

CRIME AND CORRECTION: THE PLACE OF PRISONS IN PAPUA NEW GUINEA

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Introduction

One of the jobs of the newly established Law Reform Commission is likely to be an examination of the *Criminal Code*. This will involve two related matters: an assessment of which offences would be most appropriately included in a Papua New Guinean Code, and an assessment of the kind of judicial procedure best suited to dealing with particular offences. This essay offers some comments on one limited dimension of such an assessment: prevailing attitudes towards imprisonment as a state penalty.

It is generally assumed, I think, that a common Criminal Code¹ is one of the marks of a centralised nation-state. The uniform application of (codified) law is both a symbol of and gives content to the idea of national unity. It is also the case that a nation-state characteristically centralises the use of force. It defends and thus defines itself against similar entities by an army, while internally the population, treated homogeneously in this respect, is controlled through other agencies such as judicial institutions and the police force. Theoretically, fighting is prohibited between either individual citizens or bodies and groups of persons within the state.

Previous administrations in Papua New Guinea have been particularly concerned with making violence unlawful. The use of tribal fighting in inter-group conflict is thus designated as 'lawless', or (the same thing from the state's point of view) as people 'taking the law into their own hands'. The state attempts to control both outbreaks of violent behaviour, and the offences which might lead to such episodes, through an exercise of superior force; among the sanctions at its disposal one of the most visible is imprisonment of offenders.

In the substantive and procedural law of a Criminal Code are brought together these two characteristics of state activity. A Code² defines what offences are considered appropriate for state intervention, typically including among others violent acts. In so classifying offences, of which the most serious become 'crimes', the Code re-defines their relevant context, by making the state the plaintiff. A man who fights and injures another may be charged with bodily assault against a person, not in terms of what was going on

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1 Or some other body of universally applicable law.

2 As, of course, does other legislation.

between him and his victim but because he has broken a law. Subsequent judicial procedure is focused on the fact that he has committed a state offence.³ It is the relationship between the state (reified in its 'laws') and the criminal which becomes a matter for concern, with the victim who was injured in the fight no more than a witness to the man's unlawful behaviour. If the latter wishes to sue his assailant in respect of such injuries, he must initiate independent judicial procedure (take 'civil action'). The state is not an interested party in such civil matters; its interests end when its relations with the criminal have been remedied through the imposition of a penalty payable to itself.

Not only the most visible but the most symbolic of state penalties is imprisonment. This removes the criminal as a person from one social world and places him into another. Where, as in many western countries, such a removal is held to constitute a stigma on the man's general character, the process of re-entry into the former world ('rehabilitation') becomes a social problem. Through detention, the state, as it were, takes possession of the offender for a while, treating him as its exclusive property. In ordinary life, the state's claims are balanced against other claims - of family and kinship, of work or business, and such. Thus a man earns money to further his own prospects and maintain his family as well as to finance the running of the government through income tax. But should he transgress the state's laws, he may find himself removed into its custody and temporarily (in some matters permanently) forfeiting other rights he has as a person or citizen. He is deprived of certain civil liberties; his personal life is supervised in matters of diet, dress, use of time; his social activities are limited and regimented, and attempt may also be made to influence his mental and psychological outlook.

This is all very obvious and a considerably over-simplified account. I merely intend to underline the fact that imprisonment as an official sanction exists in the context of certain specific notions about centralised government, and the relationship of the 'state' and the 'individual'. In the western world this relationship may further stand for, or is part of, the wider relationship between an 'individual' and 'society', there a topic of elaborate folk ideology.

Prisons were introduced into Papua New Guinea by western administrators concerned both to establish their own superior power and foster the idea of a centralised state. They have naturally been taken over by the national government, which seeks to develop Papua New Guinea's nationhood in the context of the modern world. But how is an institution such as the Corrective Institutions Service taken up and regarded by people who are perhaps not themselves directly involved in the government, and whose daily lives are most closely ruled by forms of social organisation derived in a large part from traditional theories about society and the nature of relationships between persons, in which a centralised state played no part?

3 Of which his injuring another person is merely the form it takes. See below, p. 10, on criminal-oriented and victim-oriented law.

It is no surprise that attitudes towards prisons should vary among different people in Papua New Guinea. Indeed, such variations are likely to arise in any population with disparate interests. In western countries, differences in interest may correspond to cleavages between socio-economic classes, between management and labour, between persons of contrasting educational backgrounds. Certain categories of persons are more prone to imprisonment than others, which they may explain in terms of their respective power positions. In Papua New Guinea, many of the differences in attitudes are connected to the way people in particular social situations interpret the relationship between dispute-settlement, law and order, crime and state control. There exist different theories about what 'law' is concerned with, about the best way to resolve conflicts, about the place of violence in inter-personal and inter-group affairs. Attitudes towards imprisonment show us, like a flash from a prism of many surfaces, some of the kinds of accommodations which have to be made between the state and traditional forms of social and political life.

Reform of the Criminal Code

Much of this paper was stimulated by an exercise which I undertook for the Department of Law. This was an investigation by questionnaire into Papua New Guinean attitudes towards sexual offences defined in the present *Criminal Code*, as represented in information collected by anthropologists who had worked in the country. Some of the questions asked of respondents to the questionnaire dealt with traditional sanctions in dispute settlement and others with attitudes towards present-day official courts. The topic of sentencing and the place of imprisonment as a penalty imposed by the official courts cropped up in several answers. (A summary of some of this information is to be found in section 9.7 of the final report.⁴) Respondents to the questionnaire have not been consulted about my making further use of their data,⁵ but the present paper could be regarded as falling within one of the general aims of the investigation, which was to assist legal reform.

4 *Report on questionnaire relating to sexual offences as defined in the Criminal Code*, prepared for the Department of Law by A.M. Strathern, February 1975.

5 Nor have their comments been sought on the particular views presented here. Most of the ethnographic information in this paper is derived from my knowledge of the Highlands, and especially Mt. Hagen. (See e.g. A.M. Strathern, "Official and Unofficial Courts: Legal Assumptions and Expectations in a Highlands Community" (1972) *New Guinea Research Bulletin*, No. 47; A.J. Strathern, "The Supreme Court: A Matter of Prestige and Power" (1972) 1 Mel LJ 23-28; A.J. Strathern, "Political Developments and Problems of Social Control in Mount Hagen", in *Priorities in Melanesian Development*, ed. R. May (1973).) My chief debt to the respondents in this context is for being able to draw upon their insights into the punitive and remedial aspects of traditional judicial processes.

The report produced from this information considers some general points about the constitution of a Criminal Code:

What is the basis of the new Criminal Code going to be? At least three aspects suggest themselves: the Code will reflect and enshrine existing public morality; the Code will define what the new morality of the nation should be; the Code will be concerned with law and order and list serious offences to be punished by the state. Even if none of these form the theoretical basis for the future Code, they are bound to be elements which influence its make-up. The Code cannot go against public morality to the point that it becomes unacceptable to the commonsense of the people at large; it must take into account the ideology of the new nation and the principles upon which its constitution is to be based; and it inevitably involves a procedure for dealing with the criminals it so defines and is thus relevant to the whole process of legal administration and the judicial system.⁶

It is this last aspect which is most relevant to the present discussion. To quote further from the report:

In any one criminal or offensive act...there are likely to be many elements to the offence, so that many norms are involved. No legal system can cope with all aspects of an offence, and it is usual to find different aspects being settled at different levels: e.g. in an adultery case, the dispute between husband and wife will be thrashed out at home; infringement of rights will be dealt with by a...court; disruption of friendly relations between groups will be left to local politics. This is as true of Papua New Guinean processes of dispute settlement as of western systems.

Legal and judicial processes pick on those aspects of the dispute which it is appropriate to deal with publicly, and, in the case of a centralised state, also have implications for state interests (public order etc.)...An official Code will mean that those committing an offence defined within it will be subject to a particular form of treatment. They will be tried publicly before a court and expect to pay certain standard penalties. In deciding upon what offences should go into the Code it is also therefore necessary to ask what offences seem most suitable for treatment of this kind, *for the decision to codify an offence is also a decision as to the kind of trial the offender will undergo.* If the general aim is to settle disputes in the best interests of all parties (including the Government) the question of appropriate penalty is crucial. Moreover this should be expanded beyond reference to whether a jail sentence is best in that or that circumstance to the question of the most appropriate judicial procedure in general. The kind of judicial process involved (official court, village moot, private settlement) will also inevitably focus on certain aspects of the offence and not others, and also implement certain values.

⁶ *Report on Sexual Offences, op. cit.*, Section 2-1.

What goes into the Criminal Code, then, cannot be isolated from a consideration of the kind of judicial process attendant upon such an allocation...Since all offences in the Code are defined as against the nation and prosecutable by the police through the official courts, it is necessary to decide which offences are best treated this way and which are best left to local level settlement.⁷

These matters were then considered in relation to the kinds of criteria by which (sexual) offences would be best selected for incorporation into a new Code. The nature of offences so selected, and their seriousness, are likely to affect the Code's legitimacy in the eyes of the people. Its legitimacy will also be judged on procedural grounds, namely the effectiveness of the methods devised for handling offences, and the suitability of the penalties and sanctions it prescribes.

Attitudes towards prisons⁸

For a number of years, politicians, village leaders and others have been quoted in the local press as wanting to make imprisonment more obviously punitive and prison conditions harsher. Many of the demands so expressed run counter to the correctional and rehabilitative aims of the Corrective Institutions Service itself. Yet, imprisonment in the context of official court sentences and traditional judicial practices may be criticised by villagers on what appear to be quite opposite grounds - that it is frequently too harsh and an inappropriate penalty in local dispute settlement. Let us look at these three sets of views in detail.

1. Prison conditions are too soft

This view is frequently publicised in the press, as also are apparently related matters such as rising crime rates and breakdowns in law and order. It is shared alike by expatriates and nationals, though I am concerned here only with the views of the latter. Imprisonment, it is thought, must be nasty enough to deter other would-be criminals and to teach the prisoner a lesson - the motive is both punishment and deterrence by fear. Repeated demands are heard that prisoners should be made to work very hard and that their daily living conditions should be unpleasant (and thus a constant reminder of their status). That prisoners might derive enjoyment from some aspects of prison life is a weakness, running counter to what are seen as the aims of imprisonment. Such a viewpoint is represented, for example, in the findings of the Committee investigating tribal fighting in the Highlands:

7 *Ibid.*, Section 2.1.3.

8 The substance of the rest of the essay is taken from an account prepared initially for the Department of the Interior for whom I had at one stage hoped to undertake a proper study of the topic.

To the Highlanders themselves, however, the present humanitarian treatment of detainees apparently seems ludicrously over lenient. At all public meetings there was, almost unanimously, a spontaneous call for harsher conditions and heavier penalties. Many described conditions from personal experience and described it as a joke. There is genuine resentment at the belief that prisoners eat more nourishing food and get fatter than those who stay home and work. Not being about to see the prisoners working there is a general belief that little work is done. There is also resentment that some prisoners return home with pay.

The Committee is aware that prison conditions are not as rosy as painted by those on the outside and it understands that recent amendments to the Corrective Institutions Regulations have done away with such things as remissions, tobacco and pay, but nevertheless it feels that there is some justification for the widely expressed complaints it heard. Even if the complaints had little substance it is a poor state of affairs if the general public, which is intended to be deterred from crime by fear of imprisonment, believe the institutions to be something of a holiday camp. They were repeatedly described by such phrases:- (a) 'Haus Kaikai';⁹ (b) 'Peles bilong Malolo na kamap fat';¹⁰ (c) 'Peles belong wok moni';¹¹ (d) 'Haus man';¹² (e) 'Haus sikul';¹³ (f) 'Gavman ino inap katim nek bilong mi'.^{14 15}

2. Prisons are chiefly rehabilitation centres

The Corrective Institutions Service emphasises the correctional rather than punitive aspects of holding persons in custody, an enlightened outlook in western terms. It is recognised that such policies can be carried out with greater effect in relation to long-term rather than short-term prisoners. The aim is to bring about a change of outlook in the prisoner himself, so that he will return to society reformed from his previous ways and a potentially useful citizen. Long-term prisoners are trained in useful skills. This view does not entirely disregard the punitive and deterrent implications of imprisonment, but sees them as lying chiefly in the fact of detention itself and in the loss of liberty thus suffered by the prisoner. Conditions within the prison, including recreational and educational facilities, have the aims of correction and rehabilitation.

3. Prison sentences are not always appropriate as a penalty

(a) Before a prisoner is committed into the care of the Corrective Institutions Service, he is sentenced by a court. Imprisonment is thus a *judicial sanction*, and one exercised exclusively by official

9 Restaurant.

10 Health resort.

11 Somewhere to earn money.

12 Club.

13 College.

14 [Anyway] the Government can't cut my head off.

15 P. Paney *et al.*, *Report of the Committee Investigating Tribal Fighting in the Highlands* (1973).

courts. Judges and magistrates, whose attention is on the type of offence which has been committed, emphasise punishment as fitting the serious or trivial nature of the offence,¹⁶ and the deterrent effect of a long or short sentence, or of some other remedy, on the rest of the population.¹⁷ There is a tendency to reserve imprisonment for what are regarded as the most *serious* offences on moral grounds, whether these involve injury to others or deviant behaviour or whatever. Thus incest carries a maximum penalty of life imprisonment in the present *Criminal Code*. It is inappropriate for trivial matters. One argument is that in the case of grave crimes society must be protected from the offender. In western legal thinking deviant behaviour is one such threat to society (affecting the morals of others). Where judges identify a growing crime rate or increasing lawlessness in the population, they may combat this with longer sentences.

(b) In the eyes of many Papua New Guineans, however, imprisonment is not always an appropriate sanction in *dispute-settlement*. Here judgement is made not according to the gravity of an offence but its *type*. Imprisonment is a suitable sanction for some offences, but ludicrous for others, however serious they are. While it may be accepted as fitting for crimes of violence, and actual sentences be regarded as too lenient for offences such as fighting involving homicide, it may be thought too harsh for others. Long prison sentences are thus generally regarded as out of place for most sexual matters, whether these are deviant acts, heinous offences against common morality (e.g. incest) or socially disruptive offences (e.g. adultery). A prison sentence may also have directly undesirable results in the village situation:

Among the points mentioned [by respondents] were (i) that a jail sentence may allow an offender to 'escape' from what otherwise would have been community sanctions and pressures; (ii) in the case of a conflict which involves two sides, a jail sentence might not be considered adequate reciprocity for the offence, nor as restoring proper balance between them, so the side who had suffered jail might entice the other to some offence in order to reciprocate the sentence as well as the initial injuries; (iii) thus, a jail sentence may actually aggravate rather than diminish a conflict situation, for it is a further 'injury' to be taken into account¹⁸;

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- 16 J. Gawi, "Customs in Criminal Law and Punishment in Papua New Guinea", *Seventh Waigani Seminar* (1973) reminds one that in the retributive theory of punishment the severity of the penalty varies with the gravity of the offence, so that the offender is aware of the extent to which the community disapproves of his actions. Through this mechanism of impressing disapproval on the offender's mind sentencing may have a reformative and deterrent effect.
- 17 See the discussion by H. Auki, "Three Approaches to Sentencing", (1974) 11 Mel LJ 263-269.
- 18 Indeed, a man who has suffered a jail sentence may subsequently be compensated in one society; in another he may be expected to take revenge on his return for his imprisonment.

(iv) such a sentence will not necessarily resolve the basic social issues at the back of a dispute, and people may remain unsatisfied till they have been properly and personally compensated; (v) a jail sentence may also have quite unsuitable results when it removes the offender - thus in an adultery case the innocent spouse is punished if the adulterer/ess is sent to jail for she or he loses their labour and domestic support (and in a wage earning situation this may also be a hardship); (vi) in one case it was reported that men who spent time away in jail might return to find their property missing, garden borders moved to their disadvantage, and so on, an abuse which leads to further litigation.¹⁹

Ideas about punishment and correction

What are we to make of these various views? Are some uninformed and others enlightened? Are some barbarous and others civilised? Are they completely irreconcilable?

Rather than assuming that these opinions can be accommodated on a single scale (e.g. from less enlightened to more enlightened) I prefer to consider them *as being about different things*. That is, they arise from different perspectives about the place of imprisonment in society and its relation to crime control and dispute-settlement. If we can sort out exactly what these different attitudes refer to, we shall be in a better position to appreciate the effects of imprisonment at the village level.

In looking at ideas about punishment and correction, one can make a broad contrast between the views held by officials whose jobs are directly concerned with the courts and prisons, and who have been trained in the western tradition (see 2 and 3 (a) above), and those held by villagers and their leaders (see 1 and 3 (b) above). The latter draw considerably on traditional ideas about punishment, correction, rehabilitation and so on.

An official view

In the official judicial system, offences which carry imprisonment as a possible penalty are generally, as we have seen, defined as offences against the state or against society (e.g. 'crimes'). A person who goes to prison is seen as being removed 'from society'. He is deprived of enjoyment of ordinary social life, and society is also protected from him. At the end of his detention he is then returned 'to society', and this is what rehabilitation is about - to make him a fit member again. The notion that a prisoner is someone who has wronged his own community, or society in general, is found also in the concept that he has a debt to pay society, and people may urge that prisoners should be put to useful works or labour on behalf of the community at public projects during their detention.

These ideas about the relationship between 'society' and the 'individual' criminal are, as we have also seen, part of the western tradition of social control, which has to cope with large and

19 *Report on Sexual Offences, op. cit.*, Section 9.7.1.

anonymous populations within a state system.²⁰

The various aims of putting someone into custody are usually summarised as follows: *punishment*, in relation to what the offender has done, whereby he repays his debt to society; this also has a *deterrent* effect on others, i.e. the community or society at large; *correction* or *reformation*, to reform the internal attitudes of the offender, particularly in relation to crime; and *rehabilitation*, to prepare him to become a useful member of society again. Judges and magistrates tend to be concerned with the deterrent effect of sentences, in relation to crime patterns and in the interests of law and order, while the Corrective Institutions Service is concerned with the offender as a person, his reform and training (i.e. with correction and rehabilitation). Corrective and rehabilitative measures have the common general aim of making bad men good. The specific aim of rehabilitation is a product of the Corrective Institutions system itself, which detaches an individual from society in the first place.

It would appear in some of the demands voiced by Papua New Guinea politicians, leaders and villagers that they are concerned only with the punishment aspects of detention (see view 1, above). However, ideas of deterrence and correction²¹ are also to be found in local dispute-settlement processes. Let us look at these, and at traditional notions of punishment. It is here that the contrast between official and village ideas about the 'individual' and 'society' becomes relevant.

20 See P. Lawrence, "The State Versus Stateless Societies in Papua and New Guinea", in *Fashion of Law in New Guinea*, B.J. Brown ed., (1969), for some comparisons between Australian and Papua New Guinea society. E.g. in respect of the western state, he points out that:
every member is conceived and treated as a citizen-isolate or citizen-unit. The meaning of this term is a person who, by acknowledging his obligations to the state, is automatically guaranteed reciprocal rights and privileges equal to those accorded all other persons who accept the state's authority in this way. These rights and privileges should not be influenced in any way by the individual's personal relationships with other members of society, especially those with authority, power, or influence, or by his personal status in society. It is essentially a case of equality before the law: one law for all. In this respect, each citizen-isolate is completely indistinguishable from every other and therefore transposable, and the recognition of moral obligation essentially universalist. As in his rights before the law, the individual has value to all other individuals purely as a human being. Factors of personal status and association should be irrelevant. (*Ibid.*, 18-19.)

21 In relation to local community values. Auki, *op. cit.*, argues that in respect of the received law, reform is impossible unless people have been thoroughly educated as to what the law means.

Traditional views

Insofar as one can generalise,²² in traditional Papua New Guinea few offences were seen as in the first place 'against society'. Those that were defined as contravening general community values, such as incest or fratricide, were often subject to religious sanctions. There was also some notion of the trouble-maker (e.g. persistent adulterer, or thief who stole from his kinsmen) who had to be taught a lesson. Most offences, however, were defined primarily in respect of the social context in which they took place. It might make a material difference whether one stole from a kinsman, a fellow-villager or from someone from an enemy village - for different judicial processes would be brought into action. If the victim were a kinsman the two might shelve the dispute in a reconciliation ceremony; if he were a fellow-villager he might demand recompense in the form of compensation; if he were an enemy he might resort to violent retaliation which involved contemporary political relations between the villages.

These factors are still largely pertinent today. Two points arise from them. First, where an offence disrupts relationships which people would like to see continued on more or less amicable terms, they are faced with a problem of *settling the dispute* between the parties. Second, when on the other hand the offence contributes to hostile social relationships, those who are on the victim's side will record it as an act of aggression against themselves and *seek retribution or revenge*. How do these ideas relate to punishment?

Both notions in fact overlap with an idea of punishment. Where attempts are made to settle a dispute, the 'trouble-maker' who caused it all might in addition be chastised, by his own kinsmen perhaps, or it is hoped that the amount of compensation he has to pay will deter him from doing the same thing again. The notion of correction is of course built into mediatory and compensation procedures which attempt to bring parties back into an amicable relationship and thus effect in them a change of heart. The actual processes and methods for dealing with this aspect of dispute-settlement are not always successful, but that is another matter. In the case of those who seek revenge, and thus to 'pay back' an offence rather than come to terms with the offender on other grounds, the punitive element is bound up with aggression and hostility. The victim may want to 'punish' the offender, but less in the sense of teaching him a lesson (for his own good) than in the sense of inflicting a comparable harm so that he will suffer, 'be made to feel', in return.

In neither case is there a disinterested body constituted to mete out punishment to an offender on behalf of society. One might speak of the western judicial system as 'criminal-oriented' in this respect, with its combination of punitive and remedial processes focused upon the criminal, his relationship to the state and his subsequent rehabilitation. Traditional Papua New Guinean societies are more 'victim-oriented', so that remedy is linked to the satisfaction secured by the victim and punishment is a reflex of the social situation of the offence (whether it is designed to teach the offender

22 The following account is necessarily a simplified one. Cf. A.L. Epstein (ed.), *Contention and Dispute, Aspects of Law and Social Control in Melanesia*, (1974), and the essays in this collection.

a lesson or to exact retribution). The relevant relationship to which sanctions are applied are those of offender-victim, or of the offender and those in authority over him, and of inter-group relations of friendliness or hostility.

The internal connection between punishment and reform of the offender thus varies according to social context. In dispute-settlement, where the aim is to restore more or less amicable relations, shaming the offender or making him pay compensation also hopefully alters his state of mind. The desired alteration is that he will no longer steal (or whatever) from these particular persons: the implication is less that 'stealing is bad', more that 'stealing is bad in this social context (e.g. between brothers)'. The punitive element may consist of the publicization of the offender's acts, or lie in exacting a sizeable compensation or in chastisement or ridicule. It may be hoped that it will have a remedial effect on the offender, and deter others. The emphasis is on preventing further disputes from arising within the community/village/clan. The legitimacy of stealing from known enemies is not affected by these aims. Where enemies are involved in a conflict, the victim may seek personal remedy through exacting revenge but will be indifferent as to the effect this has on the offender apart from making him suffer. The aim is not to stop the others from committing offences for the sake of public peace or solidarity within a group, but to stop them from inflicting injury, by a show of power which will intimidate them. In essence the respective strengths of the two groups of enemies are at issue.

In relation to one traditional Western Highlands society, Hagen, one can at a simple level separate out various elements of judicial/political sanctions in respect of whether the offence in question is committed against one's own clan (within which relations should be ostensibly amicable if not harmonious: intra-clan offences and violence are morally condemned), against members of friendly ally clans (where friendliness has to be fostered and maintained) or against enemy clans (who make no pretence at being anything but hostile).

		<u>Offence against</u>		
		own clan	ally clan	enemy clan
<u>Negative sanctions (against offender) from</u>	own clan	both REMEDIAL and PUNITIVE	PUNITIVE (deal with trouble-maker)	none
	victim's clan	(reassert intra-clan solidarity) (chastise the offender)	REMEDIAL (restore good rels)	PUNITIVE (take revenge)
chief type of sanction	A	moral, supernatural (restore good behaviour)	B social (bring groups back into reciprocity)	C political (assert or deny advantage in power relations)
		peaceable	-----	violent

The place of prison in Papua New Guinea society

Peter Lawrence has written:

It is obvious that the problem of introducing the Australian legal system into New Guinea is not one of replacing chaos or lawlessness with the 'Rule of Law' but of replacing one type of social control with another, each of which has its own logic and is geared to a completely different kind of social structure.²³

Where does the modern state fit in? It would seem to be the case that state penalties such as imprisonment *combine an exercise of physical force or power* (cf. C in diagram on page 11) *with an intent to induce moral reform* in the offender (cf. A). These two sets of aims are not differentiated (as they frequently are in the Hagen case) in respect of the social relationships to which they refer. It might well be pointed out that the state's control of its members is analogous to the kind of control exercised over individuals by those in authority, e.g. husband over wife, father over child, and which traditionally include (but as only one among many mechanisms) the legitimate use of force, physical chastisement and so on. However, as we shall see later, in many contexts, imprisonment is regarded as an alternative to violent political action, and is interpreted as much as a demonstration of power as of authority. People in the Highlands, for example, who to some extent use official sanctions as adjuncts to their own settlement processes, may see prison both as applicable to chastising group members and as a political weapon against enemies. Indeed, one of the 'problems' of imprisonment as an official sanction is that it corresponds to several diverse and differentiated traditional sanctions.

Briefly, one can say that the state is like a blown-up clan, interested in maintaining internal law and order, and thus properly involved in the moral behaviour of its members; yet a populous and anonymous clan, whose members in fact have to be kept in order through impersonal sanctions invested in agencies such as the police force and law courts, where a show of power is made against the offender and violent means are used to secure peaceable ends.²⁴

23 Lawrence, *op. cit.*, 34-35.

24 I am indebted to Inge Riebe for an original discussion on this topic. In this novel situation unexpected problems may arise. See M. Reay, "Changing Conventions of Dispute Settlement in the Minj Area", in Epstein (ed.), *op. cit.*, 239:

Changes in the conventions of dispute settlement in the Minj area demonstrate that unless explicit precautions are taken when attempts at 'modernisation' require a separation of the legal from the political sphere, an expansion of the legal universe may bring about a reduction of the moral universe.

Prisons and community morality

The official emphasis on the corrective or remedial job of prisons has aims in common with local dispute-settlement processes, to effect a change of heart in the criminal so that he will desist from crime in the future. It also has the further rehabilitative emphasis, to equip him for a future life 'in society' which will be a useful and worthy one. In Papua New Guinean communities, offenders are rarely seen as removed from society²⁵ or as having to be returned to it. Rehabilitation is in a sense an automatic consequence of dispute-settlement - thus someone made ashamed by the discovery of his delicts can to some extent restore his reputation by making a generous compensation payment; sacrifice to ancestral ghosts will resolve the problem of what to do with a brother who behaves in an unfraternal way; reconciliation ceremonies assert community values and the offender's acknowledgement of his wrong-doing; if a man's kinsmen have to help him raise compensation, they may admonish him to change his ways or risk their displeasure. In these circumstances the introduced penalty of imprisonment may actually have a non-rehabilitative effect.

The attitudes quoted on pp. 7-8 indicate that imprisonment may also be counter-productive to dispute-settlement as a process, the very fact of withdrawing the offender from his community leading to further problems and to the ignoring of existing ones. The remedial emphasis of official detention tends to be directed towards making the *criminal himself* feel differently about the acts he has committed and about the society to which he will return. Remedial processes in a face to face community, by contrast, are directed towards *patching up social relationships* and a demonstration of proper social behaviour on the part of the offender. It may be done through fear of harsh reprisals, punishment and fear of further punishment, but equally through religious devices such as confession or sacrifice, through compensation, ceremonies of reconciliation and mutual exchange, and perhaps through entirely informal pressure. The point is that where people perceive their greatest problems in dispute-settlement as to do with solving crises in social relationships, prison can have an effect quite the opposite of correction and deterrence. It may be looked upon by the offender as a means of escape from his social obligations, an easy way out. He may thus welcome a term in prison, or even engineer one to avoid community sanctions. Others will regard it as an inappropriate conclusion for this reason.

To refer, for the last time, to the *Report on Sexual Offences*:

These factors should draw one's attention to the basic issues behind dispute-settlement...[Where offences are socially disruptive] some process is...necessary to patch up social relationships, or sever them, but in any case recognise that the offence has altered pre-existing relations. Many different kinds of sanctions may be used, from shaming and competitive

25 Except in the extreme circumstances of banishment or execution or inducement to suicide.

feasting to ostracism and fighting, but the one most adaptable to the modern judicial context is the widespread use of adjustment through payment (restitution, compensation and such). In some areas the making of such payments has been extended to include situations which would have been 'resolved' in the past through fighting and such. Two important aspects are involved in compensation-type payments. (i) The aggrieved and the offended are brought into a relationship which acknowledges the breach between them - and whatever the private feelings on each side, the aggrieved is generally not regarded as having further grounds for complaint once he has received compensation; (ii) the offender may have patched up his relations with the aggrieved, or at least enabled social intercourse to continue, but in being deprived of property he has also been punished to some extent. The punishment element is greatest when the aggrieved seizes recompense by force or seeks revenge; the reconciliation element is greatest when the two parties exchange gifts....

An extremely important matter to underline is that compensation involves a recognition of liability. Definitions of liability are bound up with a person's jural and political status.... In many contexts a person's kinsmen (or others) may also incur liability in respect of his or her actions; and conversely claim damages when he or she is injured. Often the persons so designated will belong to a corporate group such as a sub-clan or clan. The *group's liabilities and rights* in respect of its members is, procedurally, a legal principle of significance. Outside the context of retaliatory or punitive violence, compensation payments are the most suitable medium²⁶ through which such relationships can be maintained - being composed of amounts to which many can contribute and in which many can share.²⁷

Where every offence is judged in the light of its social context, the background and the history of events and provocations leading to it will be taken into account in local judicial processes. Certain offences may be looked upon as a part of everyday life, inevitable if a nuisance, so that handing over compensation is sometimes little more than a formality or face-saving device. It is bound to be the case that a system which defines offences by the act alone ('theft', 'adultery' etc.) and which prescribes standard penalties for their commission should appear to be inflexible and for many particular situations inappropriate. Thus a prison sentence can be seen as too drastic and harsh a penalty; and as an irrelevant one where basic issues lie elsewhere, e.g. in coming to terms with offended ancestral spirits.

In this context a prison sentence is looked upon as a *sanction* meted out by the official courts in relation to certain offences, with the implication of its being related to community standards and

26 And imprisonment or compulsory labour least suitable.

27 *Report on Sexual Offences, op. cit.*, Section 9.7.1.

values and not just to the condition of the criminal.²⁸ It therefore involves a *judgement* as to the nature and severity of the offence. There is, of course, the further issue of *whose* community figures in judgements handed down by the official courts. A judge or magistrate might have a very different view of the kinds of values he is protecting or promoting from those of the litigants in the case.²⁹ It is almost inevitable that local Papua New Guinean judgement will from time to time conflict with official judgement. Hence the paradox, that imprisonment is regarded now as too harsh, now as not harsh enough, a penalty.

Not only the community but the individual offender will weigh up the cost of his actions. Judgement of the harshness of imprisonment and prison conditions is thus connected to an estimate of whether the crime was worth the cost. As a penalty for homicide carried out as part of inter-clan hostilities, prison conditions might seem a low price to pay for group satisfaction. But for a matter which at home might be considered trivial, such as a fight between cowives, they would be judged too severe and people would complain of what they had to endure in prison.

Here a long sentence for an offence which brought the offender little advantage might have a positively deterrent effect ("what did I gain that I am spending two years in prison?"). This deterrent effect is described by one Hagen man who said that he and his mates had had first hand experience of prison and they always after that would help their clansmen raise money for Local Government taxes to save others from having to go to prison. It would not be worth it for failure to pay taxes. Nevertheless, while an inappropriately harsh sentence may be a deterrent, it may also be resented by the community at large as an unnecessary show of force, and not at all commensurate with their evaluation of the nature or gravity of the crime.

Prisons and the exercise of power

This leads to a further point of significance. Imprisonment is regarded by the villager as essentially an official or governmental sanction. One of the most dramatic aims of the central government has been the suppression of warfare, fighting and retaliation by violent means. Government officers and judges alike have stated explicitly that the courts will punish offenders on all but the most 'trivial' counts, that people must not take matters into their own hands when this means exercising rights of retaliation through force or violence, that those who fight to avenge an injury will themselves

28 This is the main point of Gawi's argument (1973:7) that "whoever the criminal is, he should be used by the state as a means to deter potential offenders", so that punishment (severity of sentence) reflects judgement as to the gravity of the act and not just the circumstances of the offender. I have pointed out, however (p. 6), that traditional Papua New Guinean sanctions varied not only according to gravity but also to the type or nature of the offence e.g. incest may be highly offensive but not punishable by human agents.

29 For a concrete example see A.J. Strathern, (1972) *op. cit.*

be prosecuted for breaking the peace. Court penalties replace traditional ones; imprisonment is seen as the most severe penalty the courts can administer, and it in particular is seen to replace recourse to fighting.

This has several repercussions. In the past violent retaliation and fighting was only one among many types of reaction to offences. By its nature it could bring groups into confrontation with one another, and often had political overtones. In a political context injury received and inflicted is a matter of power rather than wrong-doing. This is especially so in relation to homicide, typically recorded as a loss to the victim's group as a whole. Thus in some areas today people only seek out the official courts where they are too weak to take revenge themselves, or may use the official courts and its penalties as an arena for political competition. In this way they may try to pay one another back - if they have suffered a prison sentence, through making counter-allegations they ensure that their opponents (who are seen as having sent them to prison if they 'won' their case, i.e. when charges made on the basis of their complaints resulted in conviction) suffer an equal number of sentences.

In Hagen people may be taken to the official courts (and if convicted, imprisoned) when they refuse to come to a peaceable settlement at home. "Instead of a fight, we send them to prison." The offender is thus punished both for the offence and for refusing to come to an amicable settlement. "Now he has left his work at home and must work for the Government for no pay, and the warders will make him do heavy work and not let him rest. He will feel pain, and the people are glad he went to prison."³⁰

Thus if a dispute cannot be settled or the victim feels he can obtain no proper remedy, then the latter may fall back on punitive satisfaction. In the past he might have attacked the offender; nowadays insofar as a prison sentence is looked on as a form of punishment, it also gives satisfaction to the aggrieved. The sentence may be an adequate alternative to the victim's securing personal remedy, or it may leave the whole matter of dispute settlement unresolved. The point is that in this context it is seen as punitive, by both victim and offender; and in so far as it is in lieu of other forms of dispute-settlement, in some senses as an *alternative* to remedial

30 Hagen man discussing prison sentences following a rape conviction. The notion that trouble-makers are properly dealt with through the official courts and sanctions such as imprisonment is found among urban Hagen migrants as well. An offender who is unresponsive to community sanctions, refuses to listen to what his fellows advise, in going his own way jeopardises their support. Obviously there are differences according to whether the offender is in a previously hostile relationship or a member of one's own group. A man's kinsmen might look to an institution such as prison to chastise the recalcitrant and persistent offender. There are corrective and deterrent motives here, as distinct from the revenge feelings an opponent might have. But they are tinged with punitiveness: "He did not listen to us: it serves him right."

or correctional processes, and consequently as an alternative to 'peaceable' methods. (In relations with outsiders or enemies remedial processes are not sought, and prison may provide direct punitive/retributive satisfaction. For intra-group offenders, physical punishment may be a last ditch sanction to bring someone to his senses, and thus an alternative to other remedial sanctions.)

In modern Papua New Guinea people may by and large accept the government's control of the use of force, and accept that imprisonment should take the place of violent retaliation. But they are also likely to seek from it the same satisfactions that their own judicial/political processes gave. In the case of inter-group homicide, punitive (in the sense of making the offender and his side suffer) motives may be uppermost in the victim's willingness to accept prison as a proper alternative for himself seeking revenge. Since the offender is escaping possible death by going to prison,³¹ prison must be seen as really 'punishing' him, as inflicting a comparable injury.

Local leaders and politicians, perhaps with no direct interests in particular political conflicts, may also wish imprisonment to be unpleasant - not so much from motives of revenge as from a desire that the government show its teeth. Whatever the organisation of individual Papua New Guinea communities, the country is *also* a nation-state. The same issue - e.g. tribal fighting - may be seen now as an 'international' one of political conflict between local groups, now as a 'civil' breakdown in national law and order. Those who in the interest of their clan seek punitive revenge and those who seek to restore peace and punish trouble-makers in the interest of central government may find themselves on the same side of the fence in demanding harsher prison conditions. In the former view imprisonment should be punitive on a scale commensurate with the suffering which warfare and homicide brought on the victims. In the latter view imprisonment should be primarily a deterrent (so that others will not fight), and a deterrent unpleasant enough to be properly effective, so that the cost of ignoring the official sanction will be judged too high. Only by a suitably brutal show of force, it is thought, can people be brought to their senses and made to realise that the government will not countenance *their* taking force into their own hands.

Among the reasons why many older Highlanders especially call for tougher penal measures are the changes in agents of social control which they have experienced in their own lifetime. Many remember the harsh measures to which *luluais* and *tultuls* sometimes resorted. They look back on these tactics (public beatings, putting prisoners down holes, and such) as belonging to a time when people were impressed by such shows of violence. In retrospect these measures appear to have been effective; if it can be done again, the argument goes, perhaps law and order can be restored.³²

31 And in some societies for some offences the official courts are thought to be too lenient in not executing offenders.

32 See A.M. Strathern (1972) *op. cit.* 134-5 for some Hagen comments on the matter.

In short, imprisonment as a sanction of the official courts is today seen as a replacement of certain traditional judicial processes. It may be accepted as an appropriate alternative to some traditional sanctions, or as an inappropriate innovation. Where the latter holds, its inappropriateness may be derived from several sources: (a) because it bypasses the purpose of dispute-settlement, which is a resolution of conflicts in social relations; (b) because it is too harsh a penalty for some acts; (c) because it is too soft a penalty for others; (d) because its punitive aims are wrong in one context (e.g. where disputants are interested in patching up relations), and (e) its correctional aims misapplied in another (as it seems to those seeking political revenge or who wish to emphasise the power of the government). The forms these dissatisfactions take is criticism of length of sentences³³ and complaints about prison conditions. Such criticisms do not stem simply from unenlightened prejudice; they reflect the place prison has in society, and the crux of the matter is really that it has several different such places.

Prison conditions

It would be generally true to say in Papua New Guinea that going to prison does not in itself carry much of a social stigma (a fact which must make 'rehabilitation' in one sense easier). In assessing the deterrent, correctional and punitive effects of imprisonment, people take into account the actual conditions in the prisons themselves. Thus where imprisonment is seen as a punishment, it is thought that the punishment should be actively experienced by the convicted person for as long as he is detained. Only thus will he be made to really 'feel' - mekim save.³⁴

However, it would be wrong to conclude from a criticism of 'easy' conditions that imprisonment means nothing. Several pieces of evidence point to the fact that we should not take entirely as a literal generalisation the claim that imprisonment is no more than a holiday. My examples are drawn mainly from Hagen and the Highlands.

(1) The remarks made earlier on the situations in which imprisonment is felt to be counter-productive to dispute settlement, and may even constitute a further injury to be taken into account, show that

33 I do not go into the question of sentences. In general, however, it may be argued (a point first made to me by Louise Morauta) that short sentences only have a deterrent effect where prison is a stigma in the western sense, and people wish to avoid any association with it. There are many situations in which the sentence must be of length to make an impact. Some Hageners suggested that one or two months generally meant little; four or five created much more of an impression. The *Paney Report on Tribal Fighting op. cit.* includes similar observations, and the issue was also raised by speakers to the *Corrective Institutions (Rural Lock-ups) Bill* 1974 in the House of Assembly (11/3/74).

34 "Mekim save tru long ol man i stap long kalabus. Ol i mas pilim ol i bin mekim rong na ol i mas hat wok." ("Really teach a lesson to men in prison. They must feel [realise/suffer] they have done wrong and be made to work hard." Cr. Wamp of Mt Hagen quoted in *Wantok* (19/2/75).

it may be regarded as an infliction. People try to settle their affairs out-of-court in order to *avoid* incurring a prison sentence.

(2) The very fact that it may enter into conflicts as a device whereby litigants seek to exact vengeance points to the same thing. In Hagen, for example, a person who cannot get satisfaction through compensation may seek vicarious satisfaction through seeing that the offender is imprisoned by an official court verdict. He not only thus gains a kind of personal revenge, but regards the prisoner as bringing the punishment on himself because he was a bikhet:³⁵ failing to come to some reasonable settlement and failing to listen to the words of others.

(3) The cost of going to prison is weighed up against the advantages of committing some unlawful act. Thus Standish writes of the Highlands:

In general the warring groups pre-select those who will surrender, plead guilty, and go to jail. This is simply one of the costs of fighting. ...These men are not criminals by their own code, but rather have upheld the law of custom. Prison holds no deterrent value in fight situations.³⁶

While it may be judged that imprisonment is a price people are willing to pay, in certain situations, it is still estimated as a *price*, that is, something which has to be endured as a 'payment' for knowingly pursuing a course of action which is unlawful in governmental eyes. The very fact that pre-selection is made of those who will go to prison should the fighters be brought to court points to this. If prison really meant nothing there would be no point in making such arrangements. In other words *two issues should be kept quite separate: that imprisonment is a definite cost; that it is a cost people in some circumstances are willing to pay for other advantages* (such as securing revenge in a fight).

(4) This should make us look again at the claims of those who have been to prison and come back saying it was samting nating.³⁷ If a group conflict has been the cause, there may be specific political reasons for putting on a good face and returning with bravado. This can hold in individual cases, too, where one party has sought revenge by 'sending' the other to prison. The prisoner comes back claiming that he is none the worse for his experience, and in the

35 An upstart or an arrogant person.

36 W. Standish "Warfare, Leadership and Law in the Highlands", *Seventh Waigani Seminar* (1973), 37-38. Many other examples could be cited, e.g. Reay *op. cit.*: "In the most recent phase, Minj-Wahgi people have been able to use their knowledge of sentences imposed in neighbouring subdistricts and even elsewhere in New Guinea to decide that it is worth their while to break the long ban on traditional warfare."

37 A trifle.

face of his opponent publicly asserts that the latter's attempts to make him suffer have been of no avail.³⁸

(5) Where those to be imprisoned are pre-selected, it is invariably younger men who volunteer. This is because the 'cost' of going to prison is held to be different for different age groups. Young men have less to lose than older men; they do not suffer the same indignity (in Hagen, having to be shaved is regarded as a humiliation, but one which young men can pass off as much less significant than in the case of older men³⁹); they have more stamina; their families are less penalised. In short, there are aspects of prison life which it is recognised generally are best avoided by older people, and which younger men can endure with less cost. (Youths in general may also see positive advantages in going to prison if they can thereby avoid social obligations and irksome pressures from kinsmen and others.)

(6) That prison may be seen to have differential cost is shown in the *reactions of others to the returned prisoner*. (a) A man who consistently refuses to come to a local settlement and is taken to the official courts, or a man who is 'rubbish' and has no wealth with which to pay for his offences but persists in offending, may be thought to lack 'shame', that is, he is not responsive to local pressures and values. If such a person goes to prison, others are not sorry for him. Prison is not likely to make any more immediate impression on him than their own sanctions, but when he comes out he will find his gardens have deteriorated, perhaps his wife has run away. In the end he may be made to feel shame. (b) Others are also glad when a persistent *bikhet* goes to prison, someone who does not work, does not help his kinsmen, does not listen to what others say. He is regarded as having brought prison on himself, and receives no particular commiseration when he returns. (c) But whatever the general community thinks, or whatever pleasure a man's enemies gain from his imprisonment, a returned prisoner may be welcomed back by his own family with some gesture to acknowledge the

38 One group of Hagen men who were imprisoned for drinking and fighting pretended on their return that they had had a good time in prison because they were angry at being singled out for punishment and did not want to deter others from going there! (I.e. their pretence was a kind of generalised revenge on their contemporaries.)

39 Young Hagen men are said to joke at the prospect of having their hair cut, saying to the barber, "O.K., we can put on shirts and trousers [i.e. become like white men] and have shaved heads. Later our hair will grow again!" On the significance of hair, see p. 22. Young men are also thought to get through work more quickly, and do not think of their homes and families as older men do. As Gawi remarks of another area:

Short term imprisonment...now would seem to be a mere invitation to the natives, at this stage of development to commit more crimes as many *young people*, for example, in my area (East Sepik) had admitted, going to prison was nothing but a break from the whole way of village life whereby they would have to be submissive in observing and fulfilling numerous social and family obligations. (Gawi, *op. cit.* 7, my italics.)

suffering he has endured e.g. they may cook a special meal since he has been without good food for so long. (d) When a whole group of men are imprisoned on behalf of others in their group, their welcome back may be even more positive,⁴⁰ and they may even receive payment for the sentence. Individuals who agree to stand in for others in prison on a personal basis also expect remuneration. (e) In one Southern Highlands case, men who went to prison had personal remembrances of themselves (e.g. clothing) left with relatives who, on their release, gave them valuables to demonstrate their sympathy and as some compensation for their period of incarceration. This was not to indicate fault or liability on their part, but to show feeling for their unfortunate kinsmen. (f) Someone who feels he is wrongly imprisoned may harbour thoughts of revenge on his release. His self-righteousness may or may not be recognised by others. A leader in a group conflict who is detained in custody by the police (not necessarily convicted and imprisoned) may hold it against his own people for not bailing him out or against his enemies for all the trouble they have caused. Others of his own group may acknowledge his right to revenge, and take secret measures against their enemies.

To try to avoid going to prison; to seek revenge on others by 'sending' them there; to pre-select who shall be sentenced; to be glad that trouble-makers eventually get what they deserve, and to rejoice in the incarceration of one's enemies; to commiserate with other returned prisoners; to seek remuneration or further revenge for having been imprisoned - all suggest that people regard prison as an unpleasant imposition. *In what exactly does the unpleasantness lie?* My remarks again apply mainly to the Highlands.

(1) In remote areas or in the early days of contact, imprisonment away from the home region dismayed the man's relatives who thought he might never see them or his home again. Reactions were sometimes quite extreme. Read has a dramatic description of the display of grief and mourning exhibited by a prisoner's wife and mother (Eastern Highlands, in the early 1950s).⁴¹ But these do not belong entirely to the past. Considerable upset may be shown today, especially when a leader is put in prison. Semi-mourning practices on such occasions have been recorded by A.J. Strathern in the late 1960s (Southern Highlands); and in the recent bouts of tribal fighting in the Western Highlands (1970s), one leader composed a song, which was widely circulated, expressing his grief at having been singled out to go to prison and taken away from home. Cutting a man off from his community is like inflicting a small death.

(2) Deprivation of liberty has repercussions in terms of the fact that the prisoner's family and gardens are either neglected or else have to be cared for by others. This is significant for older men; has little impact on younger men. The urban counterpart among migrants is losing one's job.

⁴⁰ At one such homecoming in Hagen some years ago (late 1950s) the returning young men had pigs killed for them, and their families reputedly said: "You have been in jail; the policemen have treated you badly and you did not eat well: now eat!"

⁴¹ K.E. Read, *The High Valley* (1965), 231-241.

(3) Also among urban Highlands migrants, where a prison sentence is an alternative to paying a fine, a man who has to go to prison may be ashamed because that is evidence that his wantok⁴² have not thought enough of him to raise the fine money. In a situation where friends help one another to stay out of prison, imprisonment can demonstrate the friendships he has lost. (But this only applies, it is pointed out, to sensitive people; those who 'feel no shame' and do not care whether they go to prison or not, and who may consistently repudiate their friends, obviously are not susceptible to such feelings.)

(4) Certain features of prison life are commented upon: restrictions on smoking and on talking at certain times; having to turn in early for the night; having to work outside in the hot sun all day; having to submit to others' orders about working; diet. Prison food has featured in most debates about prison conditions. Nutritionists say it is equal to or superior to village food; prisoners and villagers comment on its status, e.g. prisoners get 'rice and fish', prestige items in some village economies. However, while there may be situations in which prisoners are thus regarded as 'lucky', some points should be noted. The prestige status of prison diet is likely to be picked on by those who carry off their term of imprisonment with bravado or by those who would like to see harsher conditions. Drawing attention to this aspect of prison life will have an immediate emotional effect on people who only occasionally buy rice and fish as a treat. In fact prisoners, having to eat it every day, may regard it very differently, especially when brown rice is involved. The very fact that it is a village 'luxury' means that in spite of its nutritional excellence the prisoner can feel he is being inadequately fed by not getting his staple. Even where tubers are incorporated into the prison diet, he is of course deprived of other luxuries such as pork, special bananas and sugar cane etc. Returned prisoners also complain of the small amount they received.

(5) For some cultures very specific aspects of prison conditions are regarded as distasteful. On some rural stations prisoners are made to carry human feces, a degrading and humiliating experience. In one part of the Southern Highlands pigs have to be killed to cleanse the skins of returned prisoners because they were forced to handle excrement, regarded as the food of the dead. Those who place great cosmetic and mystical value on hair and beard growth, a sign of manhood among other things, suffer an insult at being shaved. This may make the prisoner ashamed, and others sorry for him or gleeful, as the case may be. These may be effective deterrents. They are likely to increase the revenge feelings a prisoner may have when he comes out of prison. (It should be added that people may also speak of the conditions of cells as unpleasant, i.e. the places where they are detailed *before* conviction. In rural areas they may have to submit to shaving. Urban migrants complain that there are no washing facilities at some cells, no chairs, and with toilet facilities in the same room as where they are supposed to sleep. One migrant claimed that conditions were so dirty that he never felt like eating.)

42 Associates.

(6) Time is said to pass slowly, and people given long sentences may be afraid of getting old.

What meaning does confinement in prison have? If one takes deprivation of liberty and pleasure, and subjection to humiliating tasks, in any other context these would amount to an *injury of the person*. One Hagen man talking about prisons said that prisoners were angry with the warders for the way they were treated, and if it had been anyone else they would have subsequently sought revenge, but the warders were excused because they were 'the government'. Prison conditions thus carry a punitive message, whatever other messages they carry.

There is no doubt that such conditions have a deterrent effect - both on the prisoner who swears he will never get into trouble again and on others who are appalled by his tales of deprivation.⁴³ That these feelings may not last for long is another matter, as is the fact that the deprivation may be counted for nothing in the face of other gains (e.g. escaping social pressures). If the actual style of prison life is thus felt to contribute to its effect as a punishment and deterrent, then it is obvious that those who demand that imprisonment should have even greater effect on would-be criminals should ask for stricter living conditions, as well as for longer sentences.

Stigma and shame

Imprisonment carries little stigma in the western sense of creating a category of persons ('convicts') who are regarded in a special light by others who know their record, and who are at a possible permanent disadvantage in securing employment or being fully accepted 'back into society'. Ex-convicts in Papua New Guinea are not stigmatised in this way. Imprisonment may nevertheless be regarded as a source of *shame*. Thus, one of its effects is that a man's offence becomes public knowledge, and likely to be known to a wider range of people than might be involved in other forms of settlement. A returned prisoner may be ashamed because his detention was a clear demonstration of his having been caught and found out, and of his failure to win his case. It is evidence of a judicial defeat. This kind of shame arises less from internal feelings of guilt, than from the loss of face which such a public defeat brings.⁴⁴ It is an expression of a person's feelings at being put at a social disadvantage in relation to others. Thus an offence brings shame not so much at the moment of commission but at the moment of discovery.

There is a supernatural dimension to this issue in some Highlands societies. Judicial hearings are essentially public, and prestige and status are seen to depend on successful public conduct. Individuals may regard themselves as suffering a loss of power if they are 'defeated' in court. This power in turn may be symbolised in the form of support from ancestral ghosts or reliance on magical devices. It is particularly shaming if a group's leaders are imprisoned, whether through fault of their own or on behalf of their group. The

⁴³ Sentiments I have heard among Hageners both at home and as migrants in town.

⁴⁴ Cf. A.J. Strathern, "Why is Shame on the Skin?" (1975) (MS University of Papua New Guinea.)

group's strength is symbolically diminished. A man who does not 'win' his court shows his weakness. To be able to meet compensation demands or even a court fine demonstrates that he has a residual or basic strength (he has the resources to acquit himself properly). A prison sentence does not allow this assertion to be made. It deprives the offender without allowing him to regain face.⁴⁵

In the traditional situation, the very fact that shame is frequently felt less in relation to the nature of the offence, more as a reflex of other people's attitudes towards an offender, means that it provides a social basis for his 'correction'. His private feelings may or may not be involved, but the offender is likely in future to want to avoid similar scenes at which he is put at a public disadvantage. This mechanism leads to a problem of 'rehabilitation'. His weakness and defeat - if the accusations against him can be sustained - have somehow got to be turned around so that he recovers enough status to be able to continue an active social life. Often the mechanism is a mere formality, and the offender's feelings of shame a nod towards public decency, so that there is no real question of his having been put into a position of more than temporary weakness. But there is danger when a man feels great shame, or can see himself as being humiliated by the judicial situation. He may be driven to repudiate it, to deny he feels any shame, and to become on the contrary full of feelings of revenge-anger. Such a person loses interest in settling the dispute as such, and is concerned only to not admit defeat. It is essential in the traditional system, therefore, that procedures be provided whereby an offender acquires the means to recover his self-esteem.⁴⁶ Such rehabilitative mechanisms include reconciliation and compensation payments. Someone who can provide adequate compensation not only proves his sensitivity to community values but shows his basic 'strength'. He can re-assert his self-worth as a person, a necessary pre-condition for continuing an active life in the community.

The extent to which imprisonment is shaming, however, will vary both according to the circumstances under which the prisoner was convicted, and according to his own status and sensitivity in the matter.

45 Depending of course on the circumstances under which he is imprisoned, e.g. he does not lose face if he stands in another's stead. But we can see that passing off a sentence as samting nating may be linked to the necessity to save face.

46 Where such procedures operate smoothly, they may be brought into play without the question of the offender's shame being made much of. In Hagen it is a virtue if a man readily comes to the point of agreeing to pay for what he has done. In effect he avoids being made ashamed. If there is any stigma it is attached to those who do not have the means to pay but persist in offending, or fly 'with no shame' in the face of public opinion.

Under certain circumstances it may be more 'honourable' to go to prison than to desist from some act, e.g. from seeking revenge for a homicide; it also is recognised that there are always individuals who are 'shameless', and who pay little heed to social sanctions whether these are traditional or introduced ones. The extent to which introduced sanctions such as prisons are overall more or less effective than traditional ones in inducing a sense of shame is a matter for investigation. Where shame *is* induced, then imprisonment may have a real deterrent and correctional effect. This is seen by others to be related directly to the prisoner's own character and responsiveness and to the kind of circumstances under which the offence was committed. On the other hand a very different effect may be brought about if in being made to feel ashamed the prisoner returns full of revenge-feelings and bitter about the publicity of his defeat. This publicity is an inevitable product of imprisonment. And it will be entirely a product of the local situation in which the offence arose whether the prisoner is seen to and feel himself as having 'paid' for his offence so that the dispute is henceforth terminated, or whether - apart from the question of his being justly or unjustly imprisoned - his sensitivity about his advertised defeat creates a further source of conflict. This is something over which neither the courts nor the Corrective Institutions Service will have any control.

Conclusion

The various attitudes which people hold towards prisons and imprisonment are to be explained in reference to their *social context*. Criticism of prison sentences as either too harsh or too easy can be related to the diverse aims of local dispute-settlement practices, and to the introduction of prison as one sanction among many others which already exist within a community. Demands that conditions be made harder stem also from the fact that imprisonment is a symbol of the government's power and centralisation of the use of force, so that people look to it for some of the similar satisfactions which they gained from their own procedures involving force and violence and which they may regard as crucial to the question of 'law and order'.

These kinds of expectations about the role of prisons cannot be dismissed as simply unenlightened. They do not indicate that traditional Papua New Guineans had no idea of correction, reform, rehabilitation and so on in their own judicial systems. Such ideas existed in the context of dispute-settlement and the maintenance of internal control within a clan or village group. What may rather be the case is that where imprisonment is associated with a show of force, is regarded as injuring the prisoner, and in attending only to him ignores the question of social relationships, people may find it hard to see it also as a vehicle for correction, reform and similar moral matters. As was pointed out, such ideas in traditional judicial processes were generally related to the desire to solve problems in face to face relationships (rather than the return of an anonymous 'individual' to an anonymous 'society'), to which incarceration is seen as counter-productive.

Some evidence was given for the extent to which Highlanders, for example, regard present prison conditions as unpleasant. It was suggested that the prevalent demands for harder conditions should be seen in connection with two things: (1) Statements that prisoners regard their sentence as a 'holiday' etc. must be related to the circumstances of the case: prison can be a price a man is willing to pay, or something to be passed off with bravado. Tougher conditions will not necessarily affect the making of these kinds of statements. (A rather separate point is that although I have argued that there is often a weighing up of the 'cost' of a crime against its penalty, this is not an appropriate analysis for every case. People do not always behave with such apparent rationality. In some situations they will be carried away by the emotions of the moment, regardless of what penalties are set on their actions.) (2) Where prison is seen as one of the government's strongest sanctions in maintaining law and order, or where it enters into the satisfactions which individuals or groups gain from taking revenge on their enemies, for as long as people persist in 'lawless' or 'hostile' behaviour there will be demands to toughen the sanctions. Again, the deterrent effect of responding to such demands remains to be seen.

In noting people's attitudes towards prisons, bodies such as the Corrective Institutions Services, and the judiciary which deals out prison sentences as a court penalty, must take into account the fact that expressed attitudes towards imprisonment must in part reflect a community's *evaluation* of particular crimes or of a perceived state of general lawlessness. They stand for a feeling and desire that lawlessness should be combatted.⁴⁷ Thus often imprisonment is a highly emotional topic. Comments about prison conditions become a vehicle for expressing opinions and feelings about certain offences, especially where such offences (for example revenge homicide) are thought to challenge a group's power or governmental authority. Since people theoretically cannot take the law into their own hands, there is little else they can do but urge for a display of power on the government's part.

Insofar as imprisonment is identified as a strong governmental sanction, prisons are likely to receive this kind of criticism, which has much less to do with actual prison conditions than with *the inevitable need of other people to give expression to their feelings* about certain crimes and the country's state of law and order.

A different question is the effectiveness of prison *as a deterrent and sanction in relation to various offences*. In respect of disputes which arise at the village level, villagers may have quite specific ideas about the usefulness of prison as a penalty. This is a matter more relevant to judges and magistrates than the Corrective Institutions Service itself.

47 In the same way as a demand for a death penalty for homicide is not necessarily a considered judgement of the best deterrent for the crime, but a symbol of the revulsion with which the crime is regarded and the desire of politicians etc. to do something about it.

As with any other governmental agency, the Corrective Institutions Service is an agent of social change. Where its aims appear to conflict with community attitudes, this can be largely set down to the existence of different ideas about the nature of society. Papua New Guinea is a single nation-state; it is *also* a confederation of numerous small 'nation-states' each with its own judicial tradition. Government bodies must serve the people in a dual sense: fostering if necessary new social identities⁴⁸ while securing justice for the present society. The Corrective Institutions Service is, in its corrective and rehabilitative aims, in a particularly sensitive position. In having these policies at all, it represents innovation. They are policies related to the concept of a single nation-state, and people will have to be informed of the idea that a central body which uses force is doing so not so much to show its power as its *authority* (as a father has authority over his children), and that removing an offender from his community, incarcerating him and regimenting his daily activities is designed to have a remedial effect. Yet, if the aims of the Service are rehabilitative, they must be executed in close awareness of *the kind of society* to which the individual will be returned. It cannot be assumed that by educating an offender in terms of western ideas about guilt or his 'debt to society', or even equipping him with western technological skills, that he will thereby be fitted to return as a useful member of the village or urban community from which he comes. Rehabilitation entirely out of context of the particular social situation in which a prisoner must in future live is likely to be nonsense in any country of a heterogenous composition. The problem is acute in a place such as Papua New Guinea where there are diverse social traditions all of which are undergoing change at different rates. For what kind of society is the offender being prepared?

Much community opinion about prisons is concerned with the effect of imprisonment as a sanction against crime and anti-social behaviour in relation to dispute-settlement and 'law and order'. These concerns exist at both the national and village level. The Corrective Institutions Service may regard such opinion as conflicting with the aims it has in treating particular criminals. But the facts suggest that no amount of 'education' is going to help bridge these conflicts; indeed perhaps they should not be treated as conflicts at all. Rather, these different opinions *represent the varied interests* of different sectors of the community. If they are not recognised as such, there will only be confusion about interpreting the role which prisons have in present-day Papua New Guinea.

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⁴⁸ Given that the present government is committed to the idea of 'development'.