Chairman of the English Prison Commission, was a particularly active participant and publicist for the movement.

In point of fact there was no single group or association in Britain devoted solely to the promotion and furtherance of the criminological programme, or at least not until the 1950s. Nor were there any theoretical schools or journals established here in this early period. However a number of individuals and publishing houses took it upon themselves to translate and make available in English most of the more important criminological texts published abroad. Thus W. D. Morrison established the "Criminology Series" on a similar basis to the celebrated American Institute series published by Little Brown & Co. in Boston and London, between them translating most of the classic texts from Italy, France and Germany. Writers such as Havelock Ellis and Morrison himself also presented the work of foreign writers to the British public through the medium of their own work, thereby establishing eclecticism, rather than any singular theory, as the typical British style.

But if Britain lacked a specifically criminological society, there was no shortage of associations, organisations and pressure groups which concerned themselves with criminal justice and penal reform. The Howard Association, the Penal Reform League, the Reformatory and Refuge Union and the Humanitarian League were all directed towards objectives similar to those proposed by criminology. These groups, along with various social work organisations, the State Children's Association, the Committee on Wage Earning Children and the Association for the Feeble-Minded, gave important and consistent support to the criminological programme, as did the writings of their individual members such as William Tallock, Thomas Holmes and Rev. Merrick. However it is important to stress that this support was never unqualified or complete. These groups were usually charitable, evangelical associations, committed to the reform of institutions or individuals in accordance with their Christian or humanitarian principles. Their support for criminology normally centred around the actual policy recommendations made by that programme - for indeterminate sentences, classification, individual reformation, probation, labour colonies, etc. - rather than the theoretical or philosophical premises from which these were derived. In other words the relation of these groups to the criminological programme was mediated by Christian evangelicism which allowed a large degree of policy support but prohibited any total endorsement of the programme as a whole.[146]

Finally, criminology derived a more general and diffuse support from the new professional and intellectual classes which had developed in Britain by the end of the nineteenth century.[147] The scientism of the programme, its promotion of expertise and professionalism as well as its rejection of tradition in favour of more 'rational' and 'humanitarian' arrangements were guaranteed to appeal to the ideologies

and interests of this class. So while few lawyers or clergymen were entirely enthusiastic, many of the newer middle-classes - state officers, medics, university intellectuals, social workers, etc. - found the doctrines and methods very appealing.[148] As we shall see, a similar social class affinity occurred in relation to the Eugenic, Social Security and Social Work programmes, and it comes as no surprise to find that many of the individuals and organisations devoted to these programmes, were also advocates or supporters of criminology.[149]

CHAPTER 4

Social Work and Penal Reform

(1) Introduction: Political Subjects and Practicable Objects

Criminology then, was one programme which came to address itself to the late nineteenth century "social question" and its corresponding penal crisis. With its own terms and its own techniques, it sought to bring about a definite re-ordering of social life - a re-ordering which centred upon penality but which extended far beyond it into the wider social realm. And in a quite explicit manner its proponents presented this programme to those in power as a complex of knowledges, techniques and legitimations with which to tackle the problem of social politics.

We now turn to the other major programmes of reform - social work, social security and eugenics - to examine their projects for the reorganisation of social life. Our discussion of these programmes will be more cursory than that afforded to criminology, for two reasons. First of all, these programmes are already better served by historical and social analysis.[1] Secondly, the focus of our investigation is such that these programmes will be examined in order to elicit their significance for modern penality and the strategic network in which it operates, rather than to produce a more exhaustive account of their character and effects.

As with criminology, we shall be concerned to identify the conditions and contours of these programmes, their discursive and technical resources, and their organisational basis and social support. But while the last Chapter operated at the level of textual detail, this one will tend towards a more abstract or general level of analysis. This analysis will highlight certain features of these three programmes

which will allow us to understand their relationships with one another, with the 'social problem' of the 1890s/1900s and with the political forces of that time. Moreover the concepts and categorisations used to define these features will later prove useful in describing the general strategic forms adopted by social and penal regulation in twentieth century Britain.

All of the programmes under scrutiny here are projects for the re-ordering, reorganisation and repair of the social realm. They are, in other words, specific schemes of social engineering and reform. Viewed abstractly, all such schemes must provide two forms of proposition - the "practical" and the "political". The practical form of proposition defines the processes, techniques and methods to be used in the engineering task, but it also specifies its point of incidence, the point at which it makes contact with the social realm, in other words, its practicable object. The political form of proposition on the other hand, states by what authority, under whose control, and "in whose name" these interventions are to be conducted; it specifies the political subject of the engineering process. We stated in Chapter Two that the crisis of the 1890s centred around a "dual problem of the social regulation of the poor and the proper role of the State". In our new terms this amounted to a crisis of social engineering in which both the 'subject' and the 'object' of social regulation were put in question. We intend to characterise the following programmes (and that of criminology too) in terms of the positions they adopted on these basic issues.

If we examine our programmes in the light of these considerations, we find that the range of practical and political propositions which they produce can be represented within a schematic grid or matrix, formed around two axes. On the one hand is the practical axis which

forms a line of possible objects of intervention ranging from 'individual' to 'mass', specifying the individual case at one end, and the national population at the other, with numerous intermediary points such as the family, the labour force, the unemployed, etc., in between. Against this can be set a political axis which ranges from 'public' to 'private', representing the range of political forms from the central State through local government to more or less private agencies such as the Churches, independent charities, or philanthropic individuals.

Despite its general terms, it is important to note that this matrix does not define the whole range of possible ways in which 'the social' might be regulated, but rather the specific grid of possibilities proposed by these programmes within that particular conjuncture. Indeed it was precisely along these 'axes' and the specific questions of "public or private?", "individual or mass?" that their discourses and debates functioned. Thus to take the criminological programme as an illustration; at the level of practice, criminology was clearly concerned with individualization, demarcating the differentiated individual as its practical object. However, in some of the texts which make up this programme, individualization was allied with a more generalised or "mass" form of intervention which involved preventative measures of social hygiene, education, housing, etc..[2] Thus the criminological programme would be located primarily, but not exclusively, at the 'individual' pole of the practical axis. At the same time, this criminology was predominantly Statist, insisting that criminal sanctions, penal techniques and the norms they prescribed and enforced should be defined and exercised by the central, national State, leaving only minor functions for private or local agencies.

Before proceeding to describe the other programmes and to locate

them within this general framework of analysis, two points need to be made. Clearly, each of the programmes under discussion aimed to produce a mass effect and to regulate, transform or moralise if not the national population, then at least substantial sections of it. In these terms, all of the programmes are geared to the 'mass' or to a specific 'population', be it the 'criminal class' or 'the feeble-minded' or 'the unemployed'. But as we shall see, it is of crucial importance to distinguish between those programmes for which a 'class' or a 'population' is merely a fictional term designating an aggregate of individuals who would have to be worked on 'one by one', and those for which the terms 'population', 'class', 'labour force', etc. were real entities which could be operated upon directly.

Secondly, it might seem appropriate in these circumstances to adopt the concepts provided by Michel Foucault to deal with this problem - namely 'bio-politics', 'anatomo-discipline', 'macro and micro-power', etc. - rather than to construct new terms which appear to amount to much the same thing. But there are two reasons why Foucault's terms have not been used here. First of all, without further elaboration his terms are too general and unspecific for our purposes. Moreover they do not correspond to the discursive terms used by the programmes themselves and so are less easily applicable. Indeed it might be said that they are not intended as a means of analysing the differences between programmes so much as the characteristics which they share. Secondly, and more importantly, Foucault's terms are not designed to distinguish the precise political form (public/private, State/non-State, etc.) which different interventions take. 'Bio-politics', 'micro-power', etc. include public as well as private forms of intervention which, for his purposes, need not be distinguished. However, for the programmes under discussion here, it is precisely this

question of political form which emerges again and again as an issue of principle - one which may seriously inhibit the practical ambitions of the programme concerned.

(2) The Social Work Programme

> "The crucial feature of social work is its heterogeneity and the fact that it is always allied to other practices. Unlike medicine and education, social work does not have specialised institutions and semi-autonomous enclosures of its own; it works by grafting itself on to education, medico-hygienic practices and to the penal and the judicial." [3]

The authors of this statement are describing social work's place in the institutional complex of the twentieth century. In nineteenth century Britain the institution with which social work allied itself was that of charity. The practice of providing aid to the poor and destitute provided a basis for a programme of social work which was concerned to transform those 'cases' which the offer of charity prised open for intervention.

It is this crucial alliance between charitable and 'social work' objectives which marks off the philanthropy of the 1870s and after from the long tradition of charitable giving. Where charity had concerned itself with material aid and the relief of distress, this late nineteenth century alliance concentrated upon merging assistance with advice, counselling and moralisation. The charitable gift, with its connotations of Christian duty, bad conscience and social superiority, was thus displaced by a more direct form of political investment - one which took care to ensure that its material outlay was rewarded by definite moral returns.

This notable shift in the practice of charitable giving was not the first occasion where distinct 'moral' objectives have overlain

those of helping the poor - as the history of denominational charity makes clear.[4] Nor were the methods and techniques utilised by the new 'scientific charities' altogether without precedent, as the much earlier work of Thomas Bernard, John Venn, Thomas Chalmers, Elberfeld, etc. will demonstrate.[5] But the formation of a distinct programme which promoted social work as its basic aim was the achievement of a number of organisations in the late nineteenth century, including the Settlement movement, the housing reform groups promoted by Octavia Hill, and above all, the Charity Organisation Society or "C.O.S.".

Within the field of charitable practice - which as we argued in Chapter Two, operated as an important strategic complement of the liberal state - this new programme can be seen as a reaction to the problems of indiscriminate almsgiving.[6] The COS in particular, argued that the practice of distributing alms without regard to the character of the recipient, his subsequent behaviour, or the operation of other charitable agencies, was a primary cause of demoralisation and pauperism. Consequently the new programme of social work with its focus upon organisation, investigation, character and reform presented itself as a corrective to indiscriminate charity in much the same way as criminology was developed in reaction to the general 'indiscriminacy' of earlier penal practice.[7]

But to view this new programme as merely an improved charitable technique would be to miss the significance of social work's intervention, and the political character of its objectives. Indeed, it would be to miss the overall significance of "charity" in this particular conjuncture when, as Jones (1971) has shown, it amounted to a political intervention aimed at reversing the detrimental effects of the geographical division of the classes, restoring a stable and hierarchical social order, and reforming (or else repressing) the

'outcasts' of the residuum.

We remarked in Chapter Two on how the Victorian charities operated within a strategic network which held the poor within an "ideological regard", employing categories and distinctions which were saturated by political norms and values. To this underlying politicality the new programme added a more immediate political concern. A crucial aspect of the "social problem" in the late nineteenth century was the threat posed to the balance of power by the advance of democracy and an expanded citizenry. As we shall see, the various programmes responded to this "problem" in different ways, but for each of them it was a central issue. For the COS, and its secretary, Charles Loch, the advance of democracy made the promotion of individual independence not a problem of the past but rather a current task of the utmost importance:

> "Pauperism is the social enemy of the modern State. The State wants citizens. It cannot afford to have any outcast or excluded classes, citizens that are not citizens." [8]

The social work programme then, was a project which aimed to resolve the social problem by means of a number of distinctive techniques and in line with a series of definite political principles. Its target population was composed of the poor, the unemployed, the sick and aged - all the customary concerns of charity. But the new programme addressed this population in a new and distinctive manner. It divided up the general field of poverty so as to differentiate and categorise "cases" and deal with them appropriately. It applied new techniques of casework and developed its own methods of assistance and "aid". One of the first and most concise statements of this new programme is provided by the annual report of the COS for 1875:

> "The aim of the Society is to improve the condition of the poor, upon the following definite principles:

1. Systematic co-operation with Poor Law authorities, charitable agencies and individuals.

2. Careful investigation of applications for charitable aid, by competent officers, each case being duly considered after inquiry, by a Committee of experienced volunteers, including representatives of the principal local charities and religious denominations.

3. Judicious and effectual assistance in all deserving cases, either through the aid of existing agencies, or, failing these, from the funds of the Society; those cases that cannot be properly dealt with by charity being left to the Guardians.

4. The promotion of habits of providence and self-reliance, and of those social and sanitary principles, the observance of which is essential to the well-being of the poor and of the community at large.

5. The repression of mendicity and imposture, and the correction of the maladministration of charity.

It is desirable that it should be distinctly understood that it is the chief aim of the Society to deal with the causes of pauperism rather than its effects, and permanently to elevate the condition of the poor by the application of the above principles, combined with pecuniary or other material assistance." [9]

We can see from this statement that the principles and positions of the COS - the base from which the social work programme was launched - were distinctly conservative. The social and political analysis which they formed amounted to an emphatic restatement of the liberal synthesis of political economy, individualism and laissez-faire. The continued operation of a limited and deterrent Poor Law was taken for granted and the role of charity was to operate alongside it, reinforcing the norms of self-reliance, domesticity, temperance and thrift, preventing destitution by moralisation and the timely provision of material aid. When the above statement declares its aim of dealing with the causes of pauperism it refers to the necessity of "dealing with" the <u>characters</u> of the poor, in opposition to those who would treat the outward effects of these characters - their visible distress, their hunger, or their destitution. Thirty years later Loch and the COS would still be

maintaining this position - not against the old plague of indiscriminate almsgiving but this time against the new "environmentalism" of Booth and Rowntree and its attendant concept of "class":

> "The grouping of the people in what are after all unreal classes, aids not a whit in the solution of the problem. The remedy depends on the cause; and the causes are lost in the classes; and thus the class only confuses the issue." [10]

The consequence of this position is a programme which takes as its practicable object the character of the individual. But whereas the individual object for criminology emerges from the institutional surface of the prison, for the COS it develops directly from two quite different sources - the Christian morality of the Church and the liberal political economy of the free market system. However, these ideological sources dictate not only the practicable object of this programme but also its political subject: the task of social work and character reform is specified as a private task, involving not the State but the voluntary endeavours of charitable individuals. In this regard, the COS remains within the framework of the Victorian system whose failure we have already described. However, the importance of the COS was that its response to this 'failure' - and to the social problem which it caused - was not one of ideological revision but rather one of technical rearmament. Instead of turning to the State or revising the market system, the COS proposed new means of rendering the old project more effective.

It is at this practical level, regarding the manner in which the individual character is to be assessed, classified and dealt with, that the social work programme of the COS displays its originality. In striking parallel to the criminology programme, and at precisely the same historical moment, the COS began to develop and propagate new and extended methods of investigation and scrutiny, new forms of knowledge

and classification of cases, and a general professionalisation of charitable practice.

On the failure of its initial project of "organising" (and hence rendering effective) the diverse forms of charitable giving already in existence, the COS set about putting its own principles directly into practice.[11] It established a number of District Offices, charged with the distribution of relief according to a series of publicised principles and regulations. These Offices, employing trained and salaried agents, operated a new apparatus of inquiry and intervention, involving case papers, visiting forms and record books, designed to investigate the character of the applicant and to allocate him to the proper channel of relief, advice or assistance.[12] Meanwhile the Central Office concerned itself with the promulgation of these methods, through its evidence to Committees, its public agitation and the publishing of numerous texts, case-histories and "Notice to Persons Applying for Assistance".[13]

The principles of relief entailed in both the practice and the propaganda of the COS are briefly specified in a paper of 1880 which states them as follows:

> "... each case must be treated separately; the welfare of the whole family must be considered; full inquiry must be made as to the causes of distress, needs, resources, character; temporary help should be given only if it will result in permanent benefit, not merely because the applicants are respectable and 'deserving'; thrift should be encouraged and repayment of help required if possible; and the assistance of friends and relatives should be sought. Personal help should bear a large proportion to material aid." [14]

These imperatives of individualisation, inquiry, observation of causes and assessment of character are already familiar to us from our examination of the criminological programme. So indeed is the assertion of a utilitarian or consequential logic ("only if it will ... benefit")

and the general thrust towards character reformation. In this sense, scientific charity's critique of an indiscriminate almsgiving which operated without knowledge and had regard to 'desert' rather than 'helpability' is a precise replication of criminology's critique of classical jurisprudence.

However the striking parallels which thus emerge between these two programmes in terms of their logic of individuation, differentiation and reform are quickly undercut by the different political principles which each one brought to bear upon this scheme. Where criminology's thrust towards normalisation was <u>extended</u> by its Statism and its denial of subjective moral freedom, the political principles of the COS operated to inhibit and place limits upon its normalising practices. To begin with, the individual character which was to be social work's practical object of intervention and transformation was conceived in the traditional terms of moral freedom and responsibility. It was to be taught, supported and improved by exposure to sound principles and proper example, but in the end, its reform depended upon the individual's will rather than any positive transformative technique. More importantly, the 'political subject' charged with the promotion and exercise of the programme was to be <u>private</u> rather than public:

> "Everything should be done to help distress in such a way that it does not become a matter rather of public than of private concern; that it is met and if possible prevented, within the private circle of family and friends." [15]

The COS was implacably opposed to any State interventionism beyond the 'normal' limits of the liberal State.[16] Thus while it was proper for the State to run Poor Law institutions, asylums and prisons, even to administer sanitation laws, elementary education and institutions for the feeble-minded; the field of charity, of moral reform and of social work, should be strictly the preserve of private, voluntary agencies.

The liberal politics of the COS insisted that the individual's welfare should be contained within the private sphere of the family, supported, if necessary by a discriminate, and equally private, practice of social work:

> "Not to give alms but to keep alive the saving health of the family becomes the problem." [17]

The family must be preserved as the fundamental social unit, providing the social ties and responsibilities which keep individuals in check, while simultaneously disseminating the political and economic "virtues" upon which society depended. "The absence of the economic virtues" was the consequence of "the looseness of the family tie and the absence of all mutual responsibility" which were to be observed in the families of the residuum.[18] Welfare provision by the State could only extend the disruption of this private sphere, demoralising its occupants and destroying the fragile family unit:

> "To shift the responsibility from the individual to the State is to sterilize the productive power of the community as a whole." [19]

This COS solution to the question of social order was thus an emphatic restatement of liberal political positions, geared to a new technology of professionalised social casework. The various problems of housing, unemployment, political instability and industrial unrest did not require a new political ordering or a change in the form of social organisation. What they demanded was the more rigorous application of conventional principles. The State was to limit its provision to the strict terms of a less-eligible poor law, individual responsibility was to be promoted, and only charity was to operate within the space between the poor law and the family network. But if this traditional strategy was to work, and to avoid the failures which had begun to register in the 1870s and 1880s, then it was vital that the

new practices of casework be allied to the older principles of Liberalism.

This programme of privately-based social work as a means of repairing the growing social crisis attracted widespread support in the 1870s and 1880s. It was adopted and developed in the practices of the Guild of Help, the Civic League and the Social Service League, and by 1894 the COS's principles were emulated by some 85 other agencies throughout Britain.[20] The University Settlement Movement of the 1880s, Dr. Barnardo's homes and the earlier Housing schemes run by Octavia Hill also operated within the programme's terms, though they extended its principles to meet their own specific concerns.

In terms of public and Parliamentary opinion, the COS succeeded in being:

> "At least until the end of the eighties, the most influential determinant of serious English middle-class opinion about the care of the poor." [21]

Support was profound within what Stedman Jones (1971) calls the 'urban gentry' and the 'liberal professional classes', and included large numbers of public figures, most notably Queen Victoria herself. It was notably unpopular, however, with many of the more traditional charities, and - not surprisingly - amongst the working classes.[22]

(3) The Revision of the 1880s

The COS continued to press this programme well into the 1900s and not without some influence, as the 1909 Poor Law Majority Report will demonstrate.[23] Indeed we shall argue that the COS's insistence on transforming questions of political rights and social organisation into issues of personal conduct and morality, is a continuing feature of social politics in the twentieth century. However there came a point

in the 1880s when the COS was actually displaced from the centre of the social work programme, to be succeeded by a revisionist current led by supporters of the ideas of Toynbee, Booth and the Barnetts. This revision addressed itself to the increasingly visible contradictions within the COS's position and resolved these tensions by releasing the programme's practical objectives and techniques from their location within a dogmatic liberalism. The result was the retention and extension of the new social work methods and the rejection or modification of their political terms.

The basic paradox of the COS position was that the success of its programme would presuppose such a massive degree of intervention, in the form of organised provision and casework, that in the end only a public agency could assume such political and administrative responsibilities. The COS's own statistical findings and practical experience - as well as those of Booth and Rowntree - had proved the vast extent of poverty and destitution among the working classes. In 1877 a COS Report on the Feeble-minded had argued that "Voluntary bodies could not provide for the numbers involved (about 49,000 of all ages in England and Wales in 1871) and the action of the State was necessary".[24] Only political dogma prevented the same argument being extended to the treatment of the poor, and by the 1880s this dogma of laisser-faire liberalism, and the strategy of repressive exclusion which it implied for the residuum was increasingly untenable.

While the supporters of the COS clung to their rigorous principles, appearing increasingly reactionary as time went on, an attempt was made by the followers of Toynbee and Barnett to change the basis upon which social work proceeded. In this revised programme the principles of casework, visiting and moralisation would continue, but within a different, and more viable political framework.

"Scientific charity" by itself, was inadequate to its task. It succeeded only in alienating the working class by its severity and rigour. It possessed neither the political qualities nor the financial resources to repair the "division of classes" which formed the basis of the social problem.[25] Toynbee and Barnett proposed two means of developing the social work programme to overcome these problems. The first development was the new form of social work practice implicit in the Settlement movement,with its concentration on group work within particular neighbourhood communities,and its attempt to 'bind classes by friendship' and the personal example of conscientious settlement workers.[26] The second and more significant development concerned not the techniques and practices of social work but rather the political framework within which they operated. In place of the repressive exclusion which the Poor Law and the COS signified for large sections of the poor, the revisionists offered a more conciliatory policy. In place of an outdated and overrigorous liberalism, they proposed what Barnett termed a 'practicable socialism'.

Practicable socialism would maintain the norms and practices of social work, and continue to promote "the sense of independence" and individual character.[27] But the social work task would be supported by new forms of provision which would automatically reward the respectable and assist the needy in a manner which was not degrading. Hence the recommendations for non-contributory pensions for "every citizen who had kept himself until the age of 60 without workhouse aid". Hence the suggestion of a free system of national health, improved dwellings, municipal parks, libraries and playgrounds for the poor.[28] All of these proposals placed demands upon public provision, either at the municipal or the central state level. As Barnett put it, they called "on Society to do what societies fail to do".[29] As such,they marked an important

break with the politics of the COS and with the Victorian strategy for dealing with poverty which we described in Chapter Two. But an equally important aspect of these proposals involved a tactic of co-option whereby members of the working classes would be induced to become actively involved within the institutions of poor relief. Thus Toynbee, Barnett and Alfred Marshall each put forward the proposal that "... the qualification for a seat on the board of guardians might be removed and the position opened to working men".[30] The significance of this proposal was that it hoped to lend a much-needed legitimacy to the system of poor relief, while at the same time directly instructing working men in the proper principles of charitable relief:

> "... it is necessary that these men should ... learn how impossible it is to adjust relief to desert, and how much less cruel is regular sternness than spasmodic kindness." [31]

Stedman Jones has argued that this co-option of the respectable working class into the machinery - and morality - of government, was to be at the expense of the residuum, who were now to be more effectively disciplined by their fellow workers.[32] And the proposals of Barnett, Marshall and others for labour colonies and compulsory detention for members of this 'residuum' lends support to Jones' view. However, we will postpone our discussion of these proposals until the following Chapter on the social security programme which will describe the whole range of tactics of co-option and forms of exclusion, of which these schemes form an early part. In other words, we would suggest that the proposals of Toynbee, Barnett and their colleagues can best be seen as an intermediary point between two distinct programmes; the social work project of the COS, and an early version of the social security programme which would be more thoroughly developed by the likes of Beveridge, Churchill and the Webbs in the 1890s and 1900s. In their attempt to disengage the practice of social case work from its links

with a repressive and less-eligible poor law, and to realign it with new forms of provision and security, these schemes formed a vital bridge between the older tradition of social work and a new one of social security.[33]

(4) The Social Work of Penal Reform

Before leaving this discussion of social work we will consider another important set of proposals which also involve an amalgam of elements drawn from two separate programmes. These proposals were the work of a number of penal reform groups, particularly the Howard Association, and they drew upon both the social work programme just described, and the criminological programme discussed in the previous Chapter. As we shall see in Chapters Six and Seven, the location of these penal reform proposals between the two programmes, lent them a peculiar form and a critical historical importance. Indeed it will be argued that the specific manner in which the penal reform groups combined these two different traditions allowed them to function as a kind of intermediary between the radical proposals of criminology and the conservative instincts of penal authorities and government legislators. Thus although these penal reformers produced very little that was original in the way of analysis, technique or recommendation, their importance lay in their ability to translate programmatic statements into the pragmatic terms of British penal politics.

The field of charitable work in Britain touched upon penality in two related ways: directly, through the practices of certain charities which focused upon offenders and ex-convicts, and indirectly, through the political lobbying and campaigning of various penal reform groups. Agencies of the first type were devoted to activities such as giving

aid to discharged prisoners, prison visiting, and the 'rescue' of delinquent children, as well as the establishment and operation of reformatories and "police court missions".[34] Some of them practiced various styles of casework, involving inquiry, supervision and character-reform, adapting the general techniques of social work to their own specific purposes. However, as we saw in Chapter Two, the development of these new techniques was sporadic and disorganised, particularly amongst the provincial aid societies. Only the missions of the Church of England Temperance Society displayed a distinctive and recognisable method of casework, combining an evangelical zeal with the careful training and techniques provided by the COS or the Church army.[35] Occasionally these groups were also concerned to promote particular arguments for penal reform, as when the Reformatory and Refuge Union pressed for new laws on inebriacy in the 1890s, but most of the proposals and pressure for reform came not from these practicing charities but from distinct societies organised for this reforming purpose.[36]

The Howard Association (formed 1866), the Penal Reform League (1907), the Romilly Society (1897) and the prison department of the Humanitarian League (1896) all existed in order to promote specific penal proposals through various forms of campaigning, Parliamentary lobbying and propaganda, thus forming a distinct organisational infrastructure of penal reform. Our familiarity with these groups, and the continued existence of this infrastructure today, should not prevent our realisation that there is something very notable about this "institutionalisation" of the demand for penal reform. The fact of private societies existing not on an ad hoc temporary basis, but as permanent and officially acknowledged agencies for the promotion of this seemingly timeless charitable pursuit, is of itself remarkable. It gives support to

Foucault's argument that penal reform is a functional and essential aspect of modern penality, which has institutionalised not only the forms of sanction but also the forms of criticism and reform which are authorised to exist.[37] Moreover, it demonstrates how this form of "pressure group" is at once a product and an auxiliary of the modern administrative State. Once the State has occupied a particular realm of activity those who would reform that realm must direct themselves to influencing the State, in the terms and through the channels it will recognise. In this sense, the State 'monopoly' of a field of social practice - such as existed in the field of penality, especially after 1877 - tends to define not only the field itself but also the forms of opposition which emerge within it.

On the basis of this argument we can better understand the proposals put forward by these groups and the impact they have had upon penal practice in modern Britain. Thus if we examine the proposals of the most important of these groups - the Howard Association - a number of important points become apparent. We have already mentioned the location of such groups <u>between</u> the social work and criminological programmes. This location seems tenable enough, given the similarities and parallels we identified in the two programmes, and it would appear an understandable position to adopt for a charitable agency operating in the penal realm. But on closer examination we find that the proposals of the Howard Association give rise to two paradoxical positions. Firstly, here was a private, charitable association which explicitly adopted COS positions on general questions of charity and social work, which at the same time was demanding a definite extension of the responsibilities and functions of the State. Secondly, here was an organisation which put forward the standard demands and recommendations of the criminological programme, while simultaneously

rejecting the basic tenets of criminological science in favour of common sense and an evangelical conscience. It will be argued in later Chapters that these two paradoxes-in-discourse gave rise to a third, this time a paradox in development. We will see then that the development in the twentieth century of an interventionist State penality, utilising criminological concepts and methods, was directly inspired and promoted by the proposals of penal reform groups which were neither "criminological" nor "Statist" in their apparent character. These positions, which I have ascribed to penal reform groups generally and to the Howard Association in particular, are thus of some importance and the remainder of this section will be devoted to discussing them.

If one examines the texts and statements of the Howard Association and its officers it becomes clear that penal reform was conceived of as a form of philanthropy, the prevention of crime being one specific aspect of a generalised campaign against vice, intemperance, pauperism and irreligion.[38] Consequently, the Association had no hesitation in declaring its views upon general questions of poverty, vagrancy, mendicacy, etc., nor in encouraging social work initiatives as a means of preventing the perishing classes from turning to crime. In these matters the Association followed what Rose calls "the main lines of progressive thought in these spheres", castigating "the indiscriminate givers of charity" and advocating "central organisation and prior investigation, thus supporting the main lines of the COS".[39] This support for the COS involved both its "proper methods of investigating each case" and its political positions on responsibility, less-eligibility, the preservation of families and the limited role of the State.[40] Thus an 1882 Report by the Association on <u>Vagrancy and Mendicacy</u> calls for:

> "A provision, by the Law, for the effectual local examination of every vagrant and of every applicant for relief, followed by prompt assistance to those found to be deserving, and an equally prompt and certain detention of the wilfully idle mendicant, for penal and reformatory treatment. ..." [41]

and in similar vein, Tallack's Penological and Preventive Principles (1895) attacks the idea of State provision of pensions, using the standard laisser-faire arguments of 'scientific charity' and the COS.[42]

But if the Association adopted COS policies and methods, and regarded itself as a firm supporter of its general doctrines, how are we to explain the fact that nearly all of the penal reforms proposed by the Howard Association involved a clear extension of the sphere and responsibility of the State? For the Association, penal reform was aimed at bringing about a reformative penality. It aimed to establish a state-organised probation service, compulsory State-funded after-care, indeterminate sentences and a reformatory prison discipline for adults as well as juveniles, each of which extended the duties of the State well beyond the limits decreed by nineteenth century liberal doctrine.[43] How could these proposals emerge from an Association which claimed to support a programme of social work whose anti-Statism was its most prominent feature?

This contradiction is reduced if one analyses the specific features of 'offenders' as a target population for charitable interventions. Up until now we have tended to discuss offenders and the poor - or the prison and the workhouse - in tandem, and this parallel analysis has produced a number of fruitful insights and suggestions. But at this point it is necessary to have regard to the structural differences between the two. To state the point simply, the State imposes an exclusive claim upon the treatment and administration of offenders while no such monopoly is exercised in regard to the poor. Offenders only exist as such in and through the institutions of the State, with the

consequence that private proposals to alter or extent or mitigate the treatment of offenders must be addressed to the State. The poor on the other hand, exist and are made poor outside of State institutions, in 'civil society'. The nineteenth century State was concerned not to monopolise their care but rather to minimise its involvement, relieving only the truly destitute, and leaving the remaining field open to charitable intervention. Philanthropy could thus have direct access to the poor, attracting applicants by the offer of relief and using this to enforce moral conditions. In contrast, 'penal philanthropy' could have access to offenders only as and where authorised by the State.[44] It could operate on the margins of penality when permitted to do so - as with visiting, after-care, missionary work, etc. - but the general administration and treatment of offenders was the constitutional task of the State.[45]

It is apparent from this that the same objectives (e.g. the transformation of individuals into moral subjects) will necessarily be promoted differently in the two fields. In the case of the poor, the demand is for a minimal and less-eligible public sector which leaves the maximum space for private casework and reform. In the case of offenders, the demand is for <u>the State itself</u> to engage in the casework and reform which is not generally open to private enterprise. And it is these circumstances which lead to the paradox of an extensive State interventionism being demanded by the otherwise <u>laisser-faire</u> liberals of the social work movement. In other words, the penal reform movement was 'Statist' in spite of itself, demanding a shift in the State's sphere of responsibility not on the basis of political principle but in terms of the expedient pursuit of a particular goal - namely the moralisation of offenders.[46]

To turn now to the second paradox, during the period from its

formation up until the First World War, the Howard Association campaigned for a number of proposals which were also being proposed by supporters of the criminological programme. These included forms of classification, indeterminate sentences, surveillance after discharge, probation, preventive detention and reformatory regimes for adults and juveniles.[47] Indeed the two sets of proposals have often been run together by historians and described as a single programme of penal reform.[48] However, if we scrutinise these demands carefully we find that they are in no way dependent upon the precepts of the new science of criminology. Indeed many of these recommendations are to be found in the Association's inaugural statement of 1866, years before the development of Lombroso's theories.[49]

In fact the superficial similarity of these demands conceals an important difference in their intended significance and mode of operation. Classification, for example, was proposed on a moral basis, not a diagnostic one. It was above all to prevent contamination and to reflect the moral status of the individual, in much the same way as probation was recommended only for 'deserving' offenders.[50] Likewise indeterminate sentences and preventive detention were viewed as sound examples of deterrence rather than a response to the irresponsible offender. And above all, reformation was seen as a process of moral atonement rather than a behavioural modification, to be brought about through moral exhortation and the grace of God, and not through positive techniques of transformation.[51] Thus against the selective and utilitarian treatment of criminology, the Association proposed reformation as simply the "honour due to all men":

> "the severity of penalty and the rigour of discipline should be everywhere qualified by ... the fact that honour is due to all men, by reason of the intrinsic worth of each soul gifted with a capacity for immortal life and endless moral development. The basest of men,

> the most degraded of women, for all of whom Christ has lived, died and risen, may through the power of his Spirit, be purified into saintly excellence." [52]

The fact that the positions of criminology and of the reform groups differed radically at the level of detail is of more than passing interest. For while these differences were suppressed in the common call for specific measures and shared demands, they were never altogether effaced.[53] Indeed we shall argue in later Chapters that this duality of meaning allowed the initial success of these recommendations in being legislated, and, facilitated a subsequent shift in the style of probation, Borstal and other practices from the evangelical to the criminological, from paternalistic 'reform' to a more scientific 'rehabilitation'.

Before leaving this discussion of the penal reform groups we should note that, at some points, their campaigns included proposals which are not to be found in the criminological programme. These recommendations reflected their general concerns with the preservation of families and the moralisation of offenders as well as their pragmatic engagement with the practical problems of criminal justice. They included demands for a system of fine-instalments, productive prison labour, extended access for philanthropic prison visiting, the abolition of imprisonment for children and the establishment of separate juvenile courts.[54] It is perhaps indicative of the strategic position and pragmatic approach of the Howard Association that each of these recommendations was enacted in legislation without the benefit of 'scientific' argument or criminological evidence for their necessity.

CHAPTER 5

Programmes of Social Security and Eugenics

(1) The Social Security Programme

"Security of life is the first object of government."
J. A. Hobson (1906).[1]

(a) Rethinking the Social Problem

The social security programme which emerged in the 1890s and 1900s offered a solution to the social problem which differed markedly from charitable or social work schemes. In place of private casework and governmental laisser faire it demanded new forms of social organisation and a national framework of social administration, sponsored and controlled by public agencies.

This programme emerged neither as the unified proposals of a particular group or profession, nor as the practical aspect of a new discipline. Instead it appeared as a number of definite schemes proposed by statesmen such as Churchill and Lloyd George, intellectuals and journalists like Blackley, Booth, Masterman and Beveridge, and various political groupings including the Fabians, the Social Imperialists and the New Liberals. These schemes, which were heterogeneous and frequently in competition with one another, nonetheless shared a fundamental programmatic objective in their concern to re-organise the social realm by means of definite apparatuses of security and administration. Such a programme, especially when one considers the powerful status of its proponents, amounted to a radical transformation in the terms and parameters of respectable political debate. We have already discussed the general conditions for this

transformation in Chapter Two, and in Chapter Seven we shall see how the success of this new programme facilitated a break from Victorian penal, as well as social, policies. Our task here is to describe the particular lines of formation which led to the emergence of this crucial programme.

We have seen how the social work programme distilled the "social problem" into questions of individual character and morality, which in turn were seen to cause the social ills of pauperism, vice, class estrangement, and political instability. The criminological programme too, though locating the problem outside the realm of moral choice, shared a similar view of its social consequences. For the proponents of social security, however, the most serious consequences of the social problem operated at higher, less visible levels. For these statesmen and politicians, charged with the task of internal governance and imperial policy, the most damaging effects of the social problem were registered in the quality of the Nation, the fitness of the Race and the efficiency of the Empire.

In the face of growing foreign competition over trade, concern over the military security of the Empire, and evidence of physical deterioration among the population which was needed to service and defend the Imperial machine, the social problem took on a new aspect.[2] The 'condition of the people' ceased to be a localised question of philanthropy and became a primary issue in national politics.[3] Unemployment, low wages, bad housing and malnutrition were reworked from a traditional discourse of demoralisation into a new framework in which they represented the economically dysfunctional and the inefficient. What for social work was a moral question of individual character, for this new programme was a political question concerning the quality of the national character. The themes of social reform

thus became interlinked with questions of national efficiency and Imperial survival.[4]

In changing the terms whereby the social problem was conceived, this reorientation fundamentally undermined the rationale of the traditional institutions which organised and administered the social realm. As we saw in Chapter Two, the network of poor law, ad hoc relief and charitable casework was directly geared to a moralistic and individualistic conception of 'the problem'. Its operations were designed to promote less-eligibility and moral example and thereby to reinforce individual responsibility. If the primary aim of social policy was now to be the promotion of economic and social 'efficiency' and the old deterrent system seen as economically inefficient, then a new apparatus of administration was implied. And given the destabilisation of these institutions by the advance of democracy, and the changing balance of class forces described in Chapter Two, this economic inefficiency was increasingly compounded by a political 'inefficiency', wherein the political 'costs' of the system (disaffection, resistance, etc.) outweighed its social benefits.

Accordingly, the advocates of social security proceeded via a critique of the status quo. The Poor Law was said to be "compromised, degraded, hardly deterrent and increasingly expensive",[5] lacking both the practical and the ideological qualities necessary to the present crisis:

> "the degradation of our Poor Law, the brutality of our casual ward, the damnable method with which our prison seeks to deal with the most delicate problems of human character must all give way to more humane and more intelligent modes of handling our battered types of humanity." [6]

Likewise the supplementary provision of ad hoc work relief in times of high unemployment - a feature which had become more and more frequent

after 1886 - was seen to be expensive, inefficient and inadequate to the problem it addressed.[7] As Gilbert points out, the failure of such schemes provided a central argument for those who proposed to break with the poor law and its local institutions.[8]

Finally, the practices of charity and the social work programme came under attack. This critique carried the authority of figures such as Beveridge, Buxton and Alden, whose experience in the Settlement missions had taught them the limitations of social work and alerted them to its harmful social effects.[9] As Beveridge argued in 1905, such a system might achieve the objective of promoting contact between different social classes, but it totally ignored the economic causes of poverty and "simply stereotyped an unhealthy relationship of patron and dependent between rich and poor".[10] J. A. Hobson put the same point more forcefully when he argued that "the material conditions of poorer working-class life are hostile to the attainment of personal efficiency".[11] For him, the neglect of these conditions by COS casework was both motivated and obstructive:

> "the principle that individual 'character is the condition of conditions' is much worse than a half-truth in its application. For it is used to block the work of practical reformers upon political and economic planes, by an insistence that the moral elevation of the masses must precede in point of time all successful reforms of environment. Plenty of people are only too willing to listen to insidious advice which takes the form: why disturb valuable vested interests ... why stir a general spirit of discontent in the masses; why suggest 'heroic' remedies for unemployment when all that is needed just now is a quiet, careful, organised endeavour to ... build up individual character?" [12]

Even to figures such as Charles Booth and the Barnetts, who were clearly less hostile to philanthropic endeavour, it was evident that the problems of chronic and endemic poverty and physical deterioration could not be dealt with by means of private agencies and individual casework.[13]

(b) Conditions of formation and discursive resources

The nature and magnitude of the social problem thus conceived gave rise to a 'macro-political' programme which took as its object not an individual to be reformed but rather a population to be reorganised and reconstituted.[14] And given this object, and the forms and scope of intervention it required, the programme was led to define not private agencies but rather the State itself as its proper subject.

Such a programme obviously has certain conditions of existence by way of discursive resources and techniques, which were not always present during the nineteenth century. It presupposes a notion of population as an entity which can be managed and administered; a set of apparatuses, techniques and personnel capable of such a task; and the various forms of statistical, economic and sociological concepts and data necessary to a national scheme of social administration. Some of these practical conditions were already being set in place by the 1890s (cf. the statistical investigations of Booth and others, official census reports, etc.) or else were supplied by the discursive developments of the programme itself (see later), though it should be emphasised that the limited availability of 'actuarial' and statistical data remained a constant problem for these schemes.[15] However there are also political and ideological conditions which are crucial for this social security programme, not least an ability to present its blatant Statism or 'collectivism' as a respectable political option. Such a task was, of course, facilitated by the economic and political developments which were described in Chapter Two, but it nonetheless required the construction of a definite ideological position which could justify a new and extended role for the State and a positive administration of the social realm.

The development of this new position in British political discourse

has been frequently noted and described. Figures such as Marshall, Beveridge and the Webbs who were directly involved in its construction characterised it as a shift from "the problem of pauperism" to "the problem of poverty"[16] or more precisely as "a shift from moral and personal to industrial and environmental explanations".[17] More recently, Gareth Stedman Jones has termed it a shift from a "problematic of demoralisation" to one of "degeneration".[18] Each of these descriptions has some degree of truth, but we would argue that this complex transformation cannot be reduced to a single formula, nor can its occurrence be described in such a direct and simple manner. Consequently it is worthwhile describing this position and its formation in a little more detail.

The 'New Liberalism', as this position is generally described - despite the adherence of Fabians and others who were not members of the Liberal Party[19] - derived from a number of sources. The most important of these were (1) a philosophical reworking of Liberalism by writers such as T. H. Green and David Ritchie, which revised its doctrines to accord with a new conception of "positive freedom"[20] and a more positive account of the nature of power".[21] If Liberalism was to continue its stress upon individual freedom it would have to have recourse to the "moral agency" of the State to remove the economic hindrances which made men unfree. It would, in Ritchie's words, have "to construct a strong and vigorous state and thereby to foster a strong and vigorous individuality".[22] (2) a new conception of "society" which emphasised "not individuals, or their aggregates, but the social organism".[23] It is no surprise that Charles Booth was one of these who adopted this view, since it was a conception which the discipline of statistics - its data on social correlations, laws of tendency and patterns of social change - did much to promote. Weiler puts it thus:

> "the old Liberals thought of society as simply an aggregate of individuals. Society,if studied or conceived at all, could be thought of only as the isolated actions of a series of individuals. It was, as Bentham said, a fiction. In contrast to this view, the new Liberals, drawing on Victorian sociology and philosophical idealism, thought of society as an organism, a unity of political, social and economic forces ... society was more than just the sum of its parts; it had an independent existence." [24]

(3) a transformation in economic theory which gave rise to new conceptions of the labour market and its attendant phenomena of wages, unemployment and poverty. Economists such as Hobson, Marshall and Beveridge challenged traditional assumptions that the market for labour was automatically self-adjusting. This,in turn,led them to reject the corollary that unemployment - caused by surplus population, overpriced wages or personal failure - could be relieved but not prevented. They argued that the major problem was not so much total unemployment as chronic underemployment and intermittent employment[25] and that these resulted from an absence of planning, transfer and mobility in the labour market.[26] Such problems could be addressed by means of a technology of organisation and information, provided that the point of intervention was shifted from the labourer to the market itself. This shift in the focus of intervention was a major and radical development, and it was precisely this desire to rationalise the market by administrative means which was shared by the schemes of Beveridge, Booth, the Webbs, H. L. Smith and others during the 1900s.[27] What was for the COS "a problem of social competence and moral responsibility"[28] was translated into a problem of social organisation: "the responsibility of society for poverty and unemployment" was for Hobson "... not merely a sentimental phrase but ... a scientific truth".[29] It is worth noting at this point however, that although Hobson's "scientific truth" was shared by the other proponents of social security, this "industrial and environmental approach" did not altogether reject questions of

individual character from its explanation. From being the prime cause of unemployment and poverty, "character" became a competing cause, held in tension against its rival "the environment", and introduced into the explanation alternatively as 'cause' and as 'effect'. Thus in Booth's work:

> "character is both cause and effect - cause to the extent that it is the explanation of why certain individuals come to occupy the location of unemployability; effect to the extent that it was induced as a result of the demoralisation coincident upon casual labour and the influences of the environment of the casual labour market." [30]

As we shall see, this particular ambivalence was intrinsic to the social security programme, and was put to productive use in the formulation of policies such as national insurance, labour exchanges and the Webbian schemes to break up the poor law.

The adoption of these positions provided a framework of social and economic analyses which would both underpin the programme of social security and develop the Liberal political tradition in a profound way. As Hobson put it:

> "The full implication of this movement may not be clearly grasped, but Liberalism is now formally committed to a task which certainly involves a new conception of the State in its relation to the individual life and to private enterprise." [31]

Similarly Herbert Samuel in 1902 reformulated "the first principle of Liberalism" to state "that it is the duty of the State to secure to all its members, the fullest possible opportunity to lead the best life".[32]

What we witness in these remarks is a reformulation of the State and of the conception of power. From being conceived as a negative political force to be limited it has become a positive social force to be harnessed and put to productive use. Sovereignty, as Hobson clearly sees, was to become a matter not of power but of welfare, and the proper goal of modern politics must be to promote "the sovereignty of

social welfare".[33]

(c) Techniques and Apparatuses: Security and Administration

The programme of social security then, aimed to intervene at the level of population in order to render that population more fit, more efficient and better integrated. It provided analyses which identified the possibility of, and the necessity for, forms of social administration, organisation and rationalisation. It identified the State as the necessary subject of this social engineering and provided arguments to render its Statism more palatable to the conventions of political discourse. But above all, this programme operated by reference to specific techniques, apparatuses and institutions which were specified in detail in numerous schemes and individual proposals. Unlike the criminology programme which promoted the principle of intervention without providing the methods of treatment which its principles entailed, the social security programme concentrated above all on matters of detailed practical technique. No doubt this pragmatism reflects the status of its proponents, who were in a position to make specific recommendations to government ministers and Inquiries - provided such proposals were sufficiently detailed and "realistic". But whatever its basis, the consequence was a series of detailed proposals for social institutions and apparatuses which formed the heart of the programme.

These concrete proposals ranged from the relatively simple devices of state-subsidised emigration, housing provision, and the provision of old age pensions through the post office network, to more complex schemes to bring about decasualisation in industry or the redevelopment of national resources such as land and transport facilities.[34] But by far the most significant proposals concerned a series of three new social apparatuses - the labour exchange, a state-

run insurance system and a system of labour or detention colonies.[35] These three apparatuses were designed to form a concerted institutional network for rationalising and administering the market in labour, and through it, the labouring population and its dependents. These were the crucial techniques necessary to support the objectives specified in the discourses of Hobson, the Webbs, Beveridge, etc. and as such formed the central elements of the social security programme.

(i) Labour Exchanges:

> "... the labour exchange will rationalise the labour market, eliminate futile drifting and wastage in periods between work and, coupled with decasualisation, subject the market for employment to the order and regulation imposed by visibility." [36]

The Exchange was designed to facilitate mobility by the introduction of a stock of knowledge and an informational technology which would benefit both the worker (who spends less time "drifting") and the employer (who is to be offered "a better sort of man"[37]). But its functionality is not exhausted in this. It also renders both the labourer and the labour market visible. The labourer's qualifications, work record and willingness to work (or not) are to be observed in order to allow "discrimination, classification and assessment".[38] On this basis he can be confirmed as worthy of unemployment relief or insurance benefit or alternatively, he will be "discovered unmistakably" as a vagrant or malingerer "and sent to an institution for disciplinary detention".[39] At the same time the market itself is opened to scrutiny, allowing for the collection of statistics which will help to predict and stabilise trade depressions, to facilitate decasualisation, to dovetail seasonal occupations, and so on.[40]

(ii) A System of Insurance:

The chief apparatus of security proposed by Beveridge and his colleagues was not a system of automatic state provision but a system of compulsory and contributory insurance. Of course a system of the former type was proposed in the form of old age pensions, but then pensions had a marginal status relative to the active work force. To some extent they operated as a distant - and meagre - reward for unstinting service,[41] but their real significance was as a gesture of "social justice", saving the aged and respectable poor from the humiliation of the workhouse.[42] The central scheme of social security - that of contributory insurance - was designed in a quite different manner in order to preserve a conception of individual thrift and a distinction between earned and unearned benefit.[43] The insurance schemes proposed to establish a nationwide system of compulsory social insurance which would tie each individual worker into a pattern of weekly payments and conditional entitlements in the event of unemployment or ill health. This 'security net' was designed:

> "to entail a definite reduction in the general social and political consequences of economic events - industrial conflict, unemployment and so forth - by ensuring that, whether working or not, citizens were in effect, employees of society." [44]

At the same time its existence provided a definite incentive for workers to remain "regular" in their work habits, lest they fall through the net of provision through failure to contribute. Moreover, as Beveridge was well aware,[45] an additional effect of the insurance principle was to promote a definite form of social integration - through the workers direct involvement in the State system and the concomitant sense of "having a stake in

society". Where the protection of Friendly Societies and Industrial Insurance had previously extended only to the better-off workers of the labour aristocracy, the new programme proposed to include the whole working population in its net:

> "Underneath ... the immense disjointed fabric of social safeguards and insurance which has grown up by itself in England, there must be spread - at a lower level - a sort of Germanized network of State intervention and regulation." [46]

(iii) Labour Colonies:

For those who, despite the Labour Exchange and the security of insurance, persisted in their failure to find work, the new programme identified an institutional solution - the labour colony. Beveridge puts it thus:

> "... those men who through general defects are unable to fill a whole place in industry are to be recognised as unemployable. They must become the acknowledged dependents of the State, removed from free industry and maintained adequately in public institutions, but with a complete and permanent loss of all citizen rights including not only the franchise, but civil freedom and fatherhood." [47]

This conception of a 'labour colony' - with or without its eugenic entail - recommended itself to practically every section of the programme's supporters, from Fabians like Shaw and the Webbs, to converts from charity such as Booth, the Barnetts and Alfred Marshall.[48] It is therefore important to stress that this was a programme of security and administration, concerned with 'provision' but also with administering those who would not be 'provided for' in the normal way. It is thus more accurately termed 'Statist' than 'collectivist'.

As with all of these new institutions, the labour colony was to have a plurality of functions and objectives. It was to

operate as "a real deterrent"[49] in much the same way as the workhouse, but according to its advocates, this was the only similarity:

> "The advantages claimed for the colony, as contrasted with the workhouse ... can be stated in a few sentences. The advocates of the colony system assent that by the workhouse methods ... the home is destroyed and the man is generally demoralised, both morally and economically, and that the cost to the rate-payers is great. In contra-distinction they maintain that, under the colony system the home is preserved, the man improved, and this at ... much less cost. ... Indirect advantages are also claimed ... in the inducement or facilities in may give to townsmen to settle subsequently upon the land." [50]

At one and the same time the colony thus offered itself as a "curative treatment"[51] for a degenerate urban workforce and as a final destination for the 'unemployable' who refused or failed to assume a place in the newly organised economy.[52]

These then, were the major apparatuses proposed and designed by the social security programme. Along with the more traditional techniques of social hygiene, housing provision, etc., they provided facilities which allowed the social realm to be 'administered', organised and to some extent 'directed' by the agencies of the State. These in turn gave rise to new forms of data and knowledge by which society might "know itself"[53] and to a bureaucratic framework in which the "professional administrators" so favoured by the new programme, might operate. Here is Beveridge again:

> "Half the virtue of such a scheme lies in the machinery which it compels the State to establish, and which when established serves many purposes besides its immediate one. It affords the basis of knowledge and organisation, which is essential if social reform is to be something other than chaotic philanthropy." [54]

(d) Internal differences

As with the other programmes we have described, it should not be assumed that the various schemes which compose the social security programme were unitary in their form or content. Disagreements existed as to the form which pensions, insurance or emigration schemes should take and many of the proposals stood in direct competition one with another.[55] Likewise the political positions of their proponents ranged from the revised Liberalism of Booth, through the committed social democracy of Hobson, to the meritocratic State socialism of the Webbs with all the varieties of the 'New Liberalism' in between.[56] These political differences gave rise to many conflicts of principle and of practical technique. Thus while Charles Booth was prepared to advocate a "limited socialism", allowing "thorough interference on the part of the State with the lives of a small fraction of the population" in order to "dispense with any Socialistic interference in the lives of all the rest",[57] figures such as Beveridge, Churchill and the Webbs sought to establish a much more extensive and thorough-going network of State regulation and administration. Similarly, while the Barnett's call for "practicable socialism" was in essence a demand for a Charitable State, William Beveridge was opposed to this kind of public philanthropy:

> "the State ought not to provide social welfare, but social service - the organisation of the labour market." [58]

Political principles also expressed themselves - often in quite surprising ways - in the disagreements over the practical details of schemes such as National Insurance. Thus whereas Churchill claimed to dislike "mixing up moralities with mathematics" and insisted that benefits be paid irrespective of personal fault,[59] and Hobson went so far as to talk of claims upon the State as a question of rights,[60] the

Webbs demanded that benefits be made conditional upon behavioural reform[61] and, along with Beveridge,[62] that no question of rights should be allowed to arise:

> "It is, I find, extraordinarily difficult to get a kind of return in the form of better conduct from a sickness or out-of-work benefit to which a person feels they have a right." [63]

Similarly the endorsement of eugenic positions and of thorough-going forms of discipline and inspection which took the working classes as their target, meets with opposition not from the "socialism" of Shaw and the Webbs - who went out of their way to advocate such techniques - but from the reconstructed Liberalism of Hobson, Masterman and other such figures.[64]

(e) Social implications

Having described the essential elements of the social security programme - its objectives, discursive resources and techniques - we will end this section by making a number of general points about its social implications.

The first point to note is that the programme does not propose 'security' to be extended to all of the population, or even to all of the working population, but only to those individuals who reach the required standards of fitness, discipline and efficiency. Beveridge is quite explicit on this point:

> "The ideal should <u>not</u> be an industrial system arranged with a view to finding room in it for everyone who desired to enter, but an industrial system in which everyone who did find a place at all should obtain average earnings at least up to the standard of healthy subsistence. ... The line between independence and dependence, between the efficient and the unemployable has to be made clearer and broader. ... Those men who ... are unable to fill such a whole place in industry are to be recognised as unemployable [and] removed from free industry." [65]

Nor was this bifurcation limited to Beveridge. Every scheme of social security from Booth and the Barnetts to the Webbs, Churchill and the New Liberals proposed a similar strategy.[66] Again and again we find a system of inclusion and security for the respectable, disciplined and regular worker, played off against a measure of exclusion and segregation for 'the unfit', the 'unemployable' and the "degenerate". On the one hand, the security of insurance schemes and pensions, on the other, the discipline of the labour colony, with the labour exchange playing a central role of assessment and allocation, redistributing the population between these two destinations. Nik Rose describes these proposals thus:

> "From Booth to Beveridge, proposals for decasualisation had as their object the re-establishment by administrative means of the boundary between the employable and the unemployable, bringing to the former the beneficient and educational discipline of regular employment, coupled with full civil rights, exposing the latter for the harsh but necessary action by the State. ... An intervention is demanded which would have the effect not only of breaking the downward spiral of degeneration, but also of removing the perpetual spot of infection of the body politic, of providing, for the social question, a final solution." [67]

And of course while the strategy of 'splitting' which this entails is by no means new, its significance lies in the new methods and mechanisms which it describes. What was once a moral judgement made by upper-class philanthropists becomes the automatic administrative action of institutions in which the workers themselves participate.

The second point to note is that the proposals of this programme entailed a massive extension of the State and a transformation in the conventions of political relations. The programme envisaged not only a huge framework of public institutions but also the routine intervention by the State in the affairs of the mature, adult worker. The "free" and "voluntary" contract of employment between two parties was henceforth to be mediated by the compulsory levies, conditions and regulations of

the State, just as the 'free' market was to be subject to a degree of organisation and administration from above.

The importance of this last point cannot be overstated, but it is also important to stress that, despite talk of "limited" or "practicable" socialism, or of "State socialism" this programme was clearly and explicitly non-socialist. Each scheme put forward assumed and celebrated the system of commodity relations, hoping only to improve its operation and its efficiency. Even the pseudo-socialism of the Fabians was in no doubt as to the meaning of social security: the 'national minimum' was not to be the end to free enterprise but rather "the inviolable starting-point of industrial competition".[68] Indeed it is perfectly apparent from the statements of figures such as Churchill, Lloyd-George and Campbell-Bannerman that the programme is a replication of Bismarck's strategy of defeating socialism by means of social reform.[69] Nor was this political effect merely a by-product of a scheme for social reform. Rather the programme of social security has to be understood as operating at two distinct levels. Most immediately it provided a means of combatting the degeneration, pauperism and unrest of the social problem by a series of apparatuses of security, exclusion and administration. But these same institutions were also designed to serve a second, political, function. The establishment of such an apparatus formed an explicit and conscious response to the new political conditions of advanced democracy. Viewed negatively, they attacked the roots of socialist militancy by addressing the 'legitimate grievances' of respectable workers. Viewed positively, they were to produce a form of social integration which would tie individual workers to the social system, and force them "to know more of the state and to know it not as an abstraction but as an organisation of which they form a part and to which they owe duties".[70] And of course the party which provided

these reforms could look forward to the more immediate benefits of the working class vote and an extended social base for its support. But for many proponents and supporters of the social security programme, party political considerations such as these were of minor significance compared with the importance of constituting the new worker-voters as responsible and efficient social units, capable of taking their place in the system of industry and representative democracy.

Finally, we would repeat that this programme amounts to a radical innovation when contrasted with nineteenth century forms of intervention, or else with that envisaged by the social work programme. Helen Dendy, future wife of Bernard Bosanquet and an officer of the COS, wrote in 1895 complaining of:

> "... the member of the Residuum who has no fears for the future. ... With his debts cleared off, and a week's wages in hand, the final utility of the reward [of working] is so small that he has absolutely no inducement to work; the smallest temptation will keep him away, the smallest inconvenience cause him to throw up the job; and it is not until he is destitute and his credit exhausted that he finds himself beginning his [marginal utility] curve again ...." [71]

Miss Dendy despaired of this character. She argued that "no artificial social arrangements" can make good the absence of "the economic virtues", leaving the social worker with the arduous task of teaching thrift to men who were "economic irresponsibles ...".

The radical character of social security lay in its ability to <u>compel</u> such a character to responsibility - not through exhortation, but by means of an apparatus which altogether transformed the nature of his utilities, his temptations, and the price of their indulgence.

(2) The Eugenics Programme

(a) The Social Problem and the Deterioration of the Race

"Eugenics" is the study and deployment of agencies under social control for the purpose of improving the "racial qualities" of future generations, either physically or mentally.[72] Of the four programmes we have examined, the eugenics scheme appears today as the one least relevant to our understanding of the present. Despite the continuing existence of the original Eugenics Society, eugenics appears to modern eyes as a marginal and disreputable concern, associated more with the methods of European fascism than the formation and strategies of the British welfare State. Yet in the 1900s the eugenics programme commanded the attention and support of an important section of the British establishment. Its proposals appeared in the recommendations of official reports, in the editorial columns of The Times, even in the minutes of Cabinet meetings, and the Eugenics Society numbered amongst its members many of those men and women whom historians like to term the 'architects' of the British Welfare State.[73]

The absence of any mention of this programme in contemporary analyses of social regulation and penality would suggest that this once-popular eugenics was nothing more than a temporary aberration of British social thought. It appears, if at all, as coincident in time with the construction of modern welfare policies, but in no way influential within them.

Our discussion of eugenics precedes upon a different premise. It will argue that though the eugenic programme soon disappeared from respectable political discourse it did not disappear "without trace". Many of its strategies, techniques and proposals were in fact to become inscribed in the new complex of social and penal regulation, though

usually without acknowledgement, and in terms which are less embarrassingly explicit.

Although the Eugenics Education Society was not formed until 1907, the eugenics programme was being articulated from the late 1880s onwards in the work of Galton, Rentoul, Chapple and others.[74] As with the other programmes we have discussed, eugenics took "the social question" as its primary focus and point of departure, but of course its characterisation of this question was in keeping with its distinctive concerns. For eugenics the social problem was above all a crisis of racial deterioration. Britain's population, particularly the urban population, was fast becoming degenerate as a consequence of demographic movements from country to city, misconceived social policies and the differential reproduction of classes. Evidence of this degeneracy was culled from the Annual Reports of the Army Medical Department, the Prison Commission and the Commissioners in Lunacy[75] as well as from the medical inspection of school children and various family case studies, all of which were said to show an alarming decline in the physical and mental quality of Britain's racial stock. The social question was alternately posed as the problem of "the unfit" whose "increasingly disproportionate progeny" threatened to "swamp our civilisation",[76] or else as an hereditary decline of "national intelligence".[77] In both cases the significance of this racial decline was directly linked to questions of National Efficiency, "the welfare of the Nation" and the survival of the Empire and its Imperial Race.[78]

The crucial source of this decline was identified as the differential rates of reproduction achieved by different sectors of the population.[79] Using the newly invented technique of correlation analysis, Heron presented evidence that:

"there is a very close relationship between undesirable

> social status and a high birth rate. ... The birth rate of abler and more capable stocks is decreasing relatively to the mentally and physically feebler stocks." [80]

while Arthur Tredgold went so far as to quantify this differential, counterposing the national average birth rate of 4.63 to an average of 7.3 in "degenerate families".[81] Against the abundant "fertility of the unfit" with their lack of sexual inhibition and social responsibility, the eugenists contrasted the falling birth rate of the 'better' classes and produced the threatening conclusion that "our professional classes almost certainly form a group that is dying out".[82] At first sight this analysis appears to reduce the social problem to a question of contingent 'natural' processes, like some updated version of Malthusianism. But in fact the eugenic case was explicitly directed against certain social institutions whose operations were seen to overlay and organise the development of the race. The "natural" processes of selection described by Malthus and Darwin had been interrupted by artificial social policies - with disastrous consequences for the race:

> "The fertility of the unfit goes on unrestrained by any other check save vice and misery. The great moral checks have not, and cannot have any place with them. But the State is, by its humanitarian zeal, limiting the scope and diminishing the forces of these natural checks amongst all classes of the community but especially among the unfit, so that its policy now fosters the fertility of this class, while it fails to arrest the declining nativity of our best citizens." [83]

These counter-eugenic policies operated wherever State or private provision intervened to alleviate the stern but vital processes of natural selection, but the eugenists reserved most critical for three particular institutions:

(i) the poor law system:

> "If the State had desired to maximise both feeble-minded procreation and birth out of wedlock there could not have been suggested a more apt device than

> the provision, throughout the country, of General Mixed Warehouses, organised as they now are, to serve as unconditional Maternity Hospitals." [84]

(ii) the doles of private charity:

> "It is characteristic of such charity that it not only neglects all eugenic principles, but that in so far as it has any discrimination it often discriminates the wrong way. That is to say, it tends to maintain, without any possibility of segregation, exactly the worst, i.e. the weakest, the most afflicted and therefore the most appealing, cases." [85]

and (iii) the Victorial penal system:

> "The eugenist condemns our existing system whereby the habitual criminal is subjected to numerous short imprisonments, because not only does it not tend to lessen the number of his progeny, but is, indeed, likely to increase his racial productivity by, from time to time, giving him renewed vigour." [86]

As Earl Russell put it, summing up these effects:

> "The insane and the extremely vicious, the idiot and the weakly, are all killed off by Nature herself, but our modern humanitarian methods preserve these wretched people alive, and incidentally give them the chance of reproducing and multiplying their kind." [87]

What we see here is the eugenist version of the critique of indiscriminate charity and public provision, familiar to us from our discussion of the COS.[88] But the terms of that critique are altered to substitute genetic characteristics for moral ones, thereby rendering irrelevant even the most discriminating of methods for the improvement of character and morals.[89]

At the same time eugenists rejected those proposals for social reform which sought 'environmental' or economic improvements while neglecting the fundamental problem of the "human raw material" upon which these worked:

> "To aim at economic change, without seeking to change the

> quality of the human element, is to waste good energy to no purpose." [90]

The rejection of "environmentalism" was somewhat ambiguous though, not least because Galton's analysis of urban degeneration appears to rely upon the environment as a direct cause of racial decline.[91] Occasionally this appeared as a rejection of the environment as a cause of human behaviour -

> "We must be careful not to assume that the environment is thrust haphazard upon us, for it is largely moulded by our own characters",[92] -

but more often it is characterised as a non-transmissable factor, whose long-term racial influence is therefore seriously limited. As Pearson put it:

> "No degenerate and feeble stock will ever be converted into healthy and sound stock by the accumulated effects of education, good laws and sanitary surroundings. ... We have placed our money on Environment when Heredity wins in a canter." [93]

The eugenic analysis thus characterised the social problem in a manner which marginalised the potential of both the social work and the social security programmes. (We will see later that the relationship between eugenics and the criminological programme was not so much antagonistic as complementary.) Against these programmes, the eugenists advanced their own proposals for the reorganisation of the social realm and its racial base. However before discussing these proposals it is necessary to enter into a little more detail concerning eugenic analysis and its arguments.

(b) An outline of eugenic discourse

The eugenists social theory was premised upon a conjunction of two hitherto separate realms of study which were brought together in the work of Francis Galton. First of all he developed a "genetic

theory" or more precisely, a theory of human characteristics and their hereditary transmission,[94] and his early work was devoted to showing that human qualities were in fact acquired via genetic mechanisms.[95] To this he added his "biometric" method of analysing biological phenomena using statistical techniques such as correlation and regression (which he himself invented) as well as genealogies, twin studies and family histories. The result of this combination was a theory of population and its individual characteristics:

> "the natural character and faculties of human beings differ at least as widely as those of domestic animals. Whether it be in character, disposition, energy, intellect, or physical power, we each receive at our birth a definite endowment. [And these various] natural qualities [or] talents go towards the making of civic worth in man." [96]

For Galton, these hereditary qualities were not only measurable at the level of the individual, but could be specified across the whole population, since "Experience shows" that they follow the "Normal Law of Frequency" in their distribution (see Figure 1).

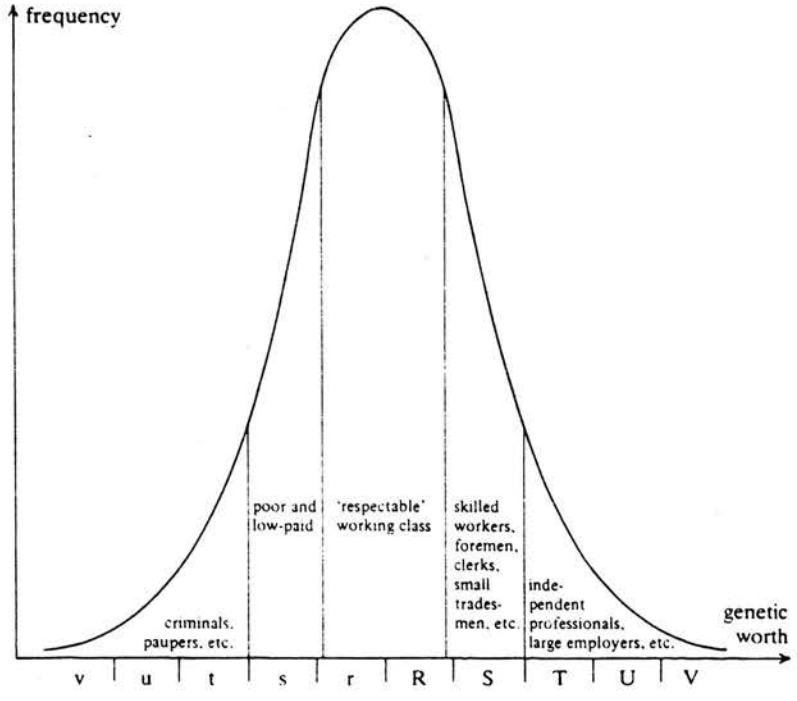

Fig. 1 Galton's view of social structure (from D. McKenzie (1981: 17))

As McKenzie points out,Galton's assumptions that 'civic worth' was quantifiable relatively fixed and normally distributed "were indeed assumptions", without empirical support. But this a priori framework was "filled out" by adopting the social data of Charles Booth to illustrate how the distribution of natural qualities underpinned and paralleled the distribution of social position.

Leaving aside the accuracy of Booth's figures and classifications, the mapping of these social categories onto natural ones was an outrageous procedure without empirical or theoretical support other than the social and class prejudices of Galton and his readership. Nevertheless, this socio-genetic map of the nation's population formed the unquestioned basis of the eugenic programme. The lower classes, criminals, paupers and the unemployed, held a social position which by and large reflected their natural attributes. As Norman Pearson put it:

> "It is a mistake to suppose that the typical pauper is merely an ordinary person who has fallen into distress through adverse circumstances. As a rule he is not an ordinary person, but one who is constitutionally a pauper, a pauper in his blood and bones." [97]

Given this analysis, the solution of Britain's social problem must address the genetic material of which the population is constructed, and not merely the social arrangements which surround it. Leonard Darwin stated the aim of the eugenic programme as being:

> "to promote the fertility of the better types which the nation contains, while diminishing the birth rate amongst those which are inferior." [98]

The eugenists thus argued for a policy of intervention in the process of population reproduction, replacing the weak and now-distorted processes of natural selection with a process which was artificial but at the same time "rational".

The practicable object or target population of these eugenic interventions differed significantly from those of the other three

programmes in that it included the 'middle classes' as well as the various sectors of the lower orders. "Positive eugenics" was concerned to design measures for increasing the fertility of the "better" classes. It is notable, however, that this privileged sector is never defined or discussed in any detail whatsoever. Rather, it was assumed that fitness to breed was the unspoken but easily recognised characteristic of the well-to-do middle-classes whose level of income and social standing already bore witness to a sound constitution and heredity.

In contrast to this reticence to specify the characteristics of "the best", eugenic texts are positively locquacious in defining the population to be addressed by "negative" eugenic policies. If the distribution of "civic worth" forms a continuum from the worst to the best, it is nonetheless possible to identify cut-off points which define an individual as "unfit" or "inferior", and these points are conveniently supplied by the already existing processes of social, legal and medical classification.[99] Consequently we find these texts again and again reciting a compendium of the conventionally undesirable social categories as the proper target for intervention:

> "The unfit in the State include all those mental and moral and physical defectives who are unable or unwilling to support themselves according to the recognised laws of human society. They include the criminal, the pauper, the idiot and the imbecile, the lunatic, the drunkard, the deformed, and the diseased ... [all of whom] are prolific and transmit their fatal taints." [100]

or again, answering his own question of "Who should be sterilized?" Rentoul lists:

> "... those suffering from leprosy, cancer, epilepsy, idiots, imbeciles, cretins, weakminded under restraint, lunatics, persons with advanced organic diseases ... prostitutes ... mental degenerates ... the sexual degenerate ... confirmed tramps and vagrants, characters well known to workhouse officials and to the police ... confirmed criminals. ..." [101]

Now one might have thought that, given the eugenist emphasis upon statistical evidence and the quantifiability of individual attributes, there would be some scientific rigour involved in this specification. It comes as something of a surprise, therefore, to find that at no point is any such rigour evident.[102] Instead the process of identification of those 'unfit' to breed is both circular and essentialist. The essence of degeneracy - "the fatal taint" - is never directly identified but is rather indirectly known through its outward manifestations - pauperism, criminality, lack of educational attainment, and so on. Degeneracy is thus a constitutional or genetic state, but one which is only knowable on the basis of social behaviours. Hence the procedure of scientific identification is displaced by a less than proper listing of undesirable social types. The target population for the eugenist becomes an amalgam of all the social ills known to middle-class man tied together by speculative reference to a hidden core of degeneracy.

This method of disguising speculation as scientific argument is already familiar to us from our earlier discussion of the criminological programme. As we noted at the time (page 109) the innate essence of criminality is, like degeneracy, knowable only through its external social "effects" - in other words it is no more than a speculative correlation between a matrix of social conditions and a putative internal essence. The direction of the argument is then reversed to make this putative (and unsubstantiated) essence appear as the cause of the social conditions, thereby displacing causation from the social to the individual level.[103] Nor is this the only overlap between criminology and negative eugencis. Writers such as Havelock Ellis, Leonard Darwin, Schlapp and Smith, and Henry Boies, straddled both fields and had no difficulty transferring data and concepts from one to the other. This was possible because of the discursive structure already mentioned,

but also because of the overlapping target population of both programmes - especially their joint concern with the habitual criminal, the inebriate, the feeble-minded and the defective. Thus Rutherford Waddell (in his preface to The Fertility of the Unfit) equates the unfit with "the progeny of the Criminal"[104] and Havelock Ellis plainly states that "Criminality is largely based on congenital psychic weakness" and degeneracy[105] - a conclusion supported by the 'findings' of Dr. Goring's famous prison study. As we shall see in a moment, there was also a substantial overlap in the recommendations of both programmes, each of which rejected short prison sentences,[106] calling for preventive detention, segregation, and even sterilization. Indeed, for some eugenists, the penal system was itself above all, a eugenic apparatus:

> "Concerning the relationship between eugenics and crime, it must ... be noted that the penal code is par excellence a group of eugenic measures for the code exacts only the conservation of certain interests and sentiments, indispensable to the well-being and development of the race. Hence the penal code is a eugenic instrument, although until today, it has been without consciousness of this function. And following the results of eugenic science, it can tomorrow widen or narrow the circle of crimes in the end of conducing to the physical and psychic improvement of the race." [107]

We will return to this point in Chapters Six and Seven to suggest that this parallel between programmes was important, forming one avenue for eugenic intervention which is rarely acknowledged as such.

(c) The techniques of Racial Improvement and their Social Support

The recommendations and techniques proposed by the eugenic programme were of two kinds, following the division between positive and negative objectives. To achieve the former, eugenists such as Darwin and Fisher suggested family allowances, and Income Tax benefits for children,[108] while Havelock Ellis pressed the idea of selective

marriage-licencing to encourage beneficial unions.[109] Galton likewise proposed "diplomas of civil worth" entitling the holders to special privileges, patronage by noble families and the provision of cheap housing.[110] Rather more developed however, were the proposals regarding negative eugenics. These ranged from various methods of segregation in farm and industrial colonies, preventive detention institutions and asylums to the more drastic techniques of 'tubo-ligature' and surgical sterilization[111] - which, as Ellis put it, would "make them eunochs for the kingdom of God's sake."[112]

It was made quite clear that these techniques would necessarily be applied on the basis of 'administrative' rather than judicial criteria, usually in tandem with already existing forms of provision and regulation such as the poor law or the penal code. As W. A. Chapple M.P. put it:

> "When the principle of artificial sterilization is accepted by the State, the organisation necessary to ensure that only the fit shall procreate, will only be a matter of arrangement by experts." [113]

We will examine in Chapter Five the discursive and ideological tactics used to legitimate this and other programmes, but it is already clear that the appeal of eugenics derived from a number of powerful sources. First of all its terms combined the authority of natural science with the advancement of the Nation and its Imperial Race. Apologists such as F. H. Bradley reminded their readers that Darwinism teaches "the necessity of constant selection" and in the context of the residuum, this consists in "the destruction of worse varieties, or at least in the hindrances of such varieties from reproduction."[114]

> "All this sounds very hard, and it is hard; but its hardness is solely due to the fact that in some matters nature is absolutely inflexible." [115]

Moreover as McKenzie points out, the assumptions of the eugenists concerning the individual were continuous with the common sense doctrines

derived from liberal political economy:

> "The eugenic view of society was fundamentally individualistic and atomistic: it was to the individual, with his or her strengths and weaknesses, that the eugenists ultimately looked. ... Poverty, crime and stupidity arose from the hereditary weakness of the poor, the criminal and the mentally-defective." [116]

Indeed the political character of the eugenic programme is best described as a kind of utilitarianism _in extremis_ - which extended the calculation of utility to consider future generations as well as the present - though the utility of the better classes was preferred to that of the greatest number.

Whatever its basis, the appeal of eugenics was certainly considerable. By 1914 the Eugenics Education Society had 1,047 members as well as the backing of other important groups such as the Fabians and the Ethological Society.[117] As McKenzie, Abrams and Farrall[118] demonstrate, the Society's activists were drawn "almost exclusively from the professional middle class", particularly those working in the biological, medical and sociological sciences. The prominence of the eugenic programme in establishment circles may be gathered from simply listing the names of Beatrice and Sidney Webb, G. B. Shaw, J. B. S. Haldane, J. M. Keynes, Cyril Burt, Dr. Barnardo and William Beveridge, all of whom were members or active supporters of the eugenic cause.[119] Samuel Hynes quotes a letter to _The Times_ of May 1911 which expressed alarm at the "degeneration of the race" and called for eugenic intervention and the "genetic control of the subnormal".

> "Among the sixty-six signatories to the manifesto were eight peers, an archbishop, six bishops, three M.P.s, the heads of two Cambridge colleges and a number of distinguished professors, the editors of the Lancet and Mind, and the heads of the Free Church of Scotland, the Primitive Methodist Conference, the Congregational Union of England and Wales, the Wesleyan Conference, the English Presbyterians and Baptists ... General William Booth of the Salvation Army ... Ramsay MacDonald and Mrs. Beatrice Webb." [120]

For particular proposals, especially concerning the segregation of 'the feeble-minded' and mental defectives, the Eugenists also received wide support from local authorities and Poor Law guardians, as well as prominent members of the Liberal Government.[121] Indeed at one stage, the standing of eugenics was such that The Times engaged in an appeal for the funding of a Eugenics Laboratory, printing an editorial lead which stated that:

> "the state of morals and of intelligence disclosed by the recent strikes, the state of health of the rising industrial population as disclosed by the medical inspection of schools, are alike in showing the need for the study and application of Eugenics." [122]

It is hardly necessary to add that one large group which did not lend its support was the population upon which the negative aspects of the eugenic programme were to operate. As McKenzie drily remarks:

> "as far as we know, no manual worker ever joined the Eugenics Education Society." [123]

As for internal differences within the eugenics programme, these were much less marked than in criminology or social security. The programme was rather more coherent and controlled in form, having a specific point of origin in Galton's work, and the Society and its Review generally presided over and organised the expression of eugenic opinion. There were of course theoretical disputes - especially over the theories of Lamarck and Mendel - and varying points of emphasis. Similarly some proponents, such as Rentoul and Chapple, were decidedly less respectable in their open insistence upon the surgeon's knife, though even their writings attracted influential sponsorship.[124] Perhaps surprisingly, the eugenic programme attracted support from both right and left of the political spectrum, and Pearson, Shaw, Wells and the Webbs were all able to combine eugenics with their own statist brand of socialism. Besides its effect in widening the programme's

breadth of appeal, this socialist support had the important effect of suggesting that eugenic and environmental reforms could, under certain circumstances, be complementary rather than competing policies.[125]

(d) Social Implications

The primary, and most radical effect of the eugenic analysis was to shift the target of social regulation from the level of the individual to that of the population. In contrast to the claims of nineteenth century psychiatry and the reformism of criminologists and social workers, eugenics adopted a kind of therapeutic nihilism with regard to the deviant individual. As Norman Pearson put it:

> "He is made of inferior material, and therefore cannot be improved up to the level of the ordinary person." [126]

The consequence of this position was a reorientation 'upwards' to the level of population and the racial stock. The concern with population and its advancement which we witnessed in the social security programme has here become a direct attempt to seize hold of the very life processes themselves and subject them to a "rational" re-ordering. Of course the forms of intervention proposed, operated and "made contact" at the level of the individual who was selected for sterilization, for segregation, was tested, licensed, and so on. But the individual was always addressed in his or her function as progenitor, each person or family was hailed in the name of the Race, as an intermediary between population and its constituents, the present and the future.

The second point to make is already rather obvious. Despite its opposition to present forms of State (and private) provision, the eugenic programme implied a re-oriented but nonetheless massive form of State intervention, provision and regulation.[127] As Sidney Webb declared:

> "... No consistent eugenist can be a 'laisser-faire' individualist unless he throws up the game in despair. He must interfere, interfere, interfere!" [128]

Moreover this policy of selective provision and "thorough intervention" was presented as having the authority of science which was henceforth to form the only proper basis for social policy. Government was to become the practice of population management based on the science of "rational selection".

Finally, we might note that this scientific apology for class divisions and imperialist policies did more than just reassure the ruling bloc of its natural ascendency. It also ensured the advancement and promotion of a cadre of administrators, experts and intellectuals and the professional middle class from which they were drawn.[129]

(3) Overview of the Programmes and their Significance

We have traced out the contours and characteristics of four separate programmes of social action which were formed and articulated at the turn of the twentieth century. As we have seen, each of these displayed distinct conditions of formation as well as specific discursive resources, techniques and objectives. But despite these differences, each programme converged onto the site of "the social problem" and presented itself, in part at least, as that problem's solution. Hence, beneath the different modes of "contact" and the varying forms and scope of intervention, we find the same familiar categories - paupers, criminals, casual labourers, vagrants and the unemployed - within the sights of each and every scheme of reform.

Before we proceed (in Chapter Six) to investigate the struggles and events which translated elements of these programmes into institutional practices, it is worth pausing to consider the significance of these

programmes as events in themselves.

Perhaps the first thing that needs to be said is that these programmes are distinctively social programmes. Unlike the economic or political programmes of the past, each one presupposes a relatively independent social realm which has its own character and determinants and may be engineered by the application of apparatuses and techniques.[130] In each programme the field of "the social" is thus recognised and addressed, signalling the new era of what Kirkman Gray termed "social politics".[131]

In keeping with the character of social politics,[132] each programme held out a positive power of promotion and improvement, either of individuals, or the race, or the social system. Contrasting themselves to the negative and prohibitive policies of the past, each programme represented a specific means of cultivating and improving the elements of the social realm and thereby extending the power of government over life. This is most apparent in the eugenics programme which seeks to do this literally, by addressing itself to the reproductive process and its manipulation. But the other programmes are equally engaged in a task of improvement, whether it be rendering the workforce more efficient, as with social security, or else the reform of individuals and families promised by social work and criminology.[133]

Crucial to power, especially to 'positive' forms of power, is the production of knowledge. Hobson put it well when he declared: "the supreme condition of progress for a society is to 'know itself'",[134] and as we have seen each of the four programmes insisted upon an apparatus of investigation and observation to facilitate its operations. The knowledge produced by inspections, reports and surveys was in turn used to categorise, classify and divide the population:

> "... an adequate knowledge of our city population is

> essential. In spite of the researches of Mr. Charles Booth, many people are still ignorant of the fundamental divisions of the working classes; they confound the artisan, the labourer and the casual in one appellation - 'the poor'." [135]

Power over life demands a knowledge of lives, and the population must be known, divided, broken down into categories and arranged around norms if it is to be reconstituted on an improved basis. Of course the terms upon which this operation procedes cannot be neutral, and in establishing categories, divisions and norms, each of these programmes attempted to transform the terms by which the social problem was understood. But whether translated into moral, biological, psychological or organisational terms, in each case the social question was fundamentally de-politicised - its provenance was displaced from questions of power and its distribution to questions of individuals and their improvement.

We should note too, that in each case this de-politicisation was partly facilitated by the new rhetoric of scientism, be it the hard naturalism of criminology and eugenics, or the rational bureaucratic 'science of administration' claimed by the proponents of social security.[136] Indeed even the social work programme came to beg the prestige of science for its casework methods and techniques, particularly when the political unacceptability of its indiscreet moralism became apparent in the years after 1914.

It is also important to realise that for all but one of these programmes, the powers which they envisaged were to be exercised by the institutions of the State. All but the social work programme courted state power, requiring not just law and its authorisation but also resources, funding and an administrative machinery which could address the entire population. Indeed for these three programmes the power which they proposed was so major as to fall "automatically" into the

State's domain.

As we have seen, the social work programme was articulated in combination with the anti-Statist philosophy of the COS, but so long as this combination was retained, the programme was unable to fulfil its ambitions. This contradiction between the programme's objectives and its proponents' philosophy was no doubt a result of serious political conviction and belief, but it also smacked of self-interest on the part of the COS organisation. While the other programmes demanded that new initiatives be adopted, the COS was insisting that its own practices be acknowledged and generalised. And while it wished to see its programme carried out, it was determined not to give up the control of that programme to any other agency.[137] It is no surprise then, that the programme was subjected to revision by Barnett et. al. in an attempt to overcome this contradiction, nor to realise that social work was to achieve its real 'take-off' as a national strategy only when sponsored and authorised by the State - first of all with probation in 1907, then more generally in the 'Welfare State' of the 1950s and 1960s. This transformation of the social work programme has a significance beyond the changing fortunes of the COS and Toynbee Hall. The way in which 'social work' was forced to accommodate itself to the conditions of its time, and in particular to the necessity of an interventionist State regulation, is in fact a belated move along a path already adopted by the other programmes. And the directions which these programmes followed were not freely chosen or simply fortuitous; they were shaped and necessitated by the material forces and conditions which, as we saw in Chapter Two, were transforming the whole basis of British political life.

Another point which emerges from our investigation concerns the rhythm and form of historical change in this area. As we have seen,

each of these programmes was a self-conscious reaction to a prior failure and its effects, suggesting a historical pattern of strategy → failure → programme → strategy, making and remaking the social realm. As Rose puts it:

> "the formation and reformation of the social is a continuous operation, obeying no single principle and subject to no final resolution." [138]

Such a sequence accords with the popular conception of politics as a form of 'crisis management' without denying the part played by programmes and other forms of calculation and strategy.

It also suggests an image of the social realm as a multi-layered mosaic, the product of layer upon layer of organisational forms, techniques and regulatory practices, each one partial in its operation, each one dealing with the residues and traces of previous strategies as well as its contemporary rivals and limitations. This history necessarily affects the operation of modern institutions and ideologies, including those in the penal realm which have survived through a long period of time. Indeed we will argue that it is those institutions and ideologies which can most easily absorb different elements and adapt to one strategy after another, which survive in the social realm - as witness the survival of the prison and 'reformism' in contrast to capital and corporal punishment.

Finally, although these programmes would certainly extend the power of the State over 'its' population, we should not forget that they would also alter the balance of power within the State and the ruling bloc. As has been frequently noted,[139] each of these programmes carries the support and implies the promotion of the professional middle classes. Each project envisages a staff of experts, of scientists and administrators placed in key position of power - so that when the State appears, it is in the guise of "Dr. State", as George Sim put it in 1883.[140] William

Beveridge continued this metaphor 50 years later in "My Utopia" when he described his ideal society which:

> "would be run not by dictators nor by parliamentary democracy but by professional administrators or 'social doctors', whose sole function would be, 'so to adjust the economic and social relations of his clients as to produce the maximum economic health'." [141]

Whatever else can be said of the twentieth century world of social administration and the 'Welfare State', there can be no denying that such a world is the triumph of a small, but influential, professional middle class.

CHAPTER 6

Resistances, Manoeuvres and Representations

(1) Introduction

So far in this thesis we have identified an historical difference to be explained and have assembled some of the materials necessary to that explanation. This difference emerges when one compares the modern network of penal sanctions and their collective representations with the features of the Victorian system which preceded it. It is a difference which can therefore be taken to constitute the distinctive individuality of modern penality.

In Chapter Two we identified the conditions and developments which promoted the transformation from Victorian to Modern penality, arguing that a number of diverse developments combined to produce a major disruption in the functioning and legitimacy of the penal system and of the wider network of social regulation. In the Chapters which followed we identified and described the range of policy resources that was historically 'available', reconstructing four distinct 'programmes' which addressed themselves to the repair and re-ordering of social and penal relations.

It is quite clear that no one single programme completely succeeded in impressing itself upon the world of practice. Instead, particular elements of each programme were adopted and established, while others were either rejected or ignored or else adopted in a modified or compromised form. An analysis of this historical process of selection, rejection and compromise is thus of crucial importance if we are to understand the specific features of modern penality. This Chapter and the next will be devoted to this task.

The question raised by this last point is a substantive one, concerning the outcomes or results of an historical process. However it implies an equally crucial question relating to the form which this process took. It will be argued that the outcome of this process amounts to a strategy, or rather a number of connected strategies, of penal and social regulation. But to assert a 'strategy' is normally taken to imply 'a strategist'. So even if one insists, with Foucault, that such strategies are not the conscious products of individuals or agencies, then one has still to describe the non-conscious mechanisms which produce the strategic effect.[1]

In describing the process of formation of modern penality, these two Chapters therefore set themselves the following question: Given that there was no single 'strategist', nor any single programme which constructed the new penal-welfare strategies, how are these strategies set in place?

The answer they give is necessarily fragmentary. 'Fragmentary' because there is no single process but rather a whole series of lines of formation, involving arguments, resistance, intersections and compromises, all of which contribute to the final outcome. And as we shall see, the "consciousness" and calculations of agents and agencies, although crucial to these struggles, are also fragmented and attenuated, characterised more by a self-seeking myopia than a strategic omniscience. Consequently, these Chapters can only trace out the various lines of formation as they are revealed by the evidence of the contemporary texts and statements, endeavouring to present revealing snapshots of events which were scarcely perceptible at the time they occurred. The focus is therefore not upon grand strategic planning, of which there is little evidence, but instead upon how each fragment (each sanction, each image, each relation) is set in place

piece by piece.

Given the detailed and extensive nature of this task, our analyses will concentrate solely upon the processes of change which pertained to penal questions, though the occasional example or comparison will refer to the debates and decisions relating to other areas such as labour regulation or welfare provision. This choice of focus by no means eases the problems of analysis. The processes which established our Edwardian welfare institutions have already been subjected to fairly detailed analysis by writers such as Gilbert and Harris, who had available to them a large range of explicit evidence.[2] For as soon as public assistance for the socially disadvantaged had been registered as a political necessity, the problem of its form was explicitly posed in political debate. Evidence of this debate - which was often fully and self-consciously ideological in character[3] - can thus be had from the Parliamentary records, from the press, and from the hustings where these issues were openly addressed. This question of social provision (described then as 'social reform') provoked controversies within and between political parties and sections of the public and was consequently addressed as an important political issue.[4] In marked contrast, the question of social discipline, though equally pressing for numerous reformers and politicians, and though equally political in its implications, was never openly and publicly debated as such. It does not appear in the party manifestoes, or in Parliamentary debate, nor was it anywhere acknowledged as an issue of public controversy.[5] Instead it emerges, fragmented and diffused, throughout a multitude of programmes, Official Reports, specialist debates and administrative discourses. Taken individually, as they usually are, each of these sets of texts, official investigations and recommendations appears to be dealing with specific, unrelated and relatively minor issues of

control - vagrants, inebriates, youth, habitual criminals, the mentally ill, prisoners, the unfit, and so on. But taken together, as we shall see, they display a remarkable coherence in the definition of problems (cf. Chapter Five (3)) and the construction of solutions, a coherence which registers an unstated, yet fundamental, reference to the disciplinary crisis which we described above.

One explanation for this 'public silence' in regard to issues of discipline and penal control might be that these questions did not divide ruling class opinion in the same way as did the other social issues. One might even argue that the question of social discipline can never be publicly discussed in class-divided societies, lest it threaten to reveal that very division. But whatever its causes, the covert nature of this process makes its explication all the more difficult and all the more crucial.

These two Chapters then, attempt to describe the ways in which a strategic solution to this disciplinary problem was pieced together in the years between 1895 and 1914. However, this description will not resemble a conventional account of Parliamentary passage and enactment. Such accounts already exist in the work of Bochel and Rose but are limited in their value for two reasons. First of all, none of the penal legislation of this period provoked any serious controversy, so the Parliamentary records suggest an account wherein penality appears drained of all real social or political significance.[6] More importantly, this kind of account omits the important social struggles that promote issues to Parliamentary attention in the first place, giving them their exact terms, significance and social support. It is not enough to suggest simply that "Reform was in the air" and "the Home Office, under Gladstone and Samuel, was as progressive as it had ever been".[7] Moreover in describing these 'other', social

processes which determined the shape and form in which penal issues emerged as Parliamentary topics, we can begin to identify a number of social and penal phenomena which are still of crucial importance today. In particular we will be concerned to examine (1) how and why some elements of the various programmes were adopted while others were closed off, silenced or dismissed; (2) the precise nature and effects of the compromises, alliances and ambiguities which were formed in these struggles; and (3) the invisible field of ideological forces which shaped the formal and representational possibilities in the field of penality.

(2) Resistances[8]

Standing over against the reforms and innovations proposed by the social programmes were numerous forms of inhibition and obstruction which stood in the way of change. These forces of resistance defined the lines of conflict and the field of confrontation which lay between the various programmes and the power of implementation, so we can form a clearer picture of these struggles if we begin with a brief description of the main sources of this opposition.

To start with, the four programmes themselves presented mutual forces of resistance, with,for example,strong opposition between the COS and the advocates of pensions and State insurance, and between eugenists and proponents of environmental reform. Similarly those groups with vested interests in the status quo could be relied upon to oppose any suggestion which might disturb their domain. Such opposition is well documented in regard to Friendly Societies, Industrial Insurance Companies and the British Medical Association,all of whom resisted compulsory State insurance,[9] and of course voluntary

organisations such as the COS, the Liberty and Defence of Property League, and the Middle Class Defence Organisation were energetic opponents of any extension of State provision.[10]

In the penal realm, resistance to change is less well documented, but was clearly present nonetheless. In the face of recommendations which suggested reformative and educational regimes for offenders, the customary arguments for deterrence and less-eligibility presented a strong line of opposition which was deployed by men such as Anderson, Tallack and Du Cane, as well as a variety of Official Reports.[11] Similarly the normal resistance of bureaucratic institutions to troublesome innovations ensured that reforms such as classification and association were obstructed because of the "practical difficulties" attendant upon their implementation.[12]

However it is also possible to identify other forms of resistance here which are perhaps more significant. Against the arguments for reformative regimes in prisons and other institutions, a number of authorities including Sir Godfrey Lushington and Dr. Carswell (and before them Lords Cockburn and Blackburn) doubted the very possibility of reforming prison or asylum inmates.[13] Indeed Sir Edmund Du Cane, and more surprisingly Sir Evelyn Ruggles-Brise, actually argued that a "heavy roll of recidivism" can be construed as "a sign not unfavourable to" the success of a penal policy[14] - a view which taken seriously would negate the necessity of reformism altogether.

The early resistances of Du Cane and The Times, which opposed 'criminological' innovations in the name of a more traditional penality, are revealing, because unlike the criminological programme, they point up the political implications of the suggested reforms. Thus Du Cane objects to the suggestion of individualised treatment and its attendant executive discretion because it would undermine the equality of justice

and open the "Government ... to charges of showing favour to or prejudice against particular prisoners".[15] The Times editorial of May 15, 1899 agrees with Ruggles-Brise that "public opinion in this country would not tolerate the inquisitorial powers given to the probation officer", and on July 17, 1901 described the indeterminate sentence as "an alarming extension of officialism, too much like a revival of lettres de cachet to be hastily accepted". Similar opposition was offered by Mr. Booth M.P. and a Times editorial of November 21, 1896, to the extension of reformatories and supervisory powers over juveniles, taking this to represent an unacceptable dilution of parental responsibility and an unwarranted extension of the State's role.[16] Similarly Du Cane made very clear his opposition to an interventionist penal State when he declared himself against the erosion of the private, voluntary character of Aid on Discharge. Such erosions (by way of regulation or subsidy) would have:

> "A positively mischievous effect, by creating a presumption that 'Government' admitted it to be within its proper functions to find employment on discharge for any person who came into prison".[17]

Other instances of resistance brought out issues which the original programmes had skirted around or actively suppressed, such as the political problems associated with authorised expertise,or else the class bias of many criminological or eugenic arguments. Of the proposed preventive detention legislation, Hilaire Belloc said:

> "The first principle is that the liberty of the man who committed the pettier crimes of violence and larceny - not the most dangerous to society but the most irritating to the wealthier classes - and not the great crimes against society which so easily go unpunished, should be, at the discretion of the governing classes ... imprisoned for life."[18]

In a similar vein of exposure and resistance, J. C. Wedgwood M.P. remarked that the "horrible" Eugenics Society was "setting out to

breed the working classes as though they were cattle" with the aim of turning people "into better money-making machines".[19]

This same 'Liberal-Anarchist' M.P. berated the general tendency of Bills based upon the various programmes to promote "the autocracy of the expert", pointing up the anti-democratic tendencies which had gone undiscussed in the programmes themselves. For example:

> "If a specialist, a doctor, or a eugenist said that So-and-So is a danger to society and ought to be imprisoned, it is not possible for the ordinary layman to criticise the grounds on which he has based his dictum of imprisonment." [20]

The lines of opposition which we have so far described were openly represented as such, and generally expressed a defensive reaction by the administrators and supporters of Victorian liberalism and its institutional apparatus. However, Du Cane's position was seriously weakened by the failures of the prison and the penal scandals of the 1890s, and on his retirement he was succeeded by Sir Evelyn Ruggles-Brise, whose appointment was a deliberate move in the direction of reform.[21] More generally, the political ramifications of the social crisis ensured that the laisser faire liberalism of the status quo was displaced from its position of dominance. As Gilbert argues, by 1906 there was:

> "... a permanent change in the politics of welfare legislation. Party contention over the principles of social reform practically vanished. In politics, nineteenth-century laissey faire orthodoxy fell without a fight. Of the great measures ... old age pensions, unemployment insurance and labour exchanges, or national health insurance - none was opposed by the Unionists on the grounds that the proposals constituted an invasion of individual responsibility." [22]

But there were also other lines of resistance which were less visible and less easily traced to their sources, but which were at the same time more powerful in their effects. Unlike those mentioned above, these deeper resistances were not overcome by the tide of

events but rather continued to exert their inhibitive force against the programmes of change. As we shall see, wherever this deep resistance emerged, the outcome was always the rejection or modification of the change in question. It will be argued later in this Chapter that these resistances actually express some of the unspoken but fundamental ideologies which support and maintain British society in its modern capitalist form. Being fundamental, these ideologies are never expressed as such, but can nonetheless be traced in the assumptions and manoeuvres of the defensive discourse which is provoked whenever these positions are challenged. Indeed the arguments and expressions of the new programmes are frequently formed in such a way as to avoid such provocations, the very existence of which is silently acknowledged in their evasions, apologies and circumlocutions. Like the unconscious of Freudian analysis, this deep or 'primary' resistance is allusive, inarticulate, and displaced in its expressions. It does not reveal itself for what it is but has to be deciphered and 'analysed'. It does not acknowledge itself, nor is it consciously known by the individuals who express it since it involves the fundamentally-assumed, and hence unspoken, ideologies which structure modern society.[23] This kind of resistance occurred at a number of key points in the intense struggles which the criminological and other programmes provoked, and we shall discuss them in some detail in a moment. But by way of illustration for now, we can mention the following examples. Thus beneath the professional jealousies of lawyers, there is a deep resistance of this kind at work in the vehement defences of 'guilt', 'responsibility' and 'free-will' - categories which underpin not only legal discourse but also the primary relations of production and association in capitalist societies.[24] Similarly the violent rejection of those fatalistic doctrines which denied reform was certainly

encouraged by the self-interested desires of social administrators and functionaries - but ultimately the strength of this rejection had its source in the cult of welfare and reformability from which the modern State derives its legitimacy.[25] As a final example here we might mention the repeated assertion made against 'criminological science' that "the internal habits and disposition of the mind and heart ... are impenetrably veiled from all human scrutiny".[26] This position, which occurs again and again in the early years of this struggle, speaks of more than a hearty scepticism of the new 'sciences'. It voices a desire not to know which has its roots in the depths of certain religious convictions and certain assumptions about the necessity of 'freedom' as a basis for social discipline. Ruggles-Brise comes closest to expressing this clearly when he makes the quite remarkable statement that:

> "public opinion would not be disposed to admit that the causes of the criminal act are discoverable by physical observation, or by the precise research of a criminal or clinical laboratory." [27]

As we shall see, similar considerations of (fictional) freedoms stood in the way of innovations such as the Labour Colony, though again no such position was acknowledged or explicated.

Before proceeding to describe these discursive manoeuvres and ideological clashes, we should draw attention to an important absence amongst the forces of resistance. This absence is perhaps brought into focus if we begin by quoting Justice the weekly journal of the Social Democratic Federation. On November 2, 1907 Justice carried the following statement headed "Victims of Capitalism":

> "Unemployables, criminals and tramps are mainly recruited from the ranks of the proletariat. They are chiefly workers who have been discouraged in the hard and bitter struggle which the capitalist system forces upon them. ... If the majority of them were asked what brought about their social and moral degradation, their reply would be:

> lack of work, lack of opportunity, of any outlook, any future, lack of nourishment, despair following upon fruitless efforts to maintain themselves in decency and comfort. They are the wreckage of individualism."

The following year, on June 20, 1908 this statement was followed by another on the theme of larceny and habitual offenders:

> "... such crimes are an inevitable result of the system, an unconscious revenge on the primal robbery, and those who represent the robbing class must need be vindictive towards their trifling imitators."

The remarkable fact about these statements is not that they should be made - after all, the class bias of the institutions of penal discipline has long been obvious to socialists. The remarkable fact is that amongst the publications of the major parties of the Left (the SDF, the ILP, the PLP, the Fabians, the Syndicalists) these are virtually the only critical engagements with penality which were made in this period. Given the class bias which has already been noted in the criminological and eugenic programmes, and the fact that their disciplinary measures were aimed largely at the lowest social classes, one might have expected to meet strong resistance from the parties and organisations which claimed to represent the interests of these groups. No such resistance occurred.

In recent years there has been some controversy regarding the relation of the various sections of the Labour movement to the Liberal reforms, with some writers claiming these measures as "achievements" of the Left and others characterising them as "defeats".[28] The evidence, however, is now fairly clear and suggests that, with a few exceptions, the main parties were generally in favour of the social reforms, despite the opposition of the Friendly Societies and the Syndicalist movement.[29] From the evidence that is available, it would seem that the criminology and eugenic programmes, when they were not ignored, were also greeted with some favour. To take the criminological

issue first, if we examine the party literature and Conference minutes of the ILP from 1903 to 1914 we find no reference whatsoever to any penal matters, despite the large number of important penal Statutes passed in that period. Where questions of criminal justice do arise, they are approached as issues of political franchise (the demand for payment of jurors) or else as issues growing out of industrial disputes (the demand for the transfer of the Metropolitan Police to the London County Council to help end class bias in the policing of strikes, etc.[30]). Similarly The Socialist Review and the various Fabian publications (including 172 tracts published up to 1914) contain no discussions of the penal measures of that period. In the few places where the criminology programme is mentioned, it is welcomed and endorsed as a more rational means of organising justice. Thus in The Socialist Review of 1909, F. H. Minett uncritically endorses 'the principles of modern criminology' stating that the "sterilization and segregation of the habitual criminal or the dangerous epileptic" is the only means of ensuring the protection of society.[31] And when, by 1912, the imprisonment of suffragette women forced the Fabian Society to adopt a position on penality, the result was an equally fulsome support for the new principles and methods of criminological science.[32] This brief endorsement was more fully backed if one examines not just the publications of the Fabians, but also their 'recommended reading' guides for members, one of which listed practically all the criminological literature which had been published in English by 1910.[33] Far from providing a source of opposition to the disciplinary implications of criminology, the 'parties of the working class' either ignored its significance or else gave it an uncritical support. Indeed much the same position was adopted with regard to eugenics, which, though more controversial on the Left, was

still given a fair degree of support, particularly by the Fabians and in the ILP's Socialist Review.[34]

This lack of resistance can be accounted for in a number of ways. It may signify a simple failure to comprehend the disciplinary and discriminatory implications of the programmes, or perhaps it expressed the kind of political position urged by Karl Kautsky in The Socialist Review (1911) where he insisted that the proletariat distance itself from the criminality of its weaker elements:

> "Nothing is more dangerous to our cause, nothing can degrade the proletariat deeper, than the dissolution of legal mass action of the proletariat in a series of individual crimes." [35]

On the other hand, the support given to the more repressive measures of the penological and eugenic programmes by Fabians and the ILP cannot be explained away 'tactically', and would seem to raise some fundamental questions about the nature of the Labour Movement in Britain and its relation to the classes it claims to represent.

The effect of this absence is important. In the absence of organised support from the political parties and unions of the Left, those threatened by these programmes - the lower classes deemed by their 'betters' to be inebriates, vagrants, feeble-minded, unfit, delinquent - are virtually powerless. Without a collective political voice they have no authority or opportunity to speak. In the multitude of Reports and Inquiries which pose the problem of disciplining these categories, we find no evidence whatsoever given by the people in question - they are discursively fixed as the dehumanised and silent objects of administration. And, of course, active, bodily resistance by those already within the institutions of penality is undercut by the isolation, individualisation and superior force which they meet there.

The general effect of this absence then, is to allow the depoliticisation of the penal issue. It becomes a realm of least resistance where changes that can command the consent of the ruling bloc and its various fractions will meet with little serious opposition. Consequently we will find that the crucial struggles which traversed the penal realm were not explicitly political, inter-class affairs, but were instead conducted within the ruling bloc. But if the forces of the working classes were absent from these struggles, they were not forgotten. Indeed the crucial process which followed was the formulation of new terms and representations for penality which could command legitimacy both within the ruling bloc and outside of it, amongst legal and professional circles, but also amongst "the people" themselves. In other words, the major political struggles over penal change were displaced to the level of ideology and representation, with only minor 'political' struggles occuring within the legislative process and between the government and private agencies (see Chapter Seven). In the account which follows most detail will thus be accorded to the discursive struggle to found a viable new scheme of penal representation.

(3) Programmes, Knowledge and the Struggle for Power

Having described the forces of change and the lines of resistance which they encountered, we are now in a position to examine the process of struggle which brought about the transformation of penality in the 1900s. The present Chapter will concentrate upon the important discursive and representational issues, while the political and institutional struggles which accompanied these will be dealt with in Chapter Seven. It cannot be stressed enough that this was not a

rational or orderly process of enlightenment whereby sound new ideas were recognised and adopted in practice. Not only were the new knowledges themselves of dubious scientific value, but the complex process of official recognition is by no means scientific or rational in character. On the contrary, its "rationale" is always also political and ideological, since the agencies and institutions in question are involved in government, not scholarship or science. Consequently we cannot accept that 'rehabilitation' or 'criminological positivism' were adopted in the twentieth century penal system because they represented the scientific wisdom of their time. The relationship of 'theory' to 'practice' - the intersection of theoretical discourses and institutional practices - is always more complex and 'irrational'. As Donzelot remarks:

> "To understand the social fortune of a knowledge [un savoir], one has to locate the reason favouring its acceptance, find the existing link between its discursive properties and the problems posed by the functioning of institutions." [36]

In the following pages we will attempt to describe in detail precisely how this relationship was constructed at the turn of the century, utilising a conception of knowledge which always sees it in its relation to power.[37] We shall argue that the history of knowledges such as criminology, or eugenics, or social work, their transformations, relationships and fortunes, cannot be understood except as 'politicised' discourses whose relation to State practices is always a complex one of strategic intersection. Hence the care we have taken to refer to these not as free-floating 'ideas' or discourses, but as programmatic elements, supported and mobilised by the various social forces and objectives which were detailed in earlier Chapters.

Given these circumstances, a sound theoretical basis and the promise of effective penal or social intervention were never enough to

ensure the success of new proposals. They had also to be representable in political and ideological terms. New sanctions or practices had to be argued for effectively in the political domain and had to be capable of being represented within the legitimatory discourses which overlay penal relations and represent them to 'the public'. The promotion of programmes to institutional practices was thus crucially about representation, imagery and forms of legitimation.[38] But it is important to note that this process was by no means one-sided, with the authorities selecting from a range of passive alternatives those ones which best fulfilled this task of representation. As we will demonstrate, the reformers and their discourses were actively involved in this struggle, striving for legitimacy and acceptance through political compromise and discursive manoeuvre. John Clarke suggests the essence of this process in the following remark (although he gives no detailed substantiation of it):

> "... in practice, the abstract philosophies do not remain visible in their 'pure forms' - they become adapted to the conventions of the already existing logics in use, shape themselves around those of the opposing tendencies, organise themselves to 'win' the support of public and political opinion and so on. Even in the case of the reformers themselves, one finds a strange mixture containing traces of both the classical view of the criminal and the emergent positivist conception of the delinquent." [39]

Nicholas Rose has argued, talking of psychology, that the errors or inconsistencies in a discourse - its contradictions, ambiguities, conflations, even its use of particular metaphors - all function and play a certain role within the discursive field.[40] And Geoff Pearson, again talking of the 'irrational' or 'extra-theoretical' elements within a theoretical discourse, says:

> "The marks which social-science literature leaves in its readers are partly made by implicit and unacknowledged literary and poetic devices. ...Social Science makes its mark when attitudes within its own texts make links with, and resonate with, attitudes within its audience; but

> these attitudes are nevertheless, rarely explicitly rendered." [41]

The structure and development of the various discourses surrounding the social question amply demonstrate the arguments of Clarke, Rose and Pearson. As we shall see, the programmatic 'desire' which runs through the conceptual fabric of these discourses (cf. Chapters Three to Five) ensured a full compliment of such motivated errors and ambiguities, and dictated a path of development which was politically pragmatic rather than theoretically sound.[42] The following pages will identify the numerous literary and discursive tactics and devices which occur in those struggles, concentrating particularly upon criminology since we have already analysed this discourse in some detail. We will try to show how these discursive figures and manoeuvres functioned in the struggles, and how they contributed to the 'success' of some programmatic elements, the 'failure' of others, and the compromising of most.

(4) Discursive Figures and Manoeuvres

One important way in which knowledges such as criminology respond to resistance and to ideological demands is by means of what we might call discursive manoeuvre. This involves the formation of certain movements in theory, e.g. the production of conceptual compromises or new alignments, which are produced not so much by conceptual logic as by political desire. Such movements are visible at each stage in the knowledge-power process - in the theoretical text (in anticipation of, or in reply to, resistances); in the official and quasi-official documents which take up these theories and represent them for political consumption;[43] and finally, in the calculated language of

Parliamentary drafting and debate. Sometimes they occur 'spontaneously', or rather, in anticipation of resistance, often extending a theme which is already discursively present (e.g. the use of administrative rather than judicial forms, the tendency to eclecticism) or else playing upon the internal differences that we identified earlier. At other times, the manoeuvre is the result of actual struggles or debates and is characterised by a 'resolution' which is politically satisfactory rather than theoretically adequate (see the discussion which follows on 'criminal man', 'responsibility' and the criminal character).

(a) The Movement from Judicial to Administrative Mode

One such manoeuvre involves a continual play on the distinction between 'judicial' and 'administrative'. The judicial sphere is seen to be the proper place for public rules, hearings, the contestation of evidence and the ascription of 'responsibility' and 'guilt', while the sphere of administration is concerned instead with expert knowledge and decision-making, discretionary procedures and the estimation of norms, needs and dangers. One finds that the constant tendency of penological texts and Reports is to displace argument from one of these spheres to the other, stressing that any recommendations they make should be understood and evaluated in administrative rather than judicial terms.

There is moreover the suggestion that in these matters, the former mode is anyway to be preferred to the latter. Thus the neutral rationality of "administrative acts" is contrasted favourably with "punishment" and its irrational basis, as in the statement:

> "Is not the confinement for indeterminare periods by administrative act . . . preferable to punishment by short sentences." (original emphasis) [44]

Of course this example is contrasting indeterminate sentences with repeated short imprisonments, but the contrast clearly goes beyond the question of sanction to emphasise the framework in which it occurs.

The issue of short sentences also reveals another feature of this displacement. Throughout the whole series of Reports (Prison Commissioners Annual Reports, Reports on Inebriates, on Vagrants, on Habituals and so on) which attack the short sentence, in each case the problem is phrased in terms of utility, to the complete exclusion of all questions of justice or desert. This promotion of "the interests of society" against the individual's claims to justice is a common characteristic of these texts, recognised (and endorsed) by The Times in 1906 in its editorial on "The Treatment of Criminals":

> "There are ... signs that an overprudish sensitiveness as to interfering with personal liberty will not continue to be used as a pretext for allowing persons who cannot control their actions to ruin themselves and others." [45]

This utilitarian disregard for justice is even more apparent where the offenders are seen to be suffering from "morbid conditions affecting the power of self-control". In such cases it is said to be "practically useless to punish for the offence, while the predisposing condition is left untouched. ..."[46]

Perhaps the clearest example of this manoeuvre is where questions regarding offence-behaviour are displaced by investigations relating to the individual's "mode of life". Numerous texts, and later at least four distinct Reports and several Acts repeat the insistence that the individual "... should be treated not as a criminal, but as a person requiring detention on account of his mode of life".[47] And of course a major advantage of this concern with character and style of living is that it can demand the incarceration of "persons who have committed no public offence"[48] - a situation in which

judicial modes would be powerless. Thus a judicially-based authority would have trouble accepting the procedure that Leonard Darwin outlined for habitual petty criminals and their descendants,[49] but the allocation without trial of individuals to carceral institutions on the grounds of 'mental and bodily defects' and 'racial danger' is one which can easily be accommodated within an administrative mode.

In this 'administrative' system, 'knowledge' and not 'justice' becomes the basis for decision. It also becomes its justification, as The Times argued in January and August of 1901:

> "There must be something inherently wrong in his [the habitual's] construction, and it should be the business of science to discover what this something is, and by what means it can be corrected. In all probability the knowledge would justify committal to a reformatory long before the distinction of three convictions had been attained." (January 12, 1901)

> "With larger knowledge it will probably become possible to distinguish the curable from the incurable drunkard. ... Such knowledge, were it once attained, would justify not only the temporary confinement of the curable drunkard, but also the lifelong confinement of the incurable. ..." (August 27, 1901)

The authors responsible for such statements take great care to distinguish the 'reasonable' administrative act from the 'unjust' judicial sentence, ensuring that everything possible is done to fix the public image of their recommendations in the former terms and not the latter. In this way 'extra' or 'lengthened' coercion is protected from criticisms regarding its apparent injustice:

> "... the lengthened care and control which may follow the sentence of the fact on the committal of the offence, will attach itself, not to the fact of committal, but to the decision which the court may adopt, acting as a 'judicial authority' [i.e. a judge acting in an administrative capacity] in relation to the detention or segregation of the offender under the medical certificates which have been submitted to it. In that case there would be, strictly speaking, no indeterminate sentence pronounced on the ground of the nature of the offence. ... What might in that case be regarded as an indeterminate sentence, would not be a sentence at all; it would be an authorisation

> similar to other judicial authorisations of a like kind, to detain or segregate." [50]

F. H. Bradley put the same point more crudely when he argued of dangerous offenders:

> "Justice is the assignment of benefit and injury according to desert. ... But if he is not a moral agent I reply, surely what follows is that justice is indifferent to his case. What is just or unjust has nothing to do with our disposal of his destiny. And hence, so long as we do not pretend retributively to punish him, we may cut him off, if that seems best for the general good." [51]

The central form of justification that accompanies the judicial-administrative shift is the concept of <u>irresponsibility</u>. According to Boies, the fact of irresponsibility on the part of the "criminally or insanely diseased ... naturally and manifestly requires their secure confinement until cured of their dangerous propensities".[52] Consequently, "the doctrine of irresponsibility thus becomes a more efficient protection of society than the dogma of punishment".[53] This doctrine is clearly at work in a large number of Reports of this period, among them that of the Royal Commission on the Feeble-minded of 1908 where we are told:

> "... the mental condition of these persons, and neither their poverty nor their crime, is the real ground of their claim for help from the State." [54]

There are occasions when this particular manoeuvre is undertaken, but its authors lack confidence in its success. In such cases a compromise position is sometimes adopted wherein the administrative procedure is allowed to retain a semblance of judicial imagery in order to relieve public concern, as when the Minority Report on the Poor Law felt it advisable to adopt such a stance when recommending a three year administrative detention for habitual paupers:

> "We feel, that a proposal to commit a person to compulsory control for such a period on a mere order of the Public Assistance Authority might meet with great opposition, and would not, in the present state

> of public opinion, be accepted. We therefore propose that in all these cases an Order for Continuous Treatment should only be obtainable after an application on behalf of the PAA to Justices of the Peace and upon such Justices being satisfied that the conditions which we have specified ... have been fulfilled." (emphasis added) [55]

It will be apparent from Chapter Three that the tendency to an administrative logic is already present within the discursive foundations of criminology itself. Its categories and differentiations, particularly the classifications of character which it produces, are radically non-judicial, based upon 'science' rather than law or justice. Our contention here, is that the manoeuvres now being described extend that logic, utilizing it for representational and political purposes. Moreover they do so in a manner which is not 'innocent' since it is apparent from our examples that they took place in full knowledge of their political effects. In each case the control of habitual petty crime or inebriacy or vagrancy could have been undertaken within the terms of criminal law, by criminalizing these patterns of conduct and attaching severe penalties to them.[56] However this would inevitably have raised questions of justice or 'proportionality' as well as all the inconveniences of proving intention, convincing juries and evidencing particular acts. An administrative framework evades these limitations, in both practice and representational terms.

When in 1904 a Penal Servitude Bill introduced the question of indeterminate sentencing on the basis on character and antecedents, it provoked two divergent reactions. The first was characterised by a traditional concern for due process, well voiced by Sir Robert Anderson, ex-head of the CID:

> "... his sentence is not to depend merely on what he has done, but on what he is. ... Here then all our national instincts of justice and fair play demand that ... this

> grave charge [of being a habitual] shall be formally made and openly investigated, adequate notice of it having been given to the accused, and full opportunity allowed him to meet it." (original emphasis) [57]

This, however, was not the line that was adopted, in this instance, nor on any of the other occasions when such questions arose. The preferred reasoning is specified in the following "Confidential Report" compiled by a number of senior judges and subsequently accepted as standard procedure:

> "A difficult question arises as to the method by which a prisoner's antecedents should be brought before the judge in order to enable him to exercise the jurisdiction conferred by the Bill. ... If formal evidence is required there will be presumably a right of cross-examination by counsel, and a right of counsel to address the court for and against the prisoner. This is very undesirable. The information required by the judge is solely for his own mind, to guide his unqualified discretion in passing sentence." [58]

Moreover evidence of mode of life, character, etc. are "not matters within the compass of strict legal proof", and so according to this Report "cannot be a matter for the jury".[59] And yet, of course, these are matters which can make an enormous difference to the fate of the accused. This refusal of cross-examination, of appeal to a jury, or even reference to legal standards makes the process of fact-finding and sentencing into an extra-judicial procedure. It is a clear and knowing displacement of the 'judge' from one sphere to the other. And in this new administrative role, his discretion is to be unqualified, his knowledge closed off from judicial challenge, and the basic rights of natural justice denied as being out of place.

(b) The Pragmatic Compromise

As we have already seen, the demands of the new criminology faced serious resistance from those forces which supported the tenets of traditional legalism and its procedures. In the face of this opposition,

and indeed in regard to the internal divisions which weakened the movement, the most frequent response was a pragmatic compromise which effaced theoretical difference in the name of practical unity. The architects of these compromises were normally the professional practitioners who stood between the theoretical programme and its practical enactment, or else the second generation of theorists such as Prins, Saleilles and Von Hamel who were more committed to political success than theoretical invention.

In Britain, Sir Evelyn Ruggles-Brise played a key role in this regard in his position as Chairman of the Prison Commission between 1895 and 1921. Moreover this was a role of which he was fully aware, as his statements throughout this time make perfectly clear. In 1901 he asked:

> "Can the wisdom and discretion of our judges be respected consistently with the intervention of non-judicial authority in the determination of penalty? Here is a great battleground for the future ..." [60]

Ruggles-Brise might have added that this was a battle in which he too was engaged, though more in the role of 'honest broker' than committed participant. His interventions repeatedly sought to bring both sides into alignment by means of various compromise formulations, as witness his celebration of the Brussels Congress resolution of 1900, which stated that:

> "... in certain cases, strictly defined, the principle of 'indeterminism' might be usefully applied, but ... for ordinary crime it was absolutely rejected." [61]

As we shall see, Ruggles-Brise was to repeat this formula frequently in the course of the next two decades, but each time with subtle alterations in its terms and extensions of its 'strict' definitions - changes which no doubt followed the fortunes of the battle as he judged them.

In much the same vein, Raymond Saleilles argues a convincing theoretical case for individualised treatment, to be specified by an expert sentencing panel of "physicians, directors of reformatory schools, professional educators, etc.". But thereafter he completely reverses the logic of his case to maintain that while the 'experts' should decide upon the form of treatment, it should be left to the judge to determine its duration![62] Bearing in mind the skill and precision of Saleilles' analyses and texts, there can be little doubt that here we have a clear case where the political will to compromise disrupts the flow of conceptual logic.

Like Ruggles-Brise, Saleilles is quite explicit about the political destination of his conceptual manoeuvres. He stresses that the law is by no means "hospitable fo sudden revolution" and insists that "the reconstruction of penal law requires co-operation" and a united front on "matters of practical concern".[63] As we shall see Saleilles himself made an important contribution to this task of theoretical 'reconciliation' by his efforts to realign the divergent positions of the 'Italian' and 'neo-classical' schools around a novel conception of 'responsibility'.

Besides such key individuals, there were a number of organisations committed to the formation of alliances and the broadening of support for particular penological reforms. Most prominent amongst these were the International Union of Criminal Law (founded in 1889 by von Liszt, von Hamel and Adolphe Prins) and the American Institute of Criminal Law and Criminology (established at the Chicago Conference of 1909).[64] The 'Union' was precisely that. It was not a school but rather an amalgam or alliance of schools whose founders "sought to attract the largest number of adherents, even when not convinced".[65] De Quiros describes the Union as a reform movement promoting a kind of "double-

entry penology" which, like Ruggles-Brise, advocated a combination of old and new concepts and sanctions. And to aid this compromise between legalism and the new criminology, the schisms, debates and internal divisions of the latter were glossed over in the Union's texts, or else reduced to the compromise formations of a pragmatic eclecticism. In much the same way, the American Institute sought "to co-ordinate the efforts of individuals and organisations", demonstrating its eclectic approach by translating into English a number of texts representing each of the divergent positions within the new criminology's programme.[66]

It should be understood that the eclecticism of the Union and the other reformers is a different character from that of Ferri or Ellis or the later work of Lombroso. For writers of the latter sort it was the logic of positivist method and the overdetermination of 'criminality' which led to their theoretical eclecticism or "multi-factorialism". Such a position was quite different from the pragmatic eclecticism of the reformers where theoretical argument was subordinated to political will in the search for alliance and synthesis. Thus Enrico Ferri, himself a theoretical eclectic, violently attacked the 'befogged eclecticism' of the reformers and their "Error" of "subjecting science to the state of popular opinion":[67]

> "[Those who]freely invoke a marriage of convenience between the old penal law and the young positive science ... always forget that the new school stands for a complete innovation in scientific method, and that there is no middle term; either one syllogises on crime considered as an abstract juridical being or one studies it as a natural phenomenon." [68]

But if purists like Ferri were unreceptive to this conciliatory approach, there was a much more positive response from the political audience at which this manoeuvre was aimed. Britain in particular was well known for its resistance to theoretical argument and the

pragmatism of its penal establishment. Thomas Hardy may have been exaggerating when he declared that "We Britons hate ideas!", but the need to maintain a 'practical approach' in any new proposals was well known to reformers.[69] As Von Hamel put it:

> "... it has always been one of the most beneficient characteristics of the Anglo-Saxon penal jurisprudence, that it kept away from purely theoretical reasonings and was influenced mostly by realistic views." [70]

And "beneficient" or not, it was this 'audience characteristic' which motivated many of the pragmatic compromises which feature in the criminological texts and Reports of the 1890s and 1900s. For example we find the Gladstone Report acknowledging the "learned but conflicting theories" which have subjected "Crime, its causes, and treatment" to "scientific inquiry", but then resorting immediately to a compromise position put forward by the International Union and other reformers - a "recognition of the plain fact" that most criminals, with important exceptions, are indeed reformable, no matter what these "scientific theories" might imply.[71]

The strategic site chosen for these compromise manoeuvres was, of course, the realm of <u>the practical</u>. Theoretical difference and conceptual discrepancy were made to disappear if divergent positions could be satisfied by a common recommendation or objective. The consequence of this was a search for practices which could veil their underlying theoretical disagreements <u>and</u> a resulting investment in ambiguity and the kind of 'polysemic' practice which will be discussed in Chapter Seven. William Clarke Hall, grappling with the contending positions of "free-will" and "determinism" attempts just such a resolution:

> "In spite ... of the apparent irreconcilability of these two views in theory, I do not think that they are equally irreconcilable in practice, and it is essential to arrive as far as possible at a common ground of action rather

> than to investigate and accentuate theoretical and metaphysical differences. If my attempt to do this seems to the scientists crude and superficial it is, I trust, at least practical." [72]

In the same mode, Leonard Darwin argues that segregation, or more precisely the preventive detention of habituals, is a point at which 'environmentalists' and 'eugenists' can find "common ground", detention being "the right policy to adopt from whatever direction we approach the subject".[73]

This last example of "reconciliation" is important because it reveals the crucial conceptual point at which disparate theories are linked into a single recommendation. This point of intersection, appearing again and again in these pragmatic formulations, is <u>the category of the individual</u>. Moreover the <u>possibility</u> of this intersection is precisely related to its political <u>desirability</u> (as was demonstrated in Chapter Three). One would imagine that the position of eugenists and of those criminologists who individualised the sources of crime would be radically incompatible with the theories of 'environmentalists' and social determinists. Yet time and time again a workable compromise was drawn out in which both positions were assimilated behind a single recommendation.[74] Such a paradox was possible because the 'environmentalists' did not take social relations as their object of analysis and transformation, nor even the social phenomenon of crime. Instead, they, like their 'opponents', took as their object <u>the criminal individual as affected by social factors</u>. Boies' statement makes plain this centring of the individual in both kinds of explanation:

> "All the immediate causes of crime are either extraneous or intrinsic <u>to the individual</u>. The extraneous causes are the opportunities, incitements, and temptations which his nature is unable to resist. The intrinsic causes are inordinate desires and passions, defective or diseased physical organs, or a weakness of moral character which

> yields to the power of the extraneous influences. The ultimate cause of all crime, therefore, is to be found in the character of the individual." [75]

As we saw in Chapter Three, this analytical primacy of the individual stemmed from the socially-defined nature of criminology's problem, and the manoeuvre we are now describing is no more than a return to the individual in the attempt to influence social politics. The focus upon social circumstances which 'environmentalism' suggests, is here postponed or marginalised as either a task for the future, or a political impossibility, and what remains is a common concern with the individual, shared by all sides, if for different reasons. Ruggles-Brise seizes this point and maximises its utility when he declares:

> "... there is, I think, one common principle from which we can all start forward today in our campaign throughout the world - that is, the common belief in ... the individualisation of punishment." [76]

It is worth simply adding at this point, that this focus upon the individual was <u>in itself</u> a means of gaining entry into the 'commonsense' of British penal policy. For like all 'empiricisms' the anti-theoretical character of the penal authorities rested upon a number of entrenched but unstated theoretical propositions. And the major assumption of that policy was - and <u>is</u> - that the individual is always the proper locus of penal intervention and concern.[77]

(c) <u>The Linking of Themes</u>

Another discursive device at work in this knowledge-power struggle involves <u>the tactical linking of disparate themes and categories</u>. The linking of <u>themes</u> takes place by means of a vertical chain of reference which ties particular penal issues to more general political questions in order to extend popular concern and attract a wider support. The most common linkage of this type draws together

questions of (criminal or deviant) Individual, Nation and Race in an open appeal to the concerns about "National efficiency" and racial deterioration which we described in Chapters Two and Five. Thus an account of the issues surrounding inebriacy in 1903 is presented as follows:

> "The consequences of alcoholism are well-known and need only to be recapitulated:
>
> 1. To the individual - degradation of the intellectual faculties and mental degeneration.
>
> 2. For the descendants - the tendency to drink, epilepsy, insanity, physical sufferings, idiocy, and lastly, extinction of the race.
>
> 3. From a social point of view, the consequences are increase of mortality, diminution of the number of births, diminution of moral energy and of the rate of intelligence, in a weakening of the life power of the population." [78]

The laconic tone of Dr. Marr is no doubt meant to accentuate the devastating consequences of inebriacy for Nation and Race, but it also suggests the ease with which these connections could be made by this time. In fact this same, somewhat breathtaking, chain of reference is to be found clearly stated in a whole series of texts and official statements of this period.[79] Before long, the associations which were developed at length in these statements had found expression in a single term. The notion of "the unfit" signified all of these themes and their connections in a condensed form, using an image borrowed from Social Darwinism. It operated to fix the social significance of the deviant population in an implicit but incisive manner, automatically raising the focus from the individual deviant to his or her implications for the Nation and the Race.[80] It is therefore no surprise to find that when criminals, paupers, unemployables and the feeble-minded are dealt with by the Cabinet of 1911, they are presented not as minor and separate issues, but as a common "social danger" which directly threatens the

progress and survival of the nation and its Empire. At the Cabinet meeting of 22nd December, 1911, Churchill introduced a paper by Dr. A. F. Tredgold, entitled "The Feeble-minded - A Social Danger", which Churchill described as a "concise ... and not exaggerated statement of the serious problem which we face". Tredgold's paper states that:

> "... the problem of the feeble-minded is no isolated one, but ... is intimately connected with those of insanity, epilepsy, alcoholism, consumption, and many other conditions of diminished mental and bodily vigour. And when we remember that these are the conditions which connote social failure and which give rise to such a large proportion of our criminals, paupers, and unemployables, we begin to see how far reaching the question is."

Having settled the scope of the problem, he then specifies its significance:

> "This brings me to ... the subject of national degeneracy. Now national degeneracy is no myth, but a very serious reality. In the past more nations have sunk to a position of utter insignificance or have been entirely blotted out of existence as a result of the moral, intellectual and physical degeneracy of their citizens, than of wars, famines, or any other conditions. ... It is impossible for any nation to progress, or even to hold its own, which contains a preponderance of individuals who are deficient in moral, intellectual and physical vigour. It would be well if we English were to ponder these facts. ..." [81]

Another linking process, this time of a 'horizontal' kind, operates to bring together disparate categories of the various deviant populations and merge their characteristics under a single term. This process involves a kind of reasoning by analogy which argues that several different categories can be commonly treated in a way that is presently deemed appropriate for only one of them. The use of the term "moral imbecile" was thus used to link together groups such as the feeble-minded, the inebriate, the habitual criminal and the vagrant, extending to the others the pathological character of the first. Thus we find Havelock Ellis stressing:

> "... the immense importance of Lombroso's identification of 'moral insanity' with 'instinctive criminality'. Madmen and criminals have been brought into line. They are both recognised as belonging to the same great and terrible family of abnormal, degenerate, anti-social persons. This point will remain unshaken whatever disputes may occur on matters of detail." [82]

Once again, the success of this manoeuvre is apparent, and its echoes are to be found in official Reports, Parliamentary debates, and a multitude of texts.[83] As The Times declared on October 2, 1911:

> "No study of the problem of crime will, we are convinced, penetrate to all its roots, no measures at once bold and effective are likely to be taken, until the close connection of feeble-mindedness, pauperism and crime is examined and clearly realised."

One very important consequence of these linkages was that they opened up indirect routes of advance for the eugenic programme. As the eugenists themselves realised, their programme was rarely acceptable when presented in explicit terms, and every opportunity was taken to insinuate eugenic demands into other, more respectable projects.[84] One such project was Criminology and its penological programme, which proved to be a valuable site for a number of displaced eugenic demands.

The infiltration of eugenic terms into penological discourse was encouraged by a number of factors. As we saw in Chapter Three, the two programmes had much in common, and many criminologists such as Boies, Ellis and Garafalo were committed eugenists. Moreover as Battagliani, Lombroso, and later Goring pointed out, the institutions of penality had a definite eugenic effect of their own, whether it be the 'automatic' effect of the scaffold or long-term imprisonment, or else the more deliberate policies of Broadmoor women's prison.[85] A number of leading eugenists, including Leonard Darwin, Arnold White and Sidney Herbert, argued for penal reforms which would promote eugenic ends, concentrating particularly upon the demand for the

preventive detention of habitual petty offenders:

> "... increased periods of detention of habitual criminals would produce both immediate social advantages and ultimate improvements in the racial qualities of future generations, and, if this be the case, the social reformer and the eugenist ought to be able to march together on this path of criminal reform." [86]

The effects of this infiltration can be clearly seen in the terms used by penal reformers when they came to talk of preventive detention. Ruggles-Brise, for example, slips easily into a eugenic terminology, despite the fact that "segregation" and "the unfit" are terms which had no previous currency in penological discourse:

> "... the State is justified in segregating, for long periods of time, a dangerous class of offenders, who by their antecedents have proved themselves unfit to be at large." [87]

And Sir Robert Anderson and Sir Alfred Willis, while arguing the "humaneness" of preventive detention, explicitly stress the fact that such measures are effective in "preventing [the habitual] propagating and training a new generation of thieves".[88]

Perhaps the greatest eugenic success in infiltrating this field was the famous Goring research on "The English Convict" completed in 1908. This study was the most important official investigation of 'criminality' prior to the First World War, and it is therefore very revealing that the research was conducted under the auspices of Karl Pearson's Biometric laboratory - the scientific nerve centre of the eugenic movement. Nor was the decision to house it there merely a consequence of the laboratory's statistical expertise; the actual terms of the research - ostensibly to 'test' the hypothesis of the Italian School - precisely mirror the basic eugenic concerns with heredity, the transmission of 'degenerate' characteristics such as criminality, and the use of anthropometric measurement.[89] It is no surprise then, to find Goring stating the following conclusions:

> "Our figures, showing the comparatively insignificant relation of family and other environmental conditions with crime, and the high and enormously augmented association of feeble-mindedness with conviction for crime, and its well-marked relation with alcoholism, epilepsy, sexual profligacy, ungovernable temper, obstinacy or purpose, and wilful anti-social activity - every one of these being heritable qualities - we think that crime will continue to exist as long as we allow criminals to propagate."

and their eugenic corollaries:

> "Modify opportunity for crime by segregating the unfit ..."
>
> "Attack the evil at its very root - to regulate the reproduction of those degrees of constitutional qualities - feeble-mindedness, inebriety, epilepsy, deficient social instinct, insanity, which conduce to the committing of crime." [90]

In the years that followed this publication, more explicit proponents of the eugenic programme refer again and again to Goring's study as solid, official evidence for their assertions and policies.[91] Moreover a reciprocal reference was also established in the opposite direction, as official statements about habitual crime came to be commonly phrased in a language borrowed from the discourse of eugenics.[92]

(d) <u>The closing-off of social questions</u>

It was demonstrated in Chapter Three that the original criminological programme involved a number of radical, 'social' elements which raised the issue of social change as a response to criminality. Given the individualising logic of criminological discourse, and the absence of any external socialist support for these positions, these were necessarily weak and somewhat marginal features of the programme. However their political significance belied this marginality, since so long as these elements existed, the <u>question</u> of social change would always be linked to the question of crime.

In the texts and statements of this period we can trace a series

of manoeuvres which effectively remove this political threat and close off the question of social change. Once again, the 'motive' of this manoeuvre appears to stem from the reformers' will to power. To raise the social question in a strong form would contradict the fundamental logic of both the criminal law and the penal system as they were presently constituted. In keeping with the basic ideologies of individualism, these institutions were structured around "the individual", making it impossible, as The Times teased, "to put society in the dock", or to deal in legal terms with the social relations which promote criminality.[93] Institutional structures such as these made the radical elements of criminology politically 'unthinkable'. They therefore posed a serious threat to the programme's success and prompted moves to forceably exclude them from its discursive field.

In the texts of André, Carpenter, and later, of Fenner Brockway, this process is simple and self-imposed. Despite the radical positions which each of these stakes out, reminding the reader of the social causes of crime and the need for their reform, these social elements later disappear in the actual arguments and policy recommendations which follow. Frequently the social aspect is reduced to a token mention, with no real place in the texts investigatory or policy framework.[94] Thus Fenner Brockway says "we must not concentrate on the individual so much that we forget society"[95] but his text does just that in its exclusive concern with the individual and his penal treatment. We are not, of course, suggesting here that this effect was consciously achieved by Brockway or anyone else. Rather what appears to happen is that these authors unconsciously allow themselves to follow the well-established lines of argument which sharply separate penality from politics. And in their desire to address penal questions and achieve practical reforms, they focus their attention

upon penal institutions, leaving the arguments for political change to other texts and other institutions. But it is precisely this separation of 'penal' and 'political', and its unintended reiteration, which effectively emasculated the radical elements in the criminological programme.

We can see this separation - and its effects - most clearly in the work of Raffaele Garafalo. Garafalo accepts that 'social' and individual causes are both necessary to explain criminal behaviour, but he insists that the former are beyond the scope of penal law; indeed of law in general:

> "we take fully into account the influences of the physical and moral environment. ... But the contention that, in lieu of punishing, we should aim to modify the environment and thus suppress the causes of crime, is one not entitled to serious regard. The law-maker cannot accomplish that which is the work of time alone." [96]

Within this logic, environmentalism ceases to be radical and becomes an argument for individual segregation - the removal of the individual from the criminogenic environment. Several years later Ruggles-Brise employs precisely the same separation in his representation of penal issues for the British public. Of course in that age of liberal reform he was more convinced than Garafalo about the capacities of the legislature to effect social change. But he was just as insistent on distinguishing "social or political science" from the "medical science" proper to penologists. The first will, perhaps, "reconstitute the 'milieu' whence vice and misery spring", but the second shall "by diagnosis and therapeutics of the mental and physical state, in early age before it is too late, correct and restrain by suitable preventative means, institutional or otherwise, the tendency to anti-social conduct". Safe in the knowledge that the social question "is engaging the attention of our statesmen today",

the penologist can proceed to the proper task of penality, viz., "the individualisation of treatment".[97]

(5) The Conduct and Resolution of Key Debates

The conceptual manoeuvres which we have described so far took place largely without controversy - or more precisely, in anticipation and evasion of controversy. There were, however, a number of serious and intense theoretical conflicts which did see the light of day, centring upon questions of 'criminal man', 'responsibility' and determinism. Our intention here is to analyse the conduct of these debates and the direction of their paths of resolution, in order to identify the ideological and political pressures which helped to shape the eventual theoretical outcomes.

(a) Criminal Man, Fatalism, Reform

The most renowned and sensational 'discovery' of nineteenth century criminology was that there existed a distinct and identifiable 'criminal man'. The controversy which followed this contention was world-wide and its echoes resonate to the present day, but it is nonetheless a controversy with very distinct contours and directions.[98] The central points at issue quickly became established as firstly, the implications of this position for penal intervention and second, the precise way in which the 'criminal type' was to be differentiated from the non-criminal.

The first field of contention is clearly established by Ruggles-Brise when he represented the Italian School's 'criminal type' as

> "... a race of beings predestined to criminal acts, against whom any system of punishment would be futile as by nature such beings would not be amenable to the

deterrent influences of penal law."[99]

The fact that this amounts to a gross overstatement of the 'Italian' view (as Ferri and Garafalo never ceased to protest[100]), misrepresenting even the early work of Lombroso, powerfully confirms the importance of this question of "fatalism".

Against this imputed fatalism there was no end of protest.[101] But the attack was launched not so much against the veracity of the proposition, or the evidence for it, but against its <u>implications</u> for penal practice:

> "Like all half-truths, it is extremely dangerous. ... [It is] what Dr. Goring calls the great 'superstition' of the day which stands in the way of Prison reform, which darkens counsel in dealing with crime, which renders rehabilitation difficult, and which stifles and discourages the zeal of the philanthropist. ..." [102]

> "Nothing in the past has so much retarded progress as the conviction ... that the criminal is a class by himself, different from all other classes, with an innate tendency to crime. ... It accounts for the unfavourable and sceptical attitude which we still find in many places towards any attempt to reclaim the criminal." [103]

Whatever the theoretical merits or demerits of the proposition, it was too dangerous to be allowed to circulate. We can see this political closure operate even more clearly in relation to Dr. Goring's study. Here was an official, British investigation of impeccable scientific credentials (at least in the eyes of the Prison Commission) which alleged that criminality was indeed an inherited characteristic. The intervention of Ruggles-Brise to write a preface to the study, representing it for a popular audience, was therefore crucial. Here is his 'rescue' manoeuvre in operation:

> "... the criminal diathesis, revealed by the tendency to crime, is affected by heredity to much the same extent as other physical and mental conditions in man: but this does not mean that a man is predestined to a criminal career by a tendency which he is unable to control. ... Heritable constitutional conditions ... can be regulated, encouraged or stultified by training and education ... and it is in

> the acceptance of this belief that lies hope for the race and encouragement for reformers of all kinds. Its acceptance rescues the notion of hereditary criminality from the stigma of predestination which necessarily attaches to any idea of a criminal né." [104]

See how 'science' and statistics quickly give way to their political purposes - and how in the name of the Race, of hope, and Reform we must believe in the power of intervention. The space for positive intervention - which criminology constructed and which, ironically, the Italians threatened to reduce - is thus re-opened by the anxious Chairman of the Prison Commission. This same 'rescue' operation can be seen in the work of William Clarke Hall and of the reformers of the International Union, their political slogan - "causality and not fatality of crime" - being designed to ensure that the notion of determination is retained, but is simultaneously stripped of its self-defeating possibilities.

The direction and resolution of this controversy is clearly motivated by the desire for intervention and reform, which, as we saw, is an integral part of the criminological programme. Its "meaning" is hardly mysterious, particularly when one recalls that the careers and status of a new generation of penal and social administrators depended upon an endorsement of positive intervention. But the force of this debate, and one or two remarks which occurred, suggest that it may have had a rather deeper significance. We mentioned earlier a reluctance to define "incorrigibility" which is evident in the Congresses and texts of this period, and no doubt much of this reluctance stemmed from the practical difficulties of definition. But it is interesting to consider the statement made by The Spectator in 1904 (January 16) in welcoming the indeterminate sentence proposed by the 1904 Penal Servitude Bill. The article's title describes this as "An Important Social Reform" which the magazine welcomes, but it takes care to warn

that there are limits to be observed for "... it would revolt the public conscience to contemplate the absolute shutting of the door of earthly hope". In the same vein, Churchill's well known statement of 1910 refuses to "cut off hope" and represents the will to bring about reformation as a central symbol of the modern British State. Among his "unfailing tests of civilisation" he lists:

> "Tireless efforts towards the discovery of curative and regenerative processes: unyielding faith that there is a treasure, if you can only find it, in the heart of every man. These are the symbols, which, in the treatment of crime and criminal, mark and measure the stored up strength of a nation, and are sign and proof of living virtue in it." [105]

Perhaps, as shall be argued in Chapter Seven, we can take Churchill at his word here and suggest that reformation is indeed a vital symbol of the modern State's ideology. So vital, that it must always be asserted discursively, whatever its role in practice.

The second major line of conflict which followed from Lombroso's contention took up the question of <u>differentiation</u>. But it was not so much concerned with the specific 'anomalies' or 'differences' which supposedly stigmatised 'the criminal'. Instead it focused upon the <u>mode of differentiation</u> that was implied, attacking the idea of an absolute demarcation and replacing it with a more sophisticated, more strategic conception. Writers such as Ruggles-Brise, Sante de Sanctis and Leonard Darwin rejected the notion that criminals were a "special type" of a "class apart",[106] asserting instead the idea of 'relative' degrees of criminality, with a <u>continuum</u> running between the criminal and non-criminal, the normal and the pathological:

> "... criminals are not a class apart, but merely ordinary individuals with certain innate qualities exceptionally well marked." [107]

> "... defectiveness ... is a relative term only." [108]

> "... the 'anthropological monster' does not exist. ... The

truth is that these [are] deviations from the normal. ..." [109]

The rejection of an absolute demarcation, and the substitution of a relative scale running from the normal to the pathological, carries with it a number of consequences. Firstly, there is no longer any need to set a fixed, agreed line of differentiation whereby the criminal can be known absolutely, thereby relieving criminology of a task which had so far proved impossible. Secondly, it established a definite place for the expert, for if criminality was a delicate matter of degree, only the expert could be relied upon to identify its subtle marks and traces. Ferri recites a tale wherein several uninitiated Conference members failed to identify any anomalies amongst a group of 'degenerates' from the Asylum of St. Ann in Paris. Cesare Lombroso, "trembling all over with the tremor of a good bloodhound close to his quarry", confounded them all by finding in each case numerous serious 'stigmata', though "these anomalies were invisible to the inexpert".[110] Thirdly, the new continuum establishes a much wider field for intervention - for two reasons. The declaring of an absolute demarcation which all can agree (e.g. the insanity rule in McNaughten's case) will necessarily tend to be restrictive. A continuum, leaving each decision to expert decision in the individual case, allows a kind of "floating standard", unspecified in advance, left to experts to define as the occasions arise.[111] As The Times declared:

> "... there is forming ... a consensus of opinion among those having an actual conversancy with criminal man ... that there exists a large category of individuals, intermediate between the wholly insane and the normal. ... The recognition of the existence of this class, and of the necessity of dealing with it firmly, marks a great advance." [112]

The other reason why this marks an extension of intervention is clearly and simply put by William Clarke Hall when he applies this

conception to the children appearing in his courtroom:

> "... there can be no such entity as the completely normal child." [113]

We can also see from these last two statements that the rejection of an absolute demarcation of the 'criminal type' leaves untouched the assumption of pathology. The continuum is between the normal and the pathological and it provides the basis and justification for a potentially infinite field of intervention.

Once again, the meaning of this debate has become more intelligible in examining its lines of contest and resolution. But perhaps a deeper significance can also be suggested. If we were to crudely summarise the conduct of the criminology programme, we could say that it began by promising to demarcate and identify the criminal by means of objective, specifiable criteria. Having convinced its audience of this possibility, it then withdrew the offer of a publicly specified line of demarcation and instead abrogated to itself the task of demarcating. Moreover this regrouped strategy has advantages which extend beyond the promotion of the criminological expert: for in its new form it specifies not a norm but an apparatus to enforce norms. It does not so much specify the criminal 'Other' as indicate his existence and set up an apparatus qualified to identify and police 'him'. Thus to extend Foucault's arguments, it justifies an extended form of policing by naming an 'Other' who can never be known in advance of a generalised but closely drawn practice of observation and scrutiny which covers the whole population.[114]

(b) The 'Responsible' Subject: Free-will and Determinism

It should be apparent from the above discussion that the new penology was traversed both by theoretical logic and political desire.

In consequence it was caught in a contradictory position, being both for and against determinism. On the one hand, the notion of determinism supplied criminology's theoretical raison d'etre, but on the other, a total determinism or fatalism would altogether deny its penological intent. On to this contradiction was added a further layer of difficulty by the fact that 'determinism' itself was radically incompatible with the prevailing legal, moral and political conceptions of the free-willed individual. The result was a debate centring upon 'the subject' which was of crucial strategic importance in the knowledge-power struggle.

We have already witnessed how the new criminology categorically refused the classical conception of the free-willed criminal actor. This axiomatic difference emerged most forcefully around the practical question of 'responsibility'. In its traditional legal usage, 'responsibility' implied a moral agent,[115] and therefore the denial of free-will entailed a parallel refusal of responsibility, and the procedures of social accountability which founded themselves upon the subject's responsibility for his actions.[116] The desired shift from the judicial to the administrative register, and the substitution of criteria of dangerousness and social defence for 'responsibility' and 'retribution', are the direct consequences of this deterministic denial of free-will.[117]

Although there were some writers such as Ferri and De Fleury who took up this strong position against responsibility, stating it boldly and without compromise,[118] most others were careful to temper their formulations with a degree of caution and respect for tradition. In the face of loud protests that the doctrine of irresponsibility was "demoralising", "subversive" and a "social dissolvent",[119] a more subtle and ambivalent position was elaborated.

Instead of dismissing responsibility as a delusion to be swept away by science, writers such as Saleilles pressed the argument that responsibility was indeed a fiction, but nonetheless a valuable and necessary fiction which should certainly be retained. If 'responsibility' and 'free-will' were subjective illusions, their 'illusory' nature by no means precluded their real-world existence and effects. On the contrary, for "it is as a subjective conception that responsibility is efficient and becomes a conscious motive force". These 'fictions' were thus "subjective realities" and, for Saleilles, it was "this subjective reality, this mental image and concept that the penal point of view must consider".[120] Such fictions may thus be scientifically "false" but nonetheless effective in social terms:

> "It is through the ideal and fictitious that men are governed and societies regulated; and whatever may be said or done, governments and legislation cannot really run counter to factors and phenomena as they exist, for these form the very structure of society. ... The way to assure public safety and social protection is not to overthrow the conception of responsibility, but on the contrary to implant it in the conscience of the masses and strengthen it by every remaining vertige of belief.
>
> The conception of responsibility is a principle to be preserved at all costs." [121]

We can see the discursive preservation of this concept - and its cost of theoretical incoherence - in the following passages by Ruggles-Brise, where he attempts to accept the propositions of Goring's study without their logically entailed implications of criminal 'irresponsibility'. He begins by welcoming the 'general theory of defectiveness' as laid out by Goring, but warns that:

> "this theory, however, must not be pressed so far as to affect the liability to punishment of the offender for his act." [122]

Since no theoretical reason is provided, we can only presume that this "must" is a political imperative and not a conceptual one. He confirms

this interpretation later in the same passage when he states:

> "Although ... the fact that on the average, the English prisoner is defective in physique and mental capacity would seem to call in question the whole responsibility of any person guilty of an anti-social act, yet if fully and properly understood, it does not mean more than that in a perfect world where the faculties of each could be fully and highly developed, the problem of punishment would not exist." [123]

The Chairman of the Prison Commission is, for once, unable to convincingly rescue political desire from theoretical logic and here retreats into a simple evasion and the nonsense of non sequitor.

But despite these difficulties of manoeuvre, a compromise position was developed along the following lines. As Saleilles had argued, the fiction of responsibility had to be retained. But if this conception were operationalized in its traditional form, it would leave no place for criminology and its investigation of the causes of the crime.[124] The solution was to retain "responsibility" and "freedom" as general principles - but to put them in question with respect to each individual case. Responsibility thus became a presumption which was always put in doubt. The Law would maintain its commitment to responsibility as the normal case, but be willing to accept deviations from this norm, particularly with regard to criminology's special categories - the inebriate, the feeble-minded, the habitual and so on. Consequently, the individual case would not proceed, as before, by assuming that the universal principle of Reason and responsibility would apply in all cases other than those where the accused was palpably insane. Instead, the apparatus of criminology would be called in to investigate the individual in question and establish his relation to the norm. Saleilles' compromise thus did not demand:

> "the renunciation of the idea of responsibility, but only the renunciation of the dangerous and puerile fiction, whereby positive and practical applications were derived from merely abstract premises." (emphasis added) [125]

Criminology thus specifies "a true responsibility in place of an assumed responsibility" substituting "the realities of experience for purely judicial abstractions".[126] It replaces a philosophical principle (all men are free and responsible) with a positive psychology (each man must be investigated, his personality assessed).

These arguments of Saleilles which set up this compromise formulation will not be found each time their conclusion is endorsed, although writers such as Havelock Ellis and Hamblin Smith did rehearse them explicitly.[127] Instead they came to be expressed in a single term which conveyed the ambivalent combination of freedom and determinism, responsibility and irresponsibility, which Saleilles was at pains to implant into the criminal process. The general term which did duty for this complex range of meanings and significance was the concept of "character". Wherever this compromise position is adopted, its contradictions and ambivalence are covered by this simple term which can convey both the freedom of the normal personality and the irresistable determinants of the pathological. Thus it appears with this function in the work of Ruggles-Brise, Goring, Ellis, Garafalo, Boies and Darwin, as well as in various Official Reports and statutory phrases, most notably the Gladstone Report and the many Acts which followed its recommendations.[128]

This compromise between freedom and determinism was based upon a developmental logic. Individuals are somehow "free" to develop their moral character (through the acquisition of habits, discipline, etc.), but at a certain stage of maturity, "the fundamental law of physical causality prevails. Freedom prepares the soil, determinism receives the seed and makes it fruitful".[129] A normal, healthy character untrammelled by genetic defect or vicious habit, will be able to exercise control and choice. It can therefore be said to be free and

responsible. But the crucial point is that this freedom is neither absolute nor essential. It is a contingent and fragile freedom which depends upon the delicate mechanisms of character formation and the vicissitudes of individual and social life. Alongside these responsible individuals are numerous characters which are either uniformed or else malformed. The latter category (inebriates, habituals, unemployables, the unfit, etc.) are pathologically determined by their defective character structures. They cannot be deterred or persuaded and so must become the target of a more positive intervention - either a reformative technology or else a preventive segregation. The unformed characters of children and juveniles also present scope for positive transformation, this time the more hopeful forces of training, discipline and education.

The concept of 'character' allowed the classical legal subject to be practically transformed and yet ideologically retained. Through these means the notion of the subject was progressively modified and psychologised, transformed from its former (philosophical) status as essential Will to the (positive) status of contingent character structure. In this manner the legal and political ideology of the responsible subject could be preserved (against a determinism which would have it destroyed) but at the same time opened up to intervention. The subject now possessed a structure and determinants which could be the site of positive interventions, an object to be acted upon.

Given the subjectivity of free-will, the appropriate strategy was one which structured choices - hence the rewards and deterrents of classical criminology. The new subjectivity of character structure, on the other hand, gives rise to a strategy which operates upon that structure and its determinants - to a positive criminology.

It is not difficult to see the deep significance of a debate such as this in the context of British political culture. The 'responsible subject' is an indispensable element of any capitalist society structured around 'free' contract, commodity exchange and representative democracy.[130] It allows a morality of individualism which allocates reward and blame 'automatically' to the individual, thereby protecting social relations of wealth and discipline from immediate scrutiny. It is therefore an essential requirement of individualism, competitive enterprise, and our form of moral and political rule.

The notion of 'responsibility' must be continually ascribed to individuals (and neither generally denied, nor ascribed elsewhere) if these social requirements are to be met. In denying freedom and responsibility the 'Italian School' allowed itself to be excluded from the terms of serious penal discussion in Britain and elsewhere. But the need to make individuals responsible by forceably ascribing responsibility to them was well met by the Saleilles compromise. Not only did it promise reformative techniques which would construct responsible subjects, its very divisions and distinctions reaffirmed the value of 'responsibility'. Each time a deviant individual was identified as 'irresponsible' and in need of treatment, the value of being responsible was practically and ideologically reinforced for the rest of the population.

Nor should it surprise us that the term which functioned to promote this outcome was that of 'character'. For 'character' had the crucial advantage of according with both commonsense discourse and the more specialist language of social work and social security. It thus contained within itself a whole array of different connotations, ranging from traditional moral judgements about an

individual's worth, through psychological theories of subjectivity and its determinants, to the concern with character formation espoused by both social workers and Imperialist politicians.

It thus tied together several distinct chains of reference within a single discursive term while simultaneously containing both poles of the free-will/determinism debate within an ambivalent theory of character formation. As we have seen, it was through discursive manoeuvres of precisely this kind that alliances were formed, resistance overcome, and strategies put in place.

(6) Discursive tactics and Modes of Representation

At a different discursive level - not of conceptual structure but of the presentational form of argument and justification - we can identify in these criminological texts the operation of certain discursive tactics and modes of representation. It is not a serious charge against a text or programme to allege that it utilises the persuasive forms of rhetoric and argument to elaborate its positions: most texts do precisely this. However these tactics and representational forms can be revealing, particularly when the same few forms appeal again and again throughout a multitude of texts and utterances as they do in the criminological programme. They reveal the political strengths and weaknesses of the programme, the means employed to circumvent resistance, and the chosen forms of legitimation. In the same way, our discussion of the operative metaphors, analogies and imagery is undertaken not to complain that a "scientific" discourse employs literary forms to present its arguments (though criminology does so more than most) but to analyse the direction, connotations and representational effects of these discursive forms.

(a) The Appeal to 'Precedent'

In arguing for their new departures and reforms, British criminologists insisted upon tempering the shock of innovation by reference to traditional practices which might be taken as "precedents" for the reform in question. And while the practices of neo-classicism formed a kind of general precedent,[131] more particular precursors were also identified and utilised Thus the Reformatory and Industrial Schools become the much-quoted precedent for Adult Reformatories, indeterminate sentences and the "right of the non-responsible offender to special disciplinary and educational treatment";[132] the practice of supplementing the gaol sentence of recidivists with periods of police supervision becomes a justification for the double track system of preventive detention;[133] and the narrow powers of detention allowed by the Public Health, Lunacy and Poor Law Acts become the legitimatory basis for the very widest kind of restrictions on the liberty of paupers, the feeble-minded and the "unemployable".[134]

There is of course a certain irony involved here, inasmuch as a judicial form of legitimation is being employed to undermine "the Judicial form" itself, and no doubt this says much about the power of both legal and traditional ideologies in this period. But rather more surprising is the speed with which small reforms and tentative innovations, once achieved, themselves come to be cited as important precedents, thereby allowing the programme's success to feed upon itself as further legitimation. Thus we find Ruggles-Brise employing the 1908 Prevention of Crime Act as a precedent for further use of the indeterminate sentence[135] and the 1908 Report on Inebriacy justifying its own proposals by reminding that:

> "The course of recent legislation shows that the legislature does not now hesitate to enforce restrictions on the liberty of persons whose unchecked vagaries are clearly contrary

to the public weal."[136]

(b) Special Cases as Points of Entry and Extension

The effect of argument by precedent was frequently to use a special case (e.g. the semi-determinate period of a child's stay at an Industrial School) to legitimate a new practice which was significantly different and more general (the indeterminate sentencing of adults to prison custody or Labour Colonies). In fact as we have seen, criminology operated precisely by producing "special cases" or categories of individual who should not be subject to the normal procedures of legal accountability because of their irresponsible or abnormal characters. However these "special cases", once established, had a tendency to extend their domain - and that of criminology - and we can cite many instances where a special case is established only to have its special features erased in the name of its subsequent extension. Thus we see Ruggles-Brise take pains to argue that the indeterminate sentence is suitable only for the special category of habitual offenders, or else that 'reformatory' treatment can be justified only for juveniles, only to find him in later years arguing that there is no good reason why these practices should not be extended to "ordinary crime" and adult criminals.[137]

This tactic functions by attacking the points of least resistance in the status quo.[138] Categories such as children or the insane, already recognised to be special cases in the eyes of the law and the public, were seized upon and used as points of entry, or tactical bridgeheads for the criminological programme.[139] Starting with characters which are 'obviously' unformed - namely children - criminology proceeds to add the less obvious cases of firstly the 'juvenile adult' then 'first offenders' and all offenders under thirty

years and finally the full range of "irresponsibles".[140] In the same way the malformed category of the insane undergoes a gradual extension until it includes 'the feeble-minded', 'the inebriate' and 'the habitual' within its terms. What begins as a narrowly defined special case extends itself indefinitely, and having made its case at either end of the criminal spectrum, criminology turns inwards from the obviously deviant to the apparently normal.[141]

This tactic was important in establishing many of the penal reforms and innovations of the period under study, but it also has a more contemporary relevance. The focus upon exemplary cases to legitimise the non-exemplary by implication is still a major feature of penal discourse, and one which is amplified whenever that discourse enters into the popular idiom. It is therefore no accident that popular discourse about crime and control 'automatically' coheres around images such as "the psychopathic killer" or "the ruthless professional" for whom prison is of course "essential" - those being the hard cases which settle the direction of uninformed opinion and promote the demand for a general severity. One hardly need add that this works to the detriment of a balanced and fuller view which would give due consideration to the vast majority of offenders who differ radically from the image of these special cases.

(c) Tactical Trade-offs

> "I think that when we do so much to prevent crime, and to train those youths up, so that they do not pursue criminal avocations, we are bound on the other hand, to be more stringent in the punishment of those who still pursue a course of crime in spite of what we have done for them." [142]

Crofton's remarks were made in 1863,but the 'balancing' of increased reform by increased severity is a device which recurs again

and again in penological argument.[143] It was particularly important in the debates surrounding preventive detention since on the face of it, an additional sentence of ten years (initially life) imprisonment for habitual offenders, on top of the proper punishment for their immediate offence, was unquestionably severe and difficult to justify. This legitimatory problem was overcome by promising to mitigate the conditions of this detention, 'exchanging' length of detention for leniency of discipline. As a Confidential Memorandum on the Penal Servitude Bill states:

> "It may not be necessary during that period of time, that the punishment should be a severe one. All that is wanted is that they should be under discipline and compulsorily segregated from the outside world. In the case of a conviction for a small offence, e.g. stealing a pair of boots, both judges and public opinion would be averse to the passing of a long sentence. ... The new prison rule [states that] ... the ordinary convict discipline will be greatly mitigated ... and thereby seeks to encourage in appropriate cases the passing of long, as opposed to severe, sentences." [144]

This trade-off tactic is rehearsed on vitually every occasion that Preventive Detention is officially discussed, as well as being used in a similar fashion to justify the lengthy detention of inebriates.[145] In the same way, the fact that the 1908 Prevention of Crime Act allowed Borstal inmates to be released "on licence" at the discretion of the authorities, was used to justify the passing of longer sentences:

> "In order to carry out this system of licenses, it is also important that the courts should have the power of passing longer sentences, because there must be a power given to the authorities to bring the lads back again, if they do not take proper advantage of the licence given to them." [146]

(d) Language, Metaphor and Desire

If one means of justifying severity was to set it off against a

purported leniency elsewhere, another method was to insist upon the severity of the problem being faced. In this endeavour to characterise the social harm caused by crime, criminology tended to neglect its concern with scientific measurement and statistical quantification and to slip into a less rational discursive form. Thus we find the frequent deployment of a kind of discursive violence whenever harsh measures need to be powerfully justified. And of course these emotive and alarmist descriptions of criminality go a long way to explaining the deep sense of social threat and danger evoked by the imaginary figure of the criminal - both then and now. The following are only the most striking instances of a violence which is pervasive in this discourse;[147] thus W. A. Chapple, the eugenist and M.P. - arguing for a policy of sterilization:

> "Consider what a burden is the criminal. Every community is more or less terrorised by him, our property is liable to be plundered, our houses invaded, our women ravished, our children murdered." [148]

And Baron Rafaele Garafalo, invoking a sensationalist statistic to prepare the reader for his "eliminatory" proposals:

> "... here statistical science steps in. Adding the figures, combining the scattered sums of human misery produced by human wickedness, it unrolls to us the scenes of a world-appalling tragedy. It shows us a field of battle littered with the remains of frightful carnage, it joins in a single heartrending cry the groans of the wounded, the lamentations of their kindred; it causes to file before us legions of the maimed, of orphans, and of paupers; it blinds us with the light of a vast incendiary conflagration devouring forests and homes; it deafens us with the yells of an army of pirates. And in sinister climax, it reveals to us the author of these scenes of desolation - an enemy mysterious, unrecognised by history - we call him the CRIMINAL." [149]

In similar terms, and for similar purposes, Lydston talks of "social excreta" which demand "total elimination"[150] and Boies talks of "the unfit, the abnormals, the sharks, the devil-fish and other monsters"

who of course "ought not to be liberated to destroy and multiply, but must be confined and secluded until they are exterminated".[151] And echoing the more technical but equally violent morphologies of Lombroso and Ferri, Boies describes criminals as:

> "Human deformities and monstrosities, physically illshapen, weak and sickly with irregular features, they bear a sinister ignoble, and furtive expression. They have an unbalanced and distorted cranium, and are of a low order of intelligence, apparently devoid of the nobler sentiments; with a depraved if not utter absence of moral sense or conscience." [152]

This tactical symmetry between the form of language and the form of measure being proposed is well brought out in the texts of Thomas Holmes, police court missioner and Secretary of the Howard Association. When he comes to prepare the ground for probation and social work sanctions, his language moves from the borrowed vocabulary of 'pathology' and 'degeneracy' to the more familiar evangelical mode:

> "Even as I sit and write, it is all before me and around. I hear again the horrible speech and diverse tongues. I hear the accents of sorrow and the burst of angry sound. I hear the devil-may-care laugh and the contemptuous expression. I hear the sighs and the groans and bitter plaints. I see men shorn of all glory. I see womanhood clothed in shame. I see vice rampant. I see misery crawling ..." [153]

As we have suggested above, the actual language and modes of representation employed in these discourses are themselves of significance. These terms, styles and literary figures do much more than simply convey propositions or communicate proposals: they simultaneously operate as persuasive devices in the knowledge-power struggle <u>and</u> help to fix the associations, emotions and responses which these issues popularly evoke. The most obvious illustration of this operation whereby the social meanings and connotations of 'criminality' are discursively constructed, is the use of <u>metaphor</u>,[154] and there is a sense in which the chosen metaphors of a discourse

reveal its social desire - the significance and connotations it would attach to its propositions. Our previous discussions of that 'desire' are thus given confirmation by the fact that criminology's favoured metaphors closely correspond to the analysis we have made. The scientistic and pathologising tendencies of the criminological programme, as well as its professional ambitions, are well brought out by the medical metaphor which saturates the surface of this discourse.[155] And although The Times and Ruggles-Brise warn that this metaphor should not be pressed too far (cf. the compromises over responsibility, determinism, etc.) we find it appearing in the Parliamentary debates, the Official Reports and even in The Times itself. It is this metaphor above all else which authorises a language of care and protection to substitute for the more awkward vocabularies of discipline and punishment. Consequently the compulsory detention of paupers becomes 'continuous care and treatment', the incarceration of the feeble-minded is rendered as "special protection suited to their needs", which of course must continue as long as is necessary, and Borstal becomes "merely a teaching and training institution" or a "moral hospital".[156]

It also transforms the conception of penal time from its negative value as a measure of severity to a more positive statement of the period during which reformative facilities will be offered. It was only through this important inversion that repeated pleas for lengthier sentences could become the mark of the progressive penal reformer.[157]

One might also add that it was precisely this metaphor, and its images of treatment, help and care, that necessitated the emphatic and frequently asserted denial of leniency which runs through the reformers' texts, striving to restrain the unacceptable connotations

which had been set in train.[158]

As we have already seen, the images and metaphors of efficiency, 'degeneracy', and 'fitness' are also constantly present here, as is the evolutionary analogy from which they derive, linking criminological proposals with the future of the Race and the Empire. In much the same way a recurring description of recidivists as a "blot" or "stain" upon civilisation, operates to link these diverse concerns in a single figure of speech. Finally, there is also a frequent reference to criminals (and sometimes to the whole of the lower classes) as 'savages' or 'semi-savages' with "a very low order of intellect and a degradation of the natural affections to something little better than animal instincts".[159] The effect of these statements is to do by implication what Garafalo and Ribot do explicitly, viz., to present the deviant population as "beings [who] are completely dehumanized".[160] Like the violent descriptions noted above, these dehumanizing terms allow an escalation to take place in a "war against crime" which is not just metaphorical.

(7) The Process of Calculation

These detailed discussions of texts and statements should by now have demonstrated that it is not an unwonted cynicism which leads us to talk of 'manoeuvres', 'tactics' and 'political struggles' within criminological and penal discourse. And although there is no space to demonstrate it here, there is good reason to suppose that a similar process of representational struggle took place within the other programmes of this period.[161] These discursive manoeuvres were clearly motivated rather than accidental. The texts we have examined were not rough and ready drafts or careless outbursts - they were

rather the carefully constructed formulations of a contradictory process wherein theoretical logic is continually interrupted by political desire. The purposes, aspirations and social objectives of organisations and individuals were thus introduced, sometimes crudely, but often very subtly, into these discourses. They can be identified, as we have shown, because they have no theoretical place there - or rather because the theoretical place they carve out for themselves involves arbitary assumptions, non-sequitors and logical contradictions which become intelligible only through political analysis. The outcome is an array of texts and supposedly scientific statements which are in fact persuasive documents; they are aimed not at 'truth' but at the political process, through which they would establish a new "regime of truth".

The significance of these analyses is that they allow us to use substantial forms of evidence and description to meet questions which are otherwise grossly speculative. Chamberlain's much quoted remark that "the foundations of property are made more secure when no real grievance is felt by the poor against the rich" might hint that a political strategy runs through the social reforms of this period. But only by a detailed examination of how such a politics entered into the fabric of these reforms - their actual discourses and apparatuses - can this thesis be substantiated.

This method of approaching the question of social strategies and their constituative struggles removes the need to posit a 'grand strategist' or any God-like omniscience, but it does raise the problem of calculation, albeit in a different form. This problem is particularly acute here, given our assertion that much of the resistance which was circumvented in these debates, and many of the positions which were discursively established, stemmed from the

deep-rooted 'unconscious' ideologies of modern capitalist society. How could authors like Ruggles-Brise and Saleilles so skilfully steer around issues such as 'responsibility', 'determinism' and 'reform' thereby preserving the ideologies of the free-subject and the welfarist claims of the modern state? How was it that the progressive social elements of their discourse were delicately marginalised and subordinated to the re-affirmed ideology of individualism? In other words, do we have to conceive of these individuals as having the insight of sociologists or sophisticated social critics in order to understand the conditions whereby their calculations were possible?

Put simply, we do not. Nor do we have to speculate as to the precise 'intentions' or knowledge of these particular figures. Instead we have to show what kinds of knowledge was objectively available to them, and to demonstrate how this could lead to calculations which followed the lines we have described. On this basis, the most likely answer is not that all of these authors clearly recognised these ideologies for what they are, and set out to protect them from challenge. Indeed it is unlikely that any of the individuals concerned would have been able to formulate the issues in this way. But if they did not recognise these unconscious ideologies, they certainly were in a position to recognise and appreciate the practical effects which these ideologies produced. They could certainly understand the firmly held beliefs of lawyers, liberals, Christians and others in 'the freedom of the individual'. They were likely to have a reasonable understanding of 'public opinion' and its insistence upon the values of pragmatism and individualism, and they were clearly aware of the developing political climate of reform and welfare. In other words they could know the

contours of the political realm well enough to guess intuitively what was 'practical' and what was not, though understanding of this practicality probably stopped short at the givenness of 'public opinion' or the 'public conscience'.[162] Their calculations would therefore be "short-sighted", based upon the knowledge, resources and objectives they had available to them as individuals.[163] But if they could not "see" these ideologies for what they were, nor realise their structural significance, they could nonetheless take into account their practical manifestations and consequences, as our analysis has shown. And theoretically this is precisely what we should expect, since ideologies do not have a social existence except through their practical effects, and it is through the maintenance of these practices that their unspoken ideologies are in turn reproduced.

In case an impression has been created that all of these calculations were undertaken with unerring accuracy and realism, we might end this section with some of the errors and miscalculations which occurred. Thus the delicacy of representational issues frequently led Ruggles-Brise into contradictory positions where the appeasement of one audience led to the displeasure of another, and hence we find him simultaneously asserting and denying the 'leniency' of preventive detention, or else arguing that classification must be the prerogative of the judiciary, only to reverse this principle when the judiciary failed to use this prerogative to the executive's satisfaction.[164] Similarly, his suggestion that the preventive detention institution should be termed a "penal colony" was hastily suppressed by the Home Office on the advice of the King's Bench Judges who feared that this nomenclature would "engender misconceptions and prejudices".[165]

Lombroso's early avowal of the criminal man might also be viewed

as miscalculated in these terms, and de Fleury was not alone in lamenting the harm done to criminology's cause by this "exclusive, silly and false notion ... which was revolting to common sense".[166] Indeed Lombroso's subsequent work appeared to recognise this problem and to modify his conceptions accordingly. As he put it in 1911:

> "... nothing is less logical than to try to be too logical: nothing is more imprudent than to try to maintain theories ... if they are going to upset the order of society. ... The sociologist must observe still greater circumspection, for if he puts into operation innovations of an upsetting nature he will simply succeed in demonstrating the uselessness and inefficiency of his science." [167]

Such circumspection was clearly also absent from Ferri's purist assertions of determinism and irresponsibility, and from the first Mental Deficiency Bill in 1912 which came too close to the explicit avowal of eugenics policies. By the following year Home Secretary McKenna had clearly learned his lesson, introducing a redrafted Bill thus:

> "We have also omitted any reference to what might be regarded as the Eugenic idea ..." [168]

The present Chapter has concentrated upon the various means used to overcome resistance, and especially upon the politico-discursive struggles which took place over questions of penal representation. It has tried to show generally that the process of penal (or social) reform entails a crucial struggle in the realm of social imagery and symbolism, and more particularly, to demonstrate how this process shaped both criminological discourse and the development of British penality.

Our two final Chapters will conclude this demonstration by detailing the other forms of struggle which were involved in this transformation, the practical outcomes which they secured, and the strategic effects which these in turn produced.

CHAPTER 7

The Formation and Institutionalisation of Penal-Welfare Strategies

(1) Introduction: The Entry into Official Discourse

The last few Chapters have described the formation of the discursive and technical resources which were brought to bear upon the questions of social and penal change in the 1900s. We have seen how these resources were developed first of all in programmatic form and then subjected to a series of refinements, realignments and compromises in the struggle to overcome resistance and "become practicable". Moreover, our argument has been that it is only by reference to these programmes, resistances and refinements that the precise forms taken by the penal and social reforms of the 1900s can become intelligible. Given that these reforms laid the basis for some of the central strategies of British penality in the twentieth century, it is not too much to argue that our understanding of the present may benefit considerably from an analysis of this past.

The purpose of these final Chapters is to trace in detail how these programmatic elements entered into official practice (or else failed to do so) and how they functioned once they were established there. In other words, they will examine the formation and functioning of what might be called "penal-welfare strategies" and will suggest the general penal and social significance of these forms of regulation.

The first line of success for these programmes in the process of "entering into power" was the Official Report. During the period between 1895 and 1914 there were as many as 40 Reports and Inquiries which dealt directly with questions of penal or social regulation. In virtually every case these Reports drew upon the new stock of

discursive resources, taking over the concepts, techniques and compromises which had so recently been formed. As we shall show, one consequence of this was that despite the great multiplicity of these Reports, and the very diverse range of issues with which they dealt, they nonetheless gave rise to a series of recommendations which displayed a remarkable degree of coherence and uniformity, involving the adoption of similar terms, parallel strategies and complimentary techniques.

For the various programmes, this success at the level of Reports was of crucial importance since it marked the entry of their terms into the circuits of official discourse.[1] Thereafter, their proposals would circulate not as academic ideas but as serious and respectable policy options which were officially 'known' to Government.

It is clearly impractical to quote at length from all 40 of these Reports in order to demonstrate the adoption of programmatic elements and the ways in which these were worked into the fabric of official discourse. On the other hand it is important that this process should be described since these selection and reworking operations were of great consequence for the eventual practical outcomes. Accordingly, we propose to summarise not the whole of the Reports, but only those passages which introduced, or else implicitly relied upon, elements drawn from the new programmes. Alongside these summaries, references will be given to the full Reports and the particular passages cited. The listing which follows is in chronological order which has the advantage of showing the shifting patterns of influence of the four programmes. For instance, it will be clear that although the criminological and the evangelical social work programmes are often fused together, the former becomes more effective in later Reports while the latter's strong influence begins to fade to some extent.

Similarly the rather vague concern with "degeneration" present in the earlier Reports can be seen to give way later to more specific recommendations drawn from the eugenic and social security programmes. No distinction has been made between 'penal' and 'social' issues because, as these summaries confirm, the two were usually intertwined in any particular Report. Consequently the Reports of the Poor Law Commission of 1909 are quoted here at length because they supply the fullest and most explicit statement of the principles and techniques which would support future strategies in the social and the penal realms.

(2) A Summary Analysis of Official Reports

1894: Report of the Departmental Committee on the Identification of Habitual Criminals

- Presents a compromised or two-fold notion of classification, based upon severity (i.e. legal guilt) and corrigibility (i.e. reform potential). (passim)
- Recommends a form of preventive detention on the explicit analogy of "the incurably insane". (p.209ff)

1895: Report of the Scottish Departmental Committee on Habitual Offenders, Vagrants, Beggars, Inebriates and Juvenile Delinquents

- Recommends Labour Settlements for habitual offenders run on reformatory lines. (p.xvii)
- The reformatory elements are to consist of compulsory labour and the visits of "charitable and temperance associations". (p.xix)
- A 'double-track' system of preventive detention is suggested which would combine a punitive and a reformatory

sentence, the first judicial-penal, the second administrative-therapeutic. Despite their practical combination in a single sentence, these two elements are to be "kept distinct" in their public image: "... it is most desirable that Labour Settlements should be kept entirely distinct from prisons and that any association, even of ideas, which should connect them in the public mind ... should be avoided". (p.xxiv)

1895: Report to the Secretary of State for the Home Department on the Proceedings of the Fifth International Penitentiary Congress: by Sir Evelyn Ruggles-Brise

- Sets out a Belgian scheme for the control of vagrancy and begging which "demands special notice" (p.15). The scheme involves a 'Registry' system of centralised information and the following classification-treatment categories:
  (a) Juveniles are sent to reformatories ("Ecoles de bienfaisance")
  (b) Invalids are sent to hospital
  (c) "Sturdy paupers" of good antecedents and willing to work are sent to a Labour Colony ("House of Refuge")
  (d) "Incorrigible Rogues" are subjected to a "repressive discipline" and detained "under sentence of two months at least up to seven years", classified according to character. (p.15)

1895: Report of the Departmental Committee on Prisons (The Gladstone Report)

- Its Warrant of Appointment makes special mention of the questions of "classification", "juveniles", "first offenders",

"habituals" and the "moral and physical condition" of prisoners.

- Establishes a compromise position which allows that "some criminals are irreclaimable, just as some diseases are incurable" but nevertheless "the great majority of prisoners" are curable. (p.8)
- Asserts the separation of social and penal reform: "the improvement of general social conditions is the work of the community. But ... some of its worst and most dangerous products ... can be reclaimed by special and skillful prison treatment". (pp.11-12)
- Accepts that it is the duty of "the State" to reform (p.13) but makes this "concurrent" with the duty of deterrence. (p.18)
- Despite references to the training of staff "by experts in criminal anthropology" (p.37) and the "most essential value" of "medical science and criminal anthropology" (p.8), the vision of reformative treatment amounts to"personal influence" (p.13), "philanthropic agencies" (p.28) and "moral influence" (p.30)
- Classification should be made "according to individual character and physical development". (p.30)
- Combines reformatory and repressive positions in the familiar tactical trade-off by arguing that "... if offenders relapsed into crime [after a reformatory effort] it would be their own deliberate choice in spite of every effort to save them". (p.31)
- Inebriates "should be dealt with as patients rather than as criminals". "Special medical treatment should be

applied to them in Reformatories or "special prisons". (p.32)

- Weakminded prisoners are not "fully responsible" and should be placed "under special observation and treatment". (p.34)
- The question of "degeneration" is raised in an attached Memorandum on Insanity in Prisons where Dr. J. Bridges states "the habitual criminal, I regard as a degenerate offspring of a very degenerate stock. Insanity and crime are simply morbid branches of the same stock". (p.49)

1896: Report of the Departmental Committee on the Education and Moral Instruction of Prisoners in Local and Convict Prisons

- This investigation into reformative methods followed on from The Gladstone Report. As the title indicates, its findings owed little to the new human sciences: "We find that the daily services in chapel, the visits of the chaplain, and a system of putting every prisoner in possession of a Bible, prayer-book and hymn book, together with a book of moral instruction are the direct means [of reform]". (p.12) These direct means are to be supplemented by lectures on "temperance, thrift or self-help". (p.13)

1896: Report on the Operation of Discharged Prisoners Aid Societies by Rev. G. P. Merrick (Prison Chaplain at Holloway)

- Again following on from Gladstone, recommends that the private, voluntary, Aid Societies be subjected to State regulation and rationalization through registration at the Home Office, certification, proper rules, accounts, etc. (passim)

- Recommends that the Societies should aim to produce a knowledge of the "character" and "mode of living" of their charges (p.36) and to this end suggests COS-type methods of co-operation, centralisation, record-keeping and thorough visiting and inspection procedures. (passim)

1897: Special Report of the Commissioners in Lunacy on the Alleged Increase of Insanity

- Acknowledges the alleged increase and the threat that this poses to the Race, as well as its fiscal implications, but points out that this can partly be explained by reference to changes in institutional practices, e.g. more registration, altered admission procedures, more institutions, etc. (passim)

1899: Report of the Prison Commissioners for the Year 1898-99

- Endorses the practice of classification by reference to character and "criminality" but compromises this criminological position by ascribing this function to the judiciary: "this power to classify ... according to their degree of criminality, is one, of course, that can only be exercised by a Court of Law and not by the prison authority". (p.6)

1899: Report of the Scottish Departmental Committee on the Rules for Inebriate Reformatories under the Inebriate Act of 1898

- Despite the medicalisation of the discourses surrounding "inebriacy",and the emphasis of this Report upon "reformatory treatment" and studying "the individuality of each inmate", the vision of treatment is once again "personal influence" and the utilisation of "labour" and

"religious influences ... to raise the moral status of the inmates". (p.ix)

1899: Report to the Secretary of State on the Treatment of Crime in America: by Sir Evelyn Ruggles-Brise

- Condemns the indeterminate sentence because "it violates the fundamental principle that punishment shall be certain and definite: that the sentence of the court shall be the final arbitrament of the case", (p.17) but then advocates indeterminacy for the special case of juveniles.[2]
- Condemns the parole system and the idea that a Warden "can fix with accuracy the psychological moment in a criminal's career when he may be set at liberty" (p.18) despite his advocacy of precisely this technique for juvenile offenders.

1900: Report of the Prison Commissioners for the Year 1899-1900

- Endorses "Indefinite Sentences" and discretionary release on ticket of leave for juveniles. Supervision to be provided by the Church Army or the Salvation Army. (p.18)

1901: Report of the Prison Commissioners for the Year 1900-1901

- Utilises an eclectic criminological argument which merges constitutional-hereditary, environmental and psychological factors, running together "natural perversity" plus "evil milieu" plus "evil example from infancy". (p.13)[3]

1901: Report to the Secretary of State on the Proceedings of the Sixth International Penitentiary Congress: by Sir Evelyn Ruggles-Brise

- Raises the issue of "criminal predestination" (as Ruggles-Brise terms it) and argues that "congenital disease or latent insanity" should be regarded as "contingencies" and not "dogmas" in regard to crime. (p.49)
- The importance of medical science is stressed, but so too is "the Temperance Question" (and it is significant that this traditional term is used, and not the notion of 'alcoholism'). (p.50)
- Endorses the distinction between "responsible" and "irresponsible", citing Professor Thiny's division between those "who are, or who are not, in possession of their entire personality". (p.57)
- Ruggles-Brise proposes a double-track sentence for habituals whereby the judge's penal sentence is "supplemented" by another "indeterminate" sentence, thus combining judicial power and executive discretion. This contradicts not only his earlier principled denial of indeterminacy for adults, but also his earlier estimate of the prison authority's proper scope and expertise (see 1899 Report on The Treatment of Crime in America) since his proposal involves the "advice of the prison authority" to the Secretary of State that "reasonable guarantees exist that the criminal can be discharged without danger to society". (p.59)
- He proposes a Reformatory System for juvenile-adults, arguing there is "scientific" evidence that persons below 21 years of age (25 or 26 in "the poorer classes") "cannot be regarded as fully responsible", "character" being

"closely allied to physical development". (p.92)

1902: Report of the Prison Commissioners for the Year 1901-1902

- Attacks "the promiscuous consignment to the common form of imprisonment" and insists upon the need for "a differentiation of penalty". (p.8)
- Recommends special treatment of young prisoners whose characters "cannot be said to be fully formed before the age of 21". (p.11)
- Recommends the segregation of professional criminals who are currently beyond control ("whose acquisitive instincts have been uncontrolled by the fear and example of punishment"). (p.10)

1903: Report of the Prison Commissioners for the Year 1902-1903

- Endorses the recommendation that "labour colonies should be established on the Belgian model". (p.15)[4]

1904: Report of the Inter-Departmental Committee on Physical Deterioration

- Proposes that the State should intervene to enforce a given standard of physical efficiency and hygiene: "... the State, acting in conjunction with the Local Authorities, [should] take charge of the lives of those who, from whatever cause, are incapable of independent existence up to the standard of decency which it imposes. In the last resort, this might take the form of labour colonies ...". (p.85)
- On "Alcoholism" (not the Temperance Question): "... more

may be done to check the degeneration resulting from "drink" by bringing home to men and women the fatal effects of alcohol on physical efficiency than by expatiating on the moral wickedness of drinking". (p.87)

- Recommends grants "from the National Exchequer in aid of all clubs and cadet corps in which physical or quasi-military training, on an approved scheme, is conducted, subject to public inspection". (p.91)[5]
- Recommends an organised and permanent system of inspection and data collection on the physical health of the population, and an Advisory Council "to advise the Government on ... points concerning public health in respect of which State interference might be expedient". (p.85)

1906: Report to the Secretary of State on the Proceedings of the Seventh International Penitentiary Congress: by Sir Evelyn Ruggles-Brise

- Proposes an institution "half-way ... between the prison and the mad-house" (p.15) for the "large category of individuals, intermediate between the wholly insane and the normal". This notion of the continuum between Normal and Pathological is necessary because although "these abnormal physical states cannot be classified under any known diseases of the mind", these irresponsible individuals are nonetheless "a danger to social security".[6] (p.14)

1906: Report of the Departmental Committee on Vagrancy

- Recommends a scheme of police-run employment offices linked to a system of labour colonies "... to place the

vagrant more under the control of the police, to help the bona fide wayfarer, and to provide a means of detaining the habitual vagrant under reformatory influences". (p.1)

- The vagrant is to "be treated not as a criminal, but as a person requiring detention on account of his mode of life". (p.59)
- Following the model of the Inebriate Reformatories, a more coercive State-run institution will attach itself to the network of privately run Colonies and Institutions. (p.75)
- Indiscriminate alms-giving is formally specified as the root cause of vagrancy. (p.121)
- Voluntary and local initiatives (regulated by the State) are recommended because "... the best chance of any reformatory effect would be from that personal supervision and care which can only be expected from those who are actuated by religious and charitable motives. ..." (p.75)

1908: Report of the Prison Commissioners for the Year 1907-1908

- Asserts the principle of corrigibility which underlines the Borstal scheme: "... up to a certain age, every criminal who is not mentally defective is potentially a good citizen". (p.13)
- Presenting statistics as to the differential height and weight of juvenile-adult prisoners against the general population, the notion of urban degeneration is used to support the Borstal system. This is described as "removing the youth from ... an evil environment, and placing him under conditions favourable to his healthy growth". (p.36)

- Recommends a system of "Continuation Schools" to regulate the entry of school leavers into the labour market and divert them "into the paths of permanent employment, skilled or unskilled". (pp.14-15)

1908: Report of the Departmental Committee on the Operation of the Law Relating to Inebriates and to their Detention in Reformatories and Retreats

- Adopts a compromise position between determinism and free-will whereby, in the name of intervention the individual is made responsible for his own character formation. While admitting the effect of congenital factors (inherited cravings, congenital qualities of self-control, etc.) it argues "... that desire for drink may be diminished by abstinence, and self-control, like any other faculty can be strengthened by exercise. It is erroneous and disastrous to inculcate the doctrine that inebriety, once established, is to be accepted with fatalistic resignation".
- Taking advantage of the fact that "the legislature does not now hesitate to enforce restrictions on the liberty of persons whose unchecked vagaries are clearly contrary to the public weal", the Report proposes compulsory powers of detention even over "inebriates ... who have committed no public offence".

1908: Report of the Royal Commission on the Care and Control of the Feeble-Minded

- Recommends a fundamental extension of State control over all classes of mentally defective persons as a means of

resolving the problems of racial deterioration and the existence of groups "over whom no sufficient control is exercised". (p.187)

- A movement of this category of person from the judicial to the administrative realm is recommended: "... the mental condition of these persons, and neither their poverty nor their crime, is the real ground" of intervention. (p.191) Accordingly, any mentally-defective offender should be dealt with "as a patient" under the Lunacy Acts (p.333) and detention ("protection")"should be continued as long as is necessary". (p.191)
- The fertility of the Unfit (more discreetly termed "the Natality of Mentally Defective Persons) is reported as higher than average, which, despite a high death rate, "allows a considerable survival of mentally-defective persons". (p.386)
- Insists upon the need for the systematic identification and notification of the whole population of defectives: "... it is necessary to ascertain who they are, and to bring them into relation with the local authority". (pp.191-2)

1909: Report of the Prison Commissioners for the Year 1908-1909

- Endorsing Part I of the 1908 Prevention of Crime Act, the Report argues that the 16 to 21 year old category can equally be justified in legal and psychological terms. It quotes at length from both "scientific" criminological authority and an anthropometric study conducted at Pentonville in 1898. (pp.14-15)

1909: Report of the Departmental Committee on Probation

- Recommends the investigation of cases by means of "Preliminary Enquiries" to ascertain character, mode of life, home circumstances, etc., however, legal procedures are respected to the extent that this information should be made available only after a finding of guilt. (paragraph 36)
- Argues that "probation should be kept distinct from charitable relief" (i.e. from distributing funds, food, clothes, etc.) (paragraph 42) although social work techniques of visiting case-records and reformatory personal influence are simultaneously endorsed. (passim)

1909: Report of the Royal Commission on the Poor Law and Relief of Distress: Majority Report

- Classification to take place between and within institutions (ix.75) according to age, sex, "physical condition and moral character" (iv.354) and "every effort should be made ... to dissociate the respectable unemployed from the habitual in and out". (iv.634)
- Recommends Labour Exchanges to "assist the mobility of labour", collect "accurate information as to unemployment" (vi.487) and classificatory knowledge of individual cases. (vi.620)
- Recommends Labour Colonies for those in need of "restoration to physical efficiency" where treatment should be "as far as possible curative and restorative" (Recommendation 67) and Detention Colonies for the "irreclaimable" who "require detention and discipline". (vi.628)

- Home Assistance (i.e. Outrelief) to be given only "after thorough inquiry" and all persons assisted "should be subject to supervision". (Recommendations 72 and 75) "Such supervision should include in its purview the conditions, moral and sanitary, under which the recipient is living". (ix.79)
- "The case-paper system should be everywhere adopted" in regard to inquiry and supervision. (Recommendation 73)
- All treatment should be individualised so as to be "appropriate for each case and yet encourage general thrift and independence". (vi.615)
- Recommends "systematic co-operation between the Public Assistance Authorities and recognised Voluntary Aid Societies", (vi.301) and a system of public subvention for private schemes of unemployment insurance. (vi.604)

1909: Report of the Royal Commission on the Poor Law and Relief of Distress: Minority Report

Part I The Non-Able Bodied

- Endorses the eugenic argument that the Nation is confronted with a "grave three-fold problem as to Birth and Infancy. ... The prevention of the continued procreation of the feeble-minded; ... the rescue of girl-mothers from a life of sexual immorality; ... the reduction of infantile mortality in respectable but necessitous families". (p.799)
- Defines the "proper sphere" of voluntary philanthropy thus: the "service of visitation" is encouraged, but on condition that no distribution of money, food or clothing is involved, since the private agency cannot know the

resources of the family and cannot enforce proper behavioural conditions for the receipt of such aid. (p.1022)

- Voluntary endeavour is to be "definitely organised, under skilled direction, in association with ... the public administration" and the volunteer must "undergo technical training". (p.1022)
- Trained volunteers should "search out those who need public assistance [and] keep them constantly under observation before and after the treatment". (p.1022)
- Public relief is to be made available without disenfranchisement, but upon precise conditions as to subsequent behaviour. Refusal to accept these terms is to result not in refusal of relief but in "compulsory removal". (pp.1020 and 1031)

Part II The Destitution of the Able Bodied

- Adopts a macro-political perspective, arguing that the Workhouse Test rids the local Guardians of a nuisance, but fails to rid society of it. "Whilst an able-bodied man remains a loafer and a waster, it is urgently desirable that he should be in hand and under observation, rather than lost in a crowd". (p.1076) The blind refusal to receive (which is also a refusal to regulate, observe, and to control) "may produce a saving on the local rate, but not on the national balance sheet". (p.1076)
- Knowledge and regulation is demanded, even of those who remain outside the Workhouse, because without such knowledge sectors of the population remain beyond control: "the Able-bodied who shun the Test Workhouse are to be face to

face with the alternative of either working or starving. As a matter of fact, our social organisation is still far too loose to narrow their choice to any such extent. They can beg, they can steal, they can sponge ... they can combine the predatory life with the parasitic. ..." (p.1076)

- Rejects the principles of less-eligibility and minimal contact implicit in Poor Law practice and insists that "what is required is to take hold of a larger section of that man's life, in order to find out the cause and character of his distress, and to bring him under influences which may set him on his feet". (p.1089)
- Produces an ambivalent position on questions of character. The Report separates the question of character from that of the causes of unemployment, but also argues that "the character of [the unemployed] class is comparatively weak ... in intelligence, training, physique or morale" and insists that the question of character is central to the treatment of the unemployed. (pp.1172-3)
- Concludes that "distress from want of employment ... is a constant feature of industry and commerce as at present administered" (p.1177) and designs a new mode of administration and regulation of the labour market by "The National Government" (p.1101). This involves "regulation of the national demand for labour" by a Ministry of Labour (p.1195); "Absorption of surplus labour" by reducing the permitted working of children and mothers of young children ("it is suicidal for the nation to drive the mother to earn money in industry", p.1194) and the reduction of hours of work in Rail and Transport industries. (p.1193)

- Recommends the establishment of a national network of Labour Exchanges to mobilise the labour market, decausualise industry by 'dovetailing' short-time engagements, and to suppress vagrancy. Registration "should be legally enforced on all men who fail to fulfil any of their social obligations, or are found homeless, or requiring Public Assistance for themselves or their families". (p.1217) Refusal of the offer of work in such cases will be "occasions for instant and invariable commitment ... to the reformatory Detention Centres which must form an integral part of the system. ..." (p.1189)
- Recommends that the government should "deliberately alter ... the social environment so as to render impossible (or at least more difficult) the present prolific life below the National Minimum, or the continuance at large of persons of either sex who are unable or unwilling to come up to the Minimum Standard of Life".
- Recommends "Medical and other inspection of all infants, school children, sick or mentally defective persons, and all who are 'unemployed' or otherwise need public help so as to discover the unfit, as well as to remedy their defects".
- Recommends "enforcement of the responsibilities of parenthood at a high standard, and hence discouragement of marriage among those unable or unwilling to fulfil them".[7]

1911: Report of the Prison Commissioners for the Year 1910-1911

- Advises a shift of the power to classify prisoners into divisions (under the 1898 Act) from the judiciary to the

prison administration. This reversal of the principled position stated in the 1899 Report is justified by the greater knowledge of the prisoner's character and antecedents available to the executive. (p.23)

1911: Report to the Secretary of State on the Proceedings of the Eighth International Penitentiary Congress: by Sir Evelyn Ruggles-Brise

- Discusses "the application of scientific experiment to criminal problems" as conducted in America, including "the treatment by sterilization of confirmed criminals and 'defectives'". (p.2)
- Insists upon "the individualisation of punishment" (p.74) and the prisoner's "reversionary rights of humanity". (p.73)
- Describes the "scientific investigation" conducted by Goring as refuting the notion of the irreclaimable criminal type and strengthening the "faith and hope" in reformative treatment. (p.74)

1913: Report of the Departmental Committee on Reformatory and Industrial Schools

- Suggests a link-up between the Schools and the Poor Law authorities: "the Local Government Board are considering the question of improving the after-care of poor-law children and it may be possible in some cases to arrange for the same agents to supervise both classes of children. It might also be possible ... for employments to be found and after-care to be undertaken ... by the Juvenile Employment Committees organised ... in connection with the Labour Exchanges". (p.57)
- Emigration is recommended "as one of the best means of

disposal open to the schools".[8]

- Physical training is also much emphasised in view of its reformative effects "on the mind and the character". (p.38)

1913: Report of the Prison Commissioners for the Year 1912-1913

- Argues for an extension of Borstal principles to include persons between 21 and 25 years old. This involves the extension of semi-determinate sentencing and reformatory training, despite earlier argument that 21 years was the proper legal and psychological limit of this special case (see, e.g., 1908-09 Report).

1914: Report of the Prison Commissioners for the Year 1913-1914

- Endorses Goring's criminological findings on the extent to which the "criminal diathesis" (disposition or character) is the effect of hereditary and constitutional defects, while refusing the implications of "predestination". (p.24)
- Recommends the "segregation and supervision of the obviously unfit". (p.24)
- Calls for "fuller information as to the mental states of prisoners" brought before the courts. (p.22)
- While it is "within the power of the State" to "control the unfit", surveillance must be left to the "individual worker" who is to "enter into the lives and homes of those who, in the absence of uplifting, and restraining and inspiring influences, would, in obedience to some constitutional defect of mind or of body, inevitably follow the line of least resistance". (p.24)

These summaries have been limited to showing only the points of entry of programmatic elements into official discourse. They have avoided repetition when the same element appears almost everywhere simultaneously (as do the calls for "classification", "reform", "investigation", etc.) or else is gradually circulated from one Report to many subsequent ones (as with "mode of life" arguments, Statist and interventionist positions, and so on). Nonetheless it is already apparent that these official documents take over not only elements of the original programmes, but also the discursive tactics and compromise formations subsequently developed, often forging new compromises and realignments in the process.[9]

As well as endorsing specific proposals on indeterminate sentencing, Labour Exchanges, segregation of the unfit, and so on, the Reports introduced virtually all of the fundamental axioms of the programmes and gave them an official authorisation. Thus we witness a definite and profound movement towards the desire for knowledge of both populations and individuals, as well as the correlative construction of apparatuses of regulation and normalisation. In this movement the place of the expert, of 'technique', and of 'science', are each secured, as is the more general commitment to the interventionist State and an extensive policy of social engineering. 'Investigation', 'individualisation', 'classification' and 'reform' are the terms which manifest this current in the penal realm. Moreover the penality of these Reports diversifies not only its sanctions but also its accredited knowledges, as the extra-legal discourses of medicine, criminology, philanthropy and psychiatry are given a definite place alongside that of the law.

We can also see the points at which the limitations and problems of one programme are minimised in their 'take-up' by being supplemented

by the elements of another. Thus, for example, criminology's failure at the level of technique is compensated by augmenting its proposals with the devices of social work - the visiting method, case records and "personal influence" - in an alignment which can achieve wider support as well as greater effect. Indeed this disregard for theoretical integrity leads to a number of pragmatic formations of an eclectic nature wherein separate programmes and discourses are intertwined within a single set of recommendations, for instance, the combination of social security and eugenics in The Minority Report, or else the admixture of 'medical' and 'moral' discourse in regard to Inebriacy.[10]

The movement from a judicial to an administrative register can be clearly traced in these Reports, as can the correlative shift from the penal to the 'therapeutic' idiom. Notions of determinism are vehemently denied only to be reintroduced via marginal categories, and there is a perceptible slide along the newly adopted continuum linking the Normal and the Pathological. We can even trace the reappearance of many of the familiar discursive manoeuvres and tactics as they emerge anew within these Reports. Thus 'special cases' are defined only to be extended, and a number of strategic metaphors 'spontaneously' occur to give arguments a particular direction or else to lend to a certain measure the legitimacy of a happier analogue. Likewise we find that the Reports regularly revolve around those particular categories - the juvenile, the habitual, the defective - which, as we saw earlier, were the strategic points of entry, carefully selected by criminologists or eugenists to achieve maximum effect.

Finally, we see the Reports construct compromise formations of their own, thereby balancing the opposing forces which are represented in their intended audience, the evidence they receive, or even in the membership of the Reporting body itself. The Poor Law Majority Report's

compromise between COS-type objectives and the need for thorough State interventionism is a well known case of this type, but other compromises are equally significant. Thus a delicate balance was struck between penal expertise and judicial knowledge - the power of the judge and that of the executive - by the various Prison Commission proposals for classification procedures or 'double-track' sentences. Similarly it is noticeable that when eugenic proposals are considered, it is always segregation rather than sterilization that is the preferred option - an option which allows the 'purification of the Race' to be displaced by arguments about the care and protection of individuals.[11] And although the role of the State is everywhere extended, this is not a matter of private initiative being 'replaced' by public engagement. On the contrary, virtually every Report presents its position as an alliance between the private and the public, the State and the Volunteer, in which the State's engagement will supplement, co-ordinate and empower voluntary action rather than emasculate it.

This then, was the first line of success achieved by the various programmes and at the same time the first official phase in a process of strategy-formation. The relative coherence and shared direction of these Reports, as well as their frequent use of parallel or complementary techniques and discourses, were eventually to contribute to the patterning and shared logics of official practices which we have described as "strategies". Since we continue to insist upon the fragmentary and 'myopic' nature of this process, it is worth pausing to consider how this relative coherence emerged.

Since these Reports and Inquiries were disparately constituted, with diverse memberships focusing upon different issues, we cannot point to a shared organisational basis which could have controlled and formulated proposals, except, of course, for the broad boundaries

established by their common relationship to the political establishment. Rather this coherence must be seen as the result of two kinds of process. Firstly, the Reports could produce similar and parallel outcomes for the simple reason that a kind of precedent-based domino-effect occurred whereby particular Reports would refer to the proposals of earlier or simultaneous documents and produce recommendations which were related to them by deliberate imitation, co-ordination or complimentarity. This process of mutual recognition and emulation can be clearly traced in the texts of these Reports which are often positively incestuous in their relations inter se.[12] But if this first point can explain the fact of coherence, it cannot account for the particular form of this coherence, based around the axioms of the four major programmes of social reform. We must explain this effect in terms of the propaganda work of these programmes, the evidence they proferred to the Committees, and their success in shaping the terms in which the social and penal problems were addressed. However it must be emphasised that this was not purely a matter of successful argument and persuasion. The Reports were not simply 'persuaded' by discursive manoeuvre any more than they were simply 'convinced' by scientific reason. Rather, the political developments and disruptions described in Chapter Two channelled official policy in certain definite directions, exerting pressure around specific issues and provoking a particular kind of political response. This 'response' encompassed the programmes themselves (or at least their eagerness to address the social question) and the initiatives which set up the various Enquiries, Commissions and Departmental Reports. Thus the Reports were constituted by the same problems which mobilised the reform programmes. They existed within a politico-discursive field which these programmes had already elaborated and transformed, so by

the time they came to construct their proposals, a series of discursive developments and manoeuvres had provided them with a number of refined and ideologically-attractive resources which they willingly deployed.

(3) The processes of strategy formation

To sum up our analysis so far, we have seen a social crisis, discursively interpreted in accordance with certain political positions, programmes which elaborate a series of paths of resolution, a politico-discursive struggle in which these programmes are compromised, resisted and transformed, and then another process of political filtering when these programmes are translated selectively into the realm of official discourse via inquiries, reports and recommendations.

The next stage of this process is much more in keeping with conventional notions of political calculation and strategy. Now recognised as terms within the field of official discourse, the concepts, techniques and recommendations of the programmes are laid hold of by governmental decisions. They become the basis for legislation, or else, lower down the hierarchy, for administrative decisions and procedures within the Prison Commission, the Board of Trade, the Home Office and so on. Once again, this next stage involves a process of calculation, selection and struggle within the Parliamentary process and also outside of it, "in the country". Thus certain measures were selected and proposed but thereafter withdrawn because of Parliamentary or popular opposition (e.g. the withdrawal of Bills involving explicitly eugenic terms, labour colonies or life-long preventive detention), and throughout this process the government is engaged in representing the significance of these issues, or else negotiating, bargaining and winning support for its measures and enactments. Moreover these

processes take place within the limits of governmental calculation, i.e. within a situation where contradiction as well as co-ordination exists between Ministers and Departments, which is not long-term but piece-meal and reactive, limited by the constraints of Parliamentary time, 'political plausibility' and popular legitimacy.[13]

If out of all of this we insist that a strategy developed - a strategy which we will soon proceed to dissect and explicate - then it will be appreciated that this notion of strategy refers to a pattern or logic inscribed within a network of apparatuses which operate in loose co-ordination around a series of common or complementary objectives. It will also be appreciated that such strategies are not the results of a single battle-plan, drawn up in advance, but are rather the outcomes of a complex and fragmented process of struggle within which the calculations of individuals and agencies play a crucial, but by no means controlling, part. Such strategies are always "at a distance" from the fragmented points of calculation and programming which promote them. They presuppose multiple, but myopic, knowledges, not a single omniscience. They are calculated, but never directly or comprehensively. They are the outcome of struggles, but struggles which are to some extent directed, delimited and deliberate in their political direction. Strategy-formation is thus a matter of fragmentary lines of development crossing and intersecting, or else being lost as they go off on 'implausible' tangents. These lines are then transformed and finally, officially inscribed, into a strategic pattern in the operational discourses and practices of institutions.

To return to our exposition, the elements of the new penal and social strategies were in fact put into place by a number of different processes, which we can list as follows:

(a) political struggles in the country for social reform, and, a

more limited pressure for penal change which emerged as a corollary of social reform and from the demands of criminologists, prison administrators and penal reform groups.

(b) negotiations between government agencies and various private or voluntary bodies (e.g. the prisoners' aid societies, the Friendly Societies, Charitable and Social Work agencies, etc.).

(c) administrative initiatives which introduced certain measures or appointed certain individuals to this end.

(d) parliamentary debate and legislation.

The next few sections will trace these processes in some detail:

(a) Political Struggles

In Chapters Two and Five we have already outlined the main forces engaged in the political struggles which contributed to the development of social reform legislation, and there is no need to repeat that description here. However, it is worth noting that the major direct pressure for these reforms emanated not from the lower classes, nor their "representatives" in the labour movement, but rather from within the ranks of the dominant political parties and the intellectuals on their fringes.[14] As the Radical writer L. A. Atherley-Jones pointed out as early as 1893:

> "... the present movement for social reform springs from above rather than below. The cry for an eight hours bill, for further factory legislation, for improvement of sanitation, for the increase of allotments and small holdings, for the readjustment of the incidence of taxation, for old age pensions, is less the spontaneous demand of the working classes than the tactical inducement of the political strategist." [15]

By the time of the 1906 Liberal landslide, considerations of national efficiency, averting the socialist threat, regulating the labour market and of securing the allegiance of the 'respectable worker', had

combined with intra-party interests to ensure the success of these social reform arguments.[16] And as Bentley Gilbert points out, the traditional terms of political action had been so thoroughly undermined by the time of the 1906 School Meals Act that:

> "... Party contention over the principle of social reform practically vanished. In politics, nineteenth century laissey-faire orthodoxy fell without a fight. Of the great measures [such as] old age pensions, unemployment insurance and labour exchanges, or national health insurance - none was opposed by the Unionists on the grounds that the proposals constituted an invasion of individual responsibility. ..." [17]

The success of social reform arguments, most notably those of the social security programme which Gilbert mentions, had a spin-off effect in the area of penal reform. As well as creating a 'climate of reform' in which new techniques, expertise and social provision had a place, these changes overcame the ideological, prohibitions upon State interventionism which had previously fixed the proper limits of government in penal affairs. The willingness of a Liberal Parliament to be seen to introduce a whole series of penal and quasi-penal measures which clearly flouted the traditions of liberalism can thus be partly explained in these terms.[18]

Before leaving this point about the very extensive 'State interventionism' which can be seen in measures such as Borstal, preventive detention, the Mental Deficiency Act, and even in the new probation and prison practices, it should be pointed out that these were not the terms in which such measures were discussed. Despite the isolated attempts of M.P.s such as Wedgewood, Rawlinson and Belloc[19] to point up the political significance of these innovations, the discussions in Parliament and the Press circumvented such issues by reference to the 'moral duty' of a charitable State to extend its 'care' and 'protection' to those in need of 'rescue'.[20] It is at this

point that we see the full significance of the mediation of the criminology programme by the traditions of evangelical penal reform. For despite its tendency to de-politicise its own categories and techniques, criminology was quite explicit about its Statism, as the social defence arguments of Ferri or Garafalo amply demonstrate. It was not the least of its advantages that the 'evangelised' version of criminology that was imported into official discourse dissolved these political terms into questions of care and benevolence. Thus, viewed through the prism of evangelical discourse, the new penality appeared to reconstitute sanctioning as a charitable act of rescue rather than an authoritative form of coercion. In this refracted light, the argument for placing limits upon State intervention was not so much a political safeguard as a failure of moral nerve.

(b) The merger of public and private agencies

It was noted earlier (p.294) that most of the Reports of this period recommended that an alliance should be formed between public and private agencies in the social and penal realms.[21] The actual process of forging this alliance was frequently a matter of delicate and difficult negotiation - as Bentley Gilbert has already shown in his account of the development of National Insurance[22] - and the precise details of these negotiations may no longer appear particularly relevant. However if examined closely, the terms and arguments used in this process can be very illuminating, frequently revealing just what was at stake in these negotiations, and by implication, the character of the alliance that was eventually formed. Although such negotiations also took place in regard to Friendly Societies, Industrial Insurance Companies, relieving charities, and others, our discussion will focus upon the formation of a merger between the

penal authorities and the various voluntary agencies which services the courts and prisons.

We have already touched on the reasons why such a merger was desired, and why this was preferred to the annexation of the functions of these voluntary agencies, but it is worthwhile here to go into this reasoning in more depth. The desire to enter the traditionally 'private' field of reformation and after-care reflected a changed perception of the significance and status of such an endeavour. By the turn of the century this had become "a subject of State concern and interest",[23] which was "too difficult and too costly to be left entirely to voluntary societies".[24] As the Prison Commissioners stated in 1910, "a system which maintains a complete divorce between philanthropic service and authoritative State control must be regarded as imperfect".[25] Given this new "concern", the extension of public control would have a number of advantages. As first Gladstone and then Merrick had pointed out in their Reports, the entry of public authority into this field would render it more uniform, more regular and more efficient than the rather diverse and uneven pattern established by local and private initiatives. At the same time it would extend the range and efficiency of the penal authorities, by harnessing these voluntary efforts to their own ends, and providing them with "useful adjuncts"[26] in the way of existing resources, institutions and personnel, at a relatively low cost. This "harnessing" would allow the philanthropic logic of the aid and missionary societies - which helped only 'deserving' or 'worthy' prisoners[27] - to be redirected towards a logic of social control, extending to all prisoners and to the offenders judicially classified as 'suitable' for probation. It would also ensure that "a knowledge of a man's character and mode of living"[28] would consistently be made available to the courts, and

would provide a viable alternative to imprisonment for those whose characters justified the risk of a non-custodial sentence. As for after-care - which was to become "a kind of after-prison probation"[29] - official direction and control would ensure a more efficient system of surveillance, resulting either in the successful channelling of the prisoner back into useful work, or else his peremptory return to captivity. Finally, the alliance with the voluntary sector would have the definite advantage of refining the mechanisms of normalisation at the point of contact with the offender. The experience of police supervision of released convicts had already proved to be inefficient in its severity and stigma, and so the possibility of articulating the subtle personal influence of the charitable volunteer with the direction of the public power appeared very attractive. As Churchill put it:

> "... there is a need for that personal touch which even the best official work cannot wholly achieve." [30]

and a later Report confirmed that:

> "the P.O. has hitherto owed much of his success to the relationship he has been able to establish with the probationer, who looks upon him as a friend, not as an official. To turn P.O.s into a new class of Civil Servant would, we believe, tend to destroy this valuable influence." (Departmental Committee on Probation Officers (1922: 7).)

However if this merger appeared advantageous to the official authorities, the first response of the voluntary agencies was distinctly unwelcoming. When the Rev. Merrick conveyed to the Aid Societies the proposals of The Gladstone Report as to their re-organisation and subordination to the official Visiting Committees, he was told that this was simply "not acceptable" to any of the societies concerned. Similarly the proposal that they should engage in a more thoroughgoing form of supervision of offenders was refused by at least four societies who replied that "as a matter of principle

any kind of espionage is in itself objectionable".[31] As to the more general recommendation that they should be regulated (and financed) by public authorities, the majority of societies replied that they did not like "the idea of interference on the part of the higher authorities" which would "do away with the sense of independence. The D.P.A. Society is not an official body, it is outside the jurisdiction of the Home Office and cannot be held accountable to it". Indeed they were able to declare - without the irony that later events would lend to their remarks - that they objected to "being too much under official supervision".[32]

Against this initial resistance, the authorities proposed a number of arguments and inducements. The first of these was the standard inducement of financial assistance which was offered in a number of forms. Thus increased subventions were offered to Local Aid Societies, and the Societies which dealt with convicts were offered a scheme whereby the prisoner's gratuity was paid not directly to the man, as before, but instead to the Aid Society for it to dispense according to its own conditions. But of course this financial provision also carried a cost, it being:

> "the duty of Government to satisfy itself in all cases where there is a grant ... that the grant is expended in a proper and effectual way on the object for which it is designed." [33]

It was argued that the improved organisation and co-ordination which public direction would bring would lead to the collating of information, knowledge and experience, and in turn to improved methods and a more effective system of aid. Moreover the voluntary societies would enjoy an improved status which would ensure automatic recognition by the courts and prisons, special rights of access to prisoners, and priority over other 'unofficial' agencies.[34] The crucial argument here though,

was one which concerned itself not with finance, organisation or status, but with more basic questions of 'power'. It was recognised by both sides that the major problem faced by the voluntary bodies in their work was that they lacked any real power or sanction to enforce conditions upon their 'clients'. As one Police Court missioner put it:

> "If they cared to resent your calling to see them they could. One had no power; it was only a moral influence." [35]

As for the Aid Societies themselves:

> "It is obvious that the power of the Societies to influence the prisoner for his good has stood upon a very weak foundation, and any success which they have achieved in humane endeavour has been due to personal service and enthusiasm unsupported by extraneous power." [36]

The inducement that was offered, and quite soon accepted, amounted to the power of a legal sanction, which was in various ways extended to these agencies in return for their co-operation and alliance. For the missionary agencies, this was to be achieved via the statutory provisions of the 1907 Probation Act, which empowered the probation officer through the sanction of recall for breach of conditions. The offender henceforth knew "that the hand of the law is still hanging over him" and the reformatory power was correspondingly increased. Indeed this power was further increased after a 1909 Report had endorsed the sentiments of a Mr. Way, probation officer, who declared:

> "What an excellent incentive it would be to the keeping of the pledge if the friend of the case at the court had a little official power at his back." [37]

The Criminal Justice Administration Act of 1914 provided this "incentive" by allowing temperance (as well as residence) to become enforceable conditions of a probation order.

For the Aid Societies dealing with convicts, a different mechanism

was employed. Their power was to derive from a suspension of the convict's duty to report to the police, which would continue so long as the Society's conditions of licence were observed. On breach of these conditions, the suspension would be lifted and the convict recalled to prison for breach of his "ticket-of-leave" police licence.[38] The consequences of this proposal were clearly spelt out by the Home Secretary at the Conference arranged between himself and representatives of the Aid Associations on July 19th, 1910, to propose the setting up of a Central Agency:

> "Your authority for all purposes will be greatly strengthened under this scheme. ... You will take over the whole of the man's affairs. You will have the liberty of the man in your hands under the Central Agency. It will not be just as you are now, that you only have the leverage of your personal influence and your spiritual administration, because besides that there is the monetary grant which you have the administering of, and also the power of saying whether they have to go under the police." [39]

Sir Evelyn Ruggles-Brise added later that "your spheres will be enormously increased",[40] but he did not forget to mention the trade-off price for this advantage. The minutes of the Conference report him as stating:

> "they were taking upon themselves a great responsibility - relieving convicts from the necessity of reporting to the police ... that was a State concern." [41]

and of course it was a 'concern' which would now justify the involvement of the State in this previously 'private' field of social action.

It should be added that great care was taken on the part of the authorities not to appear heavy handed or overbearing in their approaches. Throughout the period from the proposals of Gladstone to the final completion of this merger, the Prison Commissioners continually denied any "desire to hamper or interfere"[42] with the

societies, avoiding any hint of coercion and talking instead of a "close and friendly co-operation".[43] However this delicacy should be understood in the context of a situation wherein the agencies of the State were ultimately in complete control. After all, as we saw in Chapter Four, philanthropy in the penal realm was always in the end dependent upon the State for its authorisation and access.

The successful outcome of these negotiations can be seen from the fact that the Central Association for the Aid of Discharged Convicts was set up in 1911, and a Central Committee to organise and co-ordinate the Aid Societies of Local Prisons established in 1913.[44] Similarly, most of voluntary societies, which by 1907 provided missionaries to the police courts around the country, were happy to accept official recognition after the Probation Act of that year.[45] The co-operation of the Borstal Association required no such bargaining as it was set up de novo by Ruggles-Brise following the 1908 Act, and its powers of licence and recall were of a direct statutory kind, as were those designed for released prisoners who had served a sentence of preventive detention.[46] The Daily Express of 13th February, 1911, welcomed the new schemes with the headline "New Plan of Friendship Backed by Force", which perhaps sums up the alliance as accurately, if not so discreetly, as the formulation of Ruggles-Brise:

> "... this Central body should be supported by a contribution from the State and clothed with the necessary authority. By this means earnest personal effort would not in the last resort be unsupported by power, nor would the supervision which the law requires be forced to operate independently of the agencies of moral and religious endeavour." [47]

(c) Administrative initiatives

The third means by which the elements of the new strategy were put in place was the administrative fiat. Given the considerable

discretionary powers of the Prison Commission (especially after the 1898 Act) and even of individual prison governors, it often proved possible to implement new measures or changes in the regime without the inconvenience of obtaining direct Parliamentary approval. In such a situation, the appointment of high-ranking officials was in itself a policy measure, as can be seen from the letter of appointment received by Ruggles-Brise from Home Secretary Asquith in 1895:

> "I propose if it is agreeable to you, to appoint you to the office of Chairman of the Prison Commissioners.
>
> I am, as you are aware, very anxious that, as far as is practicable, the recommendations of the recent [Gladstone] Committee should be carried into effect, and I believe that you have the disposition, as I know that you have the ability, to bring about this object." [48]

Subsequently Ruggles-Brise was to use his administrative powers to undertake a number of important initiatives, including an experimental regime at Borstal prison (1902) and the later introduction of the Modified Borstal in 1906. These initiatives were of course limited, since they could not impose an undeterminate sentence without statutory power, however the fait accomplis "success" of these experiments did much to ease the passage of Part I of the 1908 Prevention of Crime Act when it was eventually introduced.[49] The same device of the administrative initiative was deployed to extend the special Borstal treatment to offenders of up to 25 years of age at Lancaster Prison from 1909 onwards, and was used in the Prison Commissioners Report for 1912-13 to argue for legislation along these lines.[50]

The space for administrative action of this kind was considerably extended by Section 2 of the 1898 Prison Act, which allowed the Secretary of State power to make rules for the government of local and convict prisons, thereby effectively delegating the power to legislate from Parliament to the executive.[51]

(d) Parliamentary enactments

The fourth and most important process whereby the new policy elements were finally framed and put into place was that of Parliamentary legislation and the executive action which followed on from it. Together with the social legislation for which they are best remembered, the Liberal Governments of 1906 to 1914 rapidly enacted a series of major penal measures which completed the process of transformation tentatively begun by earlier Conservative administrations.

The Parliamentary passage of the various social reforms has been described in detail in the work of Gilbert, Harris and others and it is not proposed to repeat it here. As for the penal legislation, the pages of Hansard and the recollections of the Ministers and officials concerned are not particularly illuminating. Despite the major importance of these statutes, there was little serious debate or discussion proceeding their enactment. All of the measures concerned were 'uncontentious' in Party terms and virtually unopposed on the floor of either House. Apart from the isolated opposition of a few M.P.s to the massive detention powers provided by the Mental Deficiency and preventive detention measures, the only notable feature of these debates was the uncritical manner in which many of the metaphors and legitimations of criminological argument were casually adopted.[52]

Given the double process of 'de-politicisation' which occurred, first within the various programmes and then again upon their compromised reception into official discourse, this absence of political debate should come as no surprise. Indeed it is this displacement of penal and social measures away from the site(s) of their political significance that necessitates the kind of analysis attempted in this dissertation. Nonetheless if we examine not the just declarations of M.P.s but also the statutory documents which they enacted, we can begin

to recover some of this significance for analysis.

Appendices numbers 1 and 2 list the relevant penal and social measures which were enacted between 1895 and 1914 and which, taken together, constituted the new penal and social configurations of the early twentieth century. These should be referred to in order to gain an overall image of the extent of the transformations undertaken during this period. However the remainder of this Chapter will scrutinise several of the major statutes in more detail, examining their terms and provisions in the light of all that has gone before.

If, following the balance of this thesis, and the spaces of existing historiography, we concentrate upon the 'penal' rather than the 'social', then the first important measure to be passed was the Prison Act of 1898. We have already discussed the importance of section 2 of this Act in shifting the power to make prison rules from Parliament to the executive, and in fact the remainder of its provisions operated to introduce various changes to the prison regime which could not be achieved by administrative means. Its introduction of remission, classification and limitations on the use of corporal punishment in prisons should be viewed, along with the New Prison Rules declaring the abolition of unproductive labour, modification of the silence rule and the separation of juveniles,[53] as the early implementation of the Gladstone Report's recommendations. Indeed it is worth noting that it was only the recommendations addressing the causes of popular scandal which were immediately implemented. The less visible features of the penal crisis were left until almost a decade later when a more fundamental restructuring took place in penal and social affairs.[54]

If we examine the provisions on prison classification introduced by this Act, we discover both a tentative step towards individualisation

and a typically eclectic compromise formation which merges together a number of disparate logics and connotations. The scheme of three divisions introduced by section 6 appears at first sight to be a definite move towards the individualisation of treatment on the basis of the offender and his 'antecedents'. However, in contrast to the demands of the criminological programme, this individualising classification is to be the prerogative of the Court and not the prison authority:

> "The principle here given expression is very far-reaching, and, as far as we are aware, is in advance of the penal systems in force on the Continent of Europe. By it is destroyed, in emphatic language, the theory that had prevailed hitherto ... that the duty of classification is a matter for prison officials." [55]

Moreover, if we read closely the provisions of the Act, or else the Home Office Circular that followed it, we find that the classification criteria are certainly to include the offender's 'antecedents', 'character' and 'natural disposition'; but they also involve reference to the "nature of the offence" and any "exceptional temptation or special provocation".[56] In other words, the court's classificatory power is to be exercised - if at all[57] - upon a composite logic involving criminological individualisation and a neo-classical concern with extenuation and degree of guilt.

Such a provision allows more than just discretion to the court to implement its favoured line of reasoning: it also allows the measure to be presented in a number of different ways (e.g. as more 'scientific', more 'fair', more 'charitable', etc.) and to issue in a number of different directions. Thus although it would later be used as a precedent for individualised treatment, its immediate practical effect was not different treatment but merely a different public status and the "segregation" of those who were not "really criminal" from

those who were.[58]

It might be added here that a similar ambiguity inhered in the notion of "reformative treatment" that was promoted to prominence by the Gladstone Report. When discussing the Report we noted that despite a criminological 'framing' of these discussions, and the use of terms such as "individualisation" or "treatment", the actual practices mentioned were always more in keeping with the evangelical tradition of philanthropy and social work. In those discussions immediately following Gladstone which described the reformative function, this religious aspect continued to appear, along with a newer emphasis upon certain techniques of discipline and reward.[59] However it is important to note that during the next decade and thereafter, official discussions frequently employed the notion of 'reform' or 'reformative treatment' in a much more positivist or scientific form, and did so without any need to distinguish their position from that of Gladstone.[60] The point here, as with the 'classifications' of the 1898 Act, is simply that an ambiguous or composite term can often be a kind of discursive bridgehead to later and more fundamental changes which need not then be acknowledged as such.

In the same year as the Prison Act, another important measure was enacted, following a further recommendation of the Gladstone Report, as well as the quite separate demands of the medical and temperance lobbies.[61] The Inebriates Act of 1898 established an alternative means of dealing with habitual drunkards, allowing the removal of large numbers of inebriates from prison, and the curtailment of the 'futile' and expensive practice of repeated short prison sentences. Its importance was that in doing so it took penality a first step beyond the normal constraints of criminal law. Where the criminal law traditionally rested upon questions of guilt, proportionality, a

determinate offence and sentence, and so on, the new Act's provisions allowed an indeterminate sentence, based not upon responsibility for an offence but upon the offender's assumed condition of irresponsibility. It amounted to an important extension of the powers of detention beyond the offence itself. Moreover, the section which establishes this power does so by means of a double-track sentence which allows habitual drunkards (or offenders whose crime was drink-related) to be first sentenced for their immediate offence and then, supplementarily, subjected to a detention order on the grounds of their condition. The logics of the judicial sentence and the administrative order, of the penal and the therapeutic, are thus kept formally separate while being substantially conjoined.

The detention order itself for an indeterminate period with a maximum of three years (section 1 (1)) and was to involve "classification, treatment" and "absence under licence" (section 4) while the Rules for Inebriate Reformatories, published the following year, make it clear that "treatment should be reformatory and not penal".[62] The Act itself empowers the Secretary of State to establish State Inebriate Reformatories (section 3) to be run by the Prison Commissioners (section 4) and to regulate, certify, inspect and finance such Reformatories as may be provided provately and by local authorities (sections 6 - 9). And it quickly becomes clear from the Annual Reports of the Inspector that while the private institutions should be mainly reformative, the State Reformatories are primarily concerned with discipline and security and the safe detention of 'refractory' inmates transferred from other institutions.[63] Once again, however, there is a clear discrepancy between the language of reformatory intent - "special treatment", "knowledge", investigation of the inebriate's "past history", etc.[64] - and the reports of the

treatment actually provided year by year which are much more in keeping with traditional "spiritual, moral and educational influences".[65]

Finally, it should be pointed out that this measure, whatever its limitations in regard to the reform of inebriates, subsequently operated as a kind of precedent or model for similar measures in regard to the feeble-minded, vagrants, habitual criminals and even 'normal' offenders:[66]

> "... by rendering possible the special treatment of a morbid condition which causes crime, [the Act] approves a most important principle. It recognises that ... the offending person is only in a modified degree responsible for his criminal action and that the force which impelled him to its commission is only partly if at all under his control. It acknowledges that the crime is the result of the condition." [67]

In a rather different manner, the Probation of Offenders Act of 1907 also constituted an important extension and transformation of the sanctions of the criminal law. In establishing a State-authorised system of social work, financed from the rates and ordered by the courts, the Act heralded a profound revision of the State's proper functions with regard to the offender. At the same time, section 4 of the Act established measures of investigation, surveillance and normalisation which extended and refined the field of vision and intervention available to the court. And precisely because these duties of 'visiting', 'reporting' and 'advising' were the stipulated duties of a paid and accountable official - unlike the vaguer status of investigation and reform in prisons - they were all the more likely to operate in actual practice.

If we scrutinise the terms of the Act's provisions we find once again that its categories are compromise-formations borrowing from more than just one programme. As with the 1898 Prison Act, section 1 (1) combines a criminological logic ('character', 'antecedents', 'mental

health') with the concerns of neo-classicism ('extenuating circumstances', the 'trivial nature of the offence'),appealing more to the positions of evangelical penal reformers and child-rescue than to the science of criminology. The same section directly implies the non-penal status of probation by recommending it be imposed where "it is inexpedient to inflict any punishment".

It is absolutely clear from subsequent Reports and commentaries that early probation practice did indeed follow this philanthropic social work logic, appointing personnel from the various missionary societies and adopting their techniques of visiting, inspecting and exerting 'personal influence'. Indeed probation was widely viewed by figures such as William Tallack, Secretary to the Howard Association, as intended for "deserving" offenders - a kind of penal equivalent of the Poor Law's "out-relief". However in the 1920s and 1930s, when the transformative techniques absent from criminology were supplied by psycho-analysis and its derivatives, probation was able to shift gradually towards these without the need to challenge the ambivalent terms of its original charter.

If the foregoing Acts were qualified and tentative in their endorsement of the terms of the criminological programme, then the Prevention of Crime Act of 1908 suggests a much more solid and explicit commitment. Part I of the Act, headed "The Reformation of Young Offenders",adopted the juvenile adult category of the 16 to 21 year old which we have already described, and even built in a line of extension for this 'special' category to include offenders up to the age of 23 in certain cases (section 1 (1) and (2)). It also defined eligibility for this treatment in terms of "criminal habits or tendencies" and potential corrigibility (section 1 (1)), a knowledge of which was to be derived from investigatory reports on the youth's

"character ... health and mental condition" (section 1 (1)). The purpose of this sanction is defined as the "reformation" of the offender, though of course this statement is coupled with "the repression of crime" (section 1 (1)).

The sentence established to this end is an indeterminate one, to last "not less than one year nor more than three years" and release under licensed supervision is available at the discretion of the Prison Commissioners[68] at any time after six months (or three months"in the case of a female") (section 5 (1)). Whether or not the maximum term of detention is served, a six month period of supervision follows on the expiration of the sentence, during which time the offender may be recalled and made to serve a further three months detention.

Introducing the Bill in the Lords, the Earl of Beauchamp declared that the "one principle underlying it is that there should be individual study of the character and habits of each prisoner",[69] the purpose of this individualisation being to direct a form of treatment "affecting alike his body, his mind and his character".[70] Sir Evelyn Ruggles-Brise, who did most to propose and develop the institution of Borstal training, characterised it thus:

> "The object of the System was to arrest or check the evil habit by the 'individualisation' of the prisoner, mentally, morally and physically. To the exhortation and moral persuasion of a selected staff, we added physical drill, gymnastics, technical and literary instruction [and] inducements to good conduct by a system of grades and rewards." [71]

We might add to these remarks that this noticeable emphasis upon the cultivation of the body through physical exercise and drill, whereby "the puny city-bred lad, after a few weeks of this treatment, generally grows out of his clothes"[72] owed as much to the political concern with "deterioration" and "physical efficiency" as to the often cited American model of the Elmira Reformatory.

Part II of the 1908 Act is headed "Detention for Habitual Criminals" and lays out the provisions of a new system of "Preventive Detention". Habitual criminals are those whose "criminal habits and mode of life" make it "expedient for the protection of the public that the offender be detained for a lengthened period of years" (section 10 (1)), and the Act proposes that such persons should be dealt with by means of a double-track sentence of penal servitude ("punishment") followed by a "less rigorous" term of preventive detention ("something quite distinct"[73]). The term of detention is specified as being between five and ten years (section 10 (1)) and may be terminated "at any time" by the decision of the Secretary of State to release the inmate on licensed supervision (section 14 (2)) if the Secretary "is satisfied that there is a reasonable probability that he will abstain from crime and lead a useful and industrious life" (section 14 (2)).

Clearly such a measure constitutes a radical departure from the traditional terms of criminal law, and the Prison Commissioners stressed its innovative character by pointing out that it had "no analogy in present European law".[74] However it should be equally clear that this measure had a direct and proximate 'analogy' in the social defence arguments of criminologists for "elimination", and, equally, the eugenic demand for the segregation of the unfit; for 'preventive detention' is nothing but a form of compulsory administrative segregation, as its rejected title - "the penal colony" - made rather more explicit.

However there <u>is</u> a crucial difference between the eliminative demands of eugenics and criminology, and the system proposed by the 1908 Act. The whole notion of preventive detention for habituals implies a definite notion of incorrigibility. Indeed this suggestion

of a population 'beyond reform' is explicitly stated in criminological and eugenic discourse and in the private Home Office documents which circulated prior to the Act.[75] It is therefore significant that the section 13 (3) of the Act explicitly demands "disciplinary and reformatory influences" (our emphasis), a correctionalism also implied by the licencing system designed for those who have reformed as well as those who are too old or infirm to engage in crime (section 14 (2)). And in the Parliamentary debates the Home Secretary goes out of his way to state that:

> "He [the habitual] will not be there as a hopeless offender, but from the first every effort will be made to reclaim him."

and:

> "... while the system is for the prevention of crime, it is also to be used for the reclamation of even the very worst offenders." [76]

Here again then, we encounter the profound reluctance to entertain in public a category of offenders beyond reform, a reluctance which echoes our earlier discussion of the discursive rejection of "incorrigibility" and "criminal man", and the strategic purpose of this refusal.

Before leaving this important Act we should note a number of points which apply in common to both Parts I and II. In the case of Borstal and of Preventive Detention the legal notion of proportionate punishment is displaced by a more utilitarian logic of reform and prevention, as well as which, in each case it is the offender who is addressed and not his offence.[77] In both cases too, the power of release is shifted from a decision of the judiciary to that of the executive, as indeed is the power to revoke a licence and recall to further detention. This shift of power, and the indeterminacy accompanying it, is justified by explicitly invoking "... the authority of many criminologists in America and elsewhere",[78] and the fact that

such a system ensures "time to reform".

Finally it should be pointed out that this strange combination, in the same Act,of reformative measures for youth and segregational provisions for habituals,becomes less paradoxical on closer analysis. Indeed the two measures sit very well together if one considers them as a form of tactical trade-off, with the apparent generosity of the first offsetting the severity of the second, or else as following the dictum of criminological discourse which insists that intervention should "start from both ends", aiming at "the beginning and the end of a criminal career".[79] Indeed as we shall see in Chapter Eight, there is a definite sense in which these two conjoined measures precisely illustrate the dual form of a wider strategy of socialisation and segregation which this and the other Acts helped to put into place.

The Children Act of 1908 was a much wider-ranging statute than any of those previously discussed, encompassing sections on "Infant Life Protection", "Cruelty to Children" and prohibitions on the sale of liquor and tobacco to juveniles, as well as the care and control of offenders. It was in fact a composite, consolidating measure which synthesised the demands of child-saving philanthropy with those of national efficiency and the criminological programme. As the Lord Advocate declared upon its introduction at the Commons Second Reading:

> "Many high-minded men and women, and many philanthropic societies, have been working upon this subject, and of recent years one is glad to note a large development of scientific knowledge. All these facts, together with ... the Report of the Committee on Physical Training and the Report of the Commission on Physical Deterioration, have made out the case for this Bill. ..." [80]

With regard to offenders, sections 102 and 103 of the Act prohibited imprisonment, penal servitude or judicial execution for children and young persons,[81] and established the Reformatory and Industrial School network as the normal disposition for offenders

below the age of 16 years:

> "... the object being to treat these children not by way of punishing them - which is no remedy - but with a view to their reformation." [82]

Importantly, section 111 (1) established the statutory principle of special juvenile courts separate from those used for adult offenders. While this was not a particular demand of the criminological programme, it did endorse the conception of the child or juvenile as a special category and promoted a separate institutional basis for the future development of social work and criminological initiatives. In that sense the Act marked the success of the criminological tactics which we discussed in Chapter Six and allowed a subsequent expansion of criminological influence in this newly demarcated, 'special' domain. Thus if the juvenile was the tactical point of entry established in criminological discourse,the juvenile court provided its institutional equivalent in practice.

Perhaps the major significance of this Act though, was that it established the "revolutionary" principle[83] that the problems of family "failure" were to be administered not solely by charity and voluntary social work but through a series of public channels, presided over by the specialist juvenile court. As the Under Secretary Herbert Samuel put it, "... the State must step in where the discipline of the home is absent".[84] Once again this involves the extension of State interventionism, beyond the limits of offence behaviour stipulated by the criminal law, and sections 58 (1) to 58 (8) specifies a whole catalogue of circumstances where a child may be detained in an Industrial or Reformatory School.[85] Removal and detention of children is thus permitted where a parent is "unfit" to have the care of the child, or else is a thief, a prostitute, an inebriate and so on, ensuring that from the start the juvenile court

is empowered to intervene to deal with 'neglected' as well as 'offending' children. As John Clarke points out:

> "The significance of this lies not only in the breadth of the conditions which were taken to constitute neglect, but that from the first the court was empowered to intervene to rescue the child from the vagaries of working class socialisation." [86]

By 1913 the incipient influence of the eugenic and criminological programmes which we traced in earlier Acts had become much more pronounced and forceful. The introduction of two important Committee Reports, and then a number of Bills centring upon the problem of the mentally defective, demonstrated the strength of national concern surrounding the issues pressed by these two programmes, and the provisions of these Reports and the subsequent Mental Deficiency Act of 1913 bore witness to their success in establishing their terms. From being a localised difficulty faced by the managers of casual words and prisons, the question of 'the feeble-minded' had become a degenerative threat to the Race and to National Efficiency. As the Home Secretary remarked in introducing the initial Bill:

> "The question of mental deficiency is essentially a national question and not a local question. It is to the interest of the nation as a whole that the race should be maintained, and not become degenerate." [87]

Thus whatever was said about the care and protection of the individual defective, his or her treatment was now to be devised with an eye to racial consequence and the prevention of procreation:

> "What the supporters of the Bill mean is not protection of people from violence, but the segregation of people so that they shall not have children. They mean to protect future generations. ..." [88]

Once again the 1913 Act provides for a major extention of state powers of control, this time over all specified categories of defective, and as with the new controls over inebriates, habituals, young offenders, vagrants, etc., the Act established yet more specialist

enclosures where such defectives will be detained and treated.[89] Again too, the powers of intervention are not to be withheld until an offence is committed or a voluntary committal is sought. Instead detention will be triggered by a large number of circumstances (section 2 (1) (i) - (vi)) including the decision of parents or school authorities, the fact of the defective's being neglected, being found guilty of a criminal offence, being an inmate of a prison, reformatory or asylum,or else being found to be an habitual drunkard. And despite the Home Secretary's claim that this Bill "omitted any reference to what might be regarded as the Eugenic idea",[90] it is worth noting that section 2 (1) (vi) empowers the detention of any person "who is in receipt of poor relief at the time of giving birth to an illegitimate child or when pregnant of such child".

Nor was this general shift in the principles of intervention undertaken without knowledge of its significance. As Mr. Ellis Davies, M.P. declared, approvingly:

> "We are legislating with the purpose practically of putting another class outside the pale of the law." [91]

Section 1 of the Act sets out the four classes of persons deemed to be defective within its terms, and it is useful to examine how these characterisations were constructed. While "Idiots" were those defectives "unable to guard themselves against common physical dangers" (section 1 (a)) and "Imbeciles" those "incapable of managing themselves or their affairs" (section 1 (6)), the new categories of "Feeble-minded person" and "Moral Imbecile" (cf. the place of this term in criminological discourse) were defined by reference to the failure of particular institutions. Thus a Feeble-minded person was one whose defectiveness was recognisable by his or her being incapable of "receiving proper benefit from the instruction of ordinary schools"

(section 1 (c)), and a Moral Imbecile was one upon whose "criminal propensities ... punishment has had little or no deterrent effect". It is perhaps typical of a much broader strategy (see Chapter Eight) that the failure of a normative institution should be displaced onto the character of the 'failed' individuals, who are then deemed 'beyond control' or 'beyond education'. It is equally typical that new forms of control such as those of the 1913 Act should subsequently be provided to return such individuals to the enclosed space of institutional detention.

We might add, finally, that the Act did not rest content with its new mechanisms for administering all those defectives who 'came to notice' through their offences, public deviance, or claims for State benefits. Like the Webbian strategy of the Minority Report, the Act insisted that a comprehensive system of information, knowledge and reporting should be set up which would cover the whole population of defectives. Sections 1 (a) and 30 of the Act provide that Local Authorities must "ascertain what persons within their area are defectives" and convey this information to the central Board of Control. Henceforth all defectives are to be brought into a relation with the institutions of control thus averting surprises and embarrassments with the security of administrative knowledge.

(4) The significance of these outcomes

The six statutes we have now described do not by themselves exhaust the penal developments of this period, though they do constitute the most important innovations. We could continue to evidence the various tendencies such as the de-centring of the prison,[92] the establishment of specialist enclosures and the movement towards

individualisation and 'reform', as will be clear from a glance at Appendix number 1. However enough has been done to allow us to see a number of definite lines of development taking shape, sometimes adopting the terms of the original programmes, sometimes the compromise-formations framed subsequently, but almost always in the directions specified and made possible by the programmatic discourses already described. The most notable outcomes in this regard are the extension of the role of the State, which becomes the subject of wider and more penetrating forms of social regulation; the movement towards an administrative mode of regulation, promoting expertise and the accumulation of disciplinary knowledges; and the establishment of practices of individualisation accompanied by rhetorics of reform.

Of course in all this the judicial power is never directly challenged. Instead it is discreetly <u>unsettled</u>, being subjected to numerous modifications and required to give space to a developing and increasingly autonomous penal power,[93] in much the same way that the 'responsible subject' of law is retained on condition that it be skirted around with the irresponsible 'exceptions' named by the administrative sciences. At the same time there is a compensating <u>extension</u> of that judicial power. Its formerly absolute predominance in the traditional field of criminal law has now given way to a directive role in regard to the much wider field of knowledge, controls and potentialities provided by its new social work and criminological auxiliaries. The other side of this picture is that the versions of criminology, social work and eugenics which enter into practice are mediated and sanitized versions, stripped of their radical ideological content and put to service in a diluted, disguised or displaced form which retains their "practical advantages" if not their theoretical integrity.

All of this amounted to a profound transformation in the realm of penality, and one which was recognized as such at the time.[94] At the same historical moment, the organisation and institutions of the social realm were being subjected to a re-ordering in accordance with selected elements of the social security programme, as can be seen from the establishment of labour exchanges, health and unemployment insurance, the provision of pensions, school meals and medical inspections and non-penal relief for unemployed workmen (see Appendix 2). We have already begun to show how these penal and social transformations were interrelated in more than a temporal sense[95] and in a moment we will indicate a crucial strategic linkage which articulated these two realms and allowed each to support the other. But it is worthwhile pointing out a number of important parallels and similarities between these social and penal transformations - homologies which derived from their shared programmatic origins and which were to facilitate their strategic articulation.

We can sum up these homologies rather crudely by noting that on each side there was (1) an extension of State intervention and engineering; (2) the development of an extensive regulatory knowledge of populations and individuals; (3) an attempt to address the question of degeneration and 'inefficiency'; either by building up the physical forces of the population or else segregating defective elements and prohibiting their procreation; and (4) the establishment of a de-policised administrative mode of action which claimed legitimacy in terms of its efficacy, its 'scientific' basis and its 'humane' qualities.

A more detailed demonstration could centre, for example, upon the precise parallels that are to be found between the prison reforms already mentioned and the Poor Law reforms which took place at the turn

of the century. Thus as Williams demonstrates, there was a definite movement from the 1890s onwards to introduce an individualised form of relief which involved a departure from disciplinary uniformity, the formation of a "quasi-clinical" knowledge of the character and history of applicants, the introduction of case papers, classification procedures and medical expertise. In other words the developments which overtook the general mixed workhouse of this period were almost identically those which transformed the general mixed prison at the same time.[96]

(5) The significance of failures and absences

By this point we have covered the broad range of successful outcomes which contributed to the "putting in place" of the new social and penal strategies. The next and final Chapter will conclude this study by elaborating the mechanisms of that strategy, its various effects, and the conclusions to be drawn from our investigation. However before proceeding to that conclusion it is necessary to mention one or two programmatic elements which did not become empowered, and the significance of this 'failure'.

During the period under study, there were a number of relevant Bills which were drafted and even introduced into Parliament only to be subsequently withdrawn or else dropped from the legislative programme. Thus there were three Inebriate Bills (1912, 1913 and 1914) - which would have given powers to detain inebriates before they had offended - which had to be withdrawn due to lack of time.[97] Similarly, various plans were officially stated for legislation on the special treatment of young recidivists, the detention of habitual petty offenders, and the establishment of a national society to co-ordinate

and oversee the supervision of all young persons on licence from the various types of institutions. None of these plans came to fruition.[98]

More importantly though, there were a number of Bills which were presented and then withdrawn not because of timetabling difficulties but because of their failure to command widespread consent and legitimacy. This appears to have been the case with the 1912 Mental Deficiency Bill which made it an offence to marry a defective, and provided for the detention of feeble-minded persons when "it [was] desirable in the interests of the community that they should be deprived of the opportunity of procreating children".[99] It was also the case with the two Bills of 1904 and 1909 which attempted to establish Labour Colonies along the lines proposed by the social security programme.[100]

These two 'failures' are important. We have already seen in Chapter Six how certain radical elements of the original programmes were marginalised in subsequent politico-discursive manoeuvres, but the failure to establish Labour Colonies and an explicit Eugenic segregation has still to be explained. It will be recalled that a crucial axis of the social security programme was what might be termed the Eliminative principle of exclusion and segregation (see p.187 of Chapter Five). This demanded that those elements who failed to achieve the requisite standards of social or industrial performance, despite the provision of insurance, education, employment, etc., should be removed from the free social realm and subjected to a compulsory, disciplinary segregation. As we pointed out then, the social provision elements of every single scheme were balanced and supported by this principle of elimination and the institutions which it required. The Labour Colony was thus proposed by virtually every advocate of this programme (as well as many eugenists) and was subsequently endorsed in

numerous official Reports,[101] as a necessary apparatus to exercise this crucial function. And yet the Labour Colony network was never assembled.[102]

Historians such as Harris and Stedman Jones have tried to account for this absence, and the problem that it poses,considering the widespread support for these colonies and their functional significance.[103] However they have done so without much success. In each account the proposal for colonies appears to have simply faded away, or else statesmen have become conscious of their repressive and totalitarian implications and chosen to drop the idea despite its attractions. But this leaves open the question of how the new social security project could operate without an eliminative mechanism to deal with the 'unemployable' and 'unfit' sections of the population - or rather how the Liberal Governments of 1906 - 1914 could have legislated a system which lacked an element widely believed to be crucial to its success.

We would suggest that the answer to this question is that the Eliminative principle was not altogether dropped. Rather its exercise was entrusted not to the Labour colony or eugenic segregation but to the more discreet but equally effective apparatuses of penality which we have just described. As we shall see in the following Chapter, the network of Borstals, preventive detention prisons, inebriate and feeble-minded reformatories, probation, etc. provided a substitute mechanism which could support the new social strategy, not by simple elimination but by a more complex logic of normalisation, correction and segregation. Most of this penal network was already in place by the time the major social security measures were legislated and hence it is by no means inconceivable,(though there is no direct evidence), that the governmental decision not to implement these 'repressive'

measures was shaped by an awareness of this more discreet alternative.

Whether 'intended' or not, the effect of this substitution was to fragment the category of the Unemployable or Unfit into a thousand forms of abnormality, pathology and deviance, none of which betray their political implications in the crude manner of these sweeping, derogatory categories. Moreover the fact of a diverse, fragmented network of specialist enclosures, rather than a single system of colonies, ensured that the size of this mechanism, its subject population, and its political importance, are all put out of focus. Finally, the functional substitution of this penal network for the labour colony ensured that there was no need to provoke the legitimation difficulties which would inevitably follow any decision to support the 'freedom of labour' by the open compulsion of those who refused. In place of the forced labour implied by the colony was established instead a system which was to be represented in terms of a curative and benevolent reform. In such circumstances, it is perhaps more than coincidence that the privately established labour colony at Hollesley Bay was later to become a Borstal institution, while the Scottish labour colony, in 1904, was to change its function to that of an Inebriate Reformatory.[104]

CHAPTER 8

Penal-Welfare Strategies and their Modes of Operation: Some Conclusions

(1) The reconstituted social realm

We have now completed our account of the long and complex routes whereby the various elements were put in place to form a new field of social and penal regulation. As we shall see, the contours of this new field, and the techniques, discourses and objectives which function within it, are quite different from those of the Victorian period, while being essentially continuous with those of the present day. The purpose of this final Chapter is to analyse this field and the various strategies which compose it, while indicating the significance of these policies for the conjuncture in which they were formed, and more briefly, for the period since then to the present.

We begin with a discussion of "the social" since it is only against this broader field of regulation and provision that the details of modern penality can be understood.

The crucial feature of the social policies implemented by the Liberal reforms of the 1900s was the establishment of mechanisms of security and integration which could overlay and re-organise the effects of the labour market while maintaining its basic capitalistic terms. The provision of pensions, State-subsidised insurance, labour exchanges, school meals and so on ensured that the harshest consequences of the market system were tempered, and the inequalities of its distributional effects modified. The degree of risk and insecurity encountered by the worker or his family were significantly reduced for those encompassed by the new schemes, and at the same time a small

measure of equalisation took place. Although much was made of the progressive taxation of Lloyd-George's 1909 budget, this equalisation was not between classes but rather between the various employed and unemployed, old and young, sick and healthy individuals, within the labouring class. But the importance of this 'equalisation' was that it talked not of classes, but of citizens, in which regard all were to be treated alike. Members of the lower classes, like their better-placed brethren, became:

> "individuals within a population which is now treated for this purpose as though it were one class." [1]

In this way the new social policies added an image of "equality of status" to the "political equality" which had followed the expansion of the franchise. The social message of these new provisions was that workers were no longer to be viewed merely as commodities in the market, to be used or discussed according to the desires of capital, the moralism of charity and the repression of the poor law. In place of these vagaries and hazards were substituted a measure of material provision and a new form of social status and recognition.

Taken together, these measures of security and equalisation of status were designed to bring about a "re-admission of the outcast",[2] and the formation of a solidarity which would unite the nation. Thus Churchill in 1909:

> "The idea is to increase the stability of our institutions by giving the mass of the industrial workers a distinct interest in maintaining them. With a 'stake in the country' in the form of insurances against evil days these workers will pay no attention to the vague promises of revolutionary socialism." [3]

and a Liberal Party pamphlet of 1912:

> "... all the poor and the working classes have acquired a new and a vast stake in the country. Instead of being used when useful and cast aside when no longer useful, they have become the children of the State ... not a Socialistic State but a Social State." [4]

In this new domain of security and solidarity, the institution of insurance is the key technology which supports the rest. It ensures a redistribution, "spreading the costs involved in compensating ... invalidity to all the social partners",[5] and a form of integration allowing "the passage of subjects from a merely individual level to that of joint interests",[6] giving all citizens a stake in the Nation, and ensuring the allegiance of a lifetime of regular contributions. But it does so in a manner which brilliantly avoids "Statism" and any challenge to the system of free enterprise, individuation and inequality. Through insurance, the State certainly extended its influence, but it did so by setting up a regulatory technology which does not depend upon "Statism" so much as a beneficial relation established between the individual and a state-sponsored scheme.[7] It 'enlists' the individual's self-interest and desires for security and promotion, rather than simply 'providing' his needs.[8] Likewise its legislators were careful to preserve the image and form of a contract (albeit an obligatory one) and the entitlement to which it gives rise, rather than admitting the principle of non-contributory social provision which alternative schemes would have done. Insurance thus establishes a social field of individual contracts and claims, suppressing the notion of social rights and any competing forms of social solidarity.

As Donzelot says, "need was made to operate as a means of social integration and no longer as a cause of insurrection",[9] but it must be stressed that this integration took a very definite form. Like the vote - that other great mechanism of integration which was expanding during this period - insurance promoted a form of social solidarity which nonetheless retained the primacy of the category of the individual within it.

To the new technology of regulatory controls (labour exchanges, public works, mimimum conditions, etc.), the new strategy added an insurance-based safety net which reduced the risks of those within the labour market, along with a set of auxiliary provisions (pensions, school meals, healthcare, etc.) for those who had either retired from their labours or else had yet to graduate to them. Together these promoted a market that was more efficient and better organised, and a workforce which was 'engaged' on a long term basis, not just by individual employers, but also by the new agencies of the State. The rewards, support and security which benefitted the worker were thus made to operate simultaneously to the benefit of his employers and the system as a whole by reducing waste and conflict and at the same time increasing individual commitment and regularity.

Similarly, the apparatus of insurance and pensions used the worker's self-interest and desire for security in both positive and negative ways. These interests first of all drew him into the system, winning his allegiance and commitment to it in the name of his own and his family's future. But once committed, these same interests operated to ensure that the worker observed the attached conditions of benefit - i.e. was regular, stable, worked "according to his ability", was of good character, avoided prison, and so on. The apparatus thus ensured that the worker was policed and regulated by a manipulation and utilisation of his own self-interest.[10]

(2) The New Penal Realm

If this elaborate apparatus of provision and State induced self-control could be trusted to succeed for the majority of the population, and for the 'normal' individual, it was nevertheless supported by a more

compelling back-up mechanism for the recalcitrant minority of deviant and marginal cases. As we have already indicated, this 'back-up' was supplied by the newly assembled range of penal practices and institutions which - because of their shared reliance upon a number of common techniques, images and principles - could articulate easily and effectively with the new social complex. The institutions of penality thus came to support and extend those of the social realm in the following ways:

(1) It is already clear that the rewards, provisions and benefits of the social are conditional upon certain norms of conduct, some of which are specified in regulations, while others are merely implied or assumed. Penality negatively reinforces these terms by threatening to deal coercively with those who refuse them. This 'threat' comes into play whenever the positive inducements of normal socialisation are experienced as being weak or difficult to attain.

(2) Penality relieves the social realm of its 'failures', subjecting them to a series of normalising, corrective or segregative institutions which will either return the individual to the normal social sphere or else will remove him from it permanently. It thus sets up a series of exchanges and transfers (of knowledge, records, individuals, etc.) between the normal institutions of socialisation and their penal adjuncts.[11]

(3) The new penal complex provides extensive measures of State control which serve to police such a system in the absence of the traditional mechanisms of repression and exclusion (cf. Chapter Seven, section 6). Moreover it does so in a form which appears neither Statist (cf. the important

mediation of voluntary agencies) nor repressive (cf. the new insistence upon abnormality and its correction).

(4) Finally, in representational terms, penality extends and completes the positive character of the State's new self-image. This new kind of 'Social State' is "bent on generating forces, making them grow, and ordering them",[12] and the reformative character of the new penal practices reinforces this crucial image: "the old idea of penal discipline was to crush and break, the modern idea is to fortify and build up force of character".[13]

This new field of penality has a function and constitution which is quite different from those of the Victorian system which were described in Chapter Two. Although it retains a deterrent aspect, it is by no means confined to this, being committed also to various forms of correction and normalisation, care and improvement. In accordance with these revised objectives, it now displays a new structure and overall form. What was once a hierarchy of severity has now become a much more differentiated and diverse grid of dispositions, the vertical axis of Victorian punishment being tilted increasingly towards the horizontal.[14]

As we shall see, the new aspects of this grid may be analysed in terms of the three major sectors which compose it, each one containing a number of institutions and agencies. These 'Normalising', 'Corrective' and 'Segregative' sectors are positioned at increasing distances from the normal institutions of the social realm, and movement from the first sector towards the last entails increased measures of control and a deepening penal involvement.[15] As well as the exchanges between social and penal spheres, a definite system of transfers from better to worse, worse to better, is established <u>within</u> the penal network,

which follows the insistence of numerous Reports that each line of institutions should have at its end-point a coercive state-run terminus.[16] This system of grades and transfers between institutions precisely parallels the new system of discipline which came to operate within institutions, where the old systems of punishments were replaced by a more positive structure of rewards, privileges and their withdrawal.[17] And both of these in turn are local examples of a more general mechanism of promotion/demotion which runs the whole length of the new social-penal complex.

(3) Sanctioning Criteria and Forms of Allocation

Before describing these sectors in more detail, it is necessary to say something about the criteria of allocation and the forms of administration which preside over this new penal network and direct its functioning.

We argued in Chapter One that the Victorian system was inscribed almost excluseively within the terms of legal discourse, being regulated by criteria of guilt, responsibility, legal evidence and proportionate punishment. In the new penal complex the terms of this legal discourse are undercut and redefined by the introduction of other discourses and considerations. 'Guilt', for example, is no longer the founding principle of legal intervention in this sphere. As we saw in the last Chapter, the new legislation on children, inebriacy, habituals, etc. allowed interventions to be triggered without the necessity of offence behaviour and to be justified on quite other grounds than the guilt of the subject. Besides 'guilt', intervention can now be premised upon a 'condition', a 'character' or a 'mode of life' which indicates a failure to meet one's social obligations or else an inability

to do so. 'Responsibility' too, is subjected to a serious revision in its scope and usage. Although it is, as we saw, retained as 'the normal case', the increasing number of exceptions, modifications and deviations from this rule ensure that it can no longer be simply assumed. There is consequently something of a movement from Rationalism to Empiricism whereby 'responsibility' ceases to be an a priori which is universally presumed and instead becomes subject to the test of empirical investigation in an increasing number of cases.

What these detailed changes describe is a more general movement away from the traditional laying down of laws towards an increasing resort to the mobilisation of norms, a movement which has the effect of extending and revising the operations of the judicial power. As Foucault points out:

> "[This] does not mean to say that the law fades into the background or that the institutions of justice tend to disappear, but rather than the law operates more and more as a norm, and that the judicial institution is increasingly incorporated into a continuum of apparatuses (medical, administrative and so on) whose functions are for the most part regulatory." [18]

The sense and importance of this distinction between 'law' and 'norm', and the revision of one by the other, can be gathered from the following demarcations. The protocols of the law (ideally) require publicly specified offences, guilt and responsibility, publicly proven according to the specified conventions of evidence, fact and law. They involve an open adversarial trial, definite safeguards and limitations with regard to evidence, and the availability of review and appeal procedures. In contrast, the 'norm' which comes to supplement the law in cases of juveniles, children, the feeble-minded, etc., operates according to quite different criteria. It bases itself upon expert decisions (certified by doctors, psychiatrists, social workers, etc.) regarding the normality or pathology of 'characters', 'mental or moral

states' and 'modes of life'. These decisions, which need not be publicly explained, are based upon an expertise in the 'human sciences' which is not widely shared nor easily challenged. According to this logic, sentencing becomes less a matter of 'justice' and more a question of proper administration and diagnosis. The norms of the human sciences become a new kind of raison d'etat whose demands justify serious departures from the usual terms of the law.

Much more than with traditional law, the new system of laws-plus-norms requires a thoroughgoing knowledge of the case before it. This knowledge does not concern itself merely with the 'immediate facts' and the legal provisions which apply, but also with the background, history, character and corrigibility of the individual concerned. At the same time there is a subtle shift in the role of the judge who becomes not just the arbiter of adversaries but also the ultimate interlocutor of various confessionals and processes of investigation. This shift is most clearly visible in the new juvenile court:

> "... it is always helpful to get from him, or her, a statement of the reasons for being brought into court. It is the direct and natural method of approach. ... The child should be interviewed outside the hearing of any other person. ... The important thing is to get the truth from the child." [19]

But also from the parents, the school, the investigating officer and all the other potential sources of useful information.

As we have seen in the previous Chapter, this requirement of knowledge gives rise to a whole apparatus of investigation and inquiry which reaches far beyond the forensic inquiries of the police, and supplements the various forms of inspection and inquiry entailed within the new network of social institutions.[20] Through the services of the various voluntary agencies, probation officers, after-care agents, etc., the range of knowledge available to the authorities is extended to

encompass not only the offender but also his family and his home. As one manual of investigation put it:

> "It is in the home and its immediate associations that the most powerful environmental influences are found, and it is from the home, therefore, that the most important information will be obtained." [21]

At the same time, the depth and penetration of this inquiry are increased in order to peer into the character and history of the offender, producing a knowledge which goes beyond immediate appearances, and even beyond the understanding of the offender himself:

> "It may be said that, in general, any reason given for commission of an offence will be more in the nature of an excuse than an explanation. It should be accepted as such, and the probation officer should not, at this stage, attempt to probe deeper. In all probability the offender does not know the reasons which induced him to offend, and it is only after a consideration of all the factors in the offender's life that the probation officer can venture to suggest any explanation." [22]

With the aid of various techniques borrowed from the repertoire of charity and social work ("the circular approach", "separate and contradictory questioning", "practical verification of the family's way of life", "the surprise visit" and so on[23]) the inquiries of the law are transformed in their scope and their form.

In his 1908 account of the new 'social politics' Kirkman Gray commented that:

> "Inspection is undergoing an interesting development which may be described as a movement from the inspection of <u>things</u> to the inspection of <u>persons</u>." [24]

A statement which applies as well to the penal developments we have described as to the social innovations of which he wrote. He went on to argue that these same channels of inquiry and inspection serve not just to gain 'knowledge' but also - in the reverse direction - to relay advice and directions for conduct in a form and depth previously unattainable:

> "This giving of advice represents a new function the importance of which may easily be overlooked, but can hardly be exaggerated. At first there is only an inspector of things empowered to demand the observance of certain rules. Action in regard to things is limited in extent, and it might be possible for the legislator to foresee all that should need to be done. But action is regard to persons is illimitable in range and infinitely delicate. It would be absurd to limit the function of the inspectors of infants to any statutory schedule. Two women and a baby are beyond the philosophy of the Parliamentary draftsman. The real business is not so much to tell the mother what she must do as to advise her as to what she can and should do." [25]

These important insights of Gray's apply just as well to the new normalising style which followed the shift from the enforcement of laws to the implantation of norms. Gray recognises, as others have done since,[26] how this new mode of inquiry opened up a new field of intervention - its new supplies of knowledge implying a new scope for power. For the new system of normalisation, with its capacity to prise open and enter into the intimate details of the individual's life, allows a measure of penetration and subtlety which was altogether new to the forces of the criminal law.

We will now proceed to examine the various apparatuses which were committed to this dual function of inquiry and normalisation, along with the other institutions which make up the new penal complex.

(4) The Penal Complex and its Modes of Operation

If we examine the new penal complex as a whole, it is possible to discern a number of distinct modes of operation which underpin and organise the various sanctions and institutions which make up its diverse network. On this basis it is possible to distinguish three major sectors - the normalising, the corrective and the segregative.[27]

(a) The normalising sector

The new, State-sponsored practices of probation, after-care and licensed supervision which we saw established in the previous Chapter, share a common commitment to a mode of operation which might be termed "normalisation". Each of these practices is concerned not just to prevent law-breaking but also to inculcate specific norms and attitudes. By means of the 'personal influence' of the probation or after-care officer, they attempt to straighten out characters and to 'reform' the personality of their clients in accordance with the requirements of 'good citizenship'. Of the three sectors mentioned, this one is closest to the normal or primary institutions of socialisation - the family, the school, the workplace, etc. It is physically close insofar as these are community-based sanctions which do not remove the offender from his or her work at home. It is close in the sense that it is the 'shallow end' of penality, used for those who are not yet fully criminalised or else are returning to normal life after a period of Borstal, Reformatory school, etc. Finally, it is functionally close insofar as it uses the normal mechanisms of socialisation such as "personal influence", friendly persuasion, teaching, etc., with the important difference that it does so with the backing of the court's coercive powers.

The establishment of this sector as an organised and extensive apparatus of official penality was perhaps the most important innovation in the new penal strategy, and one which had distinct repercussions throughout the rest of the complex. We have already discussed the effect of those normalising agencies in the provision of detailed knowledge and means of inquiry, but in addition to this, they brought about two major effects in terms of sanctioning practice. The first of these - hinted at already - was the extension of the judicial power

which this "entering into the lives and homes"[28] of offenders facilitated. The range of this power - its capacity to effect and influence those it contacts - is thus extended beyond the offender to include his parents and his family. As Herbert Samuel (Chairman of the 1909 Departmental Commission of Probation) commented, "the home is put under probation".[29]

Probation, supervision, 'after-care' - all of these represent an extension and multiplication of the judicial gaze, and of the consequent range of intervention: the 1909 Report again:

> "... the cardinal principle in this probation work is that the court is always cognisant of the actions of the probationer through the probation officer." [30]
>
> "Securing for him a respectful hearing, and furnishing a motive for the acceptance of his counsels, there is always in the background the sanction of the penal law - the knowledge that the probation officer is the eye of the magistrate; that misbehaviour will be reported to the court, and will bring its penalty." [31]

At the same time the depth and penetration of this power to intervene are extended. The 'personal touch' of the supervising officer actually does touch the person of the offender, engaging his personality, attitudes, beliefs and working upon them in a way that was previously beyond the scope of official penality. Moreover since the goal is 'normality' and good citizenship, the aim of this intervention goes much deeper than mere crime-prevention. And, since "there can be no such thing as the completely normal child..."[32] - or adult for that matter - is less easily satisfied.

The other major effect of this normalizing sector was one of refinement. The Victorian system, as we have seen, was fairly crude in its operations, with a tendency to be either too harsh - spiralling individuals downwards into the criminal class - or else ineffective, leaving those ineligible for prison completely "beyond control".

This new apparatus was discreet, humane and relaxed by comparison, but promised at the same time to be more effective in operation. To begin with, normalisation could exercise its control without disrupting those disciplines already provided by the home, the school, the workplace, etc.:

> "The sentence of probation, whilst it formally places the child under the control of the probation officer, allows him at the same time to return to his home and family. In this way parental authority is respected and parental responsibility maintained." [33]

And as with the child and his parents, so too with the adult and his family, his workplace, and so on. Indeed, far from disrupting these 'normal' controls, the supervising agent seeks to support them, to prop and augment them with his or her own influence: as Gray points out:

> "A co-partnership has been established over the (working class) home. The partners are the parents and the State. ... The result is not a breaking up, but a consolidation of home. The incursion is not really the incursion of a stranger, but the entrance of a member. The hearth is empty, but the representative of society is found there." [34]

Of course if the discipline of the home and the family is entirely inadequate then probation or licensed release would not be deployed, but there are cases where "the parents are as much to blame as the children", whereupon the agent must turn his attention to improving <u>their</u> conduct and protecting his ward from their infelicities. In such cases:

> "The parents quite as much as the children are 'put on probation'. Working through the family and the home, the system gives the unfortunate a strong friend from the outside who can provide education and training and employment." [35]

At the same time:

> "The parent is advised and watched over by the probation officer ... and ... the child is protected against the weakness or unworthiness of the parent." [36]

In all such cases, the agent seeks to extend his powers of influence

and to continue them in his absence by enlisting the aid of other agencies of improvement:

> "One of the principal things the probation officer has to do is to make use of existing social agencies. The officer knows that in the offender's life he is but a passing agent, not a permanent one. His endeavour, therefore, is to put his charges in touch with such permanent social and religious agencies as are appropriate to their individual need; his purpose of course being that these agencies shall continue to influence the offenders' lives long after the probationary period terminates." [37]

All of this, if it goes well, is efficient as well as economical and discreet. But it should also be experienced by the offender and the public as less negative and repressive than the prison, the fine or corporal punishment. It appears as a positive and humane means of 'building up' offenders and their families, adding to the social welfare rather than reducing it:

> "It is better than prison from the economic as well as from the humane point of view, for the offender is not removed from work in the outside world, so need not be maintained by the State, nor is the wage earner's family thrown upon the Poor Law. There is no criminal taint, no loss of status, no association with other offenders, on the contrary in the most successful cases the whole tone of the home is raised. The system aims at making both the unit and the family more useful to society." [38]

(b) The correctional sector

If we turn now to the next sector, one stage further into the penal complex, we can identify another series of institutions sharing a common mode of operation and a common position in the network. The various Borstals, Reformatory Schools, Industrial Schools and privately-run Retreats and Reformatories for the inebriate and the weak-minded, together constitute what might be termed the correctional sector, part of which was entirely new, the rest being continued from the previous system in a somewhat augmented form.

Each of these elements centred upon a mode of operation which was

institutionally-based, but distinctly correctional or 'reformative' in design. These correctional features - which may or may not have reformed offenders - were actually intrinsic to their mode of operation rather than mere imagery or rhetoric. Each institution was to be allocated only particular types of offender, selected in terms of their corrigibility, youth, character, etc.; indeed they had the power to refuse those who appeared to them to be incorrigible. Each one was run on a basis of indeterminate "non-proportionate" sentences which could be terminated at the discretion of the institution's staff, release being subject to further supervision and specified as depending upon criteria of correction and reform. Similarly each one was statutorily obliged to provide a regime of corrective training, education and reform, though the details of such regimes were never thoroughly specified, depending largely upon the initiative of the governors, superintendents and voluntary workers who ran the various institutions.

This correctional sector is functionally adjacent to the normalising sector and exhibits a number of links and continuities with it. It is "next in line" after the failure of the normalising apparatus, or in those cases where the character of the offender or his background make that first sector inappropriate. Similarly it depends upon the investigations of probation and after-care agencies for the information required to make the original assessment and allocation, the subsequent classification by character, and the eventual decision as to release. Finally, the correctional institutions utilise the services of these other agencies to conduct the supervision and after-care which is an integral feature of the correctional operation; and to feed back information about the offenders' progress, the need for recall, the success of the training, etc.

The effect of the legislation which consolidated this correctional sector in the 1900s was thus once again to extend the duration and effectivity of penal control - through the longer reformative sentences, the additional periods of supervision, etc. - and to represent penality with a positive public image of correction and reform. At the same time as we shall see, it established an intermediary sector which played a crucial role in firmly ushering offenders back into the social fold or else placing them squarely within the sphere of penal control.

(c) The segregative sector

The third and 'final' area of the penal complex - furthest removed from the realm of normal social life and containing those who have refused or have been unable to submit to the disciplines of the dominant social order - might best be termed the segregative sector. The institutions which compose this sector include the various State Reformatories for the Inebriate and the feeble-minded, the Preventive Detention institutions, and to a great extent, the ordinary prisons throughout the country.

It is important to note that although such segregation existed in the institutions of Victorian penality, the formation of the new complex served to demarcate this sector much more clearly, augmenting it with new institutions, specialising its tasks and distinguishing them from the correctional and normalising sectors. It is also important to realise that this segregative mode of operation, though firmly established, was rarely represented in such negative terms.

If we take these institutions one by one, we can see how this sectoral specialisation took place and also demonstrate the segregative nature of each of them. As we saw in the last Chapter, the new preventive detention regime, established by the 1908 Act[39] was designed

to deal with those habitual offenders who were deemed to be incorrigible. Its lengthy sentences were oriented towards the incapacitation of the habitual and the protection of the public through simple segregation, rather than towards punishment or reform:

> "All that is wanted is that they should be under discipline and compulsorily segregated from the outside world." [40]

Similarly, the State-run Reformatories for inebriates and defectives were deliberately designed to form a warehouse which would contain the failures and disruptive elements of the private institutions, thereby allowing these other places to carry out their reformative functions. As Ruggles-Brise admitted:

> "The value of the State reformatory will not consist in the production of actual results, but its existence will permit of certified institutions carrying on a work of reformation otherwise impossible." [41]

The most controversial element of our argument here is in regard to the prison, which unlike the others we have noted, was never presented in primarily negative, segregative terms. And yet if we analyse the effects of the various penal changes upon the role of the prison we find that they have definitely displaced it away from correction and towards segregation, despite an official rhetoric which claimed the reverse. In the years between 1895 and 1914 the population of the prison was re-constituted by the removal of a whole series of categories to specialist institutions or else non-custodial measures. But those removed included not just the habituals and the mentally ill who were beyond reform, but also all of the reformable, hopeful categories - the children, the juveniles, the first offenders - and even the mildly inebriate and feeble-minded who might be expected to respond well to treatment. In consequence, the prisons were left with all those persons whose offences were serious or frequent enough to warrant not correction or normalisation but the punishment of

imprisonment. The reduction of the frequency of short sentences (through legislation on fine instalments for example) only served to compound this segregative trend. Moreover despite claims that the prison regime was to become more reformative in orientation, there was no introduction of the fundamental techniques of correction such as indeterminacy, release on licence, and so on.[42] The paradoxical effect of the post-Gladstone reforms upon the prison was thus to render it <u>less</u> rather than more likely to have a reformative function.[43]

This segregative sector then, operated as the coercive terminus for the whole penal network, in just the same way that the penal complex as a whole supplied the coercive back-up for the institutions of the social realm. It formed the 'deep end' of the complex which functioned as a sanction of last resort, supporting the others by its threatening presence. As an article of 1912 pointed out:

> "The reflex effect of the segregation of the defectives on the larger number of responsible prisoners is not to be overlooked. ... The knowledge that their fortunes are not at the lowest ebb, that there is a place to which irresponsible offenders are committed indefinitely can but act as a deterrent." [44]

As we shall see in a moment, this segregative sector plays an important negative role in the overall strategic operation of the penal complex. But given this, we should again note the significance of the fact that the public rhetoric of officials and ministers insisted, and still insists, upon giving this negative function a positive gloss - whether by calling P.D. a reformative regime or by referring to incarceration as "positive custody". As we have noted before, it would appear that negativity, in its various forms, is deeply antithetical to the modern State's self-image.

(d) Their interrelations

The three sectors we have identified interrelate by means of a series of strategic connections and exchanges. The deeper, more repressive measures supply a lever of deterrent force which allows the normalising agents to operate in a way which is both relaxed and yet ultimately forceful, being both within and without repression. At the same time the more severe sectors relieve the milder ones of their dangerous or unruly cases, allowing them to function without any unnecessary use of force.[45] The other side of this transferral mechanism is, of course, the incentive of promotion which exists in the other direction, holding out the promise of more lenient institutions for those who follow orders and show signs of improvement. Finally, the existence of the milder institutions ensures that the existence of repressive ones appears justified and necessary. Having done "all we can", the only resort for these who refuse such offers of help must be a positive and humane custody, to be quickly terminated on any sign of reform. This complex of balances and leverage, promotion and demotion, the offer of provision followed by the penalty for refusal, as well as the circle of legitimation which it sets in motion, is the strategic formation of modern penal-welfare. And if one recalls the operations of the social realm, set out at the beginning of this Chapter, it will be clear that the penal-welfare strategy is in many respects a miniaturised version of the social strategy which it underpins.

Before leaving this analysis of the new social and penal strategies, to discuss their historical effects, there is one brief point that should be made. We noted in Chapter Five that the social engineering proposals of the various programmes set up a kind of grid of possibilities, ranging through public to private, and from population

to individual in its subjective and objective co-ordinates. Each of the programmes favoured a different line on this grid, some proposing that private "subjects" should act upon individuals, others proposing that the object of intervention should be the population and its subject the State. From our discussion of the social and penal strategies which were actually established, it should be clear that they combined State and private agencies as the new subjects of social intervention with the latter usually regulated by, but formally independent of, the former. At the same time, the objects which were addressed by these strategies included populations and individuals - frequently with one being addressed through the other, or else both being addressed through the family as an intermediary relay of norms and values. The overall effect of this eclecticism was not to choose one line of intervention at the cost of another, but rather to merge the whole range of possibilities in a strategic network which ranged across the whole grid, simultaneously exploiting all of its potential.

(5) The new strategies and the problems of social regulation

(a) The problem of provision

It will be recalled that the transformations which have been described, and the strategies that they constructed, were in fact concerted attempts to deal with the political repercussions of a social and penal crisis. If we remind ourselves of the central elements of this crisis, and the political problems which they posed, it will become clear that the new strategies did in fact address and alleviate these problems, in a direct but always subtle manner.

To take the social crisis first, and simply mentioning the basic

co-ordinates of a complex and overdetermined network of problems, we can recall the following. A revised and more interventionist economic policy was made desirable by a long term change in the relations of production and market forces, but also by the perceived need to promote efficiency at the level of market institutions and at the level of the population which supplied the nation's labouring and military forces. At the same time, new policies were demanded to avert the growing threat of socialist agitation, to stabilise the political effects of the market upon the lower orders, and to win the allegiance of a newly extended electorate which appeared volatile and increasingly militant. Moreover some means was required to modify the repressive and exclusory operations of the institutions and ideologies through which the lower orders were addressed.

As we have seen, the new institutions of 'the social' effected a definite re-organisation of the market, an improvement of its functioning and efficiency, and an extended range of interventionist techniques more in keeping with the post-laissey faire nature of the economic terrain. At the same time, these and other institutions improved the provision of health-care, housing and nourishment and sought generally to promote the physical efficiency of the working population. The political claim of this spate of reforms was to have given the working class "a stake in the country", creating a unified and extended nation to replace the divided and class-based society which preceded them. Through pensions, insurance benefits, school meals and labour exchanges a definite material improvement was accorded to large sectors of the population; and the consequent alterations in Poor Law practice, and the treatment of the unemployed provided a response to the 'legitimate grievances' which they acknowledged.

Perhaps more importantly the new strategy involved a significant

transformation in the mode of address officially deployed towards the working classes and their disadvantaged sectors. The repressive language of moral distinction, "desert" and "worth", and the odious 'testing' of the destitute by further destitution, were replaced by an administrative machinery and discourse quite separate from those of the hated poor law institutions. Pensions were to be distributed through the Post Office; school meals, health care and insurance benefits provided without disenfranchisement; and if the worker was still forced to be responsible, regular and stable then this force was discreetly contained in automatic administrative decisions, not in the mouths of 'philanthropists' and poor law officials. On the basis of this ideological initiative the Liberal Government hoped to win for itself the class loyalty of workers and their votes, and for the system, the life-long allegiance of regular, contributing individuals.

As some recent writers have carefully pointed out, the very structure of this new machinery involved an ideological effect of its own, achieving a 'depoliticisation' or 'deconflictualisation' of the social field within which it operated:

> "This shift entailed, or was intended to entail, a definite reduction in the general social and political consequences of economic events - industrial conflict, unemployment and so forth - by ensuring that, whether working or not, citizens were, in effect, employees of society. Attention was thus switched from the analysis of the structure of the social and economic relations within which unemployment, sickness and so forth are produced, to a consideration of the consequences of the various technical and actuarial options entailed in the calculation and distribution of allowances and benefits." [46]

At the same time it promoted the forms of passive solidarity and individual integration in the social which we have already noted, as well as the beginnings of an institutional incorporation or 'corporatism' which Marshall, the Barnetts and others had advocated, and which the Industrial Conciliation Act (1896), the Industrial

Council (1911) and the Poor Law franchise reforms of 1900, began to set in motion.[47]

The subtlety of these measures, and the basis of their 'political plausibility' at the time, lay in the fact that they comprehensively reorganised the network of social and political relations without disturbing the underlying distributions of wealth or the basic relations of power and production. As we have already noted, the redistributions which occurred were primarily intra-class, while the new insurance scheme served to underwrite market relations rather than undermine them.[48] As Churchill pointed out in 1908, the essence of the social reforms was the establishment of "that minimum standard below which competition cannot be allowed, but above which it may continue healthy and free".[49] Thus despite the ideological revision already discussed, the new framework of social security preserved within itself the basic tenets of an individualistic ideology. It preserved notions of individual responsibility, thrift, self-help, freedom from State collectivism, and the earned, contractual basis of individual 'rights' or entitlements. As Beveridge argued later, endorsing these same principles as the basis of the 'Welfare State':

> "The plan for Britain is based on the contributory principle of giving not free allowances to all from the State but giving benefits as of right in virtue of contributions made by the insured persons themselves." [50]

Which is to say, of course, that such rights are not social rights at all, but merely the individual entitlements which arise from a contractual relation.

This retention of the contractual within the collectivist, the individual in the social, is well illustrated by the insurance principle. Although the notion of a contributory insurance provided a means of financing benefits without a major resort to (progressive)

taxation, this insurance principle was hardly an actuarial reality. Not only was it State-subsidised from the start, but as Rose points out:

> "... it differs from ordinary insurance practices in a variety of ways: there is no adjustment of premium to risk, nor are premiums accumulated separately to provide for future benefits, as is done in pension funds or Friendly Societies - indeed if they were they would be by no means sufficient to meet obligations." [51]

The insurance principle, with its apparent basis in normal financial contracts, is in this sense, mythical:

> "In fact, an appearance is constructed of some logical relation between contributions and benefits for reasons which may be termed 'moral' - that is to say, in terms of the psychological effect which such a relation is considered to have on those caught up within it. It was these moral effects of the principle of insurance - its reinforcement of the notion of contractual obligation, its encouragement of thrift, the distinctions it maintains between earned and unearned benefits - which formed one of the major objectives of the advocates of this system rather than the other 'universal' schemes which were considered." [52]

By means of such measures the political effects of the social problem were deflected and its forces re-oriented. In place of an untrammelled market and a repressive policing mechanism was substituted an apparatus which could regulate population, restore efficiency and enforce responsibility, but could also present itself as merely the combined outcome of a nation of contracting individuals.

(b) The problem of disciplinary regulation

We saw in Chapter Two that the penal realm of the 1890s was also marked by a series of crises and disruptions, involving the failure of the prison, the chronic problem of recidivism, an over-severity which was often ineffective, and a corresponding crisis of popular legitimacy, manifested in frequent scandals and public outcries.

The political repercussions of these problems were compounded by the coming of "advanced democracy" which made it important to discover

a means of policing the population which would accord with the new political and ideological relations of the Social State. In the new democracy, where citizenship and security extended to all classes, discipline could no longer function through repression and exclusion. Henceforth its modalities would have to be more refined and discreet. Yet at the same time they would require to be more systematic and penetrating, more thorough in their effects. Their task was to ensure that the new and permanent threat posed to the system of class domination by the workers vote, their mass trade unions and their collective political existence was counterbalanced by an equally extensive and thoroughgoing regulation and discipline, reducing the 'risks' that democracy entailed, ensuring that new citizens were good citizens.

We have said enough already to show that the main co-ordinates of this crisis were indeed addressed by the new penal strategy which, as we have seen, repaired the deficiencies of the 1890s and created a more extensive and refined network of control. But again it is crucial to realise that along with this institutional change went a definite alteration of the ideological mode of address implicit in penal practice.

The categories and practices of the new complex did not employ the openly repressive terms of the old prison-based system nor even the explicit signs of the labour colony and its social segregation. In their place it deployed a new language of reform, correction and normalisation, supporting the inadequate, protecting the irresponsible, and restoring the morally deficient to the fullness of good citizenship.

In the language of the new complex the deviant was no longer represented as wicked or worthless - punishable because of the moral choices for which he was responsible. Instead the deviant appears as

deficient - mentally, morally or physically - his actions appearing as 'incompetent' rather than intended.[53] The function of penality is to restore him to an elusive normality by means of training and treatment, substituting new values and norms for defective old ones, supplying a discipline previously lacking, or a physical training to counteract degeneracy and neglect.[54] As Ruggles-Brise clearly saw:

> "Penal law is, through its prohibitions, the expression of the social standard of life in the country. Where that standard was high [and it was rising all the time] there must be a residuum of individuals whose mental and physical state does not enable them to live up to that standard." [55]

Penality's task was to intervene to address such deficiencies. The various sectors of the penal complex were to restore absent virtues and capacities, correct vices and abnormalities, or else, in the case of those whose incapacities were chronic, simply segregate in humane conditions for the protection of society and the individuals themselves.

This shift in the basis of penality's logic is what has been hailed as the liberalisation of punishment. It appears again and again in the texts of the 1900s and of today as the transformation which took punishment into its present civilised era, an era in which repression has become reform, and the "reversionary rights" of every citizen are recognised and provided for:[56]

> "It is in harmony with what one may perhaps call the modern growth of social consciousness that society becomes more and more concerned with the problem of treatment of those of its members who fall below the accepted normal standard. The submerged tenth, the insane, the degenerate, the criminal, the problem of the abnormal factors of the social organism becomes more and more insistent with the advance in that order which is the expression of a higher consciousness - social in its inception, humanitarian in its activity." [57]

And yet if we look closer, a less worthy operation is simultaneously taking place here. This drastic revision of penality's

logic occurs precisely at the historical moment when the political franchise is being extended to include the mass of the (male) working class within its terms for the very first time. At this moment the legal basis for full participatory political citizenship begins to change fundamentally from a question of economic substance to one of straightforward adult status.[58] But at precisely the same time a whole series of institutions and regulations are put in place which are designed to identify all those legal citizens (or prospective legal citizens) who lack the normative capacity to participate and exercise their new-found rights responsibility. Once identified, these deviants are subjected to a work of normalisation, correction or segregation which ensures one of two things. Either they become responsible, conforming subjects, whose regularity, political stability and industrious performance deems them "capable" of entering into institutions of representative democracy; or, they are supervised and segregated from the normal social realm in a manner that minimises (and individualises) any 'damage' they can do.

So in fact the sweep of the franchise and the social realm is indeed widened, but at the same time the conditions for participation in social life are made more rigorous, more contingent upon behaviour and character. Participation in the political domain is thus extended along one axis only to be restricted along another. The political reliability of citizens can no longer be assumed on account of their economic substance, so a certain caution is adopted in regard to the conditions of entry of the new classes. Just as the extending vote argued in favour of an educational provision for all,[59] it also promoted the 'remedial education' of penality and its practices:

> "The right of the state to subject the transgressor to an education which makes him fit to fulfil the elementary conditions of social life with others in an orderly

> society rests essentially on the same basis as the right to provide for the education and the instruction of children. In both cases the state sets up the level below which its members must not sink and tries to help those up who have not yet reached it or who have sunk down below it." [60]

This new and more subtle form of exclusion served to remove deviants physically from the domain of full and independent citizenship (where the extending franchise had placed them) and to remove symbolically the apparent rationality of all such deviance by ensuring that its perpetuators were deemed irresponsible, less-than-rational, less-than-citizens. At the same time it ensured that fewer groups were left 'beyond control', having redefined as pathological all those individuals who might fail to be deterred by the old system of punishments. Failure to be deterred thus became a mark of individual pathology, rather than a mark of the failure of penal institutions. Not for the first time, the institutions of penality preferred to change the nature of man himself rather than question the political principles of their practice.[61]

It was through this new version of citizenship and its necessary attributes that the new penal notions of abnormality and irresponsibility were articulated onto the strategies of the social field. And of course the corresponding ideology of beneficial provision to help those citizens-who-lacked was achieved without reference to the political transformation of 'citizenship' and the extension of State control which it undoubtedly involved. Instead it was represented as an (a-political) moral duty to help those whom modern science had recognised as being in need of care and control: a moral duty previously left to voluntary philanthropy but now supported and ensured by a benevolent charitable State.

As we saw earlier, this depoliticisation was achieved as a result

of the State-voluntary alliance and the mediation of the evangelical penal reform groups in the 'reception' of criminological innovations. This alliance (which took place in the social as well as the penal realm) allowed probation officers, social workers and supervisors eventually to become professionalised and to represent their ministrations not as class-based moralising but instead as the provision of expert counselling and advice.[62] At the same time this new concern with reform tends to undercut resistance, both from the offender/client, whose rights are displaced by his needs, leaving him unable to appeal to justice or even to know his own interests and from the public which sees only benevolence and compassion where once was cruelty.

Finally we should notice that this new extended strategy of intervention is not expressed in the traditional terms of the criminal law, which would involve declaring numerous minor irregularities as crimes carrying serious and lengthy sentences. Nor is it 'totalitarian' in establishing a State apparatus which constantly and universally intervenes in the lives and homes of all its subjects.[63] Instead the strategy functions by stating a series of normative expectations and standards and at the same time establishing a number of authorities and expert bodies to ensure these norms are met. These normative requirements are stated not just by law but also by schools, labour exchanges, housing authorities, health boards, poor law institutions and so on, and the onus is placed upon individuals and families to recognise these norms and comply with them (see Figure 2). Those who succeed remain 'free' - within these terms - and undisturbed by the incursions of state agencies. Those who fail thereby express their inadequacy, and their deviant behaviour, failure to meet requirements, or claims for special provision, function to trigger intervention accordingly.

> "It is through the failures and deficiencies of families that the State and public powers find the means and the cause to intervene. Parental deficiency and juvenile delinquency provide routes for intervention, pretexts under the liberal order whereby children can be removed from families or families placed under supervision.
>
> The autonomy of the family comes to depend not on law or proprietorial right but on competence. It enjoys a loosely supervised freedom to the extent that it meets social norms." 64

Or as one contemporary observed as early as 1915, in a chapter entitled "The Administered Child":

> "A consistent policy of acquiescence keeps a parent out of reach of official and voluntary interference in his home. But if he does not acquiesce, his case becomes abnormal and he is likely to feel the official weight." 64a

Some idea of this 'weight' is provided by the following diagram, although it makes no mention of the equally extensive penal apparatus:

APPENDIX A.—"THE INVASION OF THE HOME."

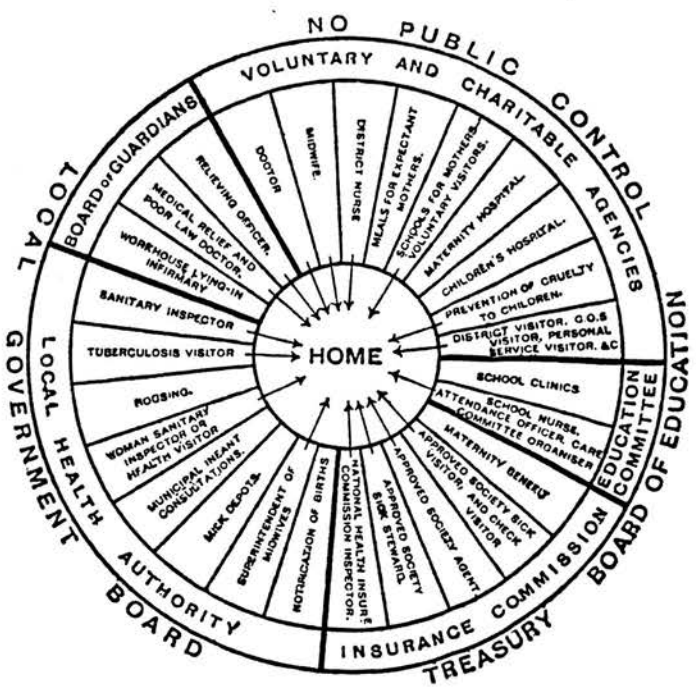

Fig. 2 "The Invasion of the Home"
(from D. Peplar (1915: Appendix A))

The penal and social agencies thus used such 'failures' as their points of entry in a more subtle and systematic repetition of the old philanthropic rescue - though 'failure' was now in relation to the normative institutions of the social realm and not, as previously, to the labour market itself. This strategy involves no violation of the liberal ideology of an equal law for all, nor yet any entry into a totalitarian Statism. Instead certain categories of person are identified (or identify themselves) on the basis of a 'failure' which can only appear to lie with themselves, since so much in the way of education, security and support has already been provided. Consequently this failure or deficiency requires that they be removed from the politico-judicial sphere to the technical-administrative realm of penal-welfare. And so once more the deficiencies of the (modified) market system are displaced onto these most disadvantaged by it. On this basis a systematic but always discreet distinction can be made between the bourgeois family, which may freely conform to norms made in its image and for its benefit, and a lower class family which is subjected to supervision and intervention in the name of a normative order which is not its own.

(6) Long term consequences and effects

The major arguments and demonstrations of our thesis have now been presented. We have shown how the transformations of the 1900s resulted in the assembly of a new set of penal and social strategies which addressed the problems of regulation and provision which had developed at the end of the nineteenth century. Moreover we have traced the complex processes of formation which contributed to these strategies and have given an account of their functioning,

interrelationships and contemporary significance.

However we cannot end the dissertation at this point without indicating some of the effects and consequences which have actually followed from these strategies, and suggesting how a knowledge of their structures may be of use for our understanding of the present. In particular it will be necessary to indicate how the logics and potentials of these strategies were limited, contradicted or redirected in the years between their formation and the present day. But before taking up this last task, we must emphasise that it cannot be anything more than a brief and schematic discussion, given the limits of the present work. A proper, detailed analysis of this subsequent development is an important project which might hopefully be facilitated by the present dissertation, but cannot be included within it.

(a) The social strategies

The establishment of these institutions of security and administration in the 1900s provided the basis upon which the policies of Keynsianism, social democracy and the 'Welfare State' have subsequently been built. In other words the outcome of the transformation we have described was to establish the balance of political forces and the style of social politics which has persisted throughout the twentieth century and is only now, in the 1980s, undergoing its first serious challenge.[65]

We can hardly begin to follow through the profound implications of this structuration, and certainly not within the limits of this thesis. Suffice it to say that this development not only established the central structures of modern Britain, with all their familiar contradictions, but also excluded a series of alternative forms which have since been marginalised and lost to political view. These

marginalised alternatives include not only the basic re-distribution of wealth and power urged by socialists, but also various forms of needs-based or even rights-based social provision, the establishment of a national minimum income, of enterprise or union-based systems of provision, and so on.[66] In establishing insurance as the primary form of provision, the Liberal Government established the terms of subsequent social policy discourse, and excluded alternative terms as utopian or impracticable. It thereby established a social realm of individual claims and contracts. leaving the vision of group solidarity and social rights to those who dreamt of an altogether different society.[67] We might also add that the "utopia" outlined by Beveridge - in which the social realm became the administrative empire of public servants, technicians and professional expertise, charged with adjusting the social and economic relations of their clients - became in large measure the actual reality of post-war Britain.

(b) Penal-Welfare strategies

The subsequent effects of the new penal-welfare strategies are also profound. They too laid the basis for the subsequent developments of the twentieth century, including the post-war shift towards a more scientific-sounding "rehabilitation", a development which merely accentuated certain discursive and institutional elements already in place, while playing down the evangelical and paternalistic elements which had originally 'balanced' them. In other words, the Liberal penal reforms of the 1900s effectively settled the terms of penal discourse and official practice, orienting them in a welfarist direction which has continued throughout the century. Again, this direction is being disturbed for the first time only now, in the 1980s.[68]

One or two of these consequences can be outlined in a little more

detail in order to illuminate the present structure of penality in the light of our analysis of its formation.[69]

First of all, we can now see more clearly how the still dominant individualistic conceptions of penality and social work have been arrived at and sustained. In both cases the correction of individuals and families has altogether displaced the concern for social transformation which can be discerned in the logic (and some of the texts) of the original programmes. Questions of social reform, of social reconstruction and change have become institutionally and discursively separate from the task of individual correction, which remains the major focus of penality. As Laurence Hausmann put it in the 1920s:

> "This is not to say that there is never such a thing as a criminal, brutal, base or mean, who is mainly if not entirely responsible for the crime of which he stands charged, but it is to say that the shared responsibility between society and the criminal varies through all degrees, and that we have stereotyped our formula of justice upon the false assumption that the criminal and not society is always to blame." [70]

Similarly with social work practice more broadly:

> "The wider programmes of 'social reform' and 'social improvement' of which social work is only one element, have been ignored at the expense of developing technique and specifically psychotherapeutic technique." [71]

And of course the more 'social reform' occurred in the 1940s and 1950s, the more this separation ensured that the problem of deviance became increasingly seen as one of individual pathology and responsibility.

Secondly, we might notice that on the basis of these changes the penal realm became more professionalised and expert-oriented. This had the effect of further decreasing public involvement with penality and also increasing the bureaucratic secrecy which had surrounded its operations since 1877.[72] At the same time this professionalisation of the executive furthered the shift from the

judicial to the administrative mode, tending to exclude the operation of either public review or legal rights within the penal realm.[73]

As we have seen, the categories and terms of the new penal-welfare practices were different in form from those of the conventional criminal law. The norms enforced by these practices - regarding say "mode of life", "moral danger", "character" or "neglect" - cannot be declared and specified publicly in the form of detailed behavioural regulations. Instead, the precise values and standards which they imply must be specified operationally, in the decisions of professionals and 'experts' who are left to certify the 'abnormal' and demarcate the 'deficient' according to their special knowledge and expertise:

> "... the practices here, though they may be constituted by law, operate according to criteria which, from the point of view of law, are indeterminate: their rules and procedures are dependent upon the forms of explanation and proof which have been elaborated in the social sciences." [74]

This problem is to some extent inherent in all penal practice, but the new focus upon reform and correction - a focus which justifies longer sentences, the evasion of legal forms,and enormous executive discretion - seriously exacerbates its effects. All of the new practices of reform, correction and normalisation routinely imply an 'ideal character' to which the deviant will be approximated; a definite set of attitudes, values, characteristics and images which are the operational objective of the treatment. And yet these crucial characteristics are never publicly stated or argued for, let alone subjected to democratic processes of legislation. Instead these spaces are filled by bland terms such as the notion of the "useful citizen", the "good character", or simply the "normal" - a lack of specificity which echoes the evasions of the criminological and eugenic programmes when faced with the same question.[75]

Without a close and detailed analysis of each particular practice and institution it is impossible to describe the precise norms and values which are involved in the new penal-welfare practices - a feature of the new strategy which has no doubt preserved it from criticism as well as control.[76] Such detailed operational analysis is beyond the scope of this dissertation, but we can point to some of the value-objectives which seem to be involved, if not their precise forms of implementation.

At a general level, it is clear that the value of 'individual responsibility' is crucially inscribed in these practices. It is formulated positively in the legal 'recognition' - and hence demand - that 'normal' individuals take full responsibility for their conduct, and negatively in the remedial treatment accorded to those found to be 'irresponsible'. Similarly, the system of reward incentives which runs throughout the new complex, reinforces a definite image of the proper order of things wherein promotion is the reward for individual effort and hard work, and the fate of the individual rests upon his own will to conform. These operational objectives correspond with the values which are discursively specified here and there within official statements and directions. Thus the promotion of "regular habits",[77] "punctuality, orderliness, smartness and obedience"[78] and an "enlightened self-interest"[79] are stated as definite Borstal objectives, as are "respect for authority" and "industrious labour".[80] "Temperance thrift and self-help"[81] are the recommended topics of instruction for adult prisoners, while female offenders are expected to learn housework, cooking, laundry, domestic service and so on.[82] Sir Alexander Paterson, a prison commissioner who followed Ruggles-Brise in his concern with "reform" and "training", assured his Borstal lads that:

"Work is sometimes a bit monotonous, but to work for

> others is never dull ... that we shall so learn to become masters of ourselves that we may be fit to be the servants of others." [83]

and the first issue of The Borstalian - the magazine for Borstal inmates, later renamed 'Phoenix' - warned the lads:

> "to give trade unionism a wide berth, for it will be the workers' ruin and a curse to the country." [84]

It might also be noted that the new forms of classification instituted in prisons after 1893 allowed definite social class and political criteria to enter into prison categorisation. Thus the Churchill rule of 1910 which allowed the privileges of the First Division to certain offenders - on the basis that they did not belong to the criminal classes - was extended to suffragettes but not to conscientious objectors or communists in the same period.[85] While these privileges of keeping servants in prison, wearing personal clothes, being allowed special food, wine, and so on were no doubt befitting to "persons of refinement and education" to whom "the many restrictions for the safe custody of criminals would naturally seem harsh, unnecessary and even unnatural",[86] it is not perhaps surprising that ordinary prisoners were reported to express "dissatisfaction", being "not able to appreciate what must often be a nice distinction".[87]

Without further evidence, it is impossible to analyse the normative content of the new penality in a rigorous way, but enough has been said to raise the suspicion that a particular configuration of values, derived from a particular social class, is indeed inscribed in these practices. As one contemporary critic pointed out, "inspection" and "reform" in these terms:

> "means the judgement of one class by the standards of of another, the teaching of people how to live under circumstances of which the teachers have no personal experience. If carried through it means also the forcing of the ideals of one class upon another class, and nothing is so demoralising as that." [88]

Another important consequence of the struggles and outcomes which we have described was the gradual institutionalisation of criminology as an officially sponsored form of knowledge. The qualified 'recognition' which we saw accorded to criminology by official discourse in the 1900s, opened up a process of institutionalisation which culminated in the establishment of the Cambridge Institute and the Home Office Research Unit in the 1950s.[89] Throughout this period, indeed up until the present day, criminological discourse has functioned as an important auxiliary of modern penality. It provides resources and support for particular policies, lends a certain 'scientific' credibility and legitimacy to official policy, and supplies a knowledge-base for penal functionaries which supports their professional status and their individual morale.

But if the social status of criminology was shaped by these developments, so too was its discursive structure. The discursive characteristics and compromises that we saw being constructed in the 1890s and 1900s have been sustained and reinforced by the 'discipline' as it has expanded throughout the century. Criminology thus retains its eclectic, individualistic, correctionalist features as well as its pragmatic quest for 'policy relevance'.[90] Indeed, it has not altogether dispensed with its Lombrosian and eugenic heritage which continue even today to direct research and shape conclusions.[91] It is hard to see how the contours of modern criminology can be understood except by reference to this history of discursive manoeuvre and the desire for institutional power.

Finally, we might simply note the new framework of penal ideology which emerged for these transformations. This ideology centred around the imaginary relation of a benevolent State extending care and treatment to an inadequate individual, a positive image which fitted

well with the ideology of welfarism which soon overlaid the new apparatus of social security. Moreover the various chains of reference which this central image evoked - those of paternalism, evangelicism and scientism - were allowed to co-exist in an eclectic and flexible framework of representation which excluded nothing but the negativity of 'senseless punishment'. This ideology of the humane and the reformative helped to establish a cross-party consensus on penality which has lasted through most of the twentieth century.[92] It is not the least of its achievements that the political opposition which was absent at its inception has not yet been caused to appear.

(7) The Limitations and Revisions of the Strategies in Practice

We have now analysed the strategic structure of the modern social and penal realms, and have indicated some of their general effects and consequences. Before concluding our analysis it is necessary to emphasise that there is a definite discrepancy between the structural logic which we have described and the subsequent operation of these institutions. Our concern has been to identify the underlying logics, techniques and discourses which structure these realms and specify their potential. We have therefore analysed their strategic formations, the mechanisms they employ, the measures they exclude, and the effects at which they are directed. It must be borne in mind however, that there is always a distance between a strategy's potential and its practical success. This distance or discrepancy is enforced by the operation of resistances, contradictions, limitations and failures which ensure that no complex strategy is ever a total success.[93]

Any exhaustive account of these realms would therefore have to supplement an abstract strategic analysis of the type we have presented

with detailed empirical descriptions of how that structure actually operates in practice. This kind of description requires a series of analyses which are beyond the scope of the present dissertation, however we will briefly indicate the main points of limitation and resistance which these strategies encountered. It should be stressed though, that this is a complement to our analysis and not a corrective of it. Our objective throughout has been to identify the mechanisms, discourses and strategies which sustain modern penality, and while this is intended to promote sound phenomenological accounts, it is not a substitute for them. It should also be noted that although this section will deal only with the penal realm, the social strategies of the Welfare State have certainly not avoided resistance or contradiction, as the political reactions of the 1970s and 1980s have made perfectly clear.[94]

One need do no more than read the major Reports, policy statements or research monographs of the last eighty years to learn of the limits and contradictions again and again encountered by the new penal-welfare strategy. The penetration and normalising potential of probation or social work supervision has been drastically limited by enormous case-loads and the bureaucratic displacement of goals.[95] Preventive detention has been little used because of judicial resistance to its terms, and the State Reformatories for Inebriates and the weak-minded dealt with only a few hundred cases each year.[96] Similarly the correctional objectives of Borstals and prisons have hardly been prosecuted with maximum force. Comparatively few professional staff have been employed in correctional institutions and where psychiatric or psychological expertise has been utilised, it has frequently been redirected from therapeutic to managerial functions.[97]

An examination of the official forms and case-papers utilised in

"correctional" institutions between 1895 and 1939 also shows up these serious limitations. The bulk of the information contained in these dossiers relates not to the inmate's character or prognosis but to his identificatory features, his institutional record and the marks and gratuities which he has earned.[98] And despite various efforts to overcome this ("opinions and observations will not be stated curtly or mechanically"[99]) official attempts to gain individualised knowledge from the police and other authorities ran up against the mechanical repetition of standard terms such as "respectable", "industrious", 'regular" or "disreputable". The tendency,then,was for classification and individualisation to become an administrative matter and not a therapeutic one. The new language of assessment and diagnosis only functioned when actually inscribed in obligatory practices such as the completion of assessment forms or release-on-licence documentation, and only in rare and special cases did it serve to promote a form of institutional treatment which depended upon its categories.[100]

Despite the claims of policy documents and the continual urging of criminologists, the penal-welfare strategies never wholly displaced other, more traditional strategies of sentencing and punishment, a failure which is most clearly illustrated by the vast expansion in the use of unsupervised fines - and by the massive use of short terms of imprisonment for those who default in payment.[101] Indeed if it was the compromising and mediating tendencies of the early programmes which enabled them to become practicable, it was also these same tendencies which ensured that the penal-welfare strategy was traced through with persistent contradictions. In fact the manoeuvres and compromise-formations of that early period set up a series of tensions and balances of forces which continue to exert their conflicting pressures right up to the present day.

Take the process of sentencing for instance. As we saw, the judicial verdict was never altogether replaced by a diagnosis or character assessment. Instead the one was supplemented by the other in an awkward two-stage process whereby the contradictory logics of classicism and positivism were made to sit side by side. This compromise leads to frequent absurdity, the most spectacular instance being the case of capital murderers who were found to be both sane and liable to execution under the McNaughton Rules,only to have their death sentence commuted by a post-sentence psychiatric examination which found them to be insane in terms of its less stringent tests of insanity.[102]

Similar conflicts have continued to plague the relationship of legal ideologies to those of social work and "welfare" as it operates throughout the penal complex. The most obvious instance here is perhaps the controversies surrounding the 1969 Children and Young Persons Act though it can also be traced in the persuasive and compromising discourse of the standard Social Enquiry Report.[103] Even within the normalising and corrective agencies themselves, the initial compromise between a moralistic approach to reform and a more scientistic psychotherapeutic model, has produced a continuing conflict which is not yet settled.

The most successful feature of the whole strategy has undoubtedly been its ideological effect and the legitimation it has produced. Nonetheless we should not omit to mention that this success is precariously balanced against an undercurrent of populist political reaction which demands that these measures be always provided in a less-eligible form and that they be supplemented by a strong deterrent policy for the wicked and the dangerous - preferably one which involves that most negative of sanctions, the death penalty.[104] Moreover the

positive, correctionalist insistence of the penal-welfare strategy makes it harder to accommodate and comprehend its own failures. It is less easy to disown this failure or to displace it on to the "recalcitrant" offender when a technical capacity for correction and cure is the central claim of the whole strategy. Consequently the status and morale of its functionaries can be, and has been, seriously undercut by the continual ineffectiveness of their practices.

The overall consequence of these limitations and contradictions - especially the failure to achieve real transformative effects upon individual character - has been to provoke a subtle but profound alteration in the functioning of the penal realm. At the level of the individual agent there has been a widespread displacement of goals which has had the overall effect of regrouping the original strategy into a more cynical and less ambitious project. What was once intent upon reforming characters, remoulding behaviour and improving its clients now does so only in the marginal, special cases which each agent recalls with hope or nostalgia, suppressing the memory of hundreds of others for whom nothing positive can be done. The standard performance becomes a less satisfying affair of surveillance, security and segregation.[105]

Today's penal complex does not prevent or stop crime in the main - the normal forms of socialisation and integration do that. Nor does it generally reform criminals. Rather it administers criminals and criminality, managing 'social failures' and not repairing them. Its effect is to propel these individuals into a deterred conformity or, more usually, into closely supervised spirals of failure and continued failure. It thereby ensures that loose categories and drifting individuals become fixed, decidedly one thing or the other, and hence more manageable. It places them in a position of being known

and predictable, properly connected with either social or penal institutions - 'within control':[106]

> "The important thing for the apparatus is the individual's identification, his inflection towards an 'uneventful' life or towards a career of catalogued delinquency. More than anything else, the system wants to eliminate surprises in favour of management in one category of the other." [107]

The penal-welfare strategy thus allows a genuine hope and desire for reform and yet simultaneously ensures that any "failure" is well controlled. But it is important to realise that this fall-back strategy which ensures that reform is 'covered' by an extended apparatus of control, was in fact recognised right from the start and offered part of the attraction of the new programme.[108] Surveillance and long-term segregation have always been represented as the balancing forces which allowed a measure of leniency without any corresponding risks.

The 'success' of the penal-welfare strategy - a success which has allowed its persistence for nearly a century - is not then the reform of offenders or the prevention of crime. It is its ability to administer and manage criminality in an efficient and extensive manner while portraying that process in terms which make it acceptable to the public and penal agents alike.

(8) Concluding Remarks: Some Theoretical Implications

The substantive propositions of this thesis have all been detailed and demonstrated by now and it is not proposed to repeat or summarise them here - not least because such a summary would run the risk of reducing the detail and complexity which lies at the heart of these arguments. Instead one or two reflections of a general kind will serve as a final conclusion.

The forms and processes of historical change have been written and interpreted here in a manner very different from conventional accounts of penal history. The value of this interpretation must be left to the judgement of the reader but the following claims can be made on its behalf. First of all, the use of a form of discourse analysis, dealing with the substance of texts and their construction has allowed these historical processes to be traced and described at a level of detail not otherwise available. It has thus extended the intelligibility of these processes beyond the vague and unsubstantiated notions of 'influence' and correlative change which organise most other accounts. For example, rather than merely 'recognise' that the reception of criminology's programme was qualified and mediated, it has proved possible to show precisely how these 'qualifications' and 'compromise formations' were discursively constructed and made available. Moreover these discursive processes have been theorised within a field of political forces, a method which again attempts to describe and detail the relations between knowledge and power instead of occluding these relations within simplistic and untenable notions of rational enlightenment. It is argued that this politico-discursive approach has allowed the timing, direction and significance of these changes to be analysed in a more comprehensive and intelligible form than is otherwise possible.

Finally, this method has the merit of describing and substantiating more precisely the relationship which holds between specific 'theories', such as criminology or eugenics, and the realm of official practices. This has led us to argue that the development of each is best seen as mutually conditioned and conditioning: thus while modern penality cannot be understood without reference to criminological discourse, the reverse is also true in a profound and fundamental sense.

Another related point which emerges from our study concerns the status of official penal discourse and its relationship to penal practices. As our analysis of the discursive manoeuvres of official Reports, statements and legislation makes clear, penal discourse is as much concerned with its projected image, public representation and legitimacy as it is with organising the practice of regulation. With regard to penal practice then, it can hardly be taken as an accurate descriptive account, though neither is it merely a 'mystification' as some writers claim.[109] Instead it should be regarded as partly constituative of penal practice and partly its ideological representation. Only detailed study of particular instances can specify the precise balance of these elements, the entanglement of which is well illustrated by a remark of a recent Report:

> "We think that the rhetoric of 'treatment and training' has had its day and should be replaced. On the other hand, we intend that the rhetoric alone should be changed and not all the admirable and constructive things that are done in its name." [110]

As for the relation between penality and other social institutions, it has been demonstrated that this is a complex (though describable) interlinking relationship of pulls and relays, exchanges and interactions. On the basis of our analysis it can make no sense to conceive of this relationship as one of simple determinism in the form argued by Rusche and Kirchheimer or even Emile Durkheim.[111] Nor does it make sense to conceive of penality as corresponding to a single 'form' or 'logic', whether it be the bourgeois form of law or the inexorable logic of disciplinary society.[112] As we have demonstrated, penality is constructed around an eclectic series of disparate and contradictory forms and logics which may sometimes be strategically related, but are never singular or uniform. There is certainly a sense in which the realm of the 'welfare sanction' could be said to be the underside of the Welfare

State,[113] but this juxtaposition can only stand if qualified by the fact that both of these terms are complex, relating to one another not as cause and effect but rather as the mutually conditioning elements of a general social strategy.

Finally, it should be clear from our central arguments that the 'practicable object' of penal practice - the individual, his guilt, his character or whatever - is not something naturally and universally given, nor even something gratefully received from scientific inquiry. It is rather a category constructed within politico-discursive struggles, with definite political implications which follow from its adoption. Not the least significance of such analyses is that they promote the possibility of a change in that object, with different political consequences in view.

APPENDICES

APPENDIX ONE

Major Penal Measures 1895-1914

1896: New Prison Rules for Juveniles.

Establishment of a Prison Staff Training Scheme.

Parkhurst Prison established as an institution for long-term, weak-minded prisoners.

1897: Separation of First Offenders from Habituals in local prisons.

Bail Act.

Foreign Prison-made Goods Act.

1898: Inebriates Act.

Prison Act.

Vagrancy Act.

1899: Reformatory Schools (Amendment) Act.

Fine or Imprisonment (Scotland and Ireland) Act.

Inebriates Act.

1901: Youthful Offenders Act.

1902: Licensing Act.

Establishment of the post of Chaplain Inspector.

1903: Poor Prisoners Defence Act.

1904: Prisons (Scotland) Act.

1906: Aylesbury Prison established as an institution for weak-minded women.

1907: Probation of Offenders Act.

Extension of remission to prisoners serving sentences of more than one month.

1908: Children Act.

Prevention of Crime Act.

Establishment of the Borstal Association.

1910: Establishment of the "Aged Class" category in prisons.

Reduction of periods of solitary confinement served by Penal Servitude prisoners.

1911: Formation of the Central Association for aid to discharged convicts.

Camp Hill Prison established as an institution for Preventive Detention.

1912: Rampton Prison established as an institution for criminal lunatics.

Appointment of a Medical Officer to the Prison Commission.

Criminal Law (Amendment) Act.

1913: Mental Deficiency Act.

Mental Deficiency (Scotland) Act.

Formation of a Central Committee for the aid of discharged local prisoners.

Prisoners (Temporary Discharge for Ill-health) Act.

1914: Criminal Justice Administration Act.

APPENDIX TWO

Major Social Measures 1895-1914

1896: Industrial Conciliation Act.

1897: Workmen's Compensation Act.

1899: Poor Law Act.

1902: Licensing Act.
Labour Bureau (London) Act.

1903: Housing of the Working Classes Act.
Employment of Children Act.

1904: Outdoor Relief Friendly Societies Act.

1905: Unemployed Workmen Act.

1906: Workmen's Compensation Act.
Trade Disputes Act.
Education (Provision of Meals) Act.

1907: Education (Administrative Provisions) Act.
Released Persons (Poor Law Relief) Act.

1908: Children Act.
Establishment of an eight hour day in the Mining Industry.
Old Age Pensions Act.

1909: Housing and Town Planning Act.

Labour Exchanges Act.

Trade Boards Act.

Development and Road Improvements Act.

Introduction of progressive income tax.

1910: Education (Choice of Employment) Act.

1911: National Insurance Act.

Old Age Pensions Act.

1912: Coal Mines (Minimum Wage) Act.

1913: Trade Union Act.

1914: Temperance (Scotland) Act.

Elementary Education (Defective and Epileptic Children) Act.

Notes and References

Preface

1. The term 'penality' is used throughout the dissertation to refer to the whole of the penal complex, including its sanctions, institutions, discourses and representations. It is useful insofar as it avoids the connotations of the terms "penal system" (which tends to stress institutional practices, not their representations, and to imply a systematicity which is often absent) and "punishment" (which seriously begs the question of the nature of the phenomenon).

2. With P. Young in "Towards a Social Analysis of Penality" in Garland and Young (eds.): The Power to Punish (1983) London: Heinemann.

3. The term "programme" operates here as an analytical and expositional device, rather than as a real category. It allows us to group together and discuss a large number of projects, schemes and propositions which shared certain fundamental objectives, discursive resources and political positions. This notion of the 'programme' needs, of course, to be grounded in the evidence of individual statements and specific projects (see Chapters Three, Four and Five), but its abstraction allows the broader significance and context of these specificities to be analysed. In consequence, the programmes discussed will be of varying degrees of integrity, uniformity and cohesion, ranging from the tightly-knit eugenics programme to the much more diverse programmes of social work and social security.

   In addition, the term "programme" allows us to recognise the sense of motivation and purpose which lay behind discourse such as criminology or eugenics, and the institutions which supported them. As will be demonstrated, it was not at all uncommon for these programmatic objectives to find their way into the conceptual structure of the discourse itself.

Notes and References

Chapter 1

Modern and Victorian Penality: The Differences

1. A description of the strategic and ideological significance of these penal-welfare elements will be developed as the dissertation progresses. Suffice it here to say that the penal-welfare institutions have operated as an important intermediary between the integrating mechanisms of 'welfare' and the coercive thrust of penality, as well as lending a positive legitimacy to punishment within a State based upon an ideology of welfarism.

2. See, for example, Bean (1976).

3. See Foucault (1977) and Durkheim (1973).

4. See Rusche and Kirchheimer (1939) and Melossi and Pavarini (1981).

5. See Cohen (1979) and (1983); Scull (1983) and Mathiesen (1983).

6. Nor is it to suggest that nothing new has occurred during the last 70 years: a proposition which would clearly be absurd considering the importance of developments such as the abolition of the death penalty, the introduction of open prisons, parole, detention centres, the expansion of the fine, the creation of Children's Panels, etc. Nonetheless it remains true that all of these, and most other innovations of the twentieth century, fall squarely within the pattern of penality which was first established in the 1900s.

7. Foucault (1977: 1-5).

8. See Radzinowicz (1956). As Palmer (1979) and Hay (1975) point out, a very large proportion of death sentences were subsequently commuted to transportation or imprisonment.

9. See generally The Departmental Committee on Corporal Punishment (The Cadogan Committee), Cmnd. 5684, February 1938.

10. On the significance of this shift from the corporal to the carceral, see Foucault (1977) and Ignatieff (1978). On transportation, see Shaw (1966).

11. The Report of the Prison Commissioners (for the year ended

31 March 1898) p.11.

12. The Penal Servitude Act 1864 which laid down these minimum sentence terms, is discussed by Hinde (1951: 91).

13. This statutory supervision and reporting of 'ticket of leave' prisoners was quite separate from the supervisory aspects of the 'after-care' offered by local Discharged Prisoners Aid Societies. These latter were private, charitable agencies (though after 1863 they received a small subvention from central government) with no legal powers of sanction for ex-prisoners who refused their attentions.

14. See the data and discussion provided by Sutherland (1934). In an undated pamphlet by Ruggles-Brise entitled "The Movement of Crime in England and Wales since the London Congress of 1872", it is stated that in 1893, 23,749 indictable cases were sentenced to imprisonment (without option of a fine), while only 960 were sentenced to penal servitude.

15. L. Radzinowicz, introduction to Webb (1963).

16. There were, however, a small number of specialist institutions such as Broadmoor (for criminal lunatics), Aylesbury Prison (for disabled and female prisoners). Between 1835 and 1854, Parkhurst Prison was used for juvenile offenders, as was Perth Prison in Scotland.

17. See Rose (1967).

18. The maximum age for Reformatory detention was 19 years.

19. Quoted in Rose (1967: 11-12).

20. Ruggles-Brise (n.d.) gives the following figures for indictable offences:

1893:	Penal Servitude	960	:	Imprisonment	23,749	:	Fine 9,457
1912:	Penal Servitude	876	:	Imprisonment	23,118	:	Fine 10,278

Unfortunately aggregate figures for the lower courts' use of sanctions for <u>non</u>-indictable cases are not easily available for this period.

21. See King (1958) and Bochel (1976).

22. The most important statutes in this process were the Prison Acts of 1823, 1835, 1844 and 1865. The administration of Scottish prisons had a slightly different process of centralisation with the Prison (Scotland) Act 1839 and the Prisons (Scotland) Administration Act 1860 establishing centralised Boards of Directors and Managers, see Cameron (1983: 122).

23. It should be noted that Scotland had its own separate Prison Commission, established by the 1877 Prisons Act.

24. See Hobhouse and Brockway (1922) for evidence of this administrative censorship.

25. See generally Foucault (1977).

26. To talk of the 'objectives' of a system, institution or agency, is always problematic if the term is taken to refer simply to subjective intentions or conscious aims. These can only be ascertained by establishing speculative links from perceptible speech or action to their presumed origins in the agent's intention, and are consequently difficult to establish or verify, especially in retrospect. The notion of 'objectives' used here refers instead to the values and aims which can be positively inferred from official policy documents and administrative orders or else from the actual priorities and structure of institutional regimes. Other less obvious 'objectives' which the prison served will be discussed in Chapter Two. For this discussion, it is the presence of the value or aim within the discursive or institutional practice which is important, not the conscious intention which may or may not lie behind it. The question of calculation will itself be dealt with later, in Chapter Seven.

27. See Young (1976).

28. See UNSDRI (1975).

29. The 'silent system' permitted associated labour during the day on condition that no communication took place between prisoners: it thus allowed a greater degree of productivity although discipline was relatively more difficult to enforce.

30. See, for example, The Committee on Dietaries of County and Borough Gaols (1864); The Committee on Dietaries of Convict Prisons (1864); The Committee on Dietaries in Local Prisons in England and Wales (1878).

31. See Jebb's evidence to The Lords Select Committee on Gaols and Houses of Correction (the Carnarvon Committee) 1863 quoted at

page IX of the Report.

32. It should be noted though, that the treadwheel and crank were not adopted in Scottish prisons:

"... in Scottish prisons there are no tread-wheels or cranks or other mechanical means of inflicting what is known in England as first-class hard labour. Sentences, involving hard labour, are comparatively rare in Scotland while in England they form the great majority ... the treadwheel and crank have both been tried in Scotland and abandoned many years ago as improper instruments of punishment. The Scottish prisoner is therefore engaged entirely in industrial labour ... for instance, oakum picking ..."

p.vii of the Scottish Departmental Committee on Habitual Offenders, etc. (1895).

33. cf. The Carnarvon Committee Report (1863) p.vii:

"If the local authorities can make use of the crank or treadwheel for productive work, the Committee see no objection to this".

34. An exception to this was the progressive stage system utilised in convict prisons which allowed discipline to operate through the removal of privileges, as well as the exaction of corporal penalties.

35. Webb (1963: 204).

36. See, for example, The Carnarvon Report (1863); The House of Lords Select Committee on Gaols and Houses of Correction, Third Report (1835); and Du Cane (1885).

37. Howard (1960: 103).

38. Ruggles-Brise (1924: 10).

39. Du Cane (1885: 155). Here Du Cane is talking of penal servitude, but his comments also applied a fortiori to most local prisons, which lacked even the elementary classifications of the convict prison.

40. cf. Grunhut's comments upon the separate system, which he described as:

"a system which by a grotesque exaggeration of a pretended individualization fell back into the most unnatural mass uniformity. It resulted in a complete extinction of all personal traits which

could act as reminders of the prisoner's individuality, and this made the whole scheme even more commendable to those who wished criminal law and prison discipline to be based upon a system of strict retribution." Grunhut (1948: 60).

41. Ellis (1910: X-XI).

42. Foucault (1979).

43. Quoted in Fox (1952: 48).

44. See Devon (1911).

45. Stephen (1883: Volume 11, 81).

46. Foucault (1977: 10).

47. See, for example, the comments of Lord Chief Justice Cockburn, quoted by Fox (1952: 48); the terms of the 1779 Penitentiary Act; the Carnarvon Committee Report (1863: xii) and the Report of the House of Commons Select Committee on Prison Discipline (1830: passim).

48. The Carnarvon Committee Report (1863: xii); Du Cane (1885: 155).

49. cf. Beccaria's statement that:

"Reformation is not to be thrust even on the criminal; and while, for the very fact of its being enforced, it loses its usefulness and efficiency, such enforcement is also contrary to the rights of the criminal, who can never be compelled to anything save suffering the legal punishment."

Quoted in Radzinowicz (1966: 12).

50. cf. The rigorous manichean categories of the McNaughten Rules, set out in Walker (1968: 84ff).

51. cf. Edelman (1979) and the commentary upon that text by Hirst and Kingdom (1979: 8):

"Law both 'imaginately' fixes and sanctions social relations. It compels things to be as it recognises they are. ... It denies recourse beyond its forms ..."

52. In fact in the years after 1908 the courts which utilised the P.D. provisions often specified maximum sentences of less than 10 years. This interpretation of the Act appears to have been contrary to the legislature's intention, and to have been challenged, unsuccessfully, by the Home Secretary in the Court of Criminal Appeal. See the Letter from the Home Secretary [H. J. Gladstone] to the Lord Chief Justice on the subject of Sentences of Preventive Detention, December 4, 1909, P.R.O. Cab 37/101.

53. See Bochel (1976).

54. See Barman (1934) and Paterson (1951).

55. On the development of the juvenile court in Britain, see Carlebach (1970).

56. As noted above, a similar system of 'progressive stages' had previously been in use in convict prisons. On these internal forms of administration and discipline, see Thomas (1972).

57. These were as follows:

"Convict Stars, Convict Intermediates, Convict Recidivists; Convict Juvenile-Adult Stars, Convict Juvenile-Adult Intermediates, Convict Juvenile-Adult Recidivists; Convicts Preventive Detention; Convicts Long Sentence Division Stars, Convicts Long Sentence Division Intermediates, Convicts Long Sentence Division Recidivists; Locals First Division, Locals Second Division, Locals Third Division; Local Stars, Local Ordinary, Local Second Division with modifications; Borstal Inmates Special Grade, Borstal Inmates Ordinary Grade, Borstal Inmates Penal Grade; Modified Borstal - one month to four, Modified Borstal - four months or over; Lads under sentences of one month and under."

Quoted in Leslie (1938).

58. No doubt judges had always taken some account of "character" when sentencing, and the Penal Servitude Act of 1879 instructed that antecedent record be considered in passing sentences of penal servitude. But in the years after 1895 we can trace the introduction of a formalised and across-the-board system of character assessment and classification, qualitatively different from the traditional practices.

59. For a detailed discussion of the prison in the years after the Gladstone Report, see Hobhouse and Brockway (1922) and Ruggles-Brise (1921).

60. As we shall see in later Chapters, the "incorrigible" status of Preventive Detention prisoners posed an ideological problem for a State which increasingly relied upon reformative representations of itself and its penal practice. The result was the simultaneous representation of such prisoners as beyond reform and yet-to-be reformed.

61. Ruggles-Brise (1911: 74).

62. See page 17 above.

63. Ellis (1910: X-XI).

64. The Gladstone Report (1895: 5).

65. The Times, 11 May 1912. On the development of the criminal law in relation to insanity, see Walker (1968), Whitlock (1963) and Smith (1981).

66. Saleilles (1913: 8-9).

67. cf. Williams (1981) who makes this point in regard to English poor law strategies and their transformation in this same period.

68. See Ruggles-Brise (1921: 2):

"Formerly, 'Prison Reform' meant the structural reform of prisons, sanitation, order, cleanliness. Today, it means the reform of the 'prisoner' by improved methods of influence and treatment while in prison."

69. "The principle of the obligation to work remains a fundamental one, but it has entirely changed its meaning: although it still has its justification as an economic factor, it is now used above all as a re-educative method, and not as a means of retribution."

The International Penal and Penitentiary Foundation (1951: 122).

70. On the nature of this continuity, see Chapter Eight below.

71. It is worth noting that, as The Times quotation suggests, this transformation was recognised as such at the time of its occurrence. See, for example, the Report of the Prison Commissioners for 1908-09, page 26, and also The Times, 15 January 1901.

72. On the generalisation of these methods throughout the western world, see the International Penal and Penitentiary Foundation's text on Modern Penal Methods (1951).

73. Foucault (1977). See also Scull (1983) which follows Foucault in this, and, in his review of Rothman's work, explicitly denies the significance of the transformations which occurred at the turn of the twentieth century.

74. Walker (1965: 133).

75. Morris and McIsaac (1978: 5).

76. Rose (1961: 15-16).

77. One important text which acknowledges such a transformation and presents a similar periodisation is Rothman (1980):

"In the opening decades of the twentieth century, new ideas and new programs transformed public attitudes and social policies toward the criminal, the delinquent and the mentally ill. The innovations are well-known for they have dominated every aspect of criminal justice, juvenile justice and mental health right through the middle 1960s." Rothman (1980: 3).

Rothman goes on to present a very detailed account of this transformation as it occurred in the United States of America; an account which in many broad respects supports the findings of the present dissertation, for example, with regard to the distance between what he calls "rhetoric and reality" and the extent to which penal administrators "benefitted" from these new developments. However, there are a number of reasons why Rothman's work has not been a central resource for the present study. First of all, Rothman's account is fully and deliberately specific to the American experience. Moreover he refuses generalisable conclusions and avoids explicit theorisation which might transcend these empirical limits. As the scope of the present dissertation cannot reasonably include a comparative element, Rothman's work therefore rules itself out of account. Secondly, there is an important sense in which Rothman's project differs from the present one. His concern is primarily with the "internal" developments and changes in the penal system, and his investigations focus upon those reformers and administrators who stand within that system. The present work attempts to broaden the focus of study and to pose questions about the "external" social and political transformations and events which condition and direct penal developments: its investigations are consequently of a wider and less specific kind. Finally, there are numerous theoretical points at which Rothman's work differs from the present dissertation, not least his concern to judge the intentions of individuals rather than analyse their operative discourses and his facile rejection of Foucault's work as a crude "economic determinism", Rothman

(1980: 11). For a different account of this transformation, again referring to another nation's experience, see Tove Stang Dahl: 'The Emergence of the Norwegian Child Welfare Law', Dahl (1974) and her untranslated Norwegian text on Child Welfare and Societal Protection, Dahl (1978).

Notes and References

Chapter 2

Victorian Strategies of Social Regulation

1. On these wider issues, see Lubenow (1971) and MacDonagh (1958).

2. Obviously the developments and transformations mentioned here are not the whole story of social change in this period - only those which have a bearing upon penality and its transformation will be discussed. The degree of detail of our discussion corresponds with the importance and proximity of these developments in this respect, for example, economic change is discussed only insofar as it affected the ideology of laisser faire individualism and the policies and institutions which depended upon this ideology.

3. cf. Sutherland (1907: 342) who warns that:

   "Those who today, in exalted stations under the aegis of the law, are carrying on, in the name of haute finance, etc., with the aid of wealth, gigantic frauds against the weak and trusting members of society ... [may tomorrow] find themselves carrying on their schemes under laws calculated to check this ... just as the vulgar thief is now."

   Also Holmes (1912: 46):

   "Probably the proportion of criminals per number of men and women who comprise the different stations of life is about the same for every rank, though I am sure that the statement will be considered absolute heresy. But it must be remembered that rich criminals are more likely to escape detection, arrest and punishment than the criminals of the poor. They are still more likely to plan numerous transactions which technically do not come within the meshes of the criminal law, but which morally are as dishonest and rascally as any crime against property can possibly be."

4. On the distinction between working class "crimes" and bourgeois "illegalities" see Foucault (1977).

5. See Gattrell and Hadden (1972) and the interpretation of their statistical work offered by Young (1976). It is pointed out that at the beginning of the nineteenth century, the prisons held large numbers of artisans, craftsmen and skilled workers, mostly convicted on 'political' charges of arson, conspiring and sedition. By the 1880s these protest offenders had greatly diminished in number and the vast bulk of the prison population was composed of recidivist property offenders. The implication drawn by Young, and followed here, is that the official "criminal population" had been narrowed and stabilised into a primarily working class

phenomenon, and at the same time, a more rigorous distinction was established between political and criminal forms of action.

6. See Gattrell and Hadden (1972). In 1865, 35 per cent of male prisoners could neither read nor write, in 1890, 22 per cent. Even as late as 1902, by which time illiteracy had been virtually eliminated in England and Wales, 16 per cent of prisoners were still illiterate. As for prisoners poverty, this is strongly suggested by the fact that in the period 1896 and 1900 inclusive:

"A trifling annual average of 24 out of some 40,000 convicted of indictable offences possessed property sufficient to justify the appointment of administrators of prisoners' property under the Abolition of Forfeiture Act of 1870." Gattrell (1980: 335).

For contemporary descriptions of the prison population in the 1860s and 1900s, see Mayhew (1862) and Goring (1913).

7. "... it is held by very careful and recognised authorities, that the number of reconvictions can be quoted not as proof of the badness of a prison system, but as a hopeful sign that crime is being confined to one set of people, that the stream of criminality is becoming, as it were, narrowed ..." Report of the Prison Commissioners for the year ended 31 March 1898.

Du Cane and Tarde are the authorities quoted in support of this claim.

8. See Foucault (1977) on the construction of this social division.

9. Gattrell and Hadden (1972), Young (1976).

10. See Hobsbawm (1964) and Gray (1976) on the question of the labour aristocracy in Victorian Britain.

11. cf. Engels (1975): Letter to Marx of October 7, 1858:

"The English proletariat is actually becoming more and more bourgeois, so that this most bourgeois of all nations is apparently aiming ultimately at the possession of a bourgeois aristocracy and a bourgeois proletariat alongside the bourgeoisie. For a nation which exploits the whole world this is of course to a certain extent justified."

As Gray (1977: 88) points out:

"When bourgeois intellectuals like Alfred Marshall praised the enlightened moderation of the 'largest and best managed unions' this was something that the bourgeoisie had been forced to accept, and to legitimize through shifts in its ideology, not a cunning scheme to 'integrate' the labour aristocracy. Any 'integration'

was a two-edged affair, as the whole history of working class struggle indicates."

12. On this question of "working class incorporation", see Cousins and Davis (1974).

13. On the "New Model Unions" which adopted this stance, see Harrison (1965).

14. See Jones (1971: 10-11).

15. Booth (1902) termed them Classes C and D.

16. The term "**perishing** class" derives from the work of Mary Carpenter:

"That part of the community which ... consists of those who have not yet fallen into actual crime, but who are almost certain from their ignorance, destitution and the circumstances in which they are growing up, to do so, if a helping hand had not been extended to help them - these form the **perishing classes**." Quoted in Rose (1967).

Jones and Williamson (1979: 84) extend this term into the economic sphere and the analysis of pauperism:

"... the existence of criminality clearly implied the existence of a criminal class, but a growth in criminality implied in addition a moral contagion between this criminal class and other classes, particularly those '**perishing** classes' whose members are always susceptible of passing into the ranks of the criminal class. In the analysis of pauperism, similar relations of contagion obtained between the working classes and the class of paupers; that is, in relation to the latter, the working classes form **perishing** classes. The term '**perishing**', like 'dangerous', is thus a generic term, but a generic term that indicates susceptibility to moral contagion."

17. In the terms of Booth's classification scheme, the residuum would be Classes A and B. See Booth (1902).

18. Booth (1902: 38).

19. Dendy (1895: 82).

20. cf. Viscount Ingestre's account of the "fearful" statistics found in the report of the chaplain of Preston Jail in 1850:

"... out of 1,656 males ,,, it is a fact that 674 were unable to read in the slightest degree; 977 did not know the reigning sovereign's name, and were unable to repeat a word of prayer; and although such was the case, 713 of them were well acquainted with the exciting adventures of Turpin and Jack Sheppard; knew that they were famous robbers and housebreakers; admired them as friends of the poor. ..." Quoted in Pearson (1975: 155).

21. Dendy (1895: 83).

"... for the member of the Residuum who has no fears for the future ... With his debts cleared off, and a week's wages in hand, the final utility of the reward is so small that he has absolutely no inducement to work; the smallest temptation will keep him away, the smallest inconvenience cause him to throw up the job; and it is not until he is destitute and his credit exhausted that he finds himself beginning his [marginal utility] curve again." Dendy (1895: 86).

22. Sir Thomas Bart. Bernard: Of the Education of the Poor, page 47, quoted by Jones and Williamson (1979: 68).

23. These phrases are taken from Booth (1902: 38).

24. Of course there were rogue elements which did not conform to this pattern - e.g. the indiscriminate alms-giver - but the concerted rejection of such practices throughout the institutions and respectable discourses of the establishment is proof of the general rule. The characteristics of this strategy will be specified in a moment, though we will not tackle the historical problem of how it was formed in the first place. However, this dissertation will address itself to the problem of how a subsequent strategy was formed in the 1900s (see Chapters Six and Seven) and at that point we will discuss the methods of investigation and the forms of analysis which are appropriate for the elucidation of such 'strategies'.

25. As we shall see, this common focus did not preclude important ideological disputes between and within these agencies, but this fundamental problem posed by the residuum remains a constant factor underpinning all of these diversities.

26. See Gray (1977) and Johnson (n.d.).

27. Although this ideology of self-help individualism was essentially of bourgeois origin and application, its impact was society-wide, bringing about a 'reform of manners' among the landed gentry, as well as among the top fraction of the working class. The reform of the public schools and universities, the opening up of the civil service to competition, reform of the army and the formal

regulation of sporting activities indicates a growing acceptance of the new values among Tory elements, while State policies and legislation (in which the landed gentry still had an important voice) were almost totally dominated by the orthodoxes of free-trade, economic liberalism and social laisser faire. **See Gray (1977).**

28. This conception of an ideology which becomes inscribed within real practices and hence becomes 'real' (despite the unreality of many of its tenets) and 'true' (despite the falsity of its judgements and propositions) is discussed in the work of Nietzsche, Foucault and Althusser. The same point is made by Edelman (1979) when he talks of ideologies - such as law - which can sanction their own categories.

29. See Hobsbawm (1968).

30. See Pashukanis (1978), Edelman (1979) and Hirst (1979). It should be stressed that a conception of the "individual free subject" is necessary to capitalist relations (and similar social forms) but not to social life as such. Hirst and Woolley (1982) discuss the significance of this term, and point to empirical evidence of society's which do not employ it at all, or else do so in a qualified manner. As we shall see, even in capitalist society, the <u>generality</u> of this term's application has been limited and modified in the ideologies and institutions of the twentieth century.

31. See Smith (1981: 75); Collini (1979) and Dickens (1960).

32. cf. Schlapp and Smith (1928: 17):

> "... though the heavenly Father was all knowing and all powerful, He did not interfere in mundane matters to the extent of hampering the human will or controlling the decisions of the individual. One must feel that this was an ecclesiastical rather than a theological decision, since its difficulties are considerable, not the least of them being the tacit negation of the efficacy of prayer. Be that as it may, the decision was in favour of free will and responsibility, and in this the later metaphysical philosophies concurred."

33. This quotation is from Ferri (1917: vi), where he describes this position as "the old and still dominant thought". cf. Garafalo (1914: 273):

> "'Moral responsibility'; 'penal proportion': these two postulates continue to form the keystone of criminal law, notwithstanding that science has demonstrated their inherent impossibility. The stone has already been loosened, but the ideal in question too intimately bound up with commonly obtaining philosophic prejudices for any hope of its immediate dislodgement."

34. Radzinowicz (1963).

35. See Saleilles (1913: 93) and Moulin (1975).

36. Schlapp and Smith (1928: 17-18).

37. See Marshall (1963: 84-85); Fraser (1973: 22) and Evans (1980).

38. Thomas Scanlon: "Mr. Chamberlain's Pension Scheme: A Friendly Society View of It" quoted in Evans (1980). As its title indicates, this succinct statement of bourgeois commonsense in fact comes from a director of a workers' Friendly Society.

39. Or so, at least, said the ideology of legalism. In practice the laws of vagrancy, breach of the peace, conspiracy and sedition, allowed some leeway beyond this general principle.

40. cf. Du Cane's position was characterised by Grunhut (1948: 97) thus:

"Reformation ... may be the object of charity organizations, but not of a State institution."

More specifically Du Cane (1885: 197) argues that any State system of after-care might have:

"... a positively mischievous effect, by creating a presumption that 'Government' admitted it to be within its proper functions to find employment on discharge for any person who came into prison."

41. The Scottish Poor Law was even more strict in this respect. As the Scottish Departmental Committee on Habitual Offenders etc. (1895: vii) put it:

"... the Scottish Poor Law system is one of outdoor relief with the poorhouse only as an auxiliary or as a check. On the other hand, the theory of the Scottish Poor Law, differing on this point totally from the English, absolutely denies relief, not only to all able-bodied persons themselves, but to those persons dependent upon them, who, if they were in employment, they would be held to be able to maintain. In Scotland the relief of the able-bodied and of their dependents is left to the charity of public bodies and private persons."

On Scottish Poor Law generally, see Ferguson (1958).

42. Williams (1981: 58): the quoted passage within this statement is taken from the 1834 Poor Law Report - see Checkland (1974: 378).

43. Williams (1981: 99) comments that the setting out of conditions of eligibility in the form of published rules:

"... gave the working class an educative opportunity to reflect on the reasons why an application for out-relief would not be successful. Ideally, the conditions would make the working classes reflect on their shortcomings, their failure to practise thrift, their deficient sense of family obligation, their dirty and unsavoury homes. At the same time, the conditions were an assurance that virtue would not go unrewarded; after a lifetime of thrift, caring for elderly relatives and housecleaning, the virtuous would be rewarded with an out-relief dole."

In fact this official strategy, like the parallel efforts of private agencies like the COS, were not to be achieved. See Williams (1981: 102).

44. Williams (1981: 102).

45. This indeed, was precisely the problem of the Speenhamland system and other systems like it, in the view of the 1834 Report.

46. Checkland (1974: 216).

47. Jordan (1978: 131).

48. cf. Marshall (1963: 84):

"The Poor Law treated the claims of the poor, not as an integral part of the rights of the citizen, but as an alternative to them - as claims which could be met only if the claimants ceased to be citizens in any true sense of the word. For paupers forfeited in practice the civil rights of personal liberty, by internment in the workhouse, and they forfeited by law any political rights they might possess."

49. See Williams (1981: 108ff) on the introduction of "classification and treatment indoors".

50. On the development of compulsory education in nineteenth century Britain, see Jones and Williamson (1979), Fraser (1973) and Marshall (1963).

51. Jones and Williamson (1979: 60).

52. Joseph Butterworth, 1816, quoted in Jones and Williamson (1979: 77).

53. See Jones and Williamson (1979).

54. Jones and Williamson (1979: 85). See also Blanch (1979).

55. According to Holmes (1908) offenders appearing in the police courts were frequently encouraged to enter into marriage as a condition of their probationary release. One Police Court Missionary claimed to have arranged seventy such marriages and Holmes maintains that this practice was quite common in the early 1900s. He describes one such "Police Court Romance" as follows:

"Not very long since, one of our judges had before him a young man charged with the attempted murder of the girl to whom he had kept company. His jealousy and brutality had alarmed her, so she had given him up. But he was not to be got rid of so easily, for he waylaid her and attempted to murder her by cutting her throat. He was charged, but the charge was reduced to one of grievous bodily harm. At the trial, the young woman was asked by the judge whether she would consent to marry the prisoner, adding that if she would consent it would make a difference in the sentence imposed. The matter was adjourned to the next session, the prisoner being allowed his liberty, that the marriage might be effected. During the adjournment they were married, and when next before the magistrate the marriage certificate was produced. She saved the man from prison, and the judge bestowed his benediction in the following words: 'Take her away' (as if, forsooth, she had been the prisoner) 'and be good to her. You have assaulted her before: don't do it again' - thus giving him every opportunity of doing at his leisure what he had barely failed to do in his haste." Holmes (1908: 108-9).

56. Fraser (1973: 123) states that:

"Loch (the founder of the COS) and his colleagues supported two propositions: first that poverty was avoidable through personal initiative and was not a consequence of the social and economic system; and second, that the extent of poverty was well within the capability of voluntary philanthropic effort which precluded the need for any large-scale state-intervention."

57. As we shall see in later Chapters, this terminology of 'desert' was later dropped in favour of a less explicit language of classification.

58. As Beatrice Webb (1938: 231) remarked:

"Neither the churches nor the hospitals, neither the orphanages nor the agencies for providing the destitute with food, clothing or shelter, would have anything to do with a society [the COS] which sought to improve methods that appeared the very negation of Christian charity."

59. Jones (1974: 484). "Working-class culture and working-class politics" in Journal of Social History.

60. Quoted in Jones (1971):

"Regularity of habits are incompatible with irregularity of income. ... It is a moral impossibility that the class of labourers who are only occasionally employed should be either generally industrious or temperate - both industry and temperance being habits produced by constancy of employment and uniformity of income." Henry Mayhew, quoted in Hay (1978: 53).

61. Hobson (1909: 213).

62. cf. Hobson's description of this sector of the population as, simply, "The Prisoners".

63. Du Cane's claim that prison costs had been decreased during his administration was publicly refuted in 1894 when the famous Daily Chronicle articles stated that average annual costs per prisoner had risen from £27 to £29 between 1877 and 1894. See The Daily Chronicle, 28 June 1894.

64. For details of this development, see Lynd (1945) and Lenin (1975).

65. See Glyn and Sutcliffe (1972).

66. The Socialist Democratic Federation (SDF) was founded in 1882, the Fabian Society in 1883 and the Independent Labour Party (ILP) in 1893.

67. See, for example, Atherley-Jones (1893). The most vivid evidence of this alarm at the spectre of socialism comes from the literature of the Conservative Party in this period: see especially the leaflets entitled "Socialism and Irreligion" (NU No. 898); "Socialism Makes Man a Machine" (NU No. 1011); "Socialism and Your Children" ("Under socialism your children will be 'State-items', vote for Unionism and protect your children") (NU No. 1044); "Socialism Destroys Liberty" (NU No. 1039); "Socialism offers No Reward to Thrift" (NU No. 1038); "Socialism Spells Industrial Ruin" (NU No. 1013) and "Socialism is the End of All Things" (NU No. 1010). Leaflets of the National Union of Conservative and Constitutional Associations, National Library of Scotland.

68. See Gray (1974).

69. As Hobsbawm points out, in a book entitled Labour's Turning Point, 1890-1900 (1974: II):

"The period was not merely one in which the nature of the battle between capital and labour changed - it produced the first conflicts which can be reasonably called national strikes or lock-outs - but also the pattern of negotiation, the political and administrative attitude to labour."

The point being made by Hobsbawm and again here, is not that the 1880s saw the first movements of working class resistance, nor even the first mass movements. The point is rather that such movements were now increasingly underpinned by the organisational force provided by mass unionisation - amongst the unskilled as well as the skilled of the working class.

70. Jones (1971: 335):

"As the depression deepened, signs of distress began to appear in the ranks of the respectable working class. 'Agitators' were already beginning to blur the distinction between the respectable working class and the 'residuum' by appealing to both under the slogan of 'relief to the unemployed'. The dangerous possibility existed that the respectable working class, under the stress of prolonged unemployment, might throw in its lot with the casual poor."

71. See Booth (1902); Mearns (1883); Sims (1883); George (1907); and the Report of the Inter-Departmental Committee on Physical Deterioration (1904). Kirkman Gray (1908: 17) points out that:

"... the most far-reaching results of these publications has been achieved among those who have never studied them. ... [They] have gained a symbolic meaning. Life and Labour, Town Poverty, Physical Deterioration are phrases which represent vague dreads and hopes. The facts percolate through the strata of society. ... The social value of this refracted light is incalculable. Such books as these create a predisposition towards concerted social action."

72. See Chapter Four.

73. See Chapter Five.

74. The assault upon laisser faire policies combined a number of powerful (and otherwise opposed) social forces, including many of the larger industrialists, finance capitalists, the various socialist and labour groupings, social reformers, radical economists, etc.

75. See Jones (1971: 111).

76. See Chapter Five.

77. Quoted in Pelling (1968). See also Semmel (1960).

78. See Harrison (1965).

79. Quoted in Emy (1973: 105).

80. On Bismarck's policies, see Semmel (1960).

81. A. J. Balfour, quoted in Fraser (1973: 129).

82. On the practical problems and limitations of local ad hoc forms of relief for the unemployed, see Harris (1972).

83. The term "discipline" is used here in its conventional sense to imply a problem of ensuring obedience through mental and moral control of whatever kind. As we shall see, Foucault's more restrictive concept of "discipline" (or dressage) was only one amongst many techniques used towards this end. On Foucault's conception of discipline, see Bottoms (1983).

84. Rothman (1971) identifies a similar course of events in the United States of America.

85. Ferri (1917: 35) mentions what he calls "the English Crisis of Imprisonment" and cites three Italian language articles by Morrison, Mario and Griffiths on this subject.

86. Garafalo (1914: 211).

87. Morrison (1896: 273).

88. Carpenter (1906: 6).

89. Saleilles (1913: 153).

90. Holmes (1912: 72).

91. See Charlton T. Lewis, President of the National Prison Association of the United States, quoted in Carpenter (1906).

92. Boies (1901: 129).

93. The Times, 26 March 1898.

94. Report of the International Prison Congress (1900: 107).

95. Report of the Prison Commissioners (1906: 14).

96. Report of the Proceedings of the International Prison Congress at Washington (1910: 37).

97. Report of the Prison Commissioners (1909-10: 8).

98. Report of the Prison Commissioners (1908-09: 26).

99. Report of the Prison Commissioners (1912-13: 31). On all of these official declarations of failure, see Brockway (1928).

100. Brise (1924: 194).

101. The Report of the Scottish Prison Commissioners for 1898, page 7.

102. The Report of the Prison Commissioners for the year ended 31 March 1898, page 8.

103. See Sutherland (1908) and Morrison (1892).

104. Sutherland (1908: V).

105. On these developments, see Morrison (1892).

106. See Rose (1979: 42).

107. See Goring (1913) and the Report of the Royal Commission on the Feeble-minded (1908).

108. See Goring (1913) and The Daily Chronicle, 25 January 1894.

109. See The Gladstone Report (1895).

110. On the provisions and effects of the Act, see Du Cane (1885: 155) and Hinde (1951: 91).

111. See Morrison (1892).

112. Brise (1900: 28). See also the letter by Ruggles-Brise of 21 December 1899 which states:

"... our difficulty is that Judges will not pass sentences of penal servitude on such cases [i.e. petty criminals and habituals]."

Letter in PRO file, P. Com 7. 286.

113. See, for example, the Report of the Departmental Committee on Inebriates (1898: 7) and Bradley (1893-4: 283).

114. See Report of the Departmental Committee on Vagrancy (1906: 1), Brise (1900: 29) and C. J. Ritchie of the Home Office in a confidential letter to the Lord Chief Justice, 22 March 1902 in PRO file, P. Com 7. 286.

115. A similar **situation** of ineffectual terror motivated many of the critiques of criminal law and punishment at the end of the eighteenth century, see Foucault (1977).

116. Their author was almost certainly W. D. Morrison. See Rose (1961: 57).

Notes and References

Chapter 3

The Criminological Programme

1. For a discussion of these 'human sciences' and their development and conditions of emergence, see Foucault (1967), (1973) and (1970).

2. Clearly we are not talking here of "criminology" as the study of crime *simpliciter*: such studies have a very long and varied history, going back to Plato and beyond. Rather it is out intention to trace the "science of criminology" in its new, self-proclaimed, positivist form, which as we shall show, differs significantly from that which went before.

3. For classic statements, both for and against this criminological science, see Barnes and Teeters (1943) and Taylor *et. al.* (1973).

4. Perhaps the best available are those by Jeffrey (1960) and Cohen (1974). A more critical analysis of this "special savoir" has been attempted recently by Pasquino (1980) but his essay is badly researched and overly schematic.

5. See especially the various essays in Mannheim (1960).

6. See Taylor *et. al.* (1973).

7. Lombroso describes his 'discoveries' thus:

   "In 1870 I was carrying on for several months researches in the prisons and asylums of Pavia upon cadavers and living persons in order to determine upon substantial differences between the insane and criminals, without succeeding very well. At last I found in the skull of a brigand a very long series of atavistic anomalies, above all an enormous middle occipital fossa and a hypertrophy of the vermis analogous to those that are found in inferior vertebrates. At the sight ... of these strange anomalies the problem of the nature and of the origin of the criminal seemed to me resolved. This was not merely an idea, but a flash of inspiration. At the sight of that skull, I seemed to see all of a sudden, lighted up as a vast plain under a flaming sky, the problem of the nature of the criminal." Lombroso (1911: xiv).

8. Saleilles (1913: 203).

9. On the work of Gall and Spurzheim, see Smith (1981).

10. De Quiros (1911: 2). On the development, influence and methods of nineteenth century positivism, see the Introduction to Mannheim (1960) and also Taylor et. al. (1973), Chapters 1 and 2.

11. On the limited influence of Compte's Positivist Movement in Britain, see Farmer (1967) and Ferri (1917: 14).

12. On the development of statistical technique, see McKenzie (1981).

13. On the history of statistical information in general, see Cullen (1975), especially the Prelude "Social Statistics in Britain 1660-1830". For criminal statistice in particular, see Wiles (1971) and Gatrell and Hadden (1972).

14. See A. M. Guerry's "Essai sur la statisque morale de la France" (1833) and A. Quetelet's "Essai de physique sociale" (1835). The work of these "moral statisticians" has sometimes been referred to as the first phase of criminological science, insofar as they applied "scientific" techniques to criminal data. See, for instance, Bonger (1916). Whether or not this compliment is granted, the "science" of these writers differs significantly from the "science of criminology" with which we are concerned, and is perhaps more properly viewed as an early sociology of deviance. Guerry and Quetelet were concerned to show that crime was a social fact, with the regularities and social basis of all such phenomena: insofar as they had a conception of individual criminal behaviour, this appears to have been neo-classical in form, assuming choices within social constraints. See Morris (1957: 48ff).

15. See Cullen (1975).

16. On Mayhew and other nineteenth century writers who investigated and documented the 'ecology' of English crime and criminals, see Lindesmith and Levin (1971) and Morris (1957). It is significant that the untheorised but persistently sociological approach of writers such as Mayhew, Rawson, Fletcher and others was marginalised or else reformulated by the appearance of the new positivist criminology. On this marginalisation, see Morris (1957) and Chapter Six of the present work.

17. cf. The Lunatics Care and Treatment Act (1845) and the Lunatics Asylum Act of the same year. For details of psychiatry's institutional development, see Smith (1981) and Scull (1979).

18. See Smith (1981) and Walker (1968). De Quiros (1911) states the following texts as the most influential in criminology's development. Clapham and Clarke's The Criminal Outline of the Insane and Criminal (1846); Winslow's Lettsonian Lectures on Insanity (1854); Thompson's Psychology of Criminals (1870) and 'The Hereditary

Nature of Crime' in The Journal of Mental Science (1870); and Maudsley's Mental Responsibility (1873).

19. For a discussion of a parallel development in French psychiatry, see Castel (1975) and Donzelot (1979).

20. On the concept of 'surface of emergence', see Foucault (1972).

21. Ruggles-Brise (1924: 10).

22. cf. The Times, July 17, 1901:

"... one is struck by the fact that experts in all civilised countries are face to face with the same problems, and are seeking to solve them in the same ways."

23. See the article by C. R. Henderson in The Journal of the American Institute of Criminal Law and Criminology, Vol. II (1911-12) entitled "The Cell: A Problem of Prison Science".

24. Garafalo (1914) argues explicitly that criminology's proper object of study is "the natural delinquent". Goring (1913) is more circumspect than Ferri or Lombroso, stating this as an hypothesis rather than an a priori presumption:

"... we are forced to the hypothesis of the possible existence of a character in all men which ... we call the 'criminal diathesis." Goring (1913: 26).

or again:

"Assuming that conviction and reconviction for crime are not purely circumstantial occurrences, and constitutional factors play some part in this eventuality. ..." Goring (1913: 123).

25. But cf. too Burt's comments on parallel developments in psychology:

"Like so many advances in theoretical science, the annexation of this new field may be traced to the pressure of practical needs. The psychology of education, of industry, and of war, the study of the criminal, the defective and the insane, all depend for their development upon a sound analysis of individual differences."

Quoted in Rose (1979: 7).

26. Ferri (1917: xli).

27. Garafalo (1914: xxvi).

28. As we shall see in Chapter Six this purism later gave way to a more pragmatic compromise.

29. Ferri (1917: 38).

30. Smithers (1911-12).

31. Ancel (1965: 51) describing the position of Adolphe Prins, whom he describes as the foremost exponent of the doctrine of social defence.

32. Saleilles (1913: 61).

33. Ferri (1917: xl).

34. Robertson and Maudsley (1864).

35. Saleilles (1913: 73).

36. Ferri (1917: 14).

37. Saleilles (1913: 72).

38. Bradley (1893-94: 272).

39. Report of the Prison Commissioners 1901-02, p.8.

40. Ellis (1910: xxv).

41. The International Penal and Penitentiary Foundation (1951: 54).

42. Ferri (1917: 37):

> "Anthropology shows by facts that the delinquent is not a normal man; that on the contrary he represents a special class, a variation of the human race through organic and physical abnormalities, either hereditary or acquired."

43. James Devon in The Glasgow Herald, 29 January, 1908.

44. The Daily Chronicle, January 29, 1894. The series of articles

from which this is taken, was published anonymously, but the most probable author is W. D. Morrison.

45. Lombroso (1911: 333). He is quoting Granthier here - with approval.

46. On these writers, and the impact of 'neo-classicism', see Taylor et. al. (1973).

47. Ferri (1917: 372).

48. Garafalo (1914: xxv).

49. Garafalo (1914: xxv).

50. Garafalo (1914: xxxiii).

51. Whiteway (1902: 25).

52. Wilson (1908: 204). cf. Our remarks on page 44 where we argued, contra Foucault, that individualisation did not take place in Britain until such a knowledge was institutionalised in the 1900s.

53. Ferri (1917: vi).

54. cf. Healey (1915: 22):

"The dynamic centre of the whole problem of delinquency and crime will ever be the individual offender."

55. Quoted in De Fleury (1901: 47).

56. Boies (1901: 35).

57. De Fleury (1901: 57).

58. This movement was in fact an aspect of a broader development which constituted modern psychology:

"It is commonly accepted that psychology emerged as a coherent and individuated theoretical field, in Britain as well as in Europe and the United States, during a period which stretched from about 1875 to about 1925. ... One can ... distinguish

something happening over this fifty year period which has the character of an 'event', an event which seems to consist of the translation or extension of certain recurrent questions concerning the nature and attributes of man from the closed space of philosophy to the domain of positive knowledge." Rose (1979: 6).

On this development also see O'Neil (1968).

59. De Fleury (1901: 35).

60. De Fleury (1901: 32).

61. Garafalo (1914: 274).

62. Claye Shaw (1902-04).

63. Hollander (1908: 2).

64. Saleilles (1913: 184).

65. Wilson (1908: 236).

66. De Fleury (1901: 21-2).

67. Boies (1901: 38).

68. Marro, quoted in Garafalo (1914: 67-8).

69. Again, Burt points out a parallel two-stage transformation in the field of psychology:

"... that in the late nineteenth century whereby psychology changed its method to that of systematic observation and research, and that in the twentieth century whereby psychology changed its subject from man-in-general to a concern with individual differences ... the question of the individual and its differentiation." Quoted in Rose (1979: 7).

It was Alfred Binet who added to this the necessity of measurement and argued that "the study of criminals", (together with the study of races, children and patients) was one of the "principal routes to be pursued". Rose (1979: 8).

70. The term belongs originally to Ruggles-Brise (1924: 91).

71. Boies (1901: 35).

72. Ferri (1917: 38).

73. Ferri (1917: xl).

74. Hollander (1908: 13).

75. Wilson (1908: 236).

76. Lydston (1904: 599).

77. Garafalo (1914: 408).

78. See Elliot (1929).

79. Elliot (1929: 36-7).

80. Ferri (1917: vi).

81. cf. G. C. Fernald (1912-13: 866):

> "It is to be noted that about all of the measures proposed as reforms in penal administration could be catalogued as 'Recommendations of an extension of classification', and, from another viewpoint, there are probably but few authorities in criminology who would suggest any other avenue as that along which penological science is to advance than that of an extension and improvement of classification."

82. This was variously described as 'correctionalism' or 'penal tutelage' (De Quiros (1911)) or even 'moral orthopaedics' (Hall (1914: 409)) as well as simply 'reformation'. It implied positive techniques of transformation, not just the provision of space or time for the individual to will his own improvement.

83. Boies (1901: 447).

84. Boies (1893: 292).

85. Quoted in De Quiros (1911: 96).

86. Ferri (1917: 420).

87. cf. The resolution of the 1906 Turin Congress:

"... The Judge must be given the power to choose, with unlimited freedom and according to the exigencies of the individual case, from a series of measures. ..." Quoted in De Quiros (1911: 98).

Also Ellis (1910: xxv).

88. For typical lists of these recommended sanctions, see Boies (1901) and the resolutions of the Congress of Cincinatti (1870), quoted in Ruggles-Brise (1924). As we shall later argue, it is significant that most of the major sanctions and techniques recommended by the criminology programme actually pre-existed it, as the Cincinatti resolutions clearly demonstrate.

89. cf. The Cincinatti resolutions of 1870 which are in most respects identical with the recommendations of forty years later. See note 88.

90. See, for example, Ferri (1917); Lombroso (1911) and Morrison (1891).

91. cf. Burton (1980: 138) on present day criminologies:

"Anthologies on violence demonstrate the intellectual incompatibility of the classificatory systems they celebrate: disparate epistemologies, contradictory concepts, mutually exclusive facts. But the paradigms all make claims to a knowledge that justifies modes of intervention. The criminology of violence espouses as knowledge eclecticist anthologies and presents the criminal justice system with maximum discursive licence to forge tactical alliances that result in pragmatic technologies."

92. See Ruggles-Brise (1924: 93) where this issue is discussed and Saleilles' objections quoted and endorsed.

93. Report on the Proceedings of the Seventh International Penitentiary Congress (1906:26).

94. Boies (1901: 446).

95. Virtually every text of this period engages in these disputes: see note 81.

96. On the congress debates, see Dahl (1974).

97. For a discussion of this development, see Chapter Six.

98. See Ferri (1917) for an explicit discussion of this movement.

99. See Boies (1901) for example.

100. McHardy (1906).

101. Lombroso (1911: 245).

102. See Brockway (1928).

103. Lombroso (1911: 245-6).

104. Garafalo (1914: 257).

105. Ruggles-Brise quoted in Holmes (1908: 35). See Chapter Six for a detailed analysis of this dispute and its consequences.

106. See Ferri (1917).

107. Saleilles (1913: 177).

108. Saleilles (1913: 192).

109. This eugenic aspect of the criminological programme has not, to our knowledge, been discussed to any extent in contemporary literature. As we will show in Chapter Six, the intrusion of categories and objectives derived from eugenics has been of real significance in the development of modern criminology and penality.

110. See Garafalo (1914: 251).

111. Battaglini (1914-15: 15).

112. See Ellis (1910: xiii).

113. Bradley (1843: 94).

114. Garafalo (1914: 251).

115. Boies (1893: 293).

116. "Large numbers of persons who are socially inefficient - some from physical degeneracy, others from mental deficiency, and others from confirmed inebriety - will be secluded for considerable periods, and prevented for the time being from propagating their kind." Quinton (1910: 119).

117. Holmes (1913: 252).

118. Goring (1913).

119. Sutherland (1908: 92).

120. Devon (1911: 19-20).

121. 'Prevention' is also used to signify interventions which operate solely at the level of the individual or the family, for example, preventive detention, segregation, etc..

122. Bonger (1916), Ferri (1917) and (1909).

123. This narrowing of focus and the marginalisation of criminology's radical elements will be discussed in Chapter Six.

124. Ferri (1917: xl).

125. Sutherland (1908: 7-8), Holmes (1912: 41).

126. See, for example, Carpenter (1906).

127. Ruggles-Brise (1921: xvi).

128. Sutherland (1908: 106-107).

129. Investigator and St. John (1904: 100). Magriand is quoted by McHardy (1906). The demand for access to prisons and the democratic accountability for prison authorities might also be included here: see the Daily Chronicle series, January 1894 cited at note 44 above. It is significant that this issue was entirely ignored by the Gladstone Report and the legislation which followed.

130. This is not to suggest that the law was actually practised in line with these ideals. But whenever is was partial, and took account of class or 'character' it always risked scandal by this failure to conform to its public principles.

131. See, for example, the Howard Association (1882), (1907), (1908), (1909) and (1910) which argue for such 'provision' to be made for inebriates, epileptics and vagrants. As Thomas Holmes, Secretary of the Association, said in his letters to The Times and The Daily Telegraph of September 17, 1907:

"The cry of the inebriate is heard all through the land, but unless the wretched victims succeed in getting into the hands of the police at least four times in one year the law does not heed the cry."

See also Quinton (1910) who would extend powers of detention to all of the 'socially inefficient'. Quinton (1910: 119).

132. Boies (1893).

133. Boies (1901: 66). cf. Castel (1975: 252):

"... mental medicine was trying to erect a new apparatus ... an intervention which would not always be bound to come too late, for it would be based on a knowledge capable of anticipating the possibility of criminal behaviour before the act was put into execution."

De Quiros (1911: 127) provides the term "near criminals". Boies (1901: 60) argues that the identification of "Presumptive Criminals" is "a sufficient substitute for judicial decision" and it is within this context that we must understand his demand that the Bertillon system of identification be used to record the details of every individual over ten years old in the population.

134. Hall (1914: 393).

135. cf. Foucault (1977: 92-3).

136. Garafalo (1914: 312):

"Once punishment is measured by the perversity of the criminal, the question of attempt by insufficient means completely disappears. If the attempt, quite as much as the executed crime, suffices to reveal the criminality of the agent, there can be no difference between the two.

137. Saleilles (1913: 51 & 97). Jeffrey (1960: 388) mentions the Spanish criminologist Pedro Dorado Montero as worthy of interest because

he "placed emphasis on the protection of individual rights and the limitation of the power of the State". In fact as Lopez-Rey (1960: 320-21) argues, Montero, like most of his international colleagues, that the interests of the "Individual and Society" became identical in the process of correction:

"In the application of penal treatments, the individual rights should be considered as subordinated to the effectiveness of such treatment aimed at the moral correction of the offender."

138. Bradley (1893-94: 270).

139. Bruck-Faber suggested "neuro-electricity" at the 1906 Turin Congress, quoted in De Quiros (1911: 96). The "plethysmograph" - a device for testing variations in the circulation of the blood, resting for its usefulness upon the way the circulation "responds to what is passing in the mind" - was invented by Mosso and is endorsed by Lombroso (1911: 253).

140. Pepler (1915: 4-5).

141. Ruggles-Brise (1899). As we shall see, a reward-incentive scheme of discipline was eventually adopted through the penal complex. However this was not a demand of the new programme so much as a product of the experience of prison management, particularly that of the 'Irish System'.

142. See De Quiros (1911) and especially Gross (1911). The Report of the Departmental Commission on the Identification of Habitual Criminals (1894) demonstrates the early official adoption of registry systems, using anthropometric systems such as the Bertillon method, and also the finger-printing method, developed by Sir William Herschel and Francis Galton. These systems were soon extended to include most prisoners and convicted offenders - often at the instigation of Chief Constables of Police - see S.P.R.O. HH 35/4.

143. cf. Boies (1901: 438):

"The State must provide skilled penologists to superintend the treatment of all convicts."

144. cf. De Fleury (1901: x):

"... These doctrines seem to tend towards the restriction of the role of the jurist and the magistrate respectively, and to diminish the importance of their office and rank."

145. cf. Castel (1975: 252) talking of the conflict between law and

medicine, guilt and madness, which surrounded the case of Pierre Rivière:

"Behind this theoretical issue is concealed, too, a competition between actors defending their position in the division of social labor: to what type of specialist is he to be entrusted and what will be his 'career'; is it to depend on verdict or diagnosis?."

See also Smith (1981: 75).

146. The contribution of these groups and individuals will be examined in more detail in Chapter Four.

147. On the development and significance of these new 'middle strata', see Hobsbawm (1964) and McKenzie (1981).

148. W. D. Morrison is clearly an exceptional case, being both a clergyman (the Chaplain of Wandsworth Prison) and a leading advocate of the criminological programme.

149. See Chapter Six for a discussion of these cross-overs.

Notes and References

Chapter 4

Social Work and Penal Reform

1. On the history of social work, see Young and Ashton (1967), Woodruffe (1971) and Bruce (1961). On eugenics, Searle (1976) and (1971) and on social security, Gilbert (1973) and Harris (1972).

2. cf. Boies (1893: vi):

   "The highest happiness, advantage and prosperity of the individual, indeed, is only to be secured by such a widening of the scope of public care, as will comprehend and benefit the entire social mass."

3. Hodges and Hussain (1979: 105).

4. See Kirkman Gray (1905).

5. See Curran (1982: 311-312) and Young and Ashton (1967: 30).

6. This was not the first or the only attempt to suppress the 'indiscriminate' giving of alms. As Curran (1982: 315) points out, as early as 1530 and 1535 there were "statutory attempts to outlaw alms-giving outside organised relief" though these proved to have little deterrent effect. The revival of indiscriminate alms giving, and subsequent attempts to stop it, in the middle years of the nineteenth century have been traced to their routes within the fractional conflicts of the English middle classes by Peter Young in his essay on the emergence of the police court mission, Young (1976a).

7. This was not a matter of influence or imitation so much as one of parallel development, a parallel which was duly noted by Raymond Saleilles:

   "Poverty requires the aid that relieves and does not encourage the condition itself. There are at present societies guided by this spirit of individualisation; they dispense with any regular form of administering charity and leave to their members the duty of assisting the poor and unemployed to such positions as they are capable of filling. ... The provisions for the relief of material distress must be applied to moral distress; and in place of punishment administered by rule and with an invariable uniformity, we ask for a system of individual superintendence through ... which the individual initiative may be appealed to, and the most suitable measures of assistance provided for each case." Saleilles (1913: 310).

8. Quoted in Mowat (1961: 70).

9. Mowat (1961: 26).

10. G. S. Loch (1909: 2). In fact the writers of the COS themselves used the term 'class', as a glance at the texts of Loch, Dendy or Bosanquet will make clear. But whereas Booth and Rowntree (and later, the discourse of social security) are describing the common effects of structural and environmental patterns upon sections of the population, the COS concept of class is merely a fictional shorthand term for an aggregate of individuals sharing common moral characteristics. This is a vital political and practical distinction which Loch clearly recognises in his distinction between "the individual method as opposed in the general method of charity", (quoted in Mowat (1961: 75)).

11. See Mowat (1961: 23) and also Beatrice Webb's comment:

"... the COS found itself baulked in its purpose of organising the multifarious charities of the Metropolis; neither the Churches nor the hospitals, neither the orphanages not the agencies for providing the destitute with food, clothing or shelter, would have anything to do with a society which sought to impose methods that appeared the very negation of Christian charity." B. Webb (1938:175).

12. See Mowat (1961: 29) on "The Apparatus of Casework". The 1895 COS Report states that:

"Investigation has a four-fold value. It enables us to decide whether a case is one for help or not. It helps us to decide the form that assistance should take to give the most permanent results. It enables us to find means of assistance apart from cash, and it helps us to give the best advice for the future welfare of the client." Quoted in Young and Ashton (1967: 103).

13. "Notice to Persons Applying for Assistance:

(1) The Society desires to help those persons who are doing all they can to help themselves, and to whom temporary assistance is likely to prove a lasting benefit.

(2) No assistance should be looked for without full information being given in order that the Committee may be able to judge:
(1) whether the applicant ought to be helped by charity; and
(2) what is the best way of helping them.

(3) Persons wishing to be assisted by Loans must find satisfactory security, such as that of respectable householders. ... Loans have to be paid back by regular instalments.

(4) Persons who have thrown themselves out of employment through their own fault ought not to count upon being helped by charity.

(5) Persons of drunken, immoral or idle habits cannot expect to be assisted unless they can satisfy the Committee that they are really trying to reform.

(6) The Society does not, unless under exceptional circumstances, give or obtain help for the payment of back rent or of funeral expenses. But when help of this sort is asked for, there may be other and better ways of assisting.

(7) Assistance will not, as a rule, be given in addition to a Parish Allowance.

By Order, COS Committee."

Quoted in Woodruffe (1971: 41).

14. Quoted by Mowat (1961: 28-9).

15. Twenty-first Annual Report of the COS (1889) page 2, quoted in Mowat (1961).

16. cf. B. Webb's comment:

"Its leading members added to their sectarian creed as to the necessary restrictions of the impulse of charity, an equally determined resistance to any extension of State or municipal action, whether in the way of the physical care of children at school, housing accommodation, medical attendance or old-age pensions, however plausibly it might be argued, in the spirit of Chalmers and Chadwick, that only by such collective action could there be any effective prevention of the perennial recruiting of the army of destitutes." B. Webb (1938: 177).

17. Quoted in Mowat (1961: 72).

18. Dendy (1895: 87).

19. C. S. Loch, quoted in Woodruffe (1971: 33).

20. Young and Ashton (1967: 105).

21. Gilbert (1973: 51).

22. cf. B. Webb (1938: 175). According to the Popular District Guardian, Mr. Goult, "the COS stunk in the nostrils of the working men ... [and] ... spent £25 in office expenses for every £5 that went to the poor". Quoted in Mowat (1961: 130). It is significant

that the industrial bourgeoisie does not feature prominently in the patron lists of the COS. Jones (1971) suggests that this was because employers would fear the consequences of association with this unpopular organisation. It might also be suggested, however, that this reflects the growing ambivalence of this class towards the policies of laisser faire, reflecting its direct involvement within the changing relations of production and exchange. Ironically the most devoted supporters of individualistic ideology are those least in contact with its intended sphere of operation. cf. Laclau (1977).

23. This influence is well marked by the appointment of C. S. Loch to serve upon the Royal Commissions on the Aged Poor (1893-95), the Feeble-Minded (1904-08) and the Poor Laws (1905-09).

24. Mowat (1961: 59).

25. Barnett (1888: 106).

"'Scientific charity' or the system which aims at creating respectability by methods of relief, has come to the judgement and has been found wanting. Societies which helped the poor by gifts made paupers, churches which could have saved them by preaching made hypocrites, and the outcome of scientific charity is the working man too thrifty to pet his children and too respectable to be happy." Barnett (1888: 96).

26. Barnett (1888: 73). The rapid expansion of the Settlement Movement is discussed by Masterman (1901) who states that in the 15 years following the founding of Barnett's Toynbee Hall in 1883, there were 30 settlement houses established in England, about half of which were in London.

27. Barnett (1888: 196).

28. See the proposals set out in Barnett (1888) generally.

29. Barnett (1888: 66). Moreover this collectivist intervention was to regulate the rich as well as the poor:

"Generally it is assumed that the chief change is that to be effected in the habits of the poor. All sorts of missions and schemes exist for the working of this change. Perhaps it is more to the purpose that a change should be effected in the habits of the rich." Barnett (1888: 41).

30. Barnett (1888: 45) and Jones (1971). The encouragement of trade unions among the unskilled is also advocated:

"It would be wise to promote the organisation of unskilled labour. ... The very organisation would be a lesson to those men in self-restraint and in fellowship." Barnett (1888: 44).

31. Barnett (1888: 45). Alfred Marshall put it more urgently:

"The peril is really very great. Soon the control of the working classes over Imperial and Local Government will cease to be nominal and become real. If they had learnt to look for guidance to the COS people, they could have been shown how to use out-relief and not abuse it. As it is, I believe that they will abuse it. ... The main evils of our present system of aid to the poor is its failure to enlist the co-operation of the working classes themselves. It is because I believe that the working classes alone can rightly guide and discipline the weak and erring of their own number that I have broken silence now. ..." Quoted in Jones (1971: 302).

32. cf. Marshall:

"... the residuum ought not to exist, and ... they will exist till the working class have themselves cleared them away." in Jones (1971: 302-3).

33. The settlement houses themselves became a kind of institutional relay between these two programmes, providing individuals with an experience and knowledge which they would later employ in government:

"Institutions like Toynbee Hall continued to flourish in the 1890s, but their function had changed. They were no longer seen as urban manor houses from which a new squirearchy would lead the poor to virtue. ... They were now seen as informal social laboratories where future civil servants, social investigators, and established politicians could informally work out new principles of social policy." Jones (1971: 328).

34. Notable amongst these were the Salvation Army, the Church Army, the Church of England Temperance Society, the Reformatory and Refuge Union, the National Association of Certified Reformatory and Industrial Schools, the State Children's Association and the Committee on Wage Earning Children. For details of the various Discharged Prisoner Aid Societies, see the Report on the Operation of Discharged Prisoners Aid Societies (1896).

35. See Young and Ashton (1967: 179-80).

36. Rose (1961: 70) states that it was the pressure of the R.R.U. which led to the appointment of the Departmental Committee on the Inebriate Laws in 1892.

37. See Foucault (1977: 234). See also Ryan (1978) on the 'special relationship' which continues to exist between the Home Office and its 'official opposition', the Howard League.

38. See, for example, the Association's pamphlets on "The Prison Congress of London" (1872), "Vagrancy and Mendicacy: A Report" (1882) and "Defects in the Criminal Administration and Penal Legislation of Great Britain and Ireland with Remedial Suggestions" Tallack (1872) as well as the various texts by T. Holmes, W. Tallack, F. Peek and T. B. L. Baker.

39. Rose (1961: 15 and 30).

40. See Rose (1961: 50), Tallack (1895) and Holmes (1907).

41. Howard Association Pamphlets (1919).

42. Tallack (1895).

43. For a discussion of these demands, see Rose (1961) and the literature cited in note 38.

44. The form taken by this official 'recognition', where granted, varied according to circumstances. In the case of Reformatory and Industrial Schools this recognition was statutory; with the police court missions it depended upon the enthusiasm of the presiding magistrate; and with prisoners aid societies, recognition, as well as visiting, access and information, depended upon the discretion of the prison governor concerned.

45. It will be recalled from Chapter One that the "State agencies" charged with this task have changed over time, generally from local to central. The precise nature of the agency concerned is, of course, of great importance, but it does not alter the point being made here.

46. We will see later that once it was clear that the State would take responsibility for the poor (as it was by 1909), the COS also demanded a reformative State practice, just as the Howard Association had done in the penal realm.

47. See Rose (1961: Chapter 2) and Tallack (1895) passim.

48. See Grunhut (1948); Fox (1952).

49. See Rose (1961).

50. Rose (1961: 50).

51. cf. Tallack (1895)'s Chapter title: "Prison Officers, their Responsibility to God".

52. Tallack (1895: 33).

53. It is important to note, however, that the Association's position changed over time. By the time Thomas Holmes became its Secretary in 1905 the list of demands which it shared with other programmes had increased to include institutions for the feeble-minded, labour colonies and parole. See Holmes (1906) and (1913). It is also noteworthy that Holmes' position was by then much closer to the social work revisionism of Canon Barnett: see Holmes (1913: 252-53).

54. See Tallack (1895: 399) and Rose (1961) passim.

Notes and References

Chapter 5

Programmes of Social Security and Eugenics

1. "Old Age Pensions" - an article in Tribune, June 11, 1906, quoted by Weiler (1982: 91).

2. cf. Rose (1979).

3. cf. Masterman (1909: 4):

   "The 'condition of the People' problem now occupies the dominant position. Every political party has realized that Social Reform, on broad and generous lines, is as inevitable condition of future progress."

   and Gilbert (1966: 61):

   "The quest for national efficiency ... gave social reform what it had not had before - the status of a respectable political question. Imperialism and the 'condition of the people' question became linked."

4. The intersection of these concerns allowed a very wide basis for certain social reforms. At various points it alligned Imperialists such as Rhodes, Tariff Reformers such as Chamberlain, Milner and Mackinder, eugenists like Pearson and Fabians such as Shaw. See generally B. Semmel (1960).

5. Gilbert (1966: 236).

6. Hobson (1909: 174).

7. See Harris (1972).

8. Gilbert (1966: 236).

9. It is no exaggeration to say that the Settlement Missions, and particularly Toynbee Hall, amounted to a kind of training college for future proponents and administrators of social security measures. Residents there included W. Beveridge, R. L. Morant, W. J. Braithwaite (architects of National Health Insurance), H. Llewellyn Smith (Permanent Secretary of the Board of Trade, responsible for Labour Exchanges and National Unemployment Insurance), E. H. Aves (Chairman of the first Trade Board) and C. R. Atlee (Labour Prime Minister)

as well as writers such as N. Buxton, H. W. Nevinson and P. Alden. See Bruce (1961).

10. Quoted in Harris (1972: 97) and in Parry (1979).

11. Hobson (1909: 207).

12. Hobson (1909: 207).

13. See Gilbert (1966: 53) and Jones (1971: 354-5).

14. "The domain of operation of macro policies is not individual bodies but large aggregates of bodies - population. ... They are directed towards statistical phenomena like birth rate, death rate, infant mortality and the balance between the number of bodies and the quantum of available resources. ... They are focused away from the minutiae, towards the species treated as a unit." Hussain (1981: 189).

15. See Gilbert (1966: 268) and Harris (1972: 47). The Minority Report of the Royal Commission on the Poor Law and Relief of Distress (1909: 1215) which embodies one version of this programme, argued that "it is now administratively possible ... to remedy most of the evils of Unemployment", but admitted that 'techniques' and a body of expert knowledge can only develop when "actually put into operation".

16. A. Marshall in his evidence to the Royal Commission on the Aged Poor (1895), quoted in Gilbert (1966: 27).

17. Harris (1972: 42) attributes this statement to the Webbs and William Beveridge.

18. Jones (1971: 354-5).

19. See generally Weiler (1982). There was in fact a political grouping within the Liberal Party which was founded in 1896 calling itself the 'New Liberals'. Its founding statement describes its objectives as being to unify the "multiplicity of progressive movements", to come to grips with "that huge unformed monster", the social question, and to implement "a specific policy of reconstruction "based on a new conception of economic freedom ... the conscious organisation of society" and "an enlarged and enlightened conception of the functions of the State". Quoted in Emy (1973: 105). Although the term 'New Liberalism' is used to cover a wider political movement, these objectives and the individuals like Hobson and Hobhouse who formulated them, give

this wider term its meaning.

20. "Man is free only when he chooses an object which tends to his self-realization. Man could be free, therefore, even when obliged to action by law if this obligation tended to develop his better nature." Quoted in Weiler (1982: 316).

21. As the following quotation from Ritchie shows, this conception of power accords closely with that of M. Foucault in rejecting the notion that power exists in a 'zero-sum' relation between the State and the individual. See Foucault (1981).

22. Quoted in Brown (1974: 6).

23. Gilbert (1966: 54).

24. Weiler (1982: 17). This position, which is clearly articulated in the writings of Hobson, Beveridge, Hobhouse and the Webbs amongst others, is clearly a stark parallel to that of Emile Durkheim who was writing at much the same time in France (see his The Division of Labour in Society, 1st edition 1893). There appears to be no evidence of any direct influence here, rather both reflect a developing feature of modern society.

25. See Beveridge (1909).

26. See Harris (1972). J. A. Hobson further argued that 'under-consumption' was a major cause of unemployment which could be remedied by a redistribution of wealth. A. H. Marshall argued a similar position (without its radical consequences) in his evidence to the Royal Commission on the Aged Poor.

27. See Harris (1972: 11).

28. COS statement (1904), quoted in C. L. Mowat (1961: 157).

29. Hobson (1909: 174).

30. Rose (1979: 26). This theoretical ambivalence is the cause of a number of contrary interpretations of Booth as environmentalist (see Brown (1968)) and as individualist (Williams (1981)). Booth himself went so far as to estimate the causal weight of 'both' of these 'factors': see Booth (1902).

31. J. A. Hobson in The Crisis of Liberalism (1909), quoted by

Gilbert (1966: 257).

32. Samuel (1902: 4). G. R. Sim (1883: 11) made the same point when he talked of "Dr. State" and 'his' "power of rescuing future citizens. ..."

33. J. A. Hobson in The Crisis of Liberalsim (1909) quoted by Gilbert (1909: 257). It should be noticed that our analysis is not at odds with that of H. M. Lynd who argues that the beginnings of the movement from "negative" to "positive" freedom can be traced in the intellectual developments of the 1880s. The purport of this section is that these developments only emerged in the political arena in the 1890s and 1900s. See Lynd (1945).

34. On emigration, see Booth (1890) and (1905) and the proposals of Lord Brabazon, Sydney Smith and Arnold White as summarised in Jones (1971: 309). On Old Age Pensions, the various schemes of J. Chamberlain, C. Booth and the National Committee of Organised Labour on Old Age Pensions are described in B. Gilbert (1966: 199ff). On schemes of decasualisation, see G. Stedman Jones' account (Jones 1971: 335) of W. Churchill's proposals while he was President of the Board of Trade and the later arguments of the Minority Report of the Royal Commission on the Poor Laws.

35. While these institutions were certainly new developments at the level of national politics, one can find local or else foreign instances of an earlier date. Thus 'Labour Registries' were established for certain trades in London as early as 1886, and after 1890 the Salvation Army was involved in running its own "Labour Exchanges", see Gilbert (1966: 37-8). Labour Colonies existed in various forms in several European countries in the 1880s and 1890s and were the subject of frequent Reports in this country: see for instance The Report on Methods of Dealing with Vagrancy in Switzerland (1904) and The Report on the Belgian Labour Colony at Marxplas (1903). As for insurance against sickness and unemployment, the Friendly Societies and Industrial Insurance Companies are obvious instances of private precursors to this proposal.

36. Rose (1979: 36).

37. Harris (1972: 202). As Percy Alden put it in 1905:

"What is required is that the State and local authority should attempt what every employer does for himself every day, distinguish between men of good and bad character." Quoted in Brown (1968: 356).

38. Rose (1979: 35).

39. W. Beveridge, quoted in Harris (1972: 285).

40. W. Beveridge, quoted in Harris (1972: 206).

41. The conditions of eligibility specified in the 1908 Act excluded anyone in receipt of poor relief (s.3(1)(a)); anyone who "has habitually failed to work according to his ability" (s.3(1)(b)); anyone "convicted of any offence and ordered to be imprisoned" (s.3(2)) as well as lunatic, inebriates and others.

42. According to John Brown, Booth's concern "was to preserve the morale of old people who had previously led independent lives from a humiliating enquiry into personal circumstances". Brown (1981).

43. Thus W. Churchill:

"The spirit of the Insurance Scheme is not to weaken the impulse of self-preservation, but to strengthen it by affording the means of struggle, and the fear of running through benefits, or passing out of the Insurance Scheme altogether, must be constantly operative." Quoted by Gilbert (1966: 272).

See also Rose (1980).

44. Rose (1980: 123).

45. "Beveridge's preference for social insurance derived partly from his belief that it was the most efficient means of caring for the poor, but more centrally from his belief ... in the capacity of social reform to promote integration and cohesion in place of conflict. He believed that social insurance ... could foster independence, social solidarity, and feelings of identification with a benevolent state." Thane (1981).

See also Harris (1977).

46. Gilbert (1966: 251).

47. Jones (1971: 335).

48. See Jones (1971: 332) and (1971: 302-3). As Jones points out, the early schemes of Booth and the Barnetts involved 'voluntary' entry to these colonies, but in later versions committal was seen to necessitate compulsion.

49. Report on the Belgian Labour Colony at Marxplas (1903) by a Committee appointed by the Lindsey (Lines) Quarter Sessions.

50. The Majority Report of the Royal Commission on the Poor Laws (1909), (vi. 637).

51. Winston Churchill, 1906, quoted in Jones (1971: 335).

52. We should note that there were also a number of proposals of a different sort for rural colonies of a pastoral or communal orientation. Three such colonies were privately established, first by the Salvation Army at Hadleigh in Essex, as part of General Booth's regenerative scheme of aid to the destitute, and later by the Poplar Board of Guardians at Laindon (in 1904) and by the London Central Committee for the Unemployed at Hollesley Bay (in 1905). See Brown (1968: 357) and Crooks et. al. (1905).

53. J. A. Hobson, quoted in Weiler (1982: 172).

54. Harris (1977: 101).

55. See the various competing schemes of insurance, pension, emigration and labour colonies in Gilbert (1966), Harris (1972) and (1977), and Jones (1971).

56. On the range of political positions of these various proposals of social security, see B. Semmel (1960), Masterman (1909), and Gilbert (1966).

57. Booth (1902: 167). As K. Williams points out:

"... labour colonies and old-age pensions had much the same status for Booth as regulating the banks [has] for Friedman; they were strategic interventions that made other interventions unnecessary." Williams (1981: 338).

58. Gilbert (1966: 245) paraphrasing Beveridge's position.

59. Churchill's determination to confirm the 'contractual' basis of national insurance was defeated in this respect, being successfully opposed by the arguments of Llewellyn-Smith, see Gilbert (1966: 271ff).

60. Hobson (1909: XII) where he insists upon "rights of self-development" and a "just apprehension of the social".

61. "The unconditionality of all payments under insurance schemes constitutes a grave defect. The State gets nothing for its money in the way of conduct, and may even encourage malingerers."

Beatrice Webb, quoted in Gilbert (1966: 278).

62. Beveridge:

"... men who cannot in ordinary circumstances support themselves in independence are not citizens in fact, and should not be in right. ..." Toynbee Record, March 1905, quoted in Brown (1981).

63. Quoted in Brown (1968: 112).

64. cf. Masterman (1909: 92):

"All the poor want ... is to be left alone. They don't want to be cleared, enlightened, inspected, drained. They don't want regulations of the hours of their drinking. They assiduously avoid the hospitals and parish rooms. They don't want compulsory thrift, elevation to remote standards of virtue or comfort, irritation into intellectual or moral progress."

65. W. Beveridge in 1906, quoted in Jones (1971: 335).

66. See references cited above: notes 48-50 and also Hay (1978: 32).

67. Rose (1979: 26).

68. Sidney Webb, quoted in Gilbert (1966: 77).

69. See Semmel (1960). And cf. H. Spender (Lloyd George's publicity agent):

"It is not enough for the social thinker in this country to meet the socialist with a negative. The English progressive will be wise if in this at any rate, he takes a leaf from the book of Bismarck who dealt the heaviest blow against German socialism not by his laws of oppression ... but by that great system of state insurance which now safeguards the German workman at almost every point in his industrial career." (1902) quoted in Gilbert (1966: 257).

and Speech by H. H. Asquith, Chancellor of the Exchequer, reprinted as the Liberal Party Pamphlet "Liberalism and Socialism":

"I do not under-rate the activity or the progress of the Socialistic propaganda, or the importance of meeting it with a constant and persistent exposure of many of its cloudy though alluring fallacies; but the real danger lies in leaving evils unredressed and problems unresolved. ..." In Pamphlets and Leaflets for 1907, The Liberal Party of Great Britain.

70. W. Beveridge (1908) quoted in Harris (1977: 102), and cf. Pearson's desire that "every citizen must learn to say with Louis XIV 'L'etat c'est moi'", quoted in Semmel (1960).

71. H. Dendy, "The Industrial Residuum" in Bosanquet (1895).

72. This definition is based upon Galton's own, as contained in his will; see McKenzie (1981: 15).

73. See The Times editorial of October 7, 1911 and the Cabinet Minutes of December 22, 1911. PRO Cab. 37/108. Members and sympathisers included Sidney and Beatrice Webb, George Bernard Shaw, Lowes Dickinson, J. B. S. Haldane, J. M. Keynes, Harold Laski, Cyril Burt, William McDougall, T. C. Horsfall and Havelock Ellis. See Searle (1976).

74. See, for example, Galton (1869) and (1889); Chapple (1904); and Rentoul (1903).

75. Cited by Rentoul (1903).

76. Chapple (1904: iii). This remark has distinct echoes in the notorious public statement made by Margaret Thatcher in 1979, this time referring to the question of immigrants and the 'threat' they posed to our nation and culture.

77. L. Darwin, quoted in McKenzie (1981: 41).

78. See Rentoul (1906: 165) and Searle (1976).

79. "All the major European nation states suffered a decline in their birth rates in the last half of the nineteenth century, a decline whose discursive effects it should be noted, were themselves conditional upon a certain apparatus of censuses, demographic statistics and so forth which had only recently been established. ... And calculations showed that Britain's decline had not only been worse than any other nation but France, but its recovery had also been slower." Rose (1979: 30).

80. Quoted by Rose (1979: 31).

81. Dr. A. F. Tredgold: "The Feeble-Minded - A Social Danger" - a paper circulated to the Cabinet by W. Churchill on December 22, 1911. See PRO Cab. 37/108 Paper 189.

82. L. Darwin, quoted in McKenzie (1981: 41).

83. Chapple (1904: 118).

84. Webb (1910-11: 234), quoting the Minority Report on the Poor Laws (1909). See also Karl Pearson's proposals for closing the casual wards and excluding the "congenital pauper" from the workhouses, described in Semmel (1960).

85. Webb (1910-11: 235).

86. Darwin (1914-5: 212). In a later collection of his writings, he states:

"... the system of short imprisonments is nearly useless as a method of promoting racial progress; whilst it may also be condemned quite as vigorously because it has proved to be a complete failure as a method of reforming the criminal himself." Darwin (1926: 218).

87. Russell (1902-4: 100).

88. cf. Rose (1979: 32).

89. This position "implied limitations on the efficacy of other strategies for dealing with the residuum proposed by other elite groups. There really was not much point preaching to the residuum, attempting to save their souls and convert them to a decent and hardworking Christian life, if they differed naturally from respectable workers." McKenzie (1981: 41).

90. Lidbetter (1910-11: 227-8).

91. "It is perfectly distressing to me to witness the draggled, drudged, mean look of the mass of individuals, especially of the women, that one meets in the streets of London and other purely English towns. The conditions of their life seem too hard for their constitutions, and to be crushing them into degeneracy." K. Pearson, quoted by McKenzie (1981: 39).

92. Edward Schuster in the British Medical Journal, August 1913, p.225 quoted by Searle (1976: 42).

93. Quoted in Semmel (1960: 48-9).

94. This theory was based upon the work of August Weismann which differentiated germ cells (or plasm) from 'body' or somatic cells. While it was body cells which were affected by environment, disease, etc., it was only the independent germ-plasm which was transmitted, thus dismissing Lamarkian theories of adaptation and the transmission of acquired characteristics. After 1899 Mendel's theory of genetic process came to form the basis of most eugenist's views, though Galton himself remained sceptical. See Searle (1976).

95. See Galton (1883) and (1869).

96. Quoted by McKenzie (1981: 16).

97. N. Pearson, "The Idle Poor" (1911) quoted in Hay (1978: 62).

98. L. Darwin, quoted by McKenzie (1981: 18). cf. A. Tredgold:

"I would lay it down as a general principle that as soon as a nation reaches that stage of civilisation in which medical knowledge and humanitarian sentiment operate to prolong the existence of the unfit, then it becomes imperative upon that nation to devise such social laws as will ensure that these unfit do not propagate their kind." Tredgold (1911: 3).

99. "... There is every grade of insanity, and yet it is necessary for legal authorities to declare one man to be insane whilst holding another man, nearly as abnormal, not to be so." L. Darwin, quoted in McKenzie (1981: 19).

100. Chapple (1904: Introduction).

101. Rentoul (1903: 17-8). Lydston (1904) provides a similar list:

"Persons with a history of insanity, epileptics, dipsomaniacs, incurable syphilitics, certain persons who suffer from deformity or chronic diseases, criminals and persons with criminal records should not be permitted to marry upon any conditions. Incurable criminals, epileptics, and the insane should invariably be submitted to this operation [sterilization] and irrespective of matrimony. Even the rare cases of reformed habitual criminals should be subjected to this operation, for the cure of their own criminal tendencies will not interfere with the transmission of these tendencies to their progeny." Quoted in Rentoul (1906: 167).

102. IQ testing has developed subsequently as an attempt to supply this lack, though its general effect has been simply to displace the problem from the quantified and 'rigorous' test result to the basis of the test itself.

103. N. Rose notes the use of this same device in the psychological debates surrounding the question of feeble-mindedness. See Rose (1979: 45):

"Feeble-mindedness is a psychological state which is, however, knowable only on the basis of the social behaviours which it induces. As Tredgold puts it, 'The condition is a psychological one, although the criterion is social'."

104. Chapple (1904: iii).

105. Ellis (1910: XI-XII).

106. cf. L. Darwin, quoted above, note 86.

107. Battaglini (1914-15: 15).

108. See McKenzie (1981: 20).

109. See Searle (1976: 103).

110. See Rose (1979: 27). W. A. Chapple was also concerned to prevent middle class women from avoiding conception, and proposed that induced sterility be made an offence in such cases. See Chapple (1904: 123).

111. See McKenzie (1981); Rentoul (1903) and Chapple (1904) passim.

112. Ellis (1910: xiii).

113. Chapple (1904: 21).

114. Bradley (1893-4: 280-1).

115. L. Darwin, quoted in McKenzie (1981: 21).

116. McKenzie (1981: 33-4).

117. See McKenzie (1981).

118. Farrall (1970) and Abrams (1968).

119. See Searle (1976) and Rentoul (1906). Of course the reasons for this support varied between individuals. One can assume, for example, that the likes of Shaw and the Webbs were drawn less to the Society's implicit political economy (with which they would certainly disagree) than to its explicit promotion of the role of science in administering the social realm and the place of the professional class in this enterprise.

120. Hynes (1968: 287).

121. See The Eugenics Review, Vol. 6; Jones (1960: 62) and Home Secretary McKenna: "... I am not exaggerating when I say that local authorities have been overwhelming in their petitions in favour of this Bill", describing the Mental Deficiency Bill 1913, Hansard, Vol. 53, Second Reading Debate, col. 221.

122. The Times, October 7, 1911, "A Laboratory for Eugenics".

123. McKenzie (1981: 24).

124. See the lists of notables declared as sponsors in Chapple (1904) and Rentoul (1906). The latter text sets aside a chapter titled "Has my proposal to sterilize certain deteriorants and degenerates secured support?" listing figures such as Sir John McDougall, Dr. Barnardo, and the Physicians and Superintendents of various English asylums.

125. See Webb (1910-11).

126. N. Pearson in Hay (1978: 62-3):

"The old, easy optimism - the belief that almost all defectives could be cured, given time and patience - had vanished. In its place grew a profound pessimism, a conviction that mental deficiency was hereditary, insusceptible to treatment and training and a growing danger to the whole of society." Jones (1960: 49).

127. As Ellen Pinsent pointed out, the eugenic programme implied a "thorough and complete scheme of State intervention", E. Pinsett, The Lancet (1903), quoted in Rose (1979: 43).

128. Webb (1910-11: 237).

129. See McKenzie (1981: 27-29).

130. Clearly there had previously been 'social' projects which aimed

to produce a social change dependent upon neither the realm of economics nor that of politics. The social hygienic programmes of the early nineteenth century are an obvious example (see Pearson (1975) for a discussion of these). However, the late nineteenth century programmes were the first to conceive of this more elaborate notion of the social as a distinct realm which could be organised, regulated and administered - not simply through individuals' conduct but through the institutions and relations which ordered individual conduct.

131. For general accounts of the formation of "the social" see Donzelot (1979); Rose (1979) and Hirst (1981). The "recognition" of the social is well illustrated in the book by B. Kirkman Gray entitled Philanthropy and the State (1908). Describing the "transition from philanthropy to social politics" Gray remarks that:

"Comparatively few people read [Census and Official] reports, but some of their more obvious results are promulgated through the newspapers, and people have become gradually permeated with the inmost lesson the Registrar-General has to teach, viz.: that birth, marriage, death, which are so intimately and seem so exclusively personal concerns, represent also a national interest of the highest moment." Gray (1908: 18).

For Gray, this social realm becomes known through "the science of statistics" which can "determine those principles upon which the well-being of society depends", (1908: 16).

132. For a discussion of the characteristics of 'social' or 'bio-politics' see Foucault (1981).

133. cf. Boies (1893: vi):

"If the time has not yet arrived, it is certainly approaching fast when the public welfare, the progress of civilisation, the elevation of humanity, the regeneration of the race, will be recognised and obeyed as the supreme motive in the social organisation - the final purpose of legislation."

134. J. A. Hobson, quoted in Weiler (1982: 172).

135. Masterman (1909: ix).

136. Harris (1972: 6) notes that the Webbs were "concerned to create an 'administrative science' for the treatment of the unemployed workmen, analogous to the science of public health" and Gilbert (1966: 6) refers to the Webbs' project as "scientific reform". N. Parry also points out that the COS claimed a "scientific" basis for their procedures and techniques, though this "was a notion of science without much substantive content, being in fact little more than an adherence to the principle of

'bureaucratic rationality'", Parry et. al. (1979: 33).

137. See Harris (1972: 103) where she argues that the COS was latterly less concerned with avoiding State intervention than with maintaining its own grip on the treatment of the problem.

138. Rose (1979: 37).

139. See Jones (1971), Gilbert (1966), McKenzie (1981) and Hobsbawm (1964).

140. Sims (1883).

141. Part quoted, part paraphrased, from W. Beveridge's "My Utopia", in Harris (1977: 137).

Notes and References

Chapter 6

Resistances, Manoeuvres and Representations

1. Foucault (1979). In fact Foucault's own work fails to do this - particularly in regard to the thesis in Discipline and Punish concerning the strategic regrouping which occurred in order to exploit the latent functions of the prison. (For a brief statement of this thesis, see Foucault (1980).)

2. Gilbert (1966), Harris (1972) and (1977). See also Fraser (1973).

3. The clearest evidence of this explicit concern with the ideological issue is contained in Gilbert's account of the exchanges between Churchill and his Department's Permanent Secretary, Llewellyn Smith, over the proposed conditions for insurance benefit: Gilbert (1966: 271). Fraser's (1973) account also makes this point and adduces different evidence. The crux of the matter is well expressed by Charles Booth when he declared the need for a 'limited socialism' as the solution to the problem of social reform, i.e., "a socialism which shall leave untouched the forces of individualism and the sources of wealth" (1902: 177).

4. Russell (1973) shows that Liberal, Labour and socialist candidates and backbenchers did raise social reform as an issue at the general election of 1906. Nonetheless, the general agreement of the parties on the necessity of social reform meant that the issue was less prominent than questions which divided the parties, such as Education policy, Free Trade versus protectionism, and so on.

5. This silence was noted and criticised at the time by Mr. J. C. Wedgewood, the radical MP. See Hansard 1913, Vol. 53, Second Reading Debate on the Mental Deficiency Bill, column 244.

6. Most of the penal Bills of this period were received in Parliament as "non-contentious" penological reforms, independent of political or ideological relations: see, for example, the debates on The Prevention of Crime Bill 1908, The Probation Bill 1907, The Children's Bill 1908 where this is stated again and again.

7. Rose (1961: 72).

8. 'Resistance' here does not refer to the resistance of the objects or targets of the practices of power (e.g. the resistance of bodies to complete discipline, as described by Foucault (1980a) or of working class culture to bourgeois ideology, as described in

Chapter Three of this dissertation). Rather it refers to the resistances met by programmes in the political/ideological domain which would prevent or obstruct them from becoming actual practices and strategies of power.

9. See Gilbert (1966).

10. See Emy (1973: 172), Lynd (1945: 75) and Fraser (1973).

11. See Du Cane (1885: 79); Rose (1961: 49); the Report of the Scottish Departmental Committee on Habituals, etc. (1895: XIX); the Report of the Departmental Committee on the Education and Moral Instruction of Prisoners (1896: 13); Anderson's view is quoted in The Times, 12 February, 1901.

12. See the Observations of the Prison Commissioners on the Recommendations of the Gladstone Report (1897).

13. See Lushington's evidence to the Gladstone Report (1895: 7); Dr. Carswell's view - that there is "little ground for believing that ... curable results can be looked for" - is expressed in the file on Lunacy and Alcoholic Excess (S.P.R.O. HH 59/13) which records an exchange on this question, taking place in 1903. Dr. Carswell was Glasgow's Certifying Physician in Lunacy. The opinions of Lords Cockburn and Blackburn were rendered to the Parliamentary Committee on Juvenile Crime in 1847, see Ruggles-Brise (1921: 89).

14. Report of the Prison Commissioners for the year ended 31 March, 1898, page 8.

15. Du Cane (1885: 156).

16. Booth MP, quoted in Hansard, Vol. 65, 20 July 1914, column 121.

17. Du Cane (1885: 197).

18. Belloc MP, quoted in Hansard, Vol. 190 (1908), Second Reading of the Prevention of Crime Bill, column 476.

19. Wedgwood is quoted in McKenzie (1981: 37), as is G. K. Chesterton:

"At root ... the Eugenist is the Employer." What the eugenist "is really wanted for ... is to get the grip of the governing classes on the unmanageable output of poor people."

20. Wedgwood MP, quoted in Hansard, Vol. 53 (1913), Second Reading Debate on the Mental Deficiency Bill, column 244 and in Hansard, Vol. 39 (1912) in the Second Reading Debate on the Mental Deficiency Bill of that year, column 642.

21. See the letter from Asquith to Ruggles-Brise, quoted in Chapter Seven.

22. Gilbert (1966: 157).

23. In the Second Reading Debate on the Prevention of Crime Bill 1908 Hansard, Vol. 190, column 476, Belloc describes the new provisions as "utterly at variance with every political or social principle that western Europe has ever known or any Christian country had ever held". Schlapp and Smith (1928: 67) describe the advert of criminology thus:

"... the new criminology was looked upon as ... the attack of evolutionary science upon the churches and the gods. ... The teaching was rebellious, radical and anarchic to the classes which had arrogated to themselves and long controlled the temporal government. To the Lords spiritual it was heretical, atheistic and damnable, if not openly blasphemous."

24. For examples of this resistance, see Oppenheimer (1913: v); Mercier (1905) and (1911) and the discussion in De Fleury (1901: x). On the ideological elements which underpin capitalist relations, see Sumner (1979) and Therborn (1980).

25. For examples of this, see Holmes, quoted in Rose (1961: 94) and Holmes (1912: 35-36) where he also quotes Ruggles-Brise to this effect. The Report of the Departmental Committee on Inebriates (1908: 5-6) also resists the denial of reformism. The interests and arguments of social administrators are discussed in Platt (1969) and McKenzie (1981). On the question of the modern State's commitment to an ideology of welfarism, see Chapter Eight.

26. The quoted statement was made by the Home Office Prison Inspectors in 1836, and is taken from Webb (1922). See also the doubts and denials expressed by the 1896 Committee on Distress from Want of Employment (1896: XIV-XV) - quoted by Harris (1972); and by J. S. Davy, Chief Inspector of the Poor Laws, quoted by McCord (1978: 46).

27. Brise (1921: 195).

28. See Hall (1978: 175) and Pelling (1968) for examples of these opposing views.

29. The I.L.P. resolved in favour of pensions, school meals, medical inspections and the recommendations of the Poor Law Minority Report at its Annual Conference of 1912 (see the Report of the Fifteenth Annual Conference, published by the I.L.P.). The Fabians were clearly in favour of many of the reforms, though not of insurance in the form which was legislated, see MacBriar (1966) As Yeo (1979: 64-66) points out, the P.L.P. and the I.L.P. were divided on the issue of insurance. Nearly all of the labourist parties joined in support of the campaign for Old Age Pensions from 1899 onwards, though many were critical of the 1908 Act itself. Only a few small groups such as the British Syndicalists opposed the reforms on principle - see Holton (1976) and issues of The Daily Herald and Solidarity from this period - the principle being that these reforms were attempts to co-opt and to discipline the working classes.

30. See the Report of the Fifteenth I.L.P. Annual Conference, published by the I.L.P., and also Pelling (1968: 64).

31. Minett (1909: 297-8).

32. See Fabian Tract No. 163: "Women and Prisons" by Helen Blagg and Charlotte Wilson (March 1912).

33. Fabian Society: What to Read on Social and Economic Subjects (1910), section on "Crime and Prison Treatment".

34. See S. Herbert "Socialism and the New Science" in Socialist Review, Vol. 1 (1908) which argues that eugenics is a necessary corollary to socialism, and the article by Minett (1909) cited above. The Fabian guide as to "What to Read" (1910) contained a selection on "Physical Degeneracy and the Birth Rate" in which eugenic texts by Chapple, Saleeby and Webb are recommended. cf. McKenzie (1981) and Chapter Four on the relation of Fabians to the Eugenic programme.

35. K. Kautsky: "Unlawful Direct Action" in the Socialist Review, Vol. 8 (1911-12: 453ff).

36. Donzelot (1979: 135-6).

37. This approach to the relation of knowledge and power is, of course, derived from the work of Foucault, see especially Foucault (1977) and (1979).

38. cf. Young (1976: 153):

"The limits of penal reform find their restrictions in the nature

of the appeal they have to current everyday concepts prevalent both at the public and Parliamentary levels. In the penal arena proposals for reform must not violate the typifications that encircle common knowledge of crime and punishment if they are to receive legitimation."

We might add, though, that this common knowledge can be substantially transformed over a period of time, as in fact occurred in the period under study.

39. Clarke (1976: 14). This conception is borrowed direct from Gramsci (1971).

40. Rose (1979: 11):

"... not only does every discourse contain a certain number of statements which are 'errors', are incoherent or internally contradictory, but these 'errors' are not merely marginal, cannot merely be partialled out in an attempt to isolate the gold from the dross, but they function, they play a certain role within a discursive field, they have their own history and their own significant consequences."

41. Pearson (1975: XI).

42. The term "discursive desire" is a shorthand expression for the objectives and social forces which we have shown to be partly constituative of these discourses.

43. cf. Burton and Carlen (1979: 6):

"The great inquiries found in the blue books of this period ... are clearly products of contemporary political struggles. Their main function was to provide and to publicly propagate knowledge of social conditions that would shape the technology of social engineering. Their contents became part of the discursive armoury of the political scene. As such the inquiries had a clearly dual function of not only creating information but manipulating its popular reception."

44. Report to the Secretary of State for the Home Department on the Proceedings of the Fifth International Penitentiary Congress, Paris (1895: 14).

45. The Times, 23 March, 1906.

46. Brise (1921: 157). cf. Bentham's dictum:

"The proper end of human punishment is not the satisfaction of

justice, but the prevention of crime", quoted in Pincoffs (1966: 18).

47. See the Prison Commissioners Report for 1908-09; the 1909 Poor Law (Majority and Minority) Reports; the Report of the Departmental Committee on Vagrancy (1906); the Report of the Departmental Committee on Inebriates (1908); The Inebriate Act of 1908, etc..

48. Report of the Departmental Committee on Inebriates (1908).

49. Darwin (1926: 225).

50. Report of the Royal Commission on the Feeble-Minded (1908: 335).

51. Bradley (1893-94: 276).

52. Boies (1901: 219).

53. Boies (1901: 219).

54. Report of the Royal Commission on the Feeble-Minded (1908: 191-2). See also the Report of the Departmental Committee on Inebriates (1908). One should perhaps add that the state "help" mentioned here refers to a very lengthy period of incarceration, as do other administratively-preferred terms such as "continuous treatment" or "asylum treatment" when used in this context.

55. Majority Report of the Royal Commission on the Poor Law (1909: R212).

56. This was in fact the position adopted by the Personal Rights Association, which objected to the illiberal manoeuvres described here (though not to the severely restrictive control of inebriates, vagrants, etc.: their concern was to ensure that such control was mobilised via the normal legal process). See the P.R.A.'s evidence to the Departmental Committee on Inebriates (1908).

57. Anderson (1904: 130). It should be noted that Anderson's concern was with the problem of public representation and legitimacy. He wanted to guard against "the morbid sympathy with the dock" which embarrassed judges and constrained their power. In contrast to his fellow members of the legal and political Establishment however, he saw "legal process" as the only way to ensure public support.

58. "Confidential Memorandum on the Penal Servitude Bill" contained in

the file on the Penal Servitude Bill of 1904: P.R.O. P.Com. 7 286.

59. The quotations are also from the Confidential Memorandum in P.R.O. P.Com. 7 286. The same point was alluded to by Mr. Akers-Douglas MP when he introduced the Bill in the House of Commons. However the explanatory Memorandum to the House of Commons on the Bill - printed on 10 August 1983 - omitted all reference to the problems of public opinion and of evidential requirements.

60. Brise (1901).

61. Brise (1924: 92).

62. Saleilles (1913: 295ff).

63. Saleilles (1913: Preface).

64. See Ancel (1965) and Vol. 1 of The Journal of Criminal Law, Criminology and Police Science: "Editorial Comment".

65. Ancel (1965).

66. The quoted statement is from the "Editorial Comment" cited in note 64. The translated texts included works by De Quiros, Gross, Lombroso, Saleilles, Tarde, Aschafferburg, Garafalo, Bonger and Ferri.

67. Ferri (1917: 372-3).

68. Ferri (1917: 22).

69. Hardy's remark is from the 1912 Preface to Jude the Obscure. cf. The Times, 21 April, 1911:

"In the study of theoretical criminology we have lagged behind. There is with us no society engaged in the investigation of theoretical questions such as the International Union. ... There is nothing exactly corresponding to the American Institute of Criminal Law and Criminology, or to the journal which it publishes."

Brise (1924) and Ellis (1910: xxi) make the same point.

70. Von Hamel (1911-12: 23).

71. The Gladstone Report (1895: 8).

72. Hall (1926: 15). See also Hall (1917: 45).

73. Darwin (1914-15: 217).

74. See the following section (d) on "The closing-off of social questions".

75. Boies (1901: 40).

76. Brise (1924: 195). On this means of combining forces which are otherwise in opposition, see McKenzie (1981: 49-50) and Rose (1979).

77. This point is not undercut by those policies which have addressed the individual via the family unit, for in both cases social relations are ignored in favour of personal relations.

78. Dr. Marr, Medical Superintendent of Glasgow Asylums, quoted in the Scottish Department file on "Lunacy and Alcoholic Excess", 1903, see S.P.R.O. HH 59/13.

79. See, for example, Lydston (1904: 37-38), Wilson (1908: vii):

"The subjects especially treated in this book are education, character formation, marriage and crime. Empire building is the theme of the book ..."

and Home Secretary McKenna:

"The question of mental deficiency is essentially a national question and not a local question. It is in the interest of the nation as a whole that the race should be maintained, and not become degenerate." Hansard 1912, Vol. 39, Second Reading Debate on the Mental Deficiency Bill, column 641.

80. cf. Crackenthorpe (1908: 971-2):

"John Bull ... demands that some control should be exercised over the unreasonable multiplication of the unfit, whether such unfitness be due to drink, feeble-mindedness, insanity, criminality or disease."

See also Chapple (1903: Introduction).

81. Tredgold (1911).

82. Ellis (1910: 367). See also Laycock, the alienist, quoted by Ellis (1910: 33): "... that many or the majority of ... criminals are moral imbeciles is certain" and Lombroso (1911).

83. See, for example, the Howard Association (1908: 2); Home Secretary Gladstone, quoted in Hansard, Vol. 190, 1908, Second Reading of the Prevention of Crime Bill, at column 497; the Report of the Departmental Committee on Inebriates (1908: 26-7) and Boies (1893) and (1901).

84. cf. The involvement of eugenists in Poor Law reform, questions of Medical Health, family planning campaigns, etc., McKenzie (1981).

85. Battaglini (1914-15: 15):

"Concerning the relationship between eugenics and crime, it must be noted that the penal code is par excellence a group of eugenic measures."

Garafalo (1914: 252):

"... the aim should be only to prevent the procreation of individuals who in all likelihood would turn out to be vicious and depraved. Not to punish the children of criminals but to prevent their birth. ... Lombroso did not hesitate to ascribe the greater humanity to our times ... to the work of capital punishment in improving the human race."

See also Goring (1913: Chapter 5) where he argues that the surprisingly low fertility of convicts is a consequence of the frequent desertion of them by their wives. Sir John McDougall is quoted in the Transactions of the Medico-Legal Society Vol. 2 (1904-05: 24) as stating that "At Broadmoor, women convicted of infanticide were detained until the menopause had occurred".

86. Darwin (1914-15: 212). See too Darwin (1926: 219-20):

"... it is to be hoped that in all their decisions in regard to setting criminals at liberty [tribunals] would take into consideration whether or not consent to be sterilised has been obtained."

87. Brise (1900: 29).

88. Anderson (1908), Wills (1907).

89. Goring (1913). An American reviewer of Goring's research noted the heavy bias of the work towards questions which would confirm the eugenist views, and away from those which would jeopardise them:

"We are surprised to note the apparent lack of thoroughness Dr Goring uses in his treatment of environment as a cause of criminality. His subdivisions of the subject are very limited and his data is not of large amount: also we consider that some of the most important factors which are usually considered prominent as causes, he has passed over entirely." Newkirk (1914-15: 354).

We might also note that the suggestion that Goring had 'refuted' Lombroso was not uncontroversial. Thus for example, Gina Lombroso welcomed the work as a confirmation of her father's theories:

"We are more than satisfied ... that the threatened refutation of the New School is based on ambiguity of words. ... We absolutely agree with our opponent; I even want to thank him for his wonderful expression of our ideas." Lombroso (1914-15: 210).

90. Goring (1913) quoted in the Journal of Criminal Law, Criminology and Police Science (1914-15: 222).

91. cf. Darwin (1914-15: 214) who cites Goring to justify the claim that "the child of a criminal is at least ten times more likely to enter prison than is the child of honest parents". See also Darwin (1926) on "The Juvenile" which is in fact a eugenic elaboration of Goring's arguments; and also the significant welcome afforded to Goring's book by The Eugenics Review of 1914-15 (Vol. 6).

92. See, for example, the Report of the Prison Commissioners (1913-14: 24):

"The principal lesson to be learned from this Inquiry is that crime can be combatted most effectively by segregation and supervision of the obviously unfit. ..."

Surprisingly, this eugenic influence upon official criminological discourse has never before been noted by the literature, let alone explained or elaborated.

93. The Times, 28 June, 1911: "The Monument to Lombroso". This question of social change, if tolerated, would have also challenged the individualising procedures of charity and social work. cf. Holmes' (1900: 40) ironical description of dealing with the hungry and the homeless by giving them evangelical tracts.

94. See, for example, André (1908); Carpenter (1906) and Brockway (1928).

95. Brockway (1928: 53).

96. Garafalo (1914: xxxiii).

97. Brise (1921: xvi). Perhaps this discursive and political division which was driven between "the environmental" and "the criminal" can help to explain the way in which the ecological theories of the early and middle nineteenth century became lost to view by the end of that century. See Morris (1957).

98. See Matza (1964); Sapsford (1981) and Lindesmith and Levin (1937).

99. Brise (1921: 199).

100. See Garafalo (1914: xxxi). Lombroso did of course talk of the constitutionally incorrigible offender - the born criminal - but this category was not coterminous with "the criminal type".

101. See Brise (1921: 199); Hall (1926: 18); Saleilles (1913: 143). Report of the Departmental Committee on Inebriates (1908: 5-6); Report of the Prison Commissioners (1907-8: 13).

102. Brise (1921: 199).

103. Brise (1911: 74).

104. Report of the Prison Commissioners (1913-14: 24).

105. W. Churchill, quoted in Brise (1921: 4).

106. See Brise (1911: 74); De Sanctis (1914-5); Darwin (1914-5: 207).

107. Darwin (1914-5: 207).

108. Ruggles-Brise, in his preface to Goring (1913: vi).

109. De Sanctis (1914-15).

110. Ferri (1914-5: 226).

111. cf. Donzelot (1979) who uses this metaphor to describe how psycho-analysis can be used to regulate the images of its clients.

112. The Times, 23 March, 1906.

113. Hall (1926: 31).

114. See Foucault (1980) where he argues that an important effect of criminality is to justify a generalized form of policing which controls and supervises a population much wider than "the criminal class".

115. cf. Bradley (1911-2: 188): "... responsibility implies a moral agent. No one is accountable, who is not capable of knowing (not, who does not know) the moral quality of his acts."

116. See Ellis (1910); Ferri (1917); De Fleury (1901).

117. For examples of this, see the Report of the Royal Commission on the Feeble-minded (1908: 332); Garafalo (1914: xxvi) and Ritchie (1894-5: 422).

118. See Ferri (1917: 372) and De Fleury (1901: 121):

"The criminal is responsible towards society for the dread and antipathy which he inspires only: he is responsible towards himself through a trick of education only, a delusion, which it is no doubt convenient to keep up for the government of children and peoples, but which no jurist or philosopher ought to be able to impose upon himself."

119. See the evidence of the Honorary Secretary of the Personal Rights Association to the Departmental Committee on Inebriates (1908) and De Fleury (1901: 121).

120. Saleilles (1913: 158-9). Essentially the same point has been made more recently in regard to the "subject of ideology", see Hirst (1979) and Althusser (1971).

121. Saleilles (1913: 154).

122. Brise (1921: 213).

123. Ruggles-Brise in his preface to Goring (1913).

124. If the offender is deemed to be free and responsible, the cause of his conviction must lie in his freely-willed choice: only when responsibility is questioned do other 'causes' enter into question.

125. Saleilles (1913: 181).

126. Saleilles (1913: 72).

127. Ellis (1910); Smith (1922).

128. See Brise (1900: 57); Goring (1913: v); Ellis (1910: ix-x); Garafalo (1914: 298); Boies (1901: 35); Darwin (1926: 226); The Gladstone Report (1895: 30). See also The Probations Act of 1907; The Prevention of Crime Act 1908; The Prison Act 1898, etc. as discussed in Chapter Seven.

129. Saleilles (1913: 35). cf. Smith (1981: 82): "... physiology reinforced this theory of character: it portrayed habits becoming built into the body's fabric and thus impossible to eradicate or even to control."

130. See Pashukanis (1978); Edelman (1979); Hirst (1979).

131. Saleilles (1913: 84). Moulin (1975: 215).

132. See, for example, the Report of the Scottish Departmental Committee on Habitual Offenders, etc. (1895: xvi); the Report of the Royal Commission on the Feeble-Minded (1908: 325); Brise (1901: 57).

133. See Brise (1901: 120); Brise (1900: 29).

134. The Report of the Royal Commission on the Feeble-Minded (1908: 325).

135. Brise (1911: 3-4).

136. Report of the Departmental Committee on Inebriates (1908). See also The Times, 23 March, 1906:

"There are ... signs that an over-prudish sensitiveness as to interfering with personal liberty will not continue to be used as a pretext for allowing persons who cannot control their actions to ruin themselves and others."

137. Report of the Prison Commissioners (1912-13: 12-13).

138. Lynd (1945: 417) pointsout that this same tactic was adopted in regard to social reform in the 1880s.

139. cf. Resolution 5 of the Turin Congress of 1906, quoted in De Quiros (1911: 127):

"Both in theory and in practice the treatment of young criminals must serve as the prototype for the treatment of adults."

L. Hausman, in his Preface to Brockway (1928: x) makes this tactic explicit:

"In this book [the case for scientific penology] is intelligently and moderately stated; and in stressing the overwhelming importance of the treatment of the juvenile offenders, it not only starts its reform proposals at what is obviously the right end, but makes its appeal on ground where public opinion is probably less hardened and less indifferent - and therefore more readily open to conviction - than in the case of the 'confirmed criminal' ..."

The child as a point of entry also had a number of other advantages such as the educational precedent, Hoffding (1911-2: 696); the attraction of "catching them young" and cutting off the supply of adult criminals, the Gladstone Report (1895: 11) and the support of a large child-saving lobby.

140. For evidence of this progressive use of analogy to extent the category of the irresponsible, see the Mental Deficiency Bill 1913 Second Reading Debate, Hansard, Vol. 53, especially the contribution of L. Scott MP; the Second Reading Debate on the Inebriates Bill 1912, Hansard, Vol. 37, especially C. Bathurst MP. The term "juvenile-adult" was developed for this purpose by E. Ruggles-Brise, see Brise (1901: 92):

"... a person cannot be regarded as fully responsible before the age of 21 ... and it has been observed by scientific authority that the citizens of the poorer classes develop physically [and hence mentally and morally] much later than those of the more favoured classes, even as late as 25 or 26."

141. Brise (1921: 11) says that the new programme of reform has been initially aimed at "the opposite poles of criminality - the beginning and the end of a criminal career".

142. W. Crofton, evidence to the Carnarvon Commission, quoted in the Carnarvon Report (1863: xii).

143. See Grunhut (1948: 403) and M. Crackenthorpe: "Eugenics as a Social Force" in <u>The Nineteenth Century</u>, 1908.

144. The Memorandum is contained in the file on Habitual Criminal in P.R.O. P.Com. 7 286.

145. See the Report of the Departmental Committee on Inebriates (1908).

146. Lord Stewart, quoted in Hansard, Vol. 198 (1908), in the Second Reading Debate in the Lords on the Prevention of Crime Bill, at column 684.

147. cf. Smith (1981: 55): "Languages of pathology and savagery were interchangeable" and Pearson (1975: 207).

148. Chapple (1903: Introduction).

149. Garafalo (1914: xxvii).

150. Lydston (1904: 569).

151. Boies (1893: 293).

152. Boies (1893: 172).

153. Holmes (1900: 2).

154. cf. Edelman (1971: 67):

"Thought is metaphorical and metaphor pervades language, for the unknown, the new, the unclear, and the remote are apprehended by one's perception of identities with the familiar ... Metaphor, therefore, defines the pattern of perception to which people respond."

155. For examples of this, see Barman (1934: 43); Ritchie (1894-5: 422); Baker (1889: Introduction); Boies (1901: 435); The Times, 30 October, 1900 and Brise (1901: 106); the Gladstone Report (1895: 9); the Majority Report of the Royal Commission on the Poor Law (1909: R212); McLean MP quoted in Hansard, Vol. 190 (1908) in the Second Reading Debate of the Prevention of Crime Bill, at column 485. See also The Times, 21 April, 1911 where it is suggested that the U.S. penal authorities have taken the medical metaphor too seriously, and have jeopardised the valuable sentiment of social revulsion against crime and criminals.

156. See the Majority Report of the Royal Commission on the Poor Law (1909); Chapple MP quoted in Hansard, Vol. 65 (20 July 1914) at column 125.

157. See Brise (1921: 93); Report of the Prison Commissioners (1900-1: 13); Report of the Prison Commissioners (1901-2: 14); Brise (1899: 19-20); and Brise (1901: 57).

158. See Garafalo (1914: 136); Brise (1924: 12); Tallack (1895: 103); Morrison (1897: 105); Report of the Prison Commissioners (1912-3: 22-3).

159. Dendy (1895: 84).

160. T. Ribot, quoted with approval in Garafalo (1914: 62).

161. See Fraser (1973); Thane (1978) and Mowat (1961) who describe the care taken within the social security programme to separate its recommendations from the Poor Law's harsh, repressive image. Thus the workhouse was renamed the 'poor law institution', out-relief became 'home assistance' and the poor law itself became 'public assistance'. The Majority Report of the Royal Commission on the Poor Law (1909: iv, 49) discusses this problem of representation explicitly:

"It has been impressed upon us in the course of our inquiry that the name Poor Law has gathered about it associations of harshness, and still more of hopelessness, which we fear might seriously obstruct the reforms which we desire to see initiated."

Similarly Beveridge, and Balfour before him, insisted that new agencies such as the labour exchange should have no association with the Poor Law, just as the Labour Colony should be kept completely distinct from the Prison. The representational problems of eugenics have already been discussed - along with the tactics adopted to overcome these problems (see earlier this Chapter) and Mowat (1961) shows that even the COS was aware of this kind of legitimacy problem and took steps to deal with it (see Chapter Four).

162. This goes some way to explaining the constant references to "public opinion" as a primary factor in these struggles. But this should not be confused with a populism which accepts the judgement of the people - 'the people' were rarely, if ever, asked their opinion or given an opportunity to express it on this matter It is rather an invocation of ideologies whose existence is "known" but not explicitly spoken. See, for example, Brise (1921: xviii); Brise (1921: 195); Darwin (1926: 225); Russell (1901: 100); the Confidential Memorandum on the 1904 Penal Servitude Bill in P.R.O. P.Com. 7 286.

163. One might add that not all statements would have been the products of completely conscious thought or calculation. There is clearly a strong emotional element (as well as a deliberate tactical ploy) in much of the language used in penal discourse - an element which will sometimes be expressed unintentionally.

164. See the series of Prison Commissioners Reports which followed the 1898 Prison Act and, over the years, evinced this changing

position.

165 See the file on Habitual Criminals, P.R.O. P.Com. 7 286.

166. De Fleury (1901: xvi).

167. Lombroso (1911: S.209).

168. Home Secretary McKenna MP, quoted in Hansard, Vol. 53 (1913) during the Second Reading Debate of the Mental Deficiency Bill, at column 221.

Notes and References

Chapter 7

The Formation and Institutionalisation of Penal-Welfare Strategies

1. See Burton and Carlen (1979) for a discussion of this term and the functions and significance of Official Inquiries and Reports.

2. In his Report on the Proceedings of the Sixth International Penitentiary Congress, Ruggles-Brise presents the same compromise position: Brise (1901).

3. The Nineteenth Annual Report of the Prison Commissioners for Scotland (1896) provides an earlier example of an eclectic criminological disc urse. The series of case-history vignettes which it presents identifies a variety of genetic, psychological, environmental and moral causes. 'Drink' and 'indolence' are given the same prominence as heredity in this mixture of new criminology and old commonsense.

4. The reference here is to the Report on the Belgian Labour Colony at Marxplas (1903) which recommends Labour Colonies thus: "... even if they are not successful in achieving ... reformatory effects ... we think that at least they may clear the streets of the habitual vagrant and loafer. ..."

5. The Report of the Royal Commission on Physical Training (Scotland) (1903) also encouraged the use of "auxiliary agencies" of a voluntary type such as the cadet corps and the Boys Brigade "as a means of disciplining the disorderly elements in society and also of strengthening the available resources of the country."

6. In his Observations on the International Congress of Criminal Anthropology at Turin (1906), Col. McHardy, Chairman of the Scottish Prison Commission, discussed "the doctrine of the criminal né" in fairly positive terms, but concluded that "It may take a long time [to be] accepted in this country as it strikes at the root of free-will". But he adds that so too did the Calvinist doctrine of the Elect. He goes on to insist that prison staff must realize "the necessity for individual treatment" and should have a "knowledge of the fact that mental defects in prisoners exist, often very obscurely".

7. The last three summary points are borrowed from Sidney Webb's summary of the Report, see Webb (1910-11: 240-1). Each of the statements are accurate representations of the Report, though their presentation is more explicitly eugenic.

8. The Majority Report of the Royal Commission on the Poor Law (1909) also recommends emigration as a method of disposal of cases.

9. Although this could not be demonstrated without citing the Reports in full, these "programmatic elements" actually formed the central positions and recommendations of the majority of these Reports. In other words, far from being a highly selective summary, the foregoing summary analysis encapsulates most of the major concerns of the Reports cited. Any contrary direction or significant contradiction (e.g. a refusal of interventionism, a denial of reformism, the rejection of the programmes' logics) would have been noted and discussed, but there were no oppositions of this fundamental kind.

   There were, however, two recurring notions which do not derive so much from the reform programmes as from the practical experience of previous administration. These were firstly, the suggestion of a discipline based upon rewards, incentives or privileges, and their withdrawal (cf. the Irish progressive stage system, the mark system, etc.), and secondly, the idea of a network of institutions ending with a coercive State-run "terminus", to which the recalcitrant and unruly inmate could be transferred. Although neither of these schemes were prominent in the reform programmes, they were certainly compatible with their terms and objectives and, as we shall see, featured in the modern strategies of penal and social regulation.

10. This kind of eclecticism is a pragmatic combination of contradictory themes and theses, not an additive theoretical logic: see our discussion of the distinction between these two positions in Chapter Three.

11. cf. Jones (1960: 53).

12. See our summary analysis of the Reports and our earlier discussion of terms such as "mode of life" which circulated from Report to Report.

13. This is not to deny the occurrence of long-term and strategic calculation within government - but rather to state its limits and constraints.

14. See Pelling (1968) and Yeo (1979).

15. Atherley-Jones (1893: 629).

16. See generally Gilbert (1966); Harris (1972) and Jones (1971).

17. Gilbert (1966: 157).

18. cf. The social economic and political developments described in Chapter Two, which formed the fundamental conditions for these political moves.

19. See Wedgwood MP, quoted in Hansard (1912), Vol. 39 Second Reading Debate on the Mental Deficiency Bill 1912, column 642; Rawlinson MP, quoted in Hansard (1914), Vol. 61 Second Reading Debate on the Criminal Justice Administration Bill, column 206; Belloc MP, quoted in Hansard (1908), Vol. 197, Third Reading of the Prevention of Crime Bill, column 237-8.

20. cf. Brise (1921: 76): "... it is the duty of the State at least to try and effect a cure" and the Gladstone Report (1895: 30), discussing the reformatory objective being proposed; "It has been objected that Government was not qualified to take up work of such a philanthropic tendency. We do not agree. ..."

21. See, for example, the Gladstone Report (1895); the Prison Commissioners Reports (1897), (1910) and (1911); the Report of the Royal Commission on the Feeble-minded (1908); the Report of the Departmental Committee on Inebriates (1908); the Report of the Departmental Committee on Reformatory and Industrial Schools (1913); the Majority and Minority Reports of the Royal Commission on the Poor Law (1909); the Report on the Operation of Discharged Prisoners Aid Societies (1896).

22. Gilbert (1966).

23. Report of the Commissioners of Prisons (1896-7: 23-4).

24. Report of the Prison Commissioners (1909-10: 16).

25. Report of the Prison Commissioners (1910-11: 14).

26. Report of the Royal Commission on the Feeble-minded (1908: 325).

27. Report on the Operation of Discharged Prisoners Aid Societies (1896).

28. Report on the Operation of Discharged Prisoners Aid Societies (1896: 36).

29. Minutes of a Conference between Home Secretary Churchill and Representatives of the Prisoners Aid Associations on 19 July 1910, page 9. Contained in the P.R.O. file on "Formation of the Central Association of Aid for Discharged Convicts", P.Com. 7 413.

30. Page 4 of Conference Minutes - see note 29 for reference.

31. Report on the Operation of Discharged Prisoners Aid Societies (1896: 82).

32. Report on the Operation of Discharged Prisoners Aid Societies (1896: 82).

33. Statement by the Prison Commissioners of the Action which has been taken (1895: 4-5).

34. Statement by the Prison Commissioners of the Action which has been taken (1895: 5-6).

35. Mr. H. Ferris Pike, quoted in The Evidence to the Report of the Departmental Committee on Probation (1909: Q.2695).

36. Report of the Prison Commissioners (1910-11: 14).

37. Mr. Way PO, quoted in the Report of Proceedings at the Fourteenth Conference of Discharged Prisoners Aid Societies (1908: 57).

38. See the Report of the Prison Commissioners (1909-10: 16).

39. Pages 9 and 12 of Conference Minutes: see note 29 for reference.

40. Conference Minutes: see note 29 for reference.

41. Proceedings of the First Meeting of the Council of the new Central Association, 6 September 1910. Contained in P.R.O. P.Com. 7 "Formation of the Central Association".

42. Report of the Commissioners of Prisons (1896-7: 23).

43. Report of the Prison Commissioners (1909-10: 16). Given this background, it is of interest to read the reply of E. Ruggles-Brise in 1917 to a letter from the Borstal Association which had complained that Borstal discipline was too severe. The Chairman treats this very courteous letter from the B.A. as positively mutinous, and replies with thinly guarded threats that such behaviour will lead to the B.A. being simply closed down. See the file on "The Borstal Association's Criticisms of the Administration of Borstal", P.R.O. P.Com. 7 541.

44. The voluntary societies represented on the Board of the new Central Association were: Royal Society for the Assistance of Discharged Prisoners; Church Army; Catholic Discharged Prisoners Aid Society; Salvation Army; St. Giles Church Mission; United Synagogue and the Borstal Association.

45. See the Report of the Departmental Committee on the Training, Appointment and Payment of Probation Officers (1922).

46. See Hobhouse and Brockway (1922: 467ff).

47. Report of the Prison Commissioners (1910-11: 14).

48. Quoted in Leslie (1938).

49. See the Report of the Prison Commissioners (1906-7).

50. Report of the Prison Commissioners (1912-13). No such legislation was passed however.

51. cf. McLachlan (1974): "Although the Home Secretary, in introducing the 1898 Bill, insisted that it was 'not a revolution in prison government', the implications of the second clause giving him power to make rules for the government of all prisons, including hard labour and the classification of prisoners, were not much less than revolutionary."

52. See note 19 and also the discussion in Chapter Six.

53. See the new provision contained in the Rules and circular following on from the 1898 Prison Act (1899).

54. Ruggles-Brise notes that the new prison measures of 1898 appeared to settle public unrest. Brise (1921).

55. Report of the Prison Commission (1899-1900).

56. See s.6 of the Prison Act 1898, and the Rules and circular following on from the 1898 Prison Act (1899).

57. Section 6 of the Prison Act 1898 permits classification, it does not require it.

58. cf. The Report of the Prison Commission (1901-2: 7):

"There is but a slight difference in the actual treatment of prisoners sentenced to the Second or Third Division, but the sentence to the Second Division implies at least the segregation of the prisoners, and marks the distinction between really criminal and only quasi-criminal. ..."

59. cf. Brise (1921: 12): "The true meaning of 'prison reform'", i.e. the building up of character on the basis of strict discipline, obedience and order, tempered by progressive stages of increasing trust, liberty and material improvement of status.

60. See, for example, Col. McHardy's use of the psychiatric expertise of Dr. John Macpherson, Medical Commissioner in Lunacy, to train his prison staff to treat prisoners "scientifically" and "psychologically". S.P.R.O. HH 60/116. See also the psychological expertise employed in discussions and practices of Borstal assessment and training, e.g. P.R.O. P.Com. 7 532 "Psychological Examination Forms".

61. cf. Rose (1961: 70).

62. Report of the Scottish Departmental Committee on Rules for Inebriate Reformatories (1899: ix). Contained in S.P.R.O. HH 57/61.

63. Report of the Prison Commissioners (1901-2: 29):

"... while Certified Reformatories can well be trusted to control and deal with amenable cases, it is essential that in order to enable them to do this, the refractory and violent cases should be transferred to the charge and control of the State, whose institutions should be possessed of a sufficiently deterrent machinery."

64. See Report of the Scottish Departmental Committee on Rules for Inebriate Reformatories (1899: xi). Contained in S.P.R.O. HH 57/61.

65. Report of the Prison Commissioners (1901-2: 621-5).

66. See, for example, the Report of the Royal Commission on the Feeble-minded (1908: 317-8).

67. Report on the Inebriate Acts for 1904, p.11, quoted in Gray (1908). See also Brise (1921: 157) who repeats this.

68. Such discretion being "... subject to the regulations of the

Secretary of State", s.5, the Prevention of Crime Act 1908.

69. Quoted in Hansard (1908), Vol. 198, House of Lords, Second Reading Debate, column 684.

70. Home Secretary McKenna, quoted in Hansard (1914), Vol. 61, Second Reading Debate on the Criminal Justice Administration Bill, at column 198.

71. Brise (1921: 93).

72. Hood (1965: 19) quoting a contemporary statement.

73. Home Secretary Gladstone, quoted in Hansard (1908), Vol. 197, Third Reading of the Prevention of Crime Bill, at column 249.

74. The Report of the Prison Commission (1908-9: 23).

75. See Home Secretary Gladstone's letter to the Lord Chief Justice on the Subject of Sentences of Preventive Detention, 4 December 1909, where he talks of "the detention of the irreclaimable": in P.R.O. Cab. 37/101; and Home Secretary Churchill's "Circular of 4 March 1911 on Preventive Detention (1911)" where he says cases must be "hopeless" to justify such a sentence.

76. Home Secretary Gladstone, quoted in Hansard (1908), Vol. 189, in the Frist Reading Debate on the Prevention of Crime Bill, at column 1124.

77. The Hansard record minutes one MP as putting it thus:

"The theory underlying the Bill was that punishment was no longer to fit the crime, but was to fit the criminal, and to achieve that they must start upon something in the nature of a criminal psychology", Lyell MP, quoted in Hansard (1908), Vol. 198, Third Reading of the Prevention of Crime Bill, at column 111.

78. Home Secretary Gladstone, quoted in Hansard (1908), Vol. 197 in the First Reading Debate on the Prevention of Crime Bill, at column 252.

79. cf. Chapter Six where this was discussed.

80. Lord Advocate Shaw, quoted in Hansard (1908), Vol. 186, Second Reading Debate on the Children Bill, column 1251-2.

81. Section 102(3) of the Children Act 1908 allows an exception to this - "unruly" children may, in certain cases, be imprisoned.

82. Lord Advocate Shaw, quoted in Hansard (1908), Vol. 186, Second Reading Debate on the Children Bill, column 1257.

83. Lord Advocate Shaw, reference as in note 80, column 1251.

84. Samuel, quoted in Hansard (1908), Vol. 186, Second Reading Debate on the Children Bill, column 1294.

85. These provisions extended those already in existence under the Reformatory and Industrial School Acts.

86. Clarke (1976: 15).

87. Home Secretary McKenna, quoted in Hansard (1912), Vol. 39, Second Reading Debate on the Mental Deficiency Bill, column 641. Note that this statement was made during the debate on the 1912 Bill. The Bill and debates of the following year were careful to avoid such explicitly eugenic formulations.

88. Wedgwood MP, quoted in Hansard (1913), Vol. 56, Report stage debates on the Mental Deficiency Bill, at column 110.

89. Section 35(1) of the 1913 Mental Deficiency Act allows the Secretary of State to establish State institutions for "defectives with dangerous or violent propensities". These State institutions are to provide a coercive back-up for the network of private or local institutions to be provided by local authorities or private bodies - subject to regulation and certification by the Secretary of State (s.41). cf. The parallel system established by the Inebriate Acts.

90. Home Secretary McKenna, quoted in Hansard (1913), Vol. 53, Second Reading Debate on the Mental Deficiency Bill, at column 221.

91. Ellis Davies MP, quoted in Hansard (1913), Vol. 56, Report stage debates on the Mental Deficiency Bill, at column 74.

92. cf. Chapter One, page 31.

"... the prison was <u>de-centred</u> - shifted from its position as the central and predominant sanction to become one institution among many in an extended grid of penal sanctions."

93. This is the significance of these compromise formations already noted, such as the "conjoined and separate" relation established in double-track sentences or preventive detention or else in the practice of finding guilt and responsibility and then sentencing within a framework of irresponsibility

94. cf. The Times, 28 June 1911: "... the marvellous transformation of criminal law which we today witness" and The Times, 21 April 1911: "... the entire civilised world is engaged in remodelling its methods of dealing with crime ... it is not our national vanity to say that nowhere has progress been more rapid or remarkable than in England."

95. cf. Chapter Two and page 298 and following of the present Chapter.

96. See Williams (1981: 119ff). It is also noticeable that in many places the Majority Report of the Royal Commission on the Poor Laws (1909) reads very much like the Gladstone Report (1895).

97. See the Hansard Reports of these years.

98. See the Report of the Prison Commissioners (1910-11) and (1913-14) and the Home Secretary's statement on habitual petty offenders in Hansard (1908), Vol. 190, Second Reading Debate on the Prevention of Crime Bill, at column 463.

99. The Mental Deficiency Bill, 1912, clause 17.

100. See Harris (1972).

101. See our summary analysis of Reports, earlier in the present Chapter.

102. There were in fact one or two privately established labour Colonies, though these were not disciplinary institutions, as such, requiring the voluntary consent of those who attended The 1905 Unemployed Workmen Act permitted the establishment of such colonies: see Harris (1972).

103. Jones (1971: 302-3) argues that these 'eliminative' measures were a crucial counterpart to the new reform strategies, but he implies (wrongly) that they were legislated in their original form and so does not pose the problem of their absence. See Harris (1972) for her account of the disappearance of Labour Colonies from policy programmes.

104. See Gilbert (1966: 241-3) and the Prison Commission Minutes of 6 January 1904 on "the Scottish Labour Colony" in Minute Book of the Prison Commissioners for Scotland, S.P.R.O. HH 35/4.

Notes and References

Chapter 8

Penal-Welfare Strategies and their Modes of Operation: Some Conclusions

1. Marshall (1963: 107).

2. Jones (1971).

3. W. Churchill, in the Daily Mail, August 1909, quoted in Harris (1972).

4. Pamphlet by Russell Rea MP, on "Social Reform Versus Socialism" in the collection of Liberal Party Pamphlets and Leaflets of 1912 in the National Library of Scotland.

5. Donzelot (1979a: 81).

6. Procacci (1978: 70).

7. This is also the case with the system of labour exchanges. The provision of pensions and school meals to sections of the population does not conform to these terms, but both of these sections were outside the workforce, and this provision also entailed specific conditions of individual eligibility and inspection.

8. cf. Donzelot (1979) and Hirst (1981).

9. Donzelot (1979: 64).

10. cf. The discussion of this problem of labour discipline and marginal utility in Dendy (1895) and at the end of the section on Social Security in Chapter Five.

11. It is thus no surprise to find that the Inquiry Forms for Borstal lads and others demand to know of the individual's relationship to all the various institutions of socialisation and integration (the home, the family, school, church, youth associations, the police, etc.). See, for example, the Borstal Report files contained in S.P.R.O. HH 13/6 and HH 13/7. See also Le Mesurier's Handbook of Probation, Chapter on "Investigation":

    "If the offender or his family are known to other social or religious organisations or public bodies, e.g., Public Assistance Committee,

Charity Organisation Society, etc., it may be possible and desirable to consult these bodies confidentially."
Le Mesurier (1935: 99).

12. Jones and Williamson (1979: 60), quoting Foucault (1978: 136).

13. Blagg and Wilson (1912: 5).

14. cf. Grunhut (1948: 97): "Social readjustment as the primary aim of legal punishment has shifted the emphasis from prison to supplementary and alternative methods of extra-mural treatment."

15. cf. Hodges and Hussain (1979: 107): "One could speak of a grid of correction and normalisation spanning from penal or repressive, at the one extreme, to the assistantial laced with observation and supervision at the other." See Cohen (1979) on the metaphor of "deep and shallow" in regard to the penal complex.

16. See the Report of the Departmental Committee on Inebriates (1908); the Report of the Royal Commission on the Feeble-minded (1908); the Report of the Royal Commission on the Poor Law (1909). On the contemporary versions of this tactic, see Carlen (1983).

17. See the International Penal and Penitentiary Foundation (1951: 116):

"... in a system which aims at finding out why the prisoner behaves in a certain manner, and then, in view of the constant struggle that he has to carry on against himself, at guiding and assisting him, it is natural that there should not only be punishments, but also rewards to encourage good conduct; the possible withholding of these, in the event of subsequent misconduct, is one of the most effective threats known to those responsible for applying the disciplinary system."

See also the Report of the Prison Commissioners (1906-7: 27) and "Rules and Additional Privileges in Preventive Detention" file in P.R.O. P.Com. 7 288:

"... it must be borne in mind that every concession made is an additional instrument in the hands of the Governor for securing order and discipline, for the more the privilege is valued, the greater the penalty which its withdrawal (under Rule 9) implies."

18. Foucault (1981: 144).

19. Hall (1926: 63).

20. As Gray (1908: 29) points out: "Inspection has become one of the

characteristic features of modern government."

21. Le Mesurier (1935: 91).

22. Le Mesurier (1935: 96).

23. Donzelot (1979: 122-4) lists and describes the first three named techniques. Mr. F. Williamson, probation officer, describes the last named in the Report of Proceedings at the Fourteenth Conference of Discharged Prisoners Aid Societies (1908: 52):

    "Someone may ask, when do you visit your cases? And in replying I would inform them that I have no fixed time, but give surprise visits, morning, noon and night."

24. Gray (1908: 267).

25. Gray (1908: 268).

26. See Foucault (1977), Donzelot (1979) and Garland (1981).

27. This three-class distinction is by no means comprehensive, and the boundaries between types should not be understood to be precise or institutionally acknowledged. There are important features of modern penality, such as fines, admonishments, corporal and capital punishment, which are not institutionally-based, have their own distinct modes of operation, and do not figure in these sectors. Nevertheless the typology usefully describes and distinguishes the major functions and characteristics of the new penal-welfare strategies.

28. The quoted phrase is from the Report of the Prison Commissioners (1913-4: 24).

29. The Report of the Departmental Committee on Probation (1909: q. 1087).

30. The Report of the Departmental Committee on Probation (1909: q. 365).

31. The Report of the Departmental Committee on Probation (1909: 2).

32. Hall (1926: 31).

33. Morrison (1896: 191).

34. Gray (1908: 39). There are, of course. striking parallels between Gray's arguments and analyses and those of Donzelot some seventy years later. See Donzelot (1979).

35. Blagg and Wilson (1912: 19).

36. Morrison (1896: 191).

37. Leeson (1914: 124). See also Russell (1908: 253) and Hall (1926: 25).

38. Blagg and Wilson (1912: 19).

39. Morris (1951: 70) states that:

"From 1909 to 1930 preventive detainees were held in a special institution at Camp Hill, near Parkhurst Prison. In 1931, Camp Hill became a 'Borstal Institution' and the detainees were moved to a separate wing of Lewes Prison, In April 1933, Portsmouth Prison, which had been closed since October 1931, was opened as a Preventive Detention Establishment, leaving Lewes as a local prison only. Then, in 1939, on the outbreak of war, Portsmouth was evacuated and the detainees were moved to a separate "hall" in Parkhurst Prison. Camp Hill and Portsmouth had been reserved exclusively for preventive detainees; in Lewes and Parkhurst such detainees were held with other prisoners, but as far as possible segregated from them."

In fact the earliest reception of detainees (who had first to serve a sentence of penal servitude) was in 1911, according to the Home Office records: P.R.O. P.Com. 7 286.

40. "Confidential Memorandum" contained in the P.R.O. file on Habitual Offenders, P.Com. 7 286. See also Brise (1900: 26).

41. Brise (1921).

42. Parole, for example, was not introduced until 1967.

43. cf. Sparks (1971).

44. Fernald (1912-3: 874).

45. cf. Hodges and Hussain (1979: 75):

"The law serves as a filter for failures of normalisation by 'psy'

and social work practices to be passed over to repressive institutions. The courts, therefore, provide the welfare apparatuses both with a threat over and a means of expulsion of the intractable and unruly."

46. Rose (1980: 123). See also Donzelot (1979a) and Procacci (1978).

47. See Holton (1976: 33), Hay (1975: 51) and Jones (1971: 317).

48. For a discussion of this point, see Jordan (1978); Mishra (1977); and Marshall (1963).

49. W. Churchill, in The Nation, 7 March 1908, quoted in David (1974).

50. W. Beveridge, quoted in Gilbert (1966).

51. Rose (1980: 124).

52. Rose (1980: 124).

53. cf. Pearson (1975: 69):

"... deviant acts ... assume the appearance of incompetent acts; that is, behaviour which is susceptible to change by skilled intervention as compared with persuasive, coercive or educative intervention."

54. It is worth noting that the term "rehabilitation" was originally used to describe the process of re-entry into the civic community which occurred at the end of a period of punishment. It signified the end of all civic disabilities and the restoration to full citizenship. The modern use of the term still carries this connotation of a 'return to the community', but now it suggests a return not to a legal status, but instead to a standard of competency or normality. Instead of "undoing the conviction" rehabilitation is now to undo the causes of conviction. On the origins of the term, see Mannheim (1939: 150-6).

55. Ruggles-Brise in his Preface to Goring (1913: vi).

56. Brise (1921).

57. Heath (1909: 233).

58. See Marshall (1963: 81).

59. cf. Marshall (1963: 84):

"The education of children has a direct bearing on citizenship, and, when the State guarantees that all children shall be educated, it has the requirements and the nature of citizenship definitely in mind. It is trying to stimulate the growth of citizens in the making. The right to education is a genuine social right of citizenship, because the aim of education during childhood is to shape the future adult."

60. Hoffding (1911-2: 694). cf. Bianchi et. al. (1975: xvii):

"The Positive School [translated] into practice (if never into legal procedure) the notion that we shall here call conditionality: the principle that full membership of a society was a matter of conformity rather than right, and that conformity is a matter to be adjudged by science and expertise (in meritorious labour and ideological consensus) rather than automatically a matter of citizen status."

61. For example, this failure of penality could have been attributed to the framework of political assumptions which insists that the source of crime and the response to it must centre around the individual, rather than social relations. In the event, the ideological force of this individualism ensured that such questions never arose.

62. cf. Brown (1978: 127):

"Where means testing and personal enquiry continued to have a central role, in the poor law, local government and charitable services, it was felt that skilled casework would legitimise their use, provide a valuable element of discretion, and prevent the clients of these agencies from suffering any unjustifiable shame or demoralisation."

63. cf. Hirst (1981: 73):

"... it was difficult within the framework of the liberal order to devise a legal basis for the power to intervene which did not convert all families into clients of a patriarch-State. Such is the problem posed by the contradictory demands of the 'bourgeois' family for autonomy and the necessities of intervention in the families of the working class and this in a context where laws are supposed to be general norms applicable to all."

64. Hirst (1981: 73-4).

64a Peplar (1915)

65. See Hirst (1981); Sassoon (1981) and Grahl (1983). On the present challenge to this style and structure of political relations, see Hall and Jacques (1983).

66. See Rose (1980) and Yeo (1979).

67. Rose (1980: 123):

> "... the principle of national insurance spelt the death, or the virtual death, of a range of other forms of provision of security, which entailed different objectives, structures and configurations of powers, statuses, responsibilities and forms of control. Friendly Societies, community-union - or enterprise-based provision, have distinct consequences and possibilities for political promotion and intervention, which can be examined without the romanticisation of a past golden age of working class protective solidarity. ..."

68. See Bottoms (1980) and Garland (1983a).

69. A detailed statistical survey of the spread and deployment of sanctions before and after the transition of the 1900s would be very useful in tracing the penological implications of this change. Unfortunately such an analysis is beyond the scope of the present dissertation.

70. Hausmann's Preface to Brockway (1928: viii).

71. Pearson (1975: 130). See also Parry et. al. (1979: 32).

72. See Hobhouse and Brockway (1922).

73. The refusal of conventional legal rights to prisoners, and the reasoning which support it, is clearly expressed in a P.R.O. file entitled "Punishments: Terminology": P.Com. 7 391: The Chairman of the Commissioners is recorded as stating:

> "The legal practice of the Courts cannot be applied in Prisons in matters of discipline where hearsay statements, circumstantial and secondary evidence such as would not be accepted in a court of law have to be admitted." Minutes, 20 August 1923.
>
> What followed was a Circular to all prison establishments insisting that the legal nomenclature of "evidence", "trial" and "sentence" then employed in disciplinary proceedings should be replaced by the terms "statements", "investigation" and "award"! This shift from judicial to administrative terminology, it was hoped, would prevent prisoners from complaining, with truth, that the so-called "trials" lack the elements essential to judicial proceedings under English law. ..." Contained in the same file.

74. Rose (1979: 60).

75. See Chapters Three and Five.

76. For one study which does identify the values involves in specific penal practices, see Carlen (1983).

77. Hobhouse and Brockway (1922: 432).

78. Barman (1934: 40).

79. Barman (1934: 62).

80. Brise (1921: 99).

81. Report of the Departmental Committee on the Education and Moral Instruction of Prisoners (1896: 13).

82. Hobhouse and Brockway (1922: 432) and Report of the Departmental Committee on Reformatory and Industrial Schools (1913: 35).

83. Quoted in Hood (1965: 107).

84. See Hood (1965: 107).

85. Hobhouse and Brockway (1922: 221).

86. Brise (1921: 9).

87. Report of the Prison Commissioners (1911-2: 11).

88. Reynolds and Woolley (1911: 26).

89. On these developments, see Wiles (1976).

90. See Cohen (1974) and Garland and Young (1983).

91. For recent examples of this, see Hinton (1979) and Hinton and Woodman (1977). For a discussion of this tendency in criminology, see Sapsford (1981).

92. cf. Burton (1980).

93. The failure to measure (or even admit) this discrepancy between programme and practice is a major failing of Foucault's work. At times the effect of this is to submerge his careful identification of political techniques and consequences beneath the rhetorical excesses of his conclusions about the "disciplinary society".

94. See Hall and Jacques (1983); Gamble (1981) and Jessop (forthcoming).

95. See Walker and Beaumont (1981).

96. See Morris (1951).

97. See Richards (1977).

98. See the forms and dossiers collected under various "Inmate Record" headings in S.P.R.O. HH and in P.R.O. P.Com. 7 files.

99. "Prospects on Discharge" Inquiry Form, in P.R.O. P.Com. 7 413.

100. See Walker (1968) and Hood (1965).

101. See Young (forthcoming).

102. Whitlock (1963: 46).

103. Walker and Beaumont (1981: 21).

104. cf. Hirst (1983).

105. See Walker and Beaumont (1981) and Bean (1973).

106. cf. The Victorian's system's failure to manage the range of deviance in this orderly fashion: Chapter Two, page 54.

107. Donzelot (1979: 113).

108. See Schlapp and Smith (1928: 271); Boies (1901: 219) and Hardy (1901).

109. See, for example, Rusche and Kirchheimer (1968).

110. Report of the Committee of Inquiry in the U.K. Prison Services (1979: 67).

111. For a discussion of these and other attempts to theorise penality, see Garland and Young (1983) and Garland (1983).

112. See Pashukanis (1978) and Foucault (1977).

113. This formulation should be taken as a refinement and extension of Foucault's argument that "discipline is the darkside of democracy", Foucault (1977).

BIBLIOGRAPHY

ABRAMS, P. (1968) The Origins of British Sociology: 1834-1914, Chicago & London: Chicago University Press.

ALTHUSSER, L. (1971) Lenin and Philosophy and Other Essays, London: New Left Books.

ANCEL, M. (1965) Social Defence, London: Routledge & Kegan Paul.

ANDERSON, R. (1904) "The Home Office Scheme for 'Professional Criminals'" in The Nineteenth Century, January 1904.

ANDERSON, R. (1908) "Criminals and Crime: A Rejoinder" in The Nineteenth Century, LXIII.

ANDRÉ, G. G. (1908) Our Criminal Fellow Citizens, London: New Age Press.

ATHERLEY-JONES, L.A. (1893) "Liberalism and Social Reform: A Warning" in The New Review, No. 9.

BAKER, T. Barwick (1889) War with Crime, London: Longmans.

BARMAN, S. (1934) The English Borstal System, London: P. S. King & Son.

BARNES, H. E. & TEETERS, N. K. (1943) New Horizons in Criminology, New Jersey: Prentice-Hall Inc..

BARNETT, M. G. (1913) Young Delinquents, London: Methuen.

BARNETT, S. A. & BARNETT, S. A. (1915) Practicable Socialism, London: Longmans.

BATTAGLINI, G. Q. (1910) "Eugenics and the Criminal Law" in the American Journal of Criminal Law, Criminology and Police Science, Vol. 5.

BEAN, P. (1976) Rehabilitation and Deviance, London: Routledge & Kegan Paul.

BELLOC, H. (1912) The Servile State, London: T. N. Foulis.

BEVERIDGE, W. H. (1909) Unemployment: A Problem of Industry, London: Longmans.

BIANCHI, H., SIMONDO, M. & TAYLOR, V. (1975) Deviance in Europe, London: Wiley.

BLACKET, J. (1906) Social Diseases and Suggested Remedies, London: A. H. Stockwell.

BLANCH, M. (1979) "Imperialism, Nationalism and Organised Youth" in Clarke, J. et. al. (eds.): Working Class Culture, London: Hutchinson.

BLAGG, H. & WILSON, C. (1912) "Women and Prisons" in Fabian Tract, No. 163, London: Fabian Society.

BOCHEL, D. (1976) Probation and After-Care, Edinburgh: Scottish Academic Press.

BOIES, H. M. (1893) Prisoners and Paupers, New York: G. P. Putnam.

BOIES, H. M. (1901) The Science of Penology, London: Putnams.

BONGER, W. A. (1916) Criminality and Economic Conditions, Boston: Little, Brown & Co..

BOOTH, C. (1894) The Aged Poor in England and Wales, London: Macmillan.

BOOTH, C. (1902) Life and Labour of the People, London: Williams & Norgate.

BOOTH, W. (1840) In Darkest England and the Way Out, London: International Headquarters.

BOOTH, W. (1905) Emigration - Colonisation, London: International Headquarters.

BOSANQUET, B. (ed.) (1895) Aspects of the Social Problem, London: Macmillan.

BOTTOMS, A. E. (1980) "An Introduction to the Coming Crisis" in Bottoms, A. E. & Preston, R. H. (eds.): The Coming Penal Crisis, Edinburgh: Scottish Academic Press.

BRADLEY, F. H. (1893-4) "Some Remarks on Punishment" in the International Journal of Ethics, No. IV.

BRADLEY, F. H. (1911-2) "The Philosophy of Responsibility" in the Journal of the American Institute of Criminal Law and Criminology, 2.

BRISE, E. Ruggles (1895) Report on the Proceedings of the Fifth International Penitentiary Congress in P.R.O. P.Com 7.57 (reprinted, along with Report on the Sixth Congress, in PP 1901 XXXIII).

BRISE, E. Ruggles (1899) Some Observations on the Treatment of Crime in America, PP 1899 XLIII.

BRISE, E. Ruggles (1900) "The Indeterminate Sentence" Paper given to the Sixth International Penitentiary Congress, 1900. Contained in P.R.O. P.Com 7.286.

BRISE, E. Ruggles (1901) Report on the Proceedings of the Fifth and Sixth International Penitentiary Congresses, PP 1901 XXXIII.

BRISE, E. Ruggles (1906) Report on the Proceedings of the Seventh International Penitentiary Congress, PP 1906 LI.

BRISE, E. Ruggles (1911) Report on the Proceedings of the Eighth International Penitentiary Congress, PP 1911 XXXIX.

BRISE, E. Ruggles (1921) The English Prison System, London: Macmillan.

BRISE, E. Ruggles (1925) Prison Reform at Home and Abroad, London: Macmillan.

BRISE, E. Ruggles (n.d.) "The Movement of Crime in England and Wales since the London Congress of 1872" undated pamphlet.

BROCKWAY, A. Fenner (1928) A New Way with Crime, London: Williams & Norgate.

BROWN, J. D. (1968) "Charles Booth and Labour Colonies, 1889-1905" in Economic History Review, 21 (1968).

BROWN, J. (1981) "Social Control and the Modernization of Social Policy, 1890-1929" in Thane, P. (ed.): The Origins of Social Policy, London: Croom Helm.

BROWN, K. D. (1971) Labour and Unemployment, 1900-1914, Newton Abbot: David & Charles.

BROWN, K. D. (ed.) (1974) Essays in Anti-Labour History: Responses to the Rise of Labour in Britain, London: Macmillan.

BRUCE, M. (1961) The Coming of the Welfare State, London: Batsford.

BUKHARIN, N. I. & PREOBAZHENSKY, E. A. (1921) The ABC of Communism (translated by P. Lavin), Glasgow: Socialist Labour Press.

BURTON, F. (1980) "Questions of Violence in Party Political Criminology" in Carlen, P. & Collison, M. (eds.): Radical Issues in Criminology, Oxford: Martin Robertson.

BURTON, F. & CARLEN, P. (1979) Official Discourse: On discourse analysis, government publications, ideology and the state, London: Routledge & Kegan Paul.

CAMERON, J. (1983) Prisons and Punishments in Scotland from the Middle Ages to the Present Day, Edinburgh: Canongate.

CARLEBACH, J. (1970) Caring for Children in Trouble, London: Routledge & Kegan Paul.

CARLEN, P. (1983) Women's Imprisonment: A study in Social Control, London: Routledge & Kegan Paul.

CARLEN, P. & COLLISON, M. (eds.) (1980) Radical Issues in Criminology, Oxford: Martin Robertson.

CARPENTER, E. (1905) Prisons, Police and Punishment, London: Fifield.

CARSON, W. G. & WILES, P. (eds.) (1971) Crime and Delinquency in Britain, London: Martin Robertson.

CASTEL, R. (1975) "The Doctors and Judges" in Foucault, M. (ed.) I, Pierre Rivière, Harmondsworth: Penguin.

CHAPPLE, W. A. (1904) The Fertility of the Unfit, Melbourne: Whitcombe & Tombs.

CHAPPLE, W. A. (1910) First Principles in the Art of Physical Development, London: Cassell & Co..

CHECKLAND, S. G. (ed.) (1974) The Poor Law Report of 1834, Harmondsworth: Penguin.

CLARKE, J. (1976) The Three Rs - Repression, Rescue and Rehabilitation: Ideologies of Control for Working Class Youth, CCCS stencilled occasional paper, No. 41.

COHEN, S. (1974) "Criminology and the Sociology of Deviance in Britain" in Rock, P. & McIntosh, M. (eds.): Deviance and Social Control, London: Tavistock.

COHEN, S. (1979) "The Punitive City: Notes on the Dispersal of Social Control" in Contemporary Crises, Vol. 3.

COHEN, S. (1983) "Social-Control Talk: Telling Stories about Correctional Change" in Garland, D. & Young, P. (eds.): The Power to Punish, London: Heinemann.

COLLINI, S. (1979) Liberalism and Sociology: L. T. Hobhouse and Political Argument in England, 1880-1914, Cambridge: Cambridge University Press.

CONSERVATIVE PARTY, The Handy Notes on Current Politics, Vols. 1890-1908, National Union of Conservative and Constitutional Associations.

CONSERVATIVE PARTY, The Pamphlets, Collection in National Library of Scotland.

COUSINS, J. M. & DAVIS, R. L. (1974) "'Working Class Incorporation' - A Historical Approach" in Parkin, F. (ed.): The Social Analysis of Class Structure, London: Tavistock.

CROOKS, W. et. al. (1909) Social Ideals, London.

CULLEN, M. J. (1975) The Statistical Movement in Early Victorian Britain, Hassocks: Harvester Press.

CURRAN, J. (1982) Welfare Discourse and the Policing of Idleness, University of Edinburgh: Ph.D. dissertation.

DAHL, T. S. (1974) "The Emergence of the Norwegian Child Welfare Law" in Scandinavian Studies in Criminology, Vol. 5, 83-98 (1974).

DAHL, T. S. (1978) Barnevern og Samfunnsvern, Oslo: PAX.

DARWIN, L. (1914-5) "The Habitual Criminal" in The Eugenics Review, No. 6.

DARWIN, L. (1926) The Need for Eugenic Reform, London: John Mundy.

DARWIN, L. (1928) What is Eugenics?, London: Watts & Co..

DAVEY, H. (1913) The Law Relating to the Mentally Defective, London: Stevens & Sons.

DE FLEURY, M. (1901) The Criminal Mind, London: Downey & Co..

DE QUINOS, B. (1911) Modern Theories of Criminality, London: Heinemann.

DEVON, J. (1912) The Criminal and the Community, London: John Lane.

DICKENS, C. (1960) Hard Times, London: Heinemann.

DONZELOT, J. (1979) The Policing of Families, London: Hutchinson.

DRAHMS, A. (1900) The Criminal, London: Macmillan.

DU CANE, E. F. (1885) The Punishment and Prevention of Crime, London: Macmillan.

DURKHEIM, E. (1964) The Division of Labour in Society (first French edition: 1893), London: Collier-Macmillan.

DURKHEIM, E. (1973) "Two Laws of Penal Evolution", English translation by T. A. Jones & A. T. Scull, Economy and Society, Vol. 2 (1973).

EDELMAN, B. (1979) Ownership of the Image: Elements for a Marxist Theory of Law, London: Routledge & Kegan Paul.

EDELMAN, M. (1971) Politics as Symbolic Action, Chicago: Markham Publications.

ELLIOT, M. A. (1929) Conflicting Theories of Penology in Certain Phases of Criminal Statutory Legislation in Thirteen States from 1900-1927, Northwestern University: Ph.D. thesis.

ELLIS, H. Havelock (1910) The Criminal (1st edition, 1889), London: Contemporary Science Series.

EMY, H. V. (1973) Liberals, Radicals and Social Politics, 1892-1914, London: Cambridge University Press.

ENGELS, F. (1975) Letter to Marx of 7 October 1858 in Marx, K. & Engels, F.: Selected Correspondence, Moscow: Progress Publications.

EUGENIC EDUCATION SOCIETY The Eugenics Review.

EVANS, E. J. (ed.) (1980) Social Policy, 1830-1914, London: Routledge & Kegan Paul.

FABIAN SOCIETY, The Fabian Tracts, Collection in the National Library of Scotland.

FARMER, M. E. (1967) "The Positivist Movement and the Development of English Sociologn" in The Sociological Review, 15(1).

FARRALL, L. (1970) The Origins and Growth of the English Eugenics Movement 1865-1925, Ph.D. Thesis: Indiana University.

FERGUSON, T. (1958) Scottish Social Welfare, Edinburgh: E. & S. Livingstone.

FERNALD, G. G. (1912-3) "The Recidivist" in Journal of the American Institute of Criminal Law and Criminology, 3.

FERRI, E. (1895) Criminal Sociology, edited by Morrison, W. D. for the Criminology Series, London.

FERRI, E. (1905) Socialism and Positive Science, the Socialist Library, London: Independent Labour Party.

FERRI, E. (1914-5) "Review of Goring's 'The English Convict'" in Journal of Criminal Law, Criminology and Police Science, 5.

FERRI, E. (1917) Criminal Sociology, London: Heinemann.

FOUCAULT, M. (1967) Madness and Civilisation, London: Tavistock.

FOUCAULT, M. (1970) The Order of Things, London: Tavistock.

FOUCAULT, M. (1972) The Archaeology of Knowledge, London: Tavistock.

FOUCAULT, M. (1973) The Birth of the Clinic, London: Tavistock.

FOUCAULT, M. (ed.) (1975) I, Pierre Rivière, Harmondsworth: Penguin.

FOUCAULT, M. (1977) Discipline and Punish: The Birth of the Prison, London: Allen Lane.

FOUCAULT, M. (1979) "About the Concept of the 'Dangerous Individual' in Nineteenth Century Legal Psychiatry" in Weisstul, D. (ed.): Law and Psychiatry, Toronto: Pergamon.

FOUCAULT, M. (1980) "Prison Talk" in Gordon, C. (ed.): Michel Foucault: Power/Knowledge, Brighton: Harvester.

FOUCAULT, M. (1980a) "Body/Power" in Gordon, C. (ed.): Michel Foucault: Power/Knowledge, Brighton: Harvester.

FOUCAULT, M. (1981) The History of Sexuality, Vol. One, Harmondsworth: Penguin.

FOX, L. W. (1952) The English Prison and Borstal Systems, London: Routledge & Kegan Paul.

FRASER, D. (1973) The Evolution of the British Welfare State, London: Macmillan.

GALTON, F. (1869) Hereditary Genius: An Enquiry into its Laws and Consequences, London: Macmillan.

GALTON, F. (1883) Inquiries into Human Faculty and its Development, London, Macmillan.

GALTON, F. (1889) Natural Inheritance, London: Macmillan.

GAMBLE, A. (1981) Britain in Decline, London: Macmillan.

GARAFALO, R. (1914) Criminology, London: Heinemann.

GARLAND, D. (1981) "The Birth of the Welfare Sanction" in British Journal of Law and Society, Vol. 8.

GARLAND, D. (1983) "Durkheim's Theory of Punishment: A Critique" in Garland, D. & Young, P. (eds.): The Power to Punish, London: Heinemann.

GATRELL, V. & HADDEN, T. (1972) "Criminal Statistics and their Interpretation" in Wrigley, E. (ed.): Nineteenth Century Society, Oxford: Oxford University Press.

GATRELL, V., LENMAN, B. & PARKER, G. (1980) Crime and the Law, London: Europa Publications.

GEORGE, H. (1907) The Crime of Poverty, Glasgow: "Land Values" Publication Department.

GILBERT, B. B. (1966) The Evolution of National Insurance in Great Britain: The Origins of the Welfare State, London: Joseph.

GLYN, A. & SUTCLIFFE, P. (1972) British Capitalism, Workers and the Profits Squeeze, Harmondsworth: Penguin.

GORING, C. (1913) The English Convict, Prison Commission.

GRAMSCI, A. (1971) Selections from the Prison Notebooks edited by Hoare, Q. & Smith, G. N., London: Lawrence & Wishart.

GRAY, B. Kirkman (1905) A History of English Philanthropy, London: P. S. King.

GRAY, B. Kirkman (1908) Philanthropy and the State, or Social Politics, London: P. S. King & Sons.

GRAY, R. Q. (1976) The Labour Aristocracy in Victorian Edinburgh, Oxford: Clarendon Press.

GRAY, R. Q. (1977) "Bourgeois Hegemony in Victorian Britain" in Bloomfield, J. (ed.): Class, Hegemony and Party, London: Lawrence & Wishart.

GROSS, H. (1911) Criminal Investigation, London: Heinemann.

GRUNHUT, M. (1948) Penal Reform: A Comparative Study, Oxford: Clarendon Press.

GUERRY, A. M. (1833) Essai sur la statistique morale de la France, Paris.

HALL, G. Stanley (1904) Adolescence, New York: Appleton.

HALL, S. & JACQUES, M. (1983) The Politics of Thatcherism, London: Lawrence & Wishart.

HALL, W. Clarke (1917) The State and the Child, New Commonwealth Books.

HALL, W. Clarke (1926) Children's Courts, London: G. Allen & Unwin.

HALL, W. Clarke, & PETTY, A. H. F. (1909) The Law Relating to Children, London: Stevens & Sons.

HARRIS, J. (1972) Unemployment and Politics: A Study in English Social Policy, 1886-1914, Oxford: Clarendon Press.

HARRIS, J. (1977) William Beveridge: A Biography, Oxford: Clarendon Press.

HARRISON, R. (1965) Before the Socialists: Studies in Labour and Politics, London.

HAY, D. (1975) "Property, Authority and the Criminal Law" in Hay, D. et. al.: Albion's Fatal Tree, Harmondsworth: Allen Lane.

HAY, J. R. (1978) The Development of the British Welfare State, London: Edward Arnold.

HEATH, C. (1909) "Crime and Social Responsibility" in International Journal of Ethics, 19.

HEATH, C. (1913) On Punishment: A Modern View of the Rational Treatment of Crime, London: George Bell.

HENDERSON, C. R. (1911-2) "The Cell: A Problem of Prison Science" in Journal of the American Institute of Criminal Law and Criminology, 2.

HINDE, R. S. E. (1951) The British Penal System, 1773-1950, London: Duckworth.

HINTON, J. W. (1979) "Some psychophysiological characteristics of recidivistic public offenders", Paper presented to the Nineteenth International Congress of Applied Psychology.

HINTON, J. W. & WOODMAN, D. D. (1977) "Psychophysiological and Biochemical Characteristics of Different Types of Aggressive Offender in a Maximum Security Hospital", Paper presented to the British Psychological Society Conference, April 1977.

HIRST, P. (1979) On Law and Ideology, London: Macmillan.

HIRST, P. (1981) "The Genesis of the Social" in Politics and Power No. 3, London: Routledge & Kegan Paul.

HIRST, P. & KINGDOM, E. (1979) "On Edelman's Ownership of the Image" Paper delivered to the B.S.A. Annual Conference, Warwick 1979.

HIRST, P. & WOOLLEY, P. (1982) Social Relations and Human Attributes, London: Tavistock.

HOBHOUSE, S. H. & BROCKWAY, F. (1922) English Prisons Today, Labour Research Department - Prison System Enquiry Committee.

HOBSBAWM, E. J. (1964) Labouring Men, London: Weidenfeld & Nicolson.

HOBSBAWM, E. J. (1968) Industry and Empire, London: Weidenfeld & Nicolson.

HOBSBAWM, E. J. (1974) Labour's Turning Point 1880-1900, London: Harvester Press.

HOBSON, J. A. (1901) The Social Problem: Life and Work, London: J. Nisbet.

HOBSON, J. A. (1902) Imperialism: A Study, London: John Nisbet.

HOBSON, J. A. (1909) The Crisis of Liberalism, London: P. S. King.

HOFFDING, H. (1911-2) "The State's Authority to Punish Crime" in Journal of the American Institute of Criminal Law and Criminology, 2.

HOLLANDER, B. (1908) Crime and Responsibility, London: Ethological Society.

HOLMES, T. (1900) Pictures and Problems from London Police Courts, London: E. Arnold.

HOLMES, T. (1906) Unfit for Prison Discipline, London: Howard Association.

HOLMES, T. (1908) Known to the Police, London: Edward Arnold.

HOLMES, T. (1912) London's Underworld, London: J. M. Dent & Son.

HOLMES, T. (1912a) Psychology and Crime, London: J. M. Dent & Sons.

HOLTON, B. (1976) British Syndicalism, London: Pluto Press.

HOOD, R. (1965) Borstal Re-Assessed, London: Heinemann.

HOWARD ASSOCIATION (1872) The Prison Congress of London, July 1872, London.

HOWARD ASSOCIATION (1882) Vagrancy and Mendicacy: A Report, London: S. Harris.

HOWARD ASSOCIATION (1907-10) Crime of the Empire and its Treatment, Annual Reports of the Howard Association for promoting the most efficient means of penal treatment and crime prevention (1907), (1908), (1909), (1910), London

HOWARD ASSOCIATION (1919) Miscellaneous Leaflets and Pamphlets 1867-1919, London.

HOWARD, D. L. (1960) The English Prisons: Their Past and their Future, London: Methuen.

HUSSAIN, A. (1981) "Foucault's History of Sexuality: A Review" in m/f, No. 5/6.

HYNES, S. L. (1968) The Edwardian Turn of Mind, London: Oxford University Press.

IGNATIEFF, M. (1978) A Just Measure of Pain, London: Macmillan.

INTERNATIONAL CONGRESS OF EUGENICS (1912) Problems in Eugenics, London.

INTERNATIONAL PENAL AND PENITENTIARY FOUNDATION, The (1951) Modern Methods of Penal Treatment, Paris.

INVESTIGATOR (pseud) & SAINT JOHN, A. (1904) Crime and Common Sense, London.

JEFFERY, C. R. (1960) "The Historical Development of Criminology" in Mannheim, H.: Pioneers in Criminology, London: Stevens & Sons.

JESSOP, B. (forthcoming) The Political Economy of Post-War Britain, London: Martin Robertson.

JOHNSON, R. (n.d.) "Peculiarities of the English Route", C.C.C.S. Stencilled Occasional Paper, No. 26.

JONES, G. Stedman (1971) Outcast London: A Study in the Relationship between Classes in Victorian Society, Oxford: Clarendon Press.

JONES, K. (1960) Mental Health and Social Policy, 1845-1959, London: Routledge & Kegan Paul.

JONES, K. & Williamson, K. (1979) "The Birth of the Schoolroom" in Ideology and Consciousness, No. 6.

JORDAN, B. (1978) Freedom and the Welfare State, London: Routledge & Kegan Paul.

KAUTSKY, K. (1911-2) "Unlawful Direct Action" in The Socialist Review, 8.

KING, J. (1958) The Probation Service, London: Butterworth.

LACLAU, E. (1977) Politics and Ideology in Marxist Theory, London: New Left Books.

LEESON, C. (1914) The Probation System, London: P. S. King & Son.

LE MESURIER, L. (1935) A Handbook of Probation and Social Work for the Courts, National Association of Probation Officers.

LENIN, V. I. (1975) Imperialism, the Highest Stage of Capitalism, Peking: Foreign Language Publication.

LESLIE, J. R. S. (1938) Sir Evelyn Ruggles-Brise: A Memoir, London: John Murray.

LIDBETTER, E. J. (1910-11) "Some Examples of Poor Law Eugenics" in The Eugenics Review, 2.

LINDESMITH, L. & LEVIN, Y. (1971) "English Ecology and Criminology of the Past Century" in Carson, W. G. & Wiles, P. (eds.): Crime and Delinquency in Britain, Oxford: Martin Robertson.

LOCH, C. S. (1910-11) "Eugenics and the Poor Law: The Majority Report" in The Eugenics Review, 2.

LOMBROSO, C. (1911) Crime, Its Causes and Its Remedies, London: Heinemann.

LOMBROSO-FERRARO, G. (1914-5) "Review of Goring's 'The English Convict'" in Journal of Criminal Law, Criminology and Police Science, 5.

LOPEZ-REY, M. (1960) "Pedro Dorado Montero" in Mannheim, H. (ed.): Pioneers in Criminology, London: Stevens & Sons.

LUBENOW, W. (1971) The Politics of Government Growth, London: Archon Books.

LYDSTON, G. Frank (1904) The Diseases of Society (the Vice and Crime Problem), London.

LYND, H. M. (1945) England in the Eighteen Eighties, Oxford: Oxford University Press.

MACBRIAR, A. (1966) Fabian Socialism and English Politics, 1884-1914, Cambridge: Cambridge University Press.

MACDONAGH, O. (1958) "The Nineteenth Century Revolution in Government: A Reappraisal" in Historical Journal, Vol. 1.

MACDONALD, A. (1893) Criminology, New York: Funk & Wagnalls.

MACDONALD, A. (1893a) Abnormal Man, New York

MANNHEIM, H. (1939) The Dilemma of Penal Reform, London: Allen & Unwin.

MANNHEIM, H. (1960) Pioneers in Criminology, London: Stevens & Sons.

MARSHALL, T. H. (1963) "Citizenship and Social Class" in Sociology at the Crossroads and Other Essays, London: Heinemann.

MASTERMAN, C. F. G. (1901) The Heart of the Empire, London.

MASTERMAN, C. F. G. et. al. (1907) To Colonise England: A Plea for a Policy, London.

MASTERMAN, C. F. G. (1909) The Condition of England, London: Methuen.

MATHIESEN, T. (1983) "The Future of Control Systems - The Case of Norway" in Garland, D. & Young, P. (eds.): The Power to Punish, London: Heinemann.

MATZA, D. (1964) Delinquency and Drift, New York: Wiley.

MAYHEW, H. & BINNY, J. (1862) The Criminal Prisons of London, London.

MCCLINTOCK, F. H. et. al. (1976) Economic Crises and Crime, Rome: UNSDRI, Publication No. 15.

MCHARDY, Col. (1906) (of the Scottish Prison Commission) "Observations on the International Congress of Criminal Anthropology at Turin" (April/May 1906) in S.P.R.O. HH 60/116.

MCKENZIE, D. (1981) Statistics in Britain, 1835-1930, Edinburgh: Edinburgh University Press.

MCLACHLAN, N. (1974) "The Penal System in Historical Perspective" in Blom-Cooper, L. (ed.): Progress in Penal Reform, Oxford: Clarendon Press.

MEARNS, "The Bitter Cry of Outcast London: An Enquiry into the Condition of the Abject Poor", London: London Congregational Union.

MELOSSI, D. & PAVARINI, M. (1981) The Prison and the Factory: Origins of the Penitentiary System, London: Macmillan.

MERCIER, C. A. (1905) Criminal Responsibility, Oxford: Clarendon Press.

MERCIER, C. A. (1911) Crime and Insanity, Home University Library of Modern Knowledge.

MERCIER, C. A. (1918) Crime and Criminals, London: University of London Press.

MINETT, F. H. (1909) "Socialism and Sham Science" in The Socialist Review, 3.

MISHRA, R. (1977) Society and Social Policy, London: Macmillan.

MITCHELL, C. A. (1911) Science and the Criminal, London: Isaac Pitman.

MORRIS, A. & MCISAAC, M. (1978) Juvenile Justice?: The Practice of Social Welfare, London: Heinemann.

MORRIS, N. (1951) The Habitual Criminal, London: Longmans.

MORRIS, T. (1957) The Criminal Area, London: Routledge & Kegan Paul.

MORRISON, W. D. (1891) Crime and Its Causes, London: Sonnenschein & Co..

MORRISON, W. D. (1892) "The Increase in Crime" in The Nineteenth Century, Vol. 31.

MORRISON, W. D. (1896) Juvenile Offenders, London: T. Fisher Unwin.

MORRISON, W. D. (1904) The Treatment of Prisoners, London: Humanitarian League.

MOULIN, P. (1975) "Extenuating Circumstances" in Foucault, M. (ed.): I, Pierre Rivière, Harmondsworth: Penguin.

MOWAT, C. L. (1961) The Charity Organisation Society 1869-1913, London.

NEWKIRK, H. D. (1914-5) "Review of Goring's 'The English Convict'" in Journal of Criminal Law, Criminology and Police Science, 5.

O'NEIL, W. M. (1968) The Beginnings of Modern Psychology, Harmondsworth: Penguin.

OPPENHEIMER, H. (1909) The Criminal Responsibility of Lunatics, London: Sweet & Maxwell.

OPPENHEIMER, H. (1913) The Rationale of Punishment, London: University of London Press.

OSBORNE, T. M. (1924) Prisons and Common Sense, London: J. B. Lippincott.

PALMER, J. (1979) "Foucault: Penality and Power" Paper given at the NDC/CSE Conference, London.

PARRY, N., RUSTIN, M. & SATYAMURTI, C. (eds.) (1979) Social Work, Welfare and the State, London: Edward Arnold.

PASHUKANIS, E. B. (1978) Law and Marxism: A General Theory, edited by Arthur, C., London: Ink Links.

PASQUINO, P. (1980) "Criminology: The Birth of a Special Savoir" in Ideology and Consciousness, No. 7 (Autumn 1980).

PATERSON, A. (1951) Paterson on Prisons: The Collected Papers of Sir Alexander Paterson, edited by Ruck, S. K., London: Frederick Muller.

PEARSON, C. H. (1893) National Life and Character, London: Macmillan.

PEARSON, G. (1975) The Deviant Imagination, London: Macmillan.

PEARSON, K. (1909) The Function of Science in the Modern State, London: University of London Press.

PEARSON, K. (1910) Eugenics and Public Health, London: University of London Press.

PELLING, H. (1968) Popular Politics and Society in Late Victorian Britain, London: Macmillan.

PEPLER, H. D. (1915) Justice and the Child, London: Constable & Co..

PLATT, A. M. (1969) The Child Savers: The Invention of Delinquency, Chicago: University of Chicago Press.

PROCACCI, P. (1978) "Social Economy and the Government of Poverty" in Ideology and Consciousness, No. 4.

QUETELET, L. A. J. (1835) Essai du physique sociale, Brussels.

QUINTON, R. F. (1910) Crime and Criminals, London: Longmans.

QUINTON, R. F. (1912) The Modern Prison Curriculum, London: Macmillan.

RADZINOWICZ, L. (1956) A History of the Criminal Law, London: Stevens.

RADZINOWICZ, L. (1963) "Introduction" to Webb, S. & B.: English Prisons Under Local Government, London: Archon.

RADZINOWICZ, L. (1966) Ideology and Crime, London: Heinemann.

RECORDS contained in the Public Records Office, Kew, England (P.R.O.).

RECORDS contained in the Scottish Public Records Office, West Register House, Edinburgh (S.P.R.O.).

RENTOUL, R. R. (1903) Proposed Sterilization of Certain Mental and Physical Degenerates: An Appeal to Asylum Managers and Others, London: Walter Scott Publications.

RENTOUL, R. R. (1906) Race Culture or Race Suicide, London: Walter Scott Publications.

REPORT of the House of Commons Select Committee on Prison Discipline (1850) PP 1850 XVII.

REPORT from the Departmental Committee on the Treatment of Inebriates (1863) c.7008 contained in S.P.R.O. HH 57/60.

REPORT of the Select Committee of the House of Lords on the Present State of Discipline in Gaols and Houses of Correction (1863) (The Carnarvon Report) PP 1863 IX.

REPORT of the Departmental Committee on Dietaries in County and Borough Gaols and Correspondence on Prison Discipline (1864) PP 1864 XLIX.

REPORT on Dietaries in Convict Prisons (1864) PP 1864 XLIX.

REPORT of the Committee of Inquiry on Prison Rules (wearing of prison dress, etc.) (1889) PP 1889 LXI.

REPORT of the Departmental Committee on the Identification of Habitual Criminals (1894) PP 1893-4 LXXII.

REPORT of the Departmental Committee on Prisons (The Gladstone Report) (1895) PP 1895 LVII.

REPORT of the Departmental Committee on Judicial Statistics (1895) PP 1895 CVIII.

REPORT of the Scottish Departmental Committee on Habitual Offenders, Vagrants, Beggars, Inebriates and Juvenile Delinquents (1895) PP 1895 XXXVII.

REPORT of the Departmental Committee on the Education and Moral Instruction of Prisoners in Local and Convict Prisons (1896) PP 1896 XLIV.

REPORT - The Nineteenth Annual Report of the Prison Commissioners for Scotland (1896) PP 1897 XL.

REPORT - Observations of the Prison Commissioners on the Recommendations of the Departmental Committee on Prisons, 1895 (1896) PP 1896 XLIV.

REPORT of the Commissioners of Prisons and the Directors of Convict Prisons for the Year 1896-7 (1896-7) PP 1897 XL 105.

REPORT on the Operation of Discharged Prisoners Aid Societies (by Rev. G. P. Merrick) (1896) PP 1897 XL 1.

REPORT - Special Report of the Commissioners in Lunacy on the Alleged Increase of Insanity (1897) PP 1897 XXXVIII.

REPORT of the Prison Commissioners for the Year eneded 31 March 1898 PP 1898 XLVII.

REPORT - Statement by the Prison Commissioners of the Action which has been taken up to January 1898 to carry out the Recommendations of the Departmental Committee on Prisons, 1895 (1898) PP 1898 XLVII.

REPORT of the Prison Commissioners (1898-9) PP 1899 XLIII.

REPORT of the Departmental Committee on Prison Dietaries (1899) PP 1899 XLIII.

REPORT - Some observations on the Treatment of Crime in America: A Report to the Secretary of State by E. Ruggles-Brise (1899) PP 1899 XLIII.

REPORT - Rules and a Circular following on from the 1898 Prison Act (1899) PP 1899 LXXIX.

REPORT of the Prison Commissioners (1899-1900) PP 1900 XLI.

REPORT of the Prison Commissioners (1900-1901) PP 1902 XLV.

REPORT to the Secretary of State for the Home Department on the Proceedings of the Fifth and Sixth International Penitentiary Congresses (by E. Ruggles-Brise) (1901) PP 1901 XXXIII.

REPORT of the Prison Commissioners (1901-1902) PP 1902 XLVI.

REPORT of the Prison Commissioners (1902-1903) PP 1904 XXXV.

REPORT on the Belgian Labour Colony at Merxplas: Issued by a Committee appointed by the Lindsey (Lincs) Quarter Sessions (1903), London: National Library of Scotland.

REPORT of the Royal Commission on Physical Training (Scotland) (1903) PP 1903 XXXI.

REPORT of the Prison Commissioners (1903-1904) PP 1905 XXXVII.

REPORT of the Inter-Departmental Committee on Physical Deterioration (1904) PP 1904 XXXII.

REPORT on Methods of dealing with Vagrancy in Switzerland, by H. Preston-Thomas (1904) PP 1904 LXXXII.

REPORT of the Prison Commissioners (1904-1905) PP 1906 L.

REPORT of the Prison Commissioners (1905-1906) PP 1906 L.

REPORT to the Secretary of State for the Home Department on the Proceedings of the Seventh International Penitentiary Congress (Budapest) by E. Ruggles-Brise (1906) PP 1906 LI.

REPORT of the Departmental Committee on Vagrancy (1906) PP 1906 CIII.

REPORT of the Prison Commissioners (1906-1907) PP 1908 LII.

REPORT of the Prison Commissioners (1907-1908) PP 1908 LII.

REPORT of the Proceedings of the Fourteenth Conference of Discharged Prisoners Aid Societies (1908), London: National Library of Scotland.

REPORT - Children Under the Poor Law: A Report to the President of the Local Government Board by T. J. Macnamara (1908) PP 1908 XCII.

REPORT of the Departmental Committee on the Operation of the Law Relating to Inebriates and to their Detention in Reformatories and Retreats (1908) PP 1908 XII.

REPORT of the Royal Commission on the Care and Control of the Feeble-minded (1908) PP 1908 XXXIX.

REPORT of the Prison Commissioners (1908-1909) PP 1909 XLV.

REPORT - Minority Report of the Royal Commission on the Poor Law and Relief of Distress (1909) PP 1909 XXXVII.

REPORT - Majority Report of the Royal Commission on the Poor Law and Relief of Distress (1909) PP 1909 XXXVII.

REPORT of the Departmental Committee on Probation (1909) PP 1910 XLV.

REPORT of the Prison Commissioners (1909-1910) PP 1910 XLV.

REPORT of the Prison Commissioners (1910-1911) PP 1911 XXXIX.

REPORT to the Secretary of State for the Home Department on the Proceedings of the Eighth International Penitentiary Congress (Washington) by E. Ruggles-Brise (1911) PP 1911 XXXIX.

REPORT - Circular of 21 June 1911 issued by the Secretary of State for the Home Department to Police Authorities on Preventive Detention (1911) PP 1911 LXV.

REPORT of the Proceedings of the Sixteenth Conference of Discharged Prisoners Aid Societeis (1912), London: National Library of Scotland.

REPORT of the Prison Commissioners (1911-1912) PP 1912-13 XLIII.

REPORT of the Departmental Committee on Reformatory and Industrial Schools (1913) PP 1913 XXXIX.

REPORT of the Prison Commissioners (1912-1913) PP 1914 XLV.

REPORT of the Prison Commissioners (1913-1914) PP 1914 XLV.

REPORT of the Departmental Committee on the Training, Appointment and Payment of Probation Officers (1922) PP 1922 X.

REPORT of the Departmental Committee on Corporal Punishment (The Cadogan Report) (1938) Cmnd. 5684.

REPORT of the Advisory Committee on the Treatment of Offenders on Corporal Punishment (1960) Cmnd. 1213.

REPORT of the Committee of Inquiry into the United Kingdom Prison Services (The May Report) (1979) Cmnd. 7673.

REYNOLDS, S. & WOOLLEY, B. & T. (1911) Seems So! A Working Class View of Politics, London: Macmillan.

RICHARDS, B. (1977) "Psychology, Prisons and Ideology: The Prison Department Psychological Service" in Ideology and Consciousness, No. 2.

RITCHIE, D. G. (1894-5) "Free-Will and Responsibility" in The International Journal of Ethics, 5.

ROBERTSON, C. A. L. & MAUDSLEY, H. (1864) Insanity and Crime, London.

ROSE, G. (1961) The Struggle for Penal Reform, London: Stevens.

ROSE, G. (1967) Schools for Young Offenders, London: Tavistock.

ROSE, N. (1979) "The Psychological Complex" in Ideology and Consciousness, No. 5 (1979).

ROSE, N. (1980) "Socialism and Social Policy: The Problems of Inequality" in Politics and Power, No. 2 (1980), London: Routledge & Kegan Paul.

ROTHMAN, D. J. (1971) The Discovery of the Asylum, Boston: Little, Brown & Co..

ROTHMAN, D. J. (1980) Conscience and Convenience: The Asylum and Its Alternatives in Progressive America, Boston: Little, Brown & Co..

RUSCHE, G. & KIRCHHEIMER, O. (1939) Punishment and Social Structure, New York: Columbia University Press (reissued by Russell & Russell, New York, 1968).

RUSSELL, E. (1902-04) "The Weight to be attached to Medical Evidence" in Transactions of the Medico-Legal Society, Vol. 1.

RUSSELL, C. E. B. (1910) Young Gaol-Birds, London: Macmillan.

RUSSELL, C. E. B. & RIGBY, L. M. (1906) The Making of the Criminal, London: Macmillan.

RUSSELL, C. E. B. & RIGBY, L. M. (1908) Working Lads Clubs, London: Macmillan.

RYAN, M. (1978) The Acceptable Pressure Group: Inequality in the Penal Lobby: A Case Study of the Howard League and R.A.P., Farnborough: Saxon House.

SALEILLES, R. (1913) The Individualisation of Punishment, London: Heinemann.

SAMUEL, H. (1902) Liberalism: An attempt to state the principles and proposals of contemporary liberalism in England, London: Grant Richards.

SAPSFORD, R. J. (1981) "Individual Deviance: The Search for the Criminal Personality" in Fitzgerald, M. et. al., Crime and Society, London: Routledge & Kegan Paul.

SASSOON, D. (1981) "The Silences of New Left Review" in Politics and Power No. 3, London: Routledge & Kegan Paul.

SCHLAPP, M. G. & SMITH, E. H. (1928) The New Criminology: A Consideration of the Chemical Causation of Criminal Behaviour, New York: Boni & Liveright.

SCULL, A. (1979) Museums of Madness: Social Organisation of Insanity in Nineteenth Century England, Harmondsworth: Penguin.

SCULL, A. (1983) "Community Corrections: Panacea, Progress or Pretence?" in Garland, D. & Young, P. (eds.): The Power to Punish, London: Heinemann.

SEARLE, G. R. (1971) The Quest for National Efficiency, Oxford: Blackwell.

SEARLE, G. R. (1976) Eugenics and Politics in Britain, 1900-1914, Oxford: Blackwell.

SEMMEL, B. (1960) Imperialism and Social Reform: English Social-Imperial Thought, 1895-1914, London.

SHAW, A. G. L. (1966) Convicts and the Colonies: A Study of Penal Transportation, London.

SIMS, G. R. (1883) How the Poor Live, London: Chatto & Windus.

SMITH, M. Hamblin (1922) The Psychology of the Criminal, London: Methuen.

SMITH, M. Hamblin (1934) Prisons and a Changing Civilisation, London: John Lane.

SMITH, R. (1981) Trial by Medicine, Edinburgh: Edinburgh University Press.

SMITH, W. W. (1911-12) "The 1910 Meeting of the International Union of Penal Law" in the Journal of the American Institute of Criminal Law and Criminology, Vol. II.

SMITHERS, W. W. (1911-12) "The 1910 Meeting of the International Union of Penal Law" in Journal of the American Institute of Criminal Law and Criminology, 2.

SOCIAL DEMOCRATIC FEDERATION Justice: The Organ of Social Democracy, London.

SOME recent investigations as to the number of the "Poor" in the Community, by G. S. Loch. Appendix III to the Physical Deterioration Report (1904) PP 1904 XXXII.

SPARKS, R. (1971) Local Prisons: The Crisis in the English Penal System, London: Heinemann.

STEPHEN, J. F. (1883) A History of the Criminal Law of England, London: Macmillan.

SUMNER, C. (1979) Reading Ideologies: An Investigation into the Marxist Theory of Ideology and Law, London: Academic Press.

SUTHERLAND, E. (1934) "The Decreasing Prison Population of England" in the Journal of Criminal Law and Criminology, XXIV.

SUTHERLAND, J. F. (1907) "Recidivism: Regarded from the Environmental and Psychopathological Standpoints" in the Journal of Mental Science, 53.

SUTHERLAND, J. F. (1908) Recidivism, Edinburgh: Wm. Green & Son.

TALLACK, W. (1872) Defects in the criminal administration of Great Britain and Ireland, with remedial suggestions, London: Howard Association.

TALLACK, W. (1889) Penological and Preventive Principles, London: Wertheimer, Lea & Co..

TAYLOR, I., WALTON, P. & YOUNG, J. (1973) The New Criminology, London: Routledge & Kegan Paul.

THANE, P. (1981) "Non Contributory Versus Insurance Pensions" in Thane, P. (ed.) The Origins of Social Policy, London: Croom Helm.

THANE, P. (ed.) (1981) The Origins of Social Policy, London: Croom Helm.

THERBORN, G. (1980) The Ideology of Power and The Power of Ideology, London: Verso.

THOMAS, J. E. (1972) The English Prison Officer since 1850, London: Routledge & Kegan Paul.

THOMSON, M. H. (1912) Environment and Efficiency, Birmingham: University of Birmingham.

TRANSACTIONS OF THE MEDICO-LEGAL SOCIETY (1904-05) Proceedings of a seminar on the proposed sterilization of certain degenerates. Papers by Rentoul, Scott, Donkin, White and Bernard Shaw.

TREDGOLD, A. F. (1911) "The Feeble-minded - A Social Danger" A paper circulated to the Cabinet by W. Churchill on 22 December 1911. See PRO Cab 37/108.

UNSDRI (1975) Prison Architecture, London: The Architectural Press.

VAN HAMEL, J. A. (1911-12) "The Indeterminate Sentence" in Journal of the American Institute of Criminal Law and Criminology, 2.

WALKER, H. & BEAUMONT, B. (1981) Probation Work, Oxford: Basil Blackwell.

WALKER, N. (1965) Crime and Punishment in Britain, Edinburgh: Edinburgh University Press.

WALKER, N. (1968) Crime and Insanity in England, Edinburgh: Edinburgh University Press.

WEBB, B. (1938) My Apprenticeship, Harmondsworth: Penguin.

WEBB, S. (1910-11) "Eugenics and the Poor Law: The Minority Report" in the Eugenics Review, Vol. 2.

WEBB, S. J. & WEBB, B. (1922) and (1963) English Prisons under Local Government, London: Longmans (reprint by Archon Books).

WEILER, P. (1982) The New Liberalism: Liberal Social Theory in Great Britain, 1889-1914, New York: Garland Publications.

WHITE, A. (1901) Efficiency and Empire, London: Methuen.

WHITEWAY, A. R. (1898) Recent Object Lessons in Penal Science, London: Waterlow Bros..

WHITLOCK, F. A. (1963) Criminal Responsibility and Mental Illness, London.

WILES, P. (1971) "Criminal Statistics and Sociological Explanations of Crime" in Carson, W. G. & Wiles, P. (eds.): Crime and Delinquency in Britain, Oxford: Martin Robertson.

WILES, P. (1976) "Introduction: The New Criminologies" in Wiles, P. (ed.): Crime and Delinquency in Britain, Vol. 2, London: Martin Robertson.

WILLIAMS, K. (1981) From Pauperism to Poverty, London: Routledge & Kegan Paul.

WILLS, A. (1907) "Criminals and Crime" in The Nineteenth Century, LXII.

WILSON, A. (1908) Education, Personality and Crime, London: Greening & Co..

YOUNG, A. F. & ASHTON, E. T. (1956) British Social Work in the Nineteenth Century, London: Routledge & Kegan Paul.

YOUNG, P. (1976) "The Theory of the Role of Prisons in Advanced Penal Systems" in McClintock, F. H. et. al.: Economic Crises and Crime, UNSDRI.

YOUNG, P. (1976a) "A Sociological Analysis of the Early History of Probation" in The British Journal of Law and Society, 3 (1976).

YOUNG, P. (forthcoming) Punishment, Money and Legal Order, Edinburgh.