

PROBATION IN SINGAPORE

This article explores the prospects of using probation as a dispositional device to alleviate that conflicts that individuals encounter due to poor adaptation to institutional circumscriptions and societal norms. An effort is made in this article to provide a conceptual framework that could be used for implementing the provisions of the Probation of Offenders Act of Singapore and other statutes that provide for supervision by probation officers. It is also indicated in this article that if probation is to be an effective non-custodial disposition in the future, it will have to fulfill goals that extend beyond the objectives traditionally ascribed to custodial and non-custodial sanctions.

I. INTRODUCTION

*Many words exhaust the Truth
Keep to the empty centre!*

Lao Tzu¹

MANY beliefs and pronouncements over the past seventy odd years have not enlightened us very much on the aims and nature of probation. As we amble along prescribing probation for forms of behaviour that we choose to describe as errant, should we not pause and return to the "empty centre" that Lao Tzu spoke of two thousand five hundred years ago as a cure for activity that throws doubt on our rationality?² Is there a way of trying to understand probation devoid of ideological abstractions?

To get to the stage Lao Tzu spoke of we have to trace the events that have led us to the present morass. Probation in the initial years was a "child" saving movement. John Augustus initiated a voluntary programme in Boston in 1841 to save young persons from the harshness of the sentencing process of the criminal courts of that time. He undertook to supervise those offenders who were least likely to commit offences during the period their sentences were suspended. In England, due to the industrial revolution many families had drifted from the rural areas to the cities. This resulted in a dislocation in the lifestyles of these families and in turn, led to an increase in crime in the cities. A supervisory scheme was, therefore, initiated to deal with

¹ H. Maurer, *Tao the Way of the Ways* (1968) at p. 31.

² Lao Tzu has also remarked "not to know and to be knowing is sickness" (Maurer, *supra*, n(1), at p. 30). We are aware that through probation something can be done to prevent recidivism. Yet we do not seem to be fully aware as to how this could possibly be done. This leads to confusion. We could emerge from this state of confusion by returning (or "keeping") to the "empty centre" that Lao Tzu referred to. That is, by simply *understanding* the facts that led to the confusion. The way out of the confusion would be to let courses of action emerge through rumination of these facts (see Maurer, *supra*, at p. 31).

³ R. Gray, "Probation, An Exploration in Meaning" (1986) *Federal Probation* 26 at pp. 27-29; L. Diana, "The Rights of Juvenile Delinquents: An Appraisal of Juvenile Court Procedures" (1957) 47 *Journal of Crim. L., Criminology and Pol. Sc.* 561 at p. 561.

unattended juveniles towards the end of the nineteenth century.⁴ Gradually, probation was extended to adults.⁵ It was felt that adults too could be supervised in a manner that would enable them to stay out of prison. By the first quarter of the twentieth century most jurisdictions in the United States and Britain had adult probation services.⁶

Singapore remained a colony of Britain till 1963. The child savers of Singapore acted voluntarily to protect those who were in need until 1948.⁷ In 1949, an Act modelled on the Children and Young Persons Act of 1933⁸ in England was enacted in Singapore.⁹ Probation was statutorily recognised as a mode of supervising juvenile offenders.¹⁰ Probation was officially made available to adults in 1951 under the provisions of the Probation of Offenders Ordinance.¹¹

In the process of reverting to the “empty centre”, an effort will be made to unfurl a perspective of probation that could be a functional adjunct to a sentencing process, that is about to make allowance for new sentencing options. In this regard, this article will also focus on the need to use the probation process to educate the “failures” in our system of the pitfalls that are associated with life’s “double bind” situations. A.W. Watts has described quite vividly the manner in which the absence of awareness of this “double bind” paradox can lead to situations of conflict with the “group” (i.e. society):

“Here, then, is a major contradiction in the rules of the social game. The members of the game are to play *as if* they were independent agents, but they are not to *know* that they are just playing as if! It is explicit in the rules that the individual is self-determining, but implicit that he is so only by virtue of the rules. Furthermore, while he is defined as an independent agent, he must not be so independent as not to submit to the rules which define him. Thus he is defined as an agent in order to be held responsible to the group for “his” actions. The rules of the game confer independence and take it away at the same time, without revealing the contradiction.”¹²

In most instances, awareness of these pitfalls would have enabled the probationer to avoid an incident labelled as a “crime”. An effort will also be made to explain the beliefs and practices that relate to probation in Singapore, and ascertain the usefulness and validity of the assumptions that engender these beliefs and practices. On reaching the “empty centre” an effort will then be made to re-define and explain the directions that probation should take in the future.

⁴ L. Radzinowicz and R. Hood, *A History of English Law* Vol. V (1986) at p. 635 (Refer also Chapter III, pp. 48-49); G. Parker, “Some Historical Observations on the Juvenile Court” (1966-67) *Crim. L. Q.* 466 at p. 480; for similar developments in Canada, see N. Boyd, “An Examination of Probation” (1977-78) 20 *Crim. L. Q.* 355 at pp. 358-361.

⁵ *Ibid.*, Radzinowicz and Hood at p. 642; J. E. Hall Williams, *The English Penal System in Transition* (1970) at pp. 253-54.

⁶ L. Diana, “What is Probation?” (1960-61) 51 *Journal of Crim. L., Criminology and Pol. Sc.* 189 at pp. 189-90; *Probation and Related Measures* U. N. Dept. of Social Affairs, Doc. No. E/CN.5/230 (1951) at pp. 42-50.

⁷ Proceedings of the First legislative Council, Colony of Singapore 2nd Session (1949) at p. B92.

⁸ 1933, C. 12.

⁹ Ordinance No. 18 of 1949; at present Cap. 38, 1985 (Rev. Ed.).

¹⁰ Section 59, Cap. 38, 1985 (Rev. Ed.).

¹¹ Ordinance No. 27 of 1951; at present Cap. 252, 1985 (Rev. Ed.).

¹² A. W. Watts, *Psychotherapy East and West* (1961) at pp. 51-52.

II. THE AIMS OF PROBATION

It would seem that when probation was introduced to Singapore in 1949, the policy makers had no intention to extend it to adults. Their objectives were simple. In view of the social dislocation caused by the Second World War a “rehabilitative” service was provided for children and young persons who “.. having been exposed to various forms of physical, social and emotional deprivation, were on the threshold of delinquency and crime.”¹³ Prior to the enactment of the Children and Young Persons Ordinance in 1949, delinquents were placed in homes established by the Colonial government. The debates in the Legislative Council reveal that the policy makers were also hoping to use probation “to prevent a class of chronic law-breakers from springing up”.¹⁴ There seemed to be a tendency amongst juveniles sent to detention homes to lose their ability to resist temptations as a result of their “familiarity” with places of detention. Probation was, therefore, introduced as an intermediary device to reduce the likelihood of young offenders being sent to detention homes.

Two years later a Probation of Offenders Ordinance¹⁵ was enacted. This Ordinance clarified the scope and role of probation as a judicial disposition and made provision for the extension of probation to adults. The debates in the Legislative Council reveal that probation was extended to adults as a high percentage of offenders in the Colony were being sent to prison for rather short periods. Quite a high proportion of these short term sentences of imprisonment were for one month or less.¹⁶ The debates also indicate that probation was extended to adults as an alternative to prison as it would not serve the “interests of the community” to send certain offenders, in view of the “nature of their offence”, to prison for short terms. It was felt that periods of short term imprisonment would be of little use as “reformatory measures”.¹⁷ Probation, therefore, was clearly linked to the type of offence that was committed by the offender. The available statistics of adult offenders sent on probation in Singapore since the 1950’s reveal that the nature of the offence rather than the characteristics of the offender has played a major part in decisions to place offenders on probation. This may have been due to particular types of offenders being involved in the commission of particular types of offences. However, only if studies reveal that there is a link between offender and offence patterns, could one say that offender characteristics have not altogether been ignored or thrust into the background in decisions relating to probation in Singapore.

Different objectives were, therefore, supposed to govern decisions on probation regarding juveniles and adults. Probation was clearly intended to be a child saving rehabilitative measure in regard to juveniles. In relation to adult offenders, however, probation was merely viewed as another dispositional option with vague objectives of deterrence and rehabilitation. It would seem that the nature of the offence was more important than the “characteristics of the offender”

¹³ K. V. Veloo, “The Probation Officer - Role and Functions” (1982) 7 Reach Out at p. 5.

¹⁴ *Supra*, n(7) at p. B93.

¹⁵ *Supra*, n(11).

¹⁶ Proceedings of the Second Legislative Council, Colony of Singapore 1st Session (1951) at p. B126.

¹⁷ *Ibid*.

in decisions concerning adult offenders, for probation orders were intended to be substitutes for short term sentences of imprisonment.

A. Objectives of Juvenile Probation

Under the Children and Young Persons Ordinance of 1933, an effort was made to treat juvenile offenders, as far as possible, in the same way as neglected or refractory juveniles.¹⁸ Most of the dispositional options listed in the Children and Young Persons Act (hereinafter referred to as CYPA) for neglected and refractory juveniles were made available for offenders as well.¹⁹ Irrespective of psychological factors a juvenile under the age of 14 was labelled a child.²⁰ A juvenile between the ages of 14 and 16 was classified as a "young offender".²¹ As a dispositional option, probation fitted neatly into the functional framework of juvenile courts. The juvenile courts were established in England in 1908.²² The procedures in the juvenile courts were more inquisitorial than adversarial, and accorded with the child saving goals of those who promoted probation for juveniles. It did not matter how the child appeared before the court. Since, theoretically, there could be not conflict between the interests of the child and the state, the juvenile court focused on the "welfare" of the juvenile and to a lesser extent on "guilt".²³ It is only in recent years that there has been concern about due process requirements in proceedings before juvenile courts.²⁴

An order for supervision by a probation officer can be issued in two instances under the CYPA:

- (i) where the child is in need of care and protection;²⁵
- (ii) where the parents indicate that the child cannot be controlled and is "refractory" in his ways;²⁶ and

A probation order may be issued under the Probation of Offenders Act (hereinafter referred to as POA):

where an offence has been proved or the child has admitted facts that constitute an offence.²⁷

Specific provision has been made in the CYPA for the supervision by probation officers of juveniles in categories (i) and (ii). However, in practice, *supervision* under supervision orders issued in regard to juveniles in categories (i) and (ii) is carried out by welfare officers from the Children and Young Persons Service, Social Support Branch, Ministry of Community Development. *Supervision* by a probation officer under a supervision order could be called "probation", even though the probation officer may not adhere to the procedure for supervision specified in the POA. *Supervision* in such circumstances

¹⁸ For a similar approach in England under the Children and Young Persons Act of 1933, see S. Stanley and M. Baginsky, *Alternatives to Prison* at p. 22.

¹⁹ See sections 59 (1), 63 and 64, Cap. 38, 1985 (Rev. Ed.).

²⁰ *Ibid.*, section 42.

²¹ *Ibid.*

²² The Children Act 1908, C. 67; Diana, *supra*, n(3) at p. 561.

²³ Section 43, *Supra*, n(10); Diana, *supra*, n(3) at pp. 561-62.

²⁴ *Kent v. 17. 5.* (1966) 383 U. S. 541 at p. 556; *In Re Gault* (1967) 387 U.S. 1; *In Re Winship* (1970) 397 U. S. 358.

²⁵ Section 63 (d), *supra*, n(10).

²⁶ *Ibid.*, section 64.

²⁷ *Ibid.*, section 59(1) (e).

ought to be in accordance with the procedure outlined in the Act that authorized the supervision. Though it is stated in the preamble of the POA that it is an "Act to provide for the probation of offenders", yet there is no indication, that any of the provisions of the POA should supercede the provisions that relate to supervision by probation officers in the CYPA. The POA should be viewed as a statute enacted to supplement the CYPA by clarifying and amplifying the provisions that relate to probation of *offenders* in the CYPA. The POA should not be viewed as a statute that is exhaustive on all matters relating to probation. As Nigel Walker has succinctly pointed out, sentencing statutes that provide for supervision may have been designed not merely to exempt an offender from a sentence but also to use the occasion of his conviction (or finding of guilt in the case of juveniles) as an opportunity to attend to his welfare. Probation officers too view themselves as social workers attending to the welfare of the "supervisee" rather than as law enforcement officials.²⁸ It is in this perspective that the supervisory efforts of probation officers in regard to offenders [and non-offenders] should be viewed. A distinction between supervision and probation based on a legalistic criterion that probationers are liable to be sentenced for their original offences while supervisees are not, should not be used to bifurcate the supervisory efforts of probation officers. Unnecessary confusion could be avoided if supervision of *offenders* is viewed as "probation under the POA" (unless otherwise provided for by a specific statute) and supervision of non-offenders by probation officers as "probation under authorizing Acts."

The CYPA gives the juvenile court power to impose conditions in supervisory and probation orders in order to discipline juveniles who fall under categories (i), (ii) and (iii).²⁹ The juvenile court judge can also impose a condition as to residence in an approved hostel for a stipulated period in a probation or supervision order.³⁰ Approved hostels are viewed as centres of "treatment" for offenders who need to be removed temporarily from an undesirable situation or associates in a neighbourhood.³¹ There are three government approved probation hostels in Singapore.³² Singapore has a rather complicated system of approved homes, approved schools, approved hostels, places of detention, remand homes and children's homes to deal with neglected, refractory and delinquent juveniles. Some of these institutions serve dual or at times three fold objectives [See Appendix I].

The CYPA does not attempt to define "delinquency". Yet a committee that was set up by the Ministry of Health and Home Affairs in 1974³³ to examine the incidence and nature of crime and delinquency amongst young offenders in Singapore defined "juvenile delinquency" as:

- (i) juvenile behaviour that could be considered criminal if committed by adults;

²⁸ N. Walker, *Sentencing Theory, Law and Practice* (1985) p. 207.

²⁹ Section 43, *supra*, n(10).

³⁰ *Ibid.*, sections 59(1)(e), 63(b) and 64(b). The person in charge of a hostel is viewed as a "fit person" by the courts.

³¹ Annual Report (1984), Ministry of Social Affairs at p. 15.

³² *Ibid.*, the three approved hostels are Bukit Batok Boys' Hostel, Pasir Panjang Boys' Hostel and Jalan Eunus Girls' Hostel (See also Appendix I).

³³ *Report of the Committee on Crime and Delinquency* (1974).

- (ii) juvenile behaviour dealt with under the provisions of the Criminal Law (Temporary Provisions) Act;³⁴
- (iii) refractory conduct³⁵ dealt with under the provisions of the Women's Charter.

Pre-delinquency was explained as behaviour or acts among juveniles or young adults, which are refractory in nature and provide preliminary signs of delinquency or criminality. Such behaviour was identified as including:

- (i) persistent disregard for authority (e.g. persistent absence from school);
- (ii) acts that show a predisposition towards dishonest behaviour (e.g. lying and cheating);
- (iii) acts that show a predisposition towards the use of force (e.g. persistent bullying);
- (iv) undesirable social habits (e.g. smoking, gambling).³⁶

In Singapore, the objectives of "probation" in regard to pre-delinquent juveniles evolved within the framework set out by the CYPA and the Committee on Delinquency. Section 5 (I)³⁷ of the POA states that a court could issue a probation order in regard to "a person convicted of an offence", if it is of the opinion "that having regard to the circumstances, including the nature of the offence and the character of the offender, it is expedient to do so". The preamble to the Act says it is an Act to provide for the probation of offenders. The Act, therefore, does not lay down any criteria for the "probation" of juveniles who are either refractory or neglected (i.e. those at the stage of pre-delinquency under the classification of the Committee on Delinquency). Considerations of welfare are the main criteria for decisions on "supervision" in regard to neglected and refractory children under the provisions of the CYPA.³⁸ As the POA applies only to offenders, none of the rules relating to probation in the POA apply to supervision of neglected or refractory children by probation officers. It would seem that in view of sections 43 (1) and 57 (8) of the CYPA the same welfare approach may have to be adopted in dealing with juvenile offenders. Further, if welfare of the child is to be the primary criterion for determining whether a juvenile should be placed on probation, one may wonder whether the juvenile court is the appropriate forum to decide on welfare measures.³⁹

In Singapore, refractory behaviour is first dealt with outside the juvenile court either in the community or through social service

³⁴ *Ibid.*, at p. 1; at present Criminal Law (Temporary Provisions) Act Cap. 67, 1985 (Rev. Ed.).

³⁵ At present Women's Charter Cap. 353, 1985 (Rev. Ed.).

³⁶ *Ibid.*, at p. 1.

³⁷ Cap. 252, 1985 (Rev. Ed.); section 5 (1) reads:

5. - (1) Where a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law) is of the opinion that having regard to the circumstances, including the nature of the offence and the character of the offender, it is expedient to do so, the court may, instead of sentencing him, make a probation order, that is to say, an order requiring him to be under the supervision of a probation officer or a volunteer probation officer for a period to be specified in the order of not less than one year nor more than three years.

³⁸ Sections 43 (1), *supra*, n(10).

³⁹ See in general, B. Wootton, "The Juvenile Courts" [1961] Crim. L. R. 669.

agencies.⁴⁰ Only when this fails is the child or young person brought before the juvenile court judge. In determining what would contribute to “the welfare of the child”, the juvenile court judge may consider certain factors that are not specifically mentioned in the CYPA. He may bear in mind, for instance, that some of the children may only be mildly out of control and it would not be fair to label them as pre-delinquents. He would try to ascertain whether the behaviour of the child is due to emotional difficulties or is a reaction to authority, boredom or whether the behaviour is symptomatic of deep rooted maladjustments and personality disorders.⁴¹ The judge may also refer to some of the criteria listed in section 64 of the CYPA in deciding whether a supervision order would serve the “welfare” of the refractory juvenile. One may ponder, however, whether a magistrate, who comes from the upper echelons of society will be able to understand the way in which life’s opportunities and experiences are distributed amongst those at the opposite end of the scale in society, in order to determine the type of care that children at that end of the scale need.

B. Objectives of Adult Probation

Even though adult probation was intended to be an alternative to short term sentences of imprisonment, there is no evidence to show that probation offers a better prospect of reforming an offender than a short period in custody.⁴² If so, it is difficult to understand why a minimum period of one year of probation was specified in lieu of a short term of imprisonment. It is not certain whether the intensity of supervision during probation has a more positive effect on reconviction rates than short term imprisonment? Several studies, elsewhere, have clearly shown that probation is less costly than imprisonment.⁴³ The same may probably be true for Singapore. Section 5 (2) of the POA purports to explain indirectly the other possible aims of adult probation. It states conditions may be specified in the order to secure “the good conduct of the offender” or prevent a repetition by him of the same offence or the commission of other offences. The 1985 annual report of the probation service clearly reiterates that section 5 (2) embodies the principal aim(s) of probation.⁴⁴

C. Are the Objectives of Probation Being Accomplished in Singapore?

Apart from the cost reducing objectives, have the other aims of juvenile and adult probation been accomplished in Singapore? How

⁴⁰ Ng Bie Hah: Existing Juvenile Justice System in Singapore (1984) UNAFEI Resource Material (Series No. 25) 132 at pp. 132-133.

⁴¹ *Ibid.*

⁴² J. C. Freeman, “The Quest for a Better System and Administration of Juvenile Justice” (1984) UNAFEI Resource Material (Series No. 25) 49 at p. 64. •

⁴³ *Ibid.*, see also J. Pointing, *Alternatives to Custody* (1986) at p. 5.

⁴⁴ Probation Service Annual Report (1985) at p. 1; section 5 (2) of POA reads:

5. - (2) A probation order may in addition require the offender to comply during the whole or any part of the probation period with such requirements as the court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the offender or for preventing a repetition by him of the same offence or the commission of other offences:

Provided that (without prejudice to the power of the court to make an order under subsection (2) of section 10 of this Act) the payment of sums by way of damages for injury or compensation for loss shall not be included among the requirements of a probation order.

does one determine whether probation has been a successful “welfare” or “reformatory” measure for juveniles and adults respectively?

The statistics refer to “success” rates of over 80% in the supervision of juvenile and adult offenders placed on probation over a twelve year period (1970-1982) [See Appendix II]. What does “success” mean in this context? The reports reveal that if an offender completed his period of probation “satisfactorily”, he would be considered a “success”. Some of the reports indicate that if an offender completed his probationary period without committing further offences or violating the terms of his probation order, he would be considered a “success”.⁴⁵ This method of assessing “success” may not be in keeping with one of the aims specified in section 5 (2) (*i.e.*, to prevent the commission of further crimes). There has been only one follow up study in Singapore of juvenile offenders sent on probation. This follow up study over a period of seven to nine years (*i.e.* till 1969) of offenders who had completed probation, indicated that over 56.9% of the juvenile offenders placed on probation between 1960-1962 (305 out of 536) had no criminal records. “Failure” was viewed as either: (a) a further conviction; or (b) breach of any of the requirements in a probation order; or (c) detention and/or police supervision under the Criminal Law (Temporary Provisions Act). Of the balance 43.1% (231 cases) only 42.4% (98) had a further lapse during the period under study. Of the remaining 133 cases 25.2% (52 cases) failed twice; 35.1% (81 cases) failed three times or more. However, the researchers concluded that it was difficult to gauge the effectiveness of probation in relation to other penal measures without further research into the types of offences that were committed and the socio-psychological characteristics of the offenders.⁴⁶ There has been no follow up study of adult probationers in Singapore.

However, in order to show probation was in effect a “success” one should not merely measure the success of probation by trying to find out how many of the probationers who completed probation were not re-convicted within a specified period after their probationary periods had ended. Only if the re-conviction rate for those who violated probation conditions or committed offences was higher during the same period will it be possible to conclude that probation was a “success” in regard to those who completed probation without violations.

Probation was considered an alternative to imprisonment because it was clear to penologists that two thirds of those in prison were those who had been in prison before.⁴⁷ Why should probation, therefore, be such a resounding success in dealing with offenders in comparison to the other penal measures?

The courts in Singapore, have not clearly explained the various dimensions of probation. Study papers containing samples of presentence reports of probation officers in Singapore reveal that behaviour modification through rudimentary “treatment” strategies

⁴⁵ For example, see Probation Service Annual Report (1981) at p. 3.

⁴⁶ J. Elliot and K.V.Veloo, “Some Implications of Probation Failure” (1975) 6 Singapore Police Journal 92 at p. p. 96.

⁴⁷ N. Morris and G. Hawkins, *The Honest Politician’s Guide to Crime Control* (1969) at p.118

have been tried out during probation.⁴⁸ "Treatment" schemes operate on the assumption that there could be a diagnosis of the causes underlying the offender's behaviour and that these causal variables can be manipulated to produce modifications of behaviour that are undesirable.⁴⁹ The judges in Singapore on the other hand, in the course of making decisions on non-custodial measures such as probation may be concerned with issues that relate to the crime rate in the country, overcrowded prisons and the feasibility of other sentencing options.⁵⁰ In fact, the instructions manual for probation officers clearly indicates that these factors should not be considered by the probation officer in writing his pre-sentence report.⁵¹ He should only consider the prospects of the offender successfully completing the period of probation in accordance with the "rehabilitative" aims specified in sections 5(1) and (2).⁵² Where there is a conflict as to the perceived aims of probation between parties making decisions on probation and those who implement decisions on probation, would it be possible to identify the functions or purposes of probation or even measure the "success" of probation? Do the judges expect the probation officer to perform only a surveillance function, as the impact of the arrest, trial and conviction itself, may have rehabilitated the offender, even before the offender is sent out on probation? In fact, one criterion used by John Augustus in identifying offenders for probation was the willingness of the offender to repent for his wrong doing.⁵³ Thus even though the probation officers may be taking their tasks of "rehabilitating" offenders seriously, the courts may be viewing probation quite differently and sending only the best risks on probation.

Statistics in Singapore, however, do not categorically support this view. Over a period of five years (1981-1985) out of a total of 2,966 offenders sent on probation, 2,472 were property offenders (83%). Of these 1,446 (58%) were listed as offenders who had committed "offences against property that did not involve violence." The statistics do not reveal how many of these offenders were recidivists, and whether such recidivists had committed the same or related offences previously.⁵⁴ Of the total number of 2,966 offenders sent on

⁴⁸ Probation and Aftercare Service Research Papers, Vol. III (1973) at pp. 69, 135; Report of Committee on Crime and Delinquency, Singapore (1974) Appendices 3B and 3C; Case Studies Vol.1 (1975), Probation and Aftercare Service at pp. 15-33; Case Studies Vol. III (1977) Probation and Aftercare Service at p. 16.

⁴⁹ A. E. Bottoms and W. N. McWilliams, "A Non-Treatment Paradigm for Probation Practice" (1979) Br. Social Work 159 at p. 166; see also D. C. Gibbons, *Society, Crime and Criminal Careers* (1978) at p. 298 for a discussion of the concept of "treatment" and "treatment" options.

⁵⁰ P. English, "Sentencing in Singapore" (1981) 23 Mal. L. R. 1 at p. 20.

⁵¹ Instruction Manual for Investigating Probation Officers, Singapore (1981) at p. 29.

⁵² *Ibid.*

⁵³ Gray, *supra*, n(3) at p. 26.

⁵⁴ Researchers do not agree on the meaning of the term recidivism. Some indicate that the term refers to those who return to prison; others indicate that the term includes those who are arrested as well, even though they have not been tried and convicted. See Vincent J. Weff et al., "Recidivism: In Search of a more Comprehensive Definition" (1976) *International Journal of Offender Therapy and Comparative Criminology* 144. D. A. Thomas refers to two types of recidivists: (1) the intermediate recidivist; (2) the inadequate recidivist. The intermediate recidivist is a person who is "between the ages of twenty and forty who has a number of previous convictions and a corresponding experience of institutional life, who appears to be developing into a persistent recidivist without having reached the stage of institutionalisation where the chance of successful rehabilitation is remote". If there is a chance of success, the court will attempt to rehabilitate him through a non-custodial measure. The "inadequate recidivist" is a person who is over forty years "with a record of convictions and custodial sentences going back many years, who has reached the stage of being barely able to cope with life outside an institutional setting..." D.A. Thomas, *Principles of Sentencing* [1973] at pp. 20-23.

probation during the years 1981-1985, only 127 (4%) offenders had engaged in acts of violence against the person.⁵⁵ Are those involved in property offences lower risks? Is probation in the Singaporean context confined essentially to a surveillance function? [See Appendix III].

Why were such a large number of property offenders who were not involved in acts of violence sent out on probation? In view of their backgrounds and the types of work they were involved in prior to their criminal acts, have the courts erred in deciding on probation as a dispositional measure? Is it because these offenders did not look upon the judges and others associated with corrections and law enforcement with hostility that they were sent on probation? A large number of these property offenders had committed offences that were associated with thefts of vehicles, motor cycles, scooters, and theft of items from vehicles and dwellings [See Appendix IV]. Could the aims of probation as specified in the POA be accomplished in regard to these offenders? The existence of violence per se cannot be a major criterion in decisions on probation. It is important to find out how the offender became involved in the incident. Was the offender who was involved in a non-violent property crime in one of the professions that provided opportunities to engage in such criminal conduct? Further, it is also important to find out whether the offender lived in an area with patterns of criminality, with easy access to "fences". Given the remote form of supervision that an overloaded probation officer in Singapore engages in,⁵⁶ it would be difficult to monitor the activities of an offender involved in low risk offences such as thefts of (and from) motor vehicles, and thefts from dwellings. The data that is available on the backgrounds of offenders sent on probation reveal that a majority of them were "general workers" and "national servicemen" (548 and 490 respectively during the period 1981-1985). Other categories of professions more specifically described in the Annual Probation Reports (1981-1985) included a high proportion of cleaners (109), stall/hawker/canteen/shop assistants (205), store assistants/store-keepers(62), office and delivery boys (103), sales assistants (45) and construction workers (215). The Annual Probation Reports (1981-1985) do not indicate the nature of the offences committed by these offenders. Hence, one may have to assume until further studies are conducted that since a majority of the offenders sent out on probation were involved in non-violent property offences, a majority of the offenders in the above categories were convicted of property offences that did not involve violence.

Studies elsewhere have indicated that offenders involved in professions that are peripheral to criminal activities (such as thefts from dwellings) can be easily enticed into crime again where supervision is lax or inadequate.⁵⁷ Sending some of these non-violent thieves on probation may, therefore, not accomplish the stated aims of probation.

On the other hand, studies on property offenders who were involved in thefts of vehicles indicate that the younger offenders were

⁵⁵ See Probation Service Annual Reports (1981-1985), under "Offenders Placed on Protection by Nature of Offences", sub-headed: "Offences against the Person with Violence".

⁵⁶ Average supervision case load of juveniles in Singapore is 68 per officer; for adults it is 63 per officer; the ideal ratio of officers to offenders should be around 1 to 35; even in those circumstances only about 20 would receive adequate supervision in instances where the probation officer has to deal with different types of offenders, see *supra*, n(47) at pp. 113-135.

⁵⁷ E. H. Sutherland, *The Professional Thief*(1937) at pp. 43 ff.

often involved in hedonistic fun and did not commit these offences for utilitarian ends. Very often these offenders engaged in these acts as members of a group of juveniles or young persons. Thefts of vehicles by individuals was rare.⁵⁸ If the sanctions that are imposed result in stigmatisation and alienation, these flirtations with delinquency could lead to further delinquency.⁵⁹ These acts may have been committed due to the lack of a cohesive living environment that would have facilitated conformity rather than digression towards delinquency. Probation may in these circumstances be more preferable than other sanctions.

The statistics in Singapore, however, do not reveal how many of the vehicles that were stolen were recovered. Such statistics may have indicated to some degree the utility to which the vehicles were put and also revealed whether the thefts from or of vehicles in the Singaporean context reflect a pattern of criminality, and whether the offenders had become enmeshed in a delinquent sub-culture. A study in the United States has referred to the poor institutional adjustment of car thieves.⁶⁰ The official statistics that are available in Singapore do not indicate whether the high proportion of national servicemen sent out on probation during the years 1981-1985 were involved in offences that related to vehicles. If this had been the case, then probation may have been an appropriate dispositional measure for dealing with offenders who fell into this category.

It would seem probation may have a favourable impact on the non-violent property offender who is involved in an isolated incident and who admits that he has been involved in a serious deviant act. Such an offender may not still have identified himself as a "criminal". Thus probation may be effective in dealing with these offenders.⁶¹

Despite issuing probation orders in favour of large numbers of offenders holding jobs that are in the periphery of criminal activities (e.g., cleaners, construction workers, hawker/canteen/shop assistants, office and delivery boys, etc.), probation has been viewed as a "success". Does this indicate that "high risk" property offenders who were not involved in violence were also sent on probation? Was the probation effort in Singapore, therefore, a "success" in dealing with high risk property offenders not involved in violence?

Can the same high degree of success be accomplished in supervising offenders convicted of "offences against property with violence"? Research in other jurisdictions seems to indicate that most offenders in this category, particularly youths, tend to act in groups.⁶² Contrary to popular belief that robbery always involved violence and that the victims suffer injuries, studies indicate violence is used only in limited instances.⁶³ The use of a weapon often discourages the victim from resisting. Moreover, most offenders in this category tend to be younger offenders. Even the display of violence, if any, would on the whole be

⁵⁸ E. Schepes, "The Young Car Thief (1959-60) 50 Journal of Crim. L., Criminology and Pol. Sc. 569 at p. 569; L. D. Savitz, "Automobile Theft" (1959-60) 50 J. of Crim. L., Criminology and Pol. Sc. 132 at p. 133; J. Hall, "Theft, Law and Society" (1952) at pp. 249-50.

⁵⁹ D. C. Gibbons, Society, *Crime and Criminal Careers* (1978) at p. 298.

⁶⁰ Schepes, *supra*, n(58).

⁶¹ E. Lemert *Human Deviance, Social Problems and Social Control* (1967) at pp. 17-18.

⁶² S. Dinitz *et al.*, *Deviance, Studies in Definition, Management and Treatment* (1975) at p. 60.

⁶³ *Ibid.*

an isolated episode in the lifestyle of the offender. Therefore, it may not be proper to categorize those charged with robbery as violent property offenders. Robbery may after all be a sub-culture of theft rather than violence. Further, an offender convicted of an offence against property that involved acts of violence may use a weapon only for an end, and not for personal satisfaction. Such an offender would hardly have a past record for offences involving actual violence. He would have generally had few conflicts with law enforcement authorities. This may indicate that his aggression is a controlled form of aggression where he directs his aggression only towards profit making efforts and not impulsive acts of violence.⁶⁴ Robbery may have been classified as a violent property crime in view of the bodily harm that could be caused during a robbery. Yet in actual terms, the violence caused in robberies as a whole may be minimal. Therefore, if violence is being used as a criterion to determine who should be sent out on probation, the courts will also have to look into the actual nature of the incident rather than the offence head under which the offender is convicted. The judges in Singapore may in fact be looking into the characteristics of the offender and the nature of the offence in the course of perusing through the contents of police statements before issuing probation orders in favour of “offenders against property involving acts of violence”. The statistics reveal that the courts have been issuing probation orders in favour of those involved in “house breaking” offences and “simple robbery”. These offences generally do not involve the use of violence.⁶⁵ The 1985 Annual Report of the Probation Service also reveals a similar trend in regard to “offences against the person with violence”. Out of the 43 offenders who were convicted of offences under this category and who were sent out on probation, 18 were offenders who had committed offences that were listed as “assault or criminal force in attempt to commit theft of property carried by person.”⁶⁶ Such offences though classified as “violent offences” are generally committed in circumstances that do not involve actual violence. During the four years prior to 1985 (1981–84), only four offenders who had committed similar offences were sent on probation.⁶⁷ From 1981 to 84, probation orders were issued in favour of a total of only eighty four offenders involved in “offences of violence against the person.”⁶⁸

Could offenders who have engaged in acts of violence be classified as high risk offenders? Can the same high “success” rates be accomplished in regard to offenders involved in the commission of “violent” property offences? Or, is it only the lack of situational opportunities that make probationary efforts a “success” in regard to property offenders who are involved in either violent or non-violent acts? For, most of these property offences tend to be committed in situations where opportunities arise suddenly - in particular car thefts and robberies.⁶⁹ It is difficult to predict future violent behaviour. Studies reveal in general that there has been an over prediction of violent conduct amongst offenders. These studies have identified characteristics which on the basis of past experience were common

⁶⁴ *Ibid.*, at p. 61.

⁶⁵ See *infra*, Appendix V.

⁶⁶ Probation Service Annual Probation Reports (1985) at p. 33.

⁶⁷ *Supra*, n(52).

⁶⁸ *Ibid.*

⁶⁹ Crime and its Impact - An Assessment (President’s Commission on Law Enforcement and Administration of Justice - Task Force Report) (1967) at pp. 83-84; *Hall, supra*, n(58), at pp. 250-51; Morris and Hawkins, *supra*, n(47), at p. 101.

amongst recidivist offenders against the person. Yet when these criteria were applied there was a massive catch of "false positives" as well.⁷⁰ Should violence, therefore be a major criterion in determining whether an offender should be sent out on probation? Is it justifiable, therefore, to use such a "criterion" in the context of the aims specified in section 5(2) of the POA? On the other hand, as it was explained earlier, there has been a trend towards issuing probation orders in favour of "high risk" property offenders who have not been involved in acts of violence!

Further, the modes of measuring success may not accurately reflect whether the professed aims of probation are in effect being fulfilled. Even if "success" is to be measured in terms of preventing a repetition by the same offender of the same offence or the commission of another offence or "breach" of one of the conditions in the probation order during the period of probation, then the figures in the Annual Probation Reports may not indicate accurately whether probation is in effect a "success". No data is available as to the number of times probation officers issued warnings when violations occurred; the attitudes of probation officers towards each further "breach" and the criteria that they used in order to determine whether there was a "breach" too may have differed. Given the supervisory loads of probation officers in Singapore, a violation (or even a minor offence) may be difficult to detect, for supervision is likely to be lax. An officer may also be reluctant to identify violations of conditions in a probation order by juveniles as "breach" in fear of reinforcing the labelling process that began in the juvenile court. His reluctance may be directly linked to a hope that the offender may grow out of his delinquent traits.

The above observations only underscore the need to have a wider range of criteria to measure "success" for purposes of evaluating probation. The mode of measuring "success" should differ in assessing the impact of probation on different categories of offenders. If for instance, an offender is involved in drug abuse, probation can be claimed to be a "success" if there has been a reduction in the use of drugs by the offender and the problem is no longer preventing him from engaging in day to day activities. Also, since most of the offenders sent on probation tend to be under the age of twenty one,⁷¹ probation may be viewed as a "success" even if they do not commit offences for two years, while they live through a phase in which they are exposed to conflicting (often confusing) values, thoughts and experiences. Moreover, if any of these probationers had assumed responsibilities that they would have otherwise avoided, or had overcome difficulties that they would otherwise have given way to, one could still attribute the "success" to probation. Even marginal improvements on past behaviour may be viewed as "success".

A period in prison under a sentence, though satisfactorily completed in accordance with the terms of the sentence, will not indicate whether the imprisonment was a "success". So it would be with probation. Some of the criteria discussed above and other "social

⁷⁰ A von Hirsch, "Prediction of Criminal Conduct and Preventive Confinement of Committed Persons" (1971-72) 21 Buffalo L. R. 717; E. A. Wenk et al., "Assaultive Youth" (1972) 9 J. of Research in Crime and Delinquency 171; M. J. Lillyquist, *Understanding and Changing Criminal Behaviour* (1980) at pp. 326 - 331; R. Gross and A. Ashworth; *The English Sentencing System* (1981) at pp. 213-217.

⁷¹ 95.1% in 1985, *supra*, n(66), at p. 13.

criteria” have been recommended in a study in England (called the IMPACT study, 1976) to determine the effectiveness of supervision during probation.⁷² Factors such as financial management of resources, use of leisure hours, friendships with non-delinquents, family problems and post probation employment were used as criteria for the purpose of evaluating the effectiveness of probation. While indicating that these criteria would be *relevant*, Nigel Walker has pointed out that “if ‘social criteria’ are to replace re-convictions it is not sufficient.” Walker added:

“This poses severe problems for evaluators, since the objectives of social workers not only vary from client to client - as they should - but also are often defined in ways which make success very difficult to assess with any pretence to objectivity.”⁷³

Thus it would seem that re-conviction and breach criteria should be used merely as indicators to determine whether the probation orders have been implemented, and not to determine the effectiveness of probation.

The available data, therefore, do not indicate whether the aims of probation as specified in section 5 (2), that is, to secure the good conduct of the offender and the prevention of recidivist traits are in fact being accomplished through probation, though as an effort to enforce a legal disposition it may in effect be a “success”. It is also not clear whether these objectives can be accomplished through other less costlier but seemingly equally effective methods such as conditional discharges, suspended sentences and orders of attendance at attendance centres. If only the better risks are being sent out on probation, then probation in Singapore clearly plays a very limited role in accomplishing the aims specified in section 5 (2). Even though, as it has been pointed out earlier, this may not be the case in Singapore, it would seem probation is largely a disposition involving predominantly a surveillance function, with the offer of some limited forms of help being kept open to the offender should the need arise. For, the Annual Reports (1981-1985) do not list “success” rates in relation to the various aims specified in section 5 (2) or specific “rehabilitation” programmes. Probation may seem, therefore, to be merely an extension of the prison system. Instead of the offender being controlled within the prison, the offender may in effect be under the control of officials of the criminal justice system outside prison through probation. In other words, probation could well be just another device to keep the offender within the fold of the criminal justice system.

To ascertain whether probation has broader goals to serve than the aims specified in section 5 (2) and whether “success” could be measured in the context of these broader goals, one has to examine the nature of probation as a dispositional measure and some of its more prominent features.

⁷² M. S. Folkard *et al.*, *IMPACT: Intensive Matched Probation and Aftercare Treatment*. HOR Study No. 36. London HMSO (Quoted from Walker, *supra*, n(28), at p. 290).

⁷³ Walker, *supra*, n(28) at p. 290 and refer generally pp. 74- 93.

III. THE SALIENT FEATURES OF PROBATION

It may be possible to evaluate the elasticity of the concept of probation by ascertaining its salient features as reflected in the provisions of the CYPAs and POA. Is probation a sentence? If not, a probation order can be used to fulfill aims that extend beyond retribution, deterrence, treatment and surveillance.⁷⁴ What could these aims be? Could the essential mechanisms on which probation as a dispositional process functions, complement one another satisfactorily to enable each or all of them together accomplish the present limited aims of probation? Can these mechanisms be used for accomplishing wider objectives? The prominent features that hold the probation effort together are:

- (i) the uniqueness of probation as a mode for the disposition of offenders; and
- (ii) the interaction of judicial and correctional objectives in decisions to grant and enforce probation.

The ramification of these features will be analysed under the heads of:

- (A) Is probation a sentence?
- (B) Is there scope for a wider concept of probation?
- (C) Factors influencing the decisions to grant and enforce probation.

Such an analysis will in turn enable us to find out:

- (i) whether what is in effect being done right now, that is, a surveillance function with offers of limited help when needed, can be more effectively implemented;
- (ii) whether the aims specified in section 5 (2) can be accomplished;
- (iii) whether there is scope for imputing a wider role for probation in the context of the provisions, practices and notions of probation in the POA. That is, whether there is scope for elasticity of the concept of probation within the existing legal and administrative framework?

A. *Is Probation a Sentence?*

The policy makers who perceived the need to introduce probation to Singapore merely viewed it as an alternative to short sentences. They, therefore, stipulated one year as the minimum probationary period. The maximum period was limited to three years. If the offender was above the age of fourteen, he could be sent on probation only in instances where he has expressed a willingness to comply with the terms of the order.⁷⁵ This is a feature that is peculiar to dispositions that relate to binding over and probation. A person is fined or sent to prison not because he consents to such dispositions. He is in effect "sentenced" to a period in prison or fined. Probation it would seem is not a "sentence". It is an order issued with the consent of the offender. Section 5(1) states that instead of "sentencing" the offender, the court may issue a probation order. Orders are issued even in civil disputes.⁷⁶

⁷⁴ These are the traditional aims of sentencing, see Thomas, *supra*, n(54) at pp. 3-9.

⁷⁵ Section 5 (4) of POA.

⁷⁶ Sees. 42-44, Subordinate Courts Act, Cap. 321, 1985 (Rev. Ed.); sec 18 (2), Supreme Court of Judicature Act, Cap. 322, 1985 (Rev. Ed.).

It is because probation is not a sentence that orders for supervision by probation officers (viewed as “probation” earlier) can be issued to deal with refractory youth under CYPA.⁷⁷

Section 5 (2) states that a probation order may require the offender to comply with conditions that the court considers to be necessary to secure the good conduct of the offender or prevent a repetition by him of the same offence or the commission of other offences. Probation, however, differs from a binding over order in regard to the mode of supervision. The supervision is more organised and direct in this instance than in situations where an offender is bound over with a bond (a personal guarantee) or guarantees from sureties.⁷⁸ Probation as a later development provided an extension to the binding over concept.⁷⁹ A binding over order could extend to a period of two years.⁸⁰ The probation period under a probation order cannot extend beyond three years and should be for a minimum period of one year.⁸¹ However, it would appear in view of the wording in section 6(1) of the POA, the court at its discretion may discharge a probation order within a year on an application by a probationer or probation officer.⁸² The court does not have the power to reduce the period below a year or extend the period beyond three years through an amendment order.⁸³ However, these provisions give the court the power of monitoring the enforcement of the order after the sentencing stage. This is an aspect peculiar to probation, whereas in other dispositions such as fines and imprisonment, the courts do not perform a monitoring function to the same degree with the assistance of support staff after the sentence has been pronounced. The probation order seems, therefore, more like an alternative to a “sentence”. Further, if one of the conditions in an order is violated the probation officer may exercise his discretion to decide whether in fact there was a *breach*. The offender in such situations is brought before a magistrate who may then decide whether probation should be *revoked* or not.⁸⁴ The magistrate at that stage may impose a fine without revoking probation or revoke probation and sentence the offender in any manner that the magistrate’s court that convicted him could have sentenced him.⁸⁵ If the order for probation had been issued by the District Court or the High Court, the magistrate could refer the breach to these courts.⁸⁶ The fact that a court can impose a “sentence” only after a “breach” of the condition(s) of a probation order, in effect affirms and demarcates in a subtle manner the differences that underscore the two dispositions. Further, the time which the offender

⁷⁷ Section 64.

⁷⁸ Section 71, Criminal Procedure Code, Cap. 68, 1985 (Rev. Ed.).

⁷⁹ C. T. Griffiths, J. F. Klein, N. Verdun-Jones, *Criminal Justice in Canada* (1980) at p. 250.

⁸⁰ *Supra*, n(78); the period for which an order is issued in the Magistrate’s Court can extend to only 6 months; if the order is issued in a District Court it can extend to 2 years. Also, refer to section 74 (binding over for good behaviour of suspected persons, vagrants, persons disseminating seditious matter) and section 75 (binding over of habitual offenders).

⁸¹ Section 5(1) of POA.

⁸² Sections 6(1) reads: The court by which a probation order is made under section 5 of this Act may, upon application made by -

(a) the probationer; or

(b) the probation officer or volunteer probation officer who is responsible for the supervision of the probationer, discharge the order.

⁸³ Section 6(2)(a) of POA.

⁸⁴ Section 7(1) - (2)(a) of POA.

⁸⁵ *Ibid.*

⁸⁶ Section 7(2)(b).

must serve under probation is unrelated to the prison sentence provided by statute for the same crime. Probationary periods do not count towards sentence completion. The entire probationary period has to be successfully completed. All this shows probation is not a sentence. It is in effect a relief from "sentencing".

B. Is There Scope for a Wider Concept of Probation?

Punishment in the form of retribution, deterrence or rehabilitation are the traditional goals of "sentencing", and if probation is not viewed as a "sentence", it may mean that probation as a disposition should fulfill objectives that extend beyond the goals of a "sentence". Or, should the aims of probation be totally different from the above aims of "sentencing"? The Annual Probation Reports of Singapore (1981-1985) seem to view probation as a "rehabilitative" measure involving supervision in the community.⁸⁷ As mentioned earlier, surveillance in the community may be a more appropriate explanation of probation in the Singaporean context. Supplementary goals of rehabilitation do exist and these are clearly reflected in the efforts to help the offender when requests are made or are essential for the purpose of controlling the offender. It is important to find out whether the aims of probation extend beyond those of a sentence or are different, because the conditions in a probation order should in some way reflect the link between the condition and the goal to be accomplished. Determining "breach" too may be influenced by the goal that has been set in issuing a probation order. The court may wish to "revoke" an order on "breach" only when all hope of accomplishing the aims of probation have ended. Moreover, depending on what these aims are only some types of offenders can be sent on probation.

Section 5 (2) states that the "conditions" are imposed in order to secure the good conduct of the offender or to prevent a repetition of the same offence or the commission of other offences. These are largely the aims of "sentences" as well. If so, why is it that the courts do not impose one of the "sentences"? Morris and Hawkins refer to a study in England by Leslie Wilkins who compared the results of probation with the results of other penal measures (prison, reformatory or fine) for groups of offenders matched in respect variables such as the offender's age, sex, previous criminal careers, number of charges and offences taken into consideration and types of offences. This study showed there were no significant differences in the re-conviction rates under different methods of disposal of offenders.⁸⁸ Does this mean if a matched sample of offenders sent to prison and those sent on probation are examined, the reconviction rates will be the same? Should only those whom the community refuses to accept in its midst be imprisoned? If probation is not viewed as a sentence, yet if its aims are similar, then probation would only be another method of coping with offenders who could have been equally well dealt with through imprisonment, fines or other "sentences". The only rationale for having probation as an alternative would be the overcrowded prisons and reduced costs of corrections.

Probation as a unique dispositional device, with its own flexible structure for supervision and decision-making should not be utilised

⁸⁷ The 1985 Annual Probation Report for instance states the POA "provides a constructive form of corrective treatment outside the institutional setting", at p. 1.

⁸⁸ *Supra*, n(47) at p. 118; also n(42) at p. 64.

only for the narrow purpose of reducing costs. It was in the first instance, not confined to offenders alone - whether juveniles or adults. Supervision by probation officers is still a discretionary option that the courts resort to in order to deal with non-offending refractory youth under the age of sixteen.⁸⁹ Rather than attempting to "rehabilitate" the offender through surveillance, probation should be viewed more positively as an effort to provide avenues for the offender to further his spontaneous behaviour and aspirations through channels that would enable him to understand and avoid conflict situations. The surveillance system as it prevails today focuses on repressing the spontaneity in the offender through conditions in the order and supervision thereafter, in order to change his attitudes. We seek to act in keeping with our spontaneous inclinations which are a natural way of interacting with others and reacting to our environment. However, we also become aware through experience, the schools and other relationships of the "double bind" rules that lie beneath the surface of social values and the need to channel our spontaneity in a manner that would prevent us from encountering situations of conflict.⁹⁰ The offenders are those who have expressed their spontaneity oblivious of the impact of these "double bind" rules. They are the ones on whom the influence of parents, schools or life's experiences have not adequately reinforced or enhanced their awareness in the rules of participation in a game called "life". Some of these offenders fall into the probation net. Those who played the game by violating the underlying "double bind" rules in a manner that would disrupt the whole game that society expects all to play, and whom society feels would be likely to do so again, are kept away in prison. The probation service could play the positive role of channelling their spontaneity in a manner that would enable the offenders to avoid the "double bind" rules that may propel them into situations of conflict, by establishing specific programmes to match the offence and the offender.

The data in the Annual Probation Reports (1981-1985) on "Adult and Juvenile Probationers By Nature of their Employment" indicate that almost all probationers were in professions that could be categorised as either low income "working" class or "lower middle" class professions in the Singapore context.⁹¹ Budget training for offenders who commit certain property offences could be introduced, for most of these offences tend to be committed by those who have financial difficulties.⁹² Other programmes could, if possible, focus on activities that are enjoyable for the probationers, and which would enable them to acquire a skill that may in turn make participation in the programme a fulfilling experience. Training in appropriate skills may induce a probationer to develop ideas that could motivate or

⁸⁹ Section 64 of the CYPA.

⁹⁰ See Watts, *supra*, n(12) at p. 51 *et seq*; also refer to text of n(12) for an explanation of the "double bind" paradox. For an explanation as to why these "double bind" situations should be considered in supervisory efforts in probation, see *supra*, n(6), Diana at pp. 202-204; M. Lillyquist, *Understanding and Changing Criminal Behaviour* (1980) at pp.

⁹¹ Lim Chong Yah *et al.* *Policy Options for the Singapore Economy* (1988) at p. 415, indicate that an income of below \$ 170 per month per capita, can be viewed as being below the "poverty line". If this is translated in the context of the income needs of the family of a worker (i.e. the worker, spouse and two children), the total earnings of the worker should be \$680 per month. This amount has been used as a rough yardstick in this paper to determine whether the income of a probationer in view of the nature of his employment would put him above the "low income working class". The income group immediately above this class has been viewed in this paper as the "lower middle" class.

⁹² G. W. Smith, "The Community Corrections Option" (1985) UNAFEI, Resource Material (Series No. 28) 135 at pp. 140-141.

inspire him to engage in enterprises of his own.⁹³ This will in turn help him to develop confidence in himself and in what he is doing. Such a focus would ultimately enable the offender to develop a sense of “respectability” and acquire social skills that lead to durable social relationships with other members of the society who are more aware of the “double bind” conflict situations. Thus in a situation where a probationer who has engaged in acts of violence towards birds and reptiles has more than a passing interest in them, he should be made aware of opportunities that may enable him to earn, a living by engaging in activities that would further his interests and inclinations. He could be asked to enrol in elementary courses in biology or useful apprentice schemes (in bird and reptile “farms”) to acquire skills that may help him to pursue a career that would prevent cruelty to animals and human beings. Since the laws do not bar “cruelty” to animals or other creatures absolutely, if the probationer’s tendencies are not directed along appropriate channels, he could find himself placed suddenly in a situation of conflict without much awareness on his part—even though he may have thought all along that his conduct was not objectionable (i.e. the “double bind” situation). Such probationary efforts should be directed, as far as possible, towards providing self employment skills. This would be the most effective way to help the offender to avoid the subsequent “double bind” situations that he could face, when he goes out to earn a livelihood after a “labelling” experience.

The approach adopted in formulating and implementing these programmes should be in keeping with the “help” concept that Bottoms and McWilliams have suggested. They have pointed out that in the treatment model, there is basically a diagnosis by the caseworker of the offender’s problems. The caseworker made decisions as to the appropriate mode of treatment with little or no advice from the offender. Under the “help” model suggested by Bottoms and McWilliams the caseworker had to request the offender to define the problems in regard to which he needed help. Thereafter, the probationer had to be told of the choices open to him, and offered assistance in instances where the probation officer felt the probationer will *not* be able to cope on his own. Bottoms and McWilliams, however, indicate that this limited effort at “help” should replace “treatment” altogether.⁹⁴ However, if there is to be a wider role for probation in the context of what has been discussed earlier, socio-psychological therapeutic efforts will have to be included to in order to offer the probationer a wider range of “choices”.

In keeping with the procedures and approach suggested above, the psychodrama approach to corrections that is adopted in some of the institutions in the United States to provide the offender a dress rehearsal of the social situations in which he may have to play various roles, could also be usefully adopted in the context of probation.⁹⁵ These programmes could make the offender aware of the expectations of his society, its modes of assessing “success”, “respect” and so on, and the instances in which it would be difficult to achieve and fulfill these expectations in view of certain underlying “double bind” rules -

⁹³ J. Pointing, *Alternatives to Custody* (1986) at pp. 71-105 in particular.

⁹⁴ *Supra*, n(49) at p. 172; see also A. Willis, “The Balance Between Care and Control in Probation: A Research Note” (183) 13 Br. J. Social WK. 339; for a criticism of the views of Bottoms and McWilliams, see P. D. McNaney, D. Thomas, D. Fogel, *Probation and Justice* (1984) at pp. 21-22.

⁹⁵ C. Bartollas, *Correctional Treatment: Theory and Practice* (1985) at pp. 126-128.

which society expects the individual to ascertain through his experiences in life. This is the "game" society expects all to play, and he should be encouraged to evaluate in the context of his needs, the validity of the criteria set out by society in measuring "success" in regard to these goals. Probation thus involves not merely surveillance or even "treatment", but an offer of "help" in a manner that would make the offender be aware of what he has failed to observe. Formulating programmes that would promote practical activities and skills, and in turn help the offenders to be aware of the "double bind" rules in a society in a manner that is different from the approaches in school and life's experiences, should be the future role of probation. Thus budget training programmes, programmes to re-evaluate criteria for "success" and to counter inclinations that may place the offender in a "double bind" should also be included in the probation effort.

A committee consisting of social workers, psychologists, psychoanalysts, law enforcement officers and other individuals with sufficient expertise in counselling could be requested to compile a manual of the "double bind" rules that have a bearing on the conduct of various categories of offenders who are most frequently sent on probation. This committee could, thereafter, continue to monitor the conflict situations that could be remedied through probation, and then advise the probation service on the adoption of new programmes and techniques to deal with the offenders. Lay persons advise the juvenile court judge in Singapore on matters that relate to the "treatment" of any child or young person.⁹⁶ Members of the community are also represented in committees that make decisions to grant or revoke parole in Singapore.⁹⁷ There is, therefore, no reason why a committee of experts in the aforementioned areas should not be formed to advise the probation service in its endeavours to explore a new framework for the adoption of innovative correctional techniques.

Further, probation may also be used for promoting social goals such as community participation in crime prevention. The probation service cannot act for the community without acting *with* the community. Probation may be used as a tool in crime prevention by making people understand the social, economic and environmental conditions that enable certain types of offending behaviour to flourish. This will have to be done in Singapore when the probation service comes under increasing pressure to supervise high risk offenders in view of overcrowding in prisons. If the offenders are to be permitted to live in the community, it is only proper to make those in the community be aware of the risks involved. Through the co-operation and efforts of members of the community, it would be much easier for the probation officer to curtail recidivism. After all as the old adage in social medicine goes, better drains are worth a thousand doctors. The crime producing situations in the community may have to be identified and an effort will have to be made to find out what sort of influence the residents in that community could have in controlling these situations. Probation orders therefore should directly help the community to become aware of crime producing situations and supplement in some manner the community's effort to reduce such situations. For example, if lack of schools, houses and poor policing had contributed to crimes, then the orders could include conditions

⁹⁶ Section 47, *supra* n(10).

⁹⁷ Sections 3 and 13 of the Probation of Offenders Rules, 1976 No. S.43/76; Clause 7, Schedule D of the Criminal Procedure Code, Cap. 68, 1985 (Rev. Ed.).

that would compel the probationers to participate in the construction of houses, schools and the setting up of civilian police forces.

Probation, therefore, should aim at goals that extend beyond the traditional goals of "sentencing". Section 5(1) specifies aims that could on a wider interpretation accommodate these goals. For, the court may under section 5(1) issue an order for probation "having regard to the circumstances, including the nature of the offence and the character of the offender". The term "circumstances" here could relate to (i) promotion of welfare of the offender by making him aware of the "double bind" situations through participation in various schemes, and (ii) also "circumstances" that facilitate participation by the community in crime prevention which in effect would be the best assurance against recidivism. The only *assurance* that the present probation process can perhaps offer is a delay in the commission of an offence. Since the offender is to be supervised in the community, probation as an alternative to a sentence should mean more than surveillance during the probation period. Or else, fines, conditional discharges and suspended sentences could accomplish the same results at a much lower cost than probation. The pre-occupation with surveillance should be displaced by the dynamics of need as reflected in the wider aims aforementioned. These needs may include not only the "needs" of the offender but those of the community in seeking ways to prevent recidivism.⁹⁸ Further, section 5(2) of the POA too states the court may impose "conditions" having regard to the "circumstances of the case" in order to accomplish the goals set out in section 5(1).

C. Factors Influencing the Decision to Grant and Enforce Probation

A re-examination of the factors that influence the decisions to grant and enforce probation under the POA may also enable us to ascertain whether probation as a concept should extend beyond mere surveillance in the Singapore context.⁹⁹

1. The Pre-Sentence Report

One may wonder why a pre-sentence report is submitted by the probation officer in instances where a court is considering the possibility of issuing a probation order, if the predominant aim of probation in Singapore is surveillance. What does a probation officer look for in making his recommendations? Should the recommendation be in keeping with the policies spelt out by the probation service, the courts or the POA (or CYPA in the case of juveniles)? The statistics reveal that the courts have overruled the recommendations of probation officers (See Appendix VI). Does this indicate a discrepancy in the policies adopted by the probation service and the courts in determin-

⁹⁸ Bottoms and McWilliams, *supra*, n(49) at p. 172; see also Willis, *supra* n(94) at p. 345.

⁹⁹ When orders of supervision are issued to probation officers under sections 63 (children and young persons in need of care and attention) and 64 (refractory children and young persons), and the conditions, if any, are violated in an order the court could either continue with the order after an admonition, terminate it or refer the supervisee to an approved home. The CYPA does not provide any rules or criteria in regard to "breach" or "revocation" of conditions in supervision orders issued to probation officers. The CYPA does not require the juvenile court judge to call for a "report" on a child or young person, before issuing a supervision order under section 63 or 64 to a probation officer. Hence the discussion in the text on the "factors that influence the grant and enforcement of orders in regard to probation" will centre around orders issued under the POA.

ing who should be sent on probation? If the policies are different, then the modes of ascertaining facts for purposes of making decisions on whether to issue probation orders too will differ.

The POA does not refer to the need to submit a probation or pre-sentence report. Neither does the Act indicate the stage of a trial at which a pre-sentence report should be called for by the judge. In practice, in Singapore, a pre-sentence report is called for by a magistrate after a decision is made as to whether an accused has committed an offence. The pre-sentence or probation report should be sent to the magistrate of a juvenile court and the two panel advisers who assist the magistrate, at least two days prior to sentencing.¹ The report that the probation officer has to submit should be in accordance with the regulations issued under the POA [See Appendix VII]. These regulations stipulate that the probation officer has to provide data on the family of the offender, the neighbourhood in which the offender lives, his friends and associates, and inter alia, his history of employment, delinquency and crime. The probation officer is also requested to provide an assessment of the offender and recommend the mode of supervision during the period of probation. In making recommendations to a juvenile court in the light of the above data, the probation officer should bear in mind that:

- (i) the welfare and well-being of the juvenile is the primary consideration;²
- (ii) the juvenile court does not consider only the offence in deciding whether an offender should be placed on probation; the court may also consider the social background, the reason for the offence, the problems facing the offender and his current state of affairs;³
- (iii) if probation is suggested, the probation officer should be able to advise the court on the period for which the offender should be sent on probation and the conditions that should be included in the probation order.⁴

It is clear, therefore, that in writing a probation report that is submitted to a magistrate in the juvenile court, the probation officer has to bear in mind the objectives of the juvenile court mentioned in (i) above. As a condition of the probation order, the juvenile may be asked to reside in a hostel or live with a relative.⁵ It is stated in the manual, however, that the officer should not be concerned with issues that relate to increase in crime rates in making his recommendations in the pre-sentence report.⁶ Since the objectives of the juvenile court and probation service appear to be the same, unless the judge feels the officer was biased in his opinions or has overlooked useful data in making certain observations and recommendations, a recommendation for probation would generally be accepted by the courts.

It is, however, uncertain as to whether the objectives of the higher courts in making a decision on probation coincide with the policies of the officers, if any, in recommending probation. A recent study by Peter English on sentencing practices in Singapore indicates that the

¹ *Supra*, n(51) at p. 27.

² *Supra*, n(51), at p. 22.

³ *Ibid.*, at p. 28.

⁴ *Ibid.*, at p. 31.

⁵ *Ibid.*

⁶ *Ibid.*, at p. 29.

courts take into consideration “factors” that have very little to do with “treatment or welfare”, in deciding whether a custodial or non-custodial sentence should be imposed on the offender. After an analysis of 102 appeal cases heard in the High Court of Singapore, the writer concluded:

“At the risk of over-simplification and generalisation it may be said that the presence of aggravating features is likely to incline the court to put uppermost in its mind the demands of deterrence, retribution and prevention. If mitigating features prevail in the case then the principle of rehabilitation is likely to loom largest in the court’s thinking”.

If the offence was pre-meditated, well-executed and the offender had previous convictions, and the crimes of the sort that the accused committed were widespread and the public felt threatened, and offenders had to be deterred, or if the offender had abused a position of trust — then the courts may view these factors as “aggravating” and be reluctant to impose a “lenient” sentence such as probation, a conditional discharge or a fine (rather than custody), or a light fine (rather than a heavy one). The mitigating factors that the courts have recognized are the youthfulness of the offender, the spontaneous aspects of the offender’s conduct,⁷ the offender’s plea of guilt and the absence of previous convictions.⁸

The Annual Reports of the Probation Service (1981-1985) indicate that the pre-sentence reports would contain “factual” and “diagnostic” information on offenders that could enable the courts to determine the “appropriate sentence” that should be imposed on offenders.⁹ There is clearly a danger in taking this approach towards the drafting of a pre-sentence report. If the probation officer becomes aware that a particular judge has certain beliefs and attitudes, he may well slant his views and recommendations to fit the views of the judge. He could do the same to suit the approach of a court in regard to a particular type of offence in order to “enable the court to determine the appropriate sentence”. If the aim of probation in Singapore is performance of a surveillance function, even a pre-sentence report may not be required. The judge could decide in the light of other non-custodial sanctions that are available whether probation is effective to maintain control over the offender. One reason why a probation officer is asked to submit a pre-sentence report is because he is in a better position than a judge to observe the attitudes of the accused towards the environment and community in which he lives (or is going to live) and then recommend remedial measures. Yet if the courts are concerned with other non-behavioural factors as well in making a decision on probation, probation orders will be issued only in instances where it would serve the court’s aim in sending an offender on probation, and not because there is hope for implementing remedial measures through probation. However, in instances where the court’s objectives coincide with a recommendation for probation, the pre-sentence report would reinforce the court’s decision and in addition, also provide useful source material for the probation officer to implement the court’s decision.

⁷ P. English, “Sentencing in Singapore” (1981) 23 Mal. L. R. 1 at p. 19.

⁸ *Ibid.*, at p. 20.

⁹ See for instance the Probation Service Annual Report (1984) at p. 3; in the 1985 Annual Report, the wording is “to help the court to determine whether probation or an alternative sentence is best suited for an offender”, at p. 3.

Could the pre-sentence report serve any of the broader aims of probation that extend beyond surveillance? Could there be a format for a pre-sentence report that would serve a more useful purpose than it does now? The format of the pre-sentence report that is used at present by the probation service focuses heavily on laying out information about the offender.¹⁰ There is no requirement for the probation officer to provide information about his views on the specific circumstances in which the crime was committed. That is, whether in his opinion there were crime contributing factors and whether he could specifically identify these factors and relationships in the community that may have significantly contributed to the commission of the crime, and the prospects of reducing the impact of these contributing factors. If the offender had broken into a house in an area, the offender's version as to why he committed the crime in a particular area and particulars as to his interests in certain types of goods, may provide a host of information on gangs in the area, their modes of operation, the network through which these offenders disposed their goods, the level of deviancy in the offender, why he took to crime and the prospects for crime prevention through community efforts. If the officer could identify crime reducing factors he could mention these in his report. The judge will be in a better position to ascertain whether the wider aims of probation aforementioned can be accomplished and then include conditions that may make the probation effort worthwhile.

Under the head "Offender's History" in the pre-sentence report there is a column requesting information about "Factors relevant to explaining the offence" (see Appendix VII). It may also have been appropriate to refer to two additional categories titled,

- (a) "Factors contributing to crime";
- (b) "Factors that could contribute to reduction of crime".

In making his recommendations, the officer should be encouraged to discuss the "double bind" situations that led to the offender committing the crime under "Offender's History" — in the context of "Factors relevant to explaining the offence". Under "Recommendations", the probation officer could recommend conditions that could curtail recidivism and contribute to crime prevention. He could also indicate, in turn, as to which of these conditions can be most effectively implemented. The officer would be in a better position than a judge to evaluate the community's resources, needs and inclination to co-operate, and advise whether a condition to accomplish the aforementioned wider aims of probation should be included or not. The pre-sentence report should not be merely a device to reinforce the judge's decision to either keep an offender out of prison or in prison in keeping with policy factors that may have a limited bearing on the overall aims of probation. Nor should the report be a device to find out whether the offender can be easily controlled or not. The probation service in preparing pre-sentence reports is supposed to offer the service of specialists, and should break away from the master servant syndrome that has influenced its relationship with the courts. Its role in the court's decision to grant or refuse probation should be clearly reflected in the format of the pre-sentence report.

¹⁰ The pre-sentence report that is submitted to a court in Singapore need not contain the accused's version of the offence. It was felt by the probation service that the court would hear details of the accused's version of the incident during the trial and, therefore, there was no need to clutter the report with superfluous details.

As it will be necessary to deal with an increasing number of high risk offenders through probation in the future, it may be useful for the probation officer to indicate whether an "observation order" should be issued in regard to certain types of low risk offenders. An observation order could be issued in order to see how the offender would behave in the community for a period of ninety days, before a probation order with a condition(s) is issued. Such an order would be as effective a deterrent as a conditional discharge or probation order. For after all, originally probation orders were introduced to serve a rather narrow objective, that is, to be an alternative to a short sentence. The "observation order" could well serve this objective. The pre-sentence report would be useful to the court in assessing whether an "observation order" should be issued in lieu of a probation order or not.

2. "Breach" and "Revocation" of Probation Orders

Two other factors that hold the probation effort together are the processes of taking cognizance of "breach" of conditions in probation orders and "revocation" of probation by the courts. These procedural features which relate to the enforcement of probation orders could be utilised by probation officers for accomplishing the wider aims of probation described earlier.

If the probationer has failed to comply with an order the court could:

- (i) without prejudice to the continuance of probation impose a fine not exceeding one hundred dollars.¹¹ If the court decides to continue with the probation, it could amend the order in accordance with the procedure laid down in section 6 (2); or
- (ii) deal with him as if it had just convicted him of the offence in connection with which the probation order was issued in the first instance.¹²

When there is a "breach" the offender is brought before a magistrate. The magistrate then decides whether the probation should be "revoked".¹³ Once he has made this decision he refers the matter to the appropriate court (*i.e.* the court that issued the probation order) to "deal with him as if it had just convicted him of an offence".¹⁴ In instances where the probationer is convicted of an offence during the period of probation, the POA has stipulated clearly that there is "breach".¹⁵ However, the POA leaves revocation to the discretion of the judges through the use of the word "may" in the relevant sections.¹⁶ It becomes, therefore, important to identify when there is a "breach" in instances where the probationer is not convicted of an offence during the period of probation - and in addition to ascertain when the courts would "revoke" a probation order in instances:

- (a) where the probationer has not been convicted of an offence; and

¹¹ Section 7 (2) of POA.

¹² *Ibid.*

¹³ Section 7 (2) of POA.

¹⁴ Sections 7 (2) (b) and 7 (3): this procedure, however, is not followed in the Singapore courts. The probation service notifies the court that granted probation of a conviction in another court.

¹⁵ Section 9 (4).

¹⁶ Sections 7 (3)(b), 9 (5) and 9 (6).

- (b) when the probationer has been convicted of an offence during probation.

In instances where the probationer has not committed an offence, yet violated some of the conditions in the probation order as to time restriction for instance, the probation officer's decision to identify a "breach" would to a large extent be governed by his perception of probation. Should he merely view the probation order as a legal order that has to be enforced? Or, should he have a wider perspective of the purpose of probation? Until this matter is resolved there will not be even a basic minimum level of uniformity in decisions on "breach", and this would in turn make statistics on probation "success" rates superficial and unreliable. If decisions on "breach" or "revocation" of a probation order are not based on criteria that are reasonably uniform, there would be very little consistency in the sentencing practices of courts. Decisions to abstain from declaring "breach" or "revocation" of an order in such circumstances can be justified only on the grounds of grace or mercy offered by those involved in the supervision of offenders. To declare "breach" to merely assert the authority of the probation officer or the courts, should be done, only in extreme instances where the probationer has demonstrated a lack of willingness to co-operate with the probation officer. It could also be done in such extreme instances to show that the probationer is accountable for his conduct. Moreover, declaring a "breach" in such instances could also relieve the probation officer of the feeling of having "a fly on his back".¹⁷ If the conditions had been included in the probation order with specific objectives or aims in mind, and if the prospects of accomplishing such aims despite the "violation" seem reasonable then the officer should not view the violation as a "breach". Moreover, the offender in the process of making an adjustment to supervision and developing a new outlook towards life is bound to violate various conditions in the order at the initial stages. It would be futile to view these violations as amounting to "breach". The whole objective of the probation exercise would be rendered nugatory. If for instance, the conditions are linked to the community's efforts to prevent crime, that is, for instance to participate in the construction of a school in a particular neighbourhood, a mere violation such as non-participation during a day or two in the construction activities should not be viewed as "breach".

In instances where there are a series of violations that are not viewed as offences, and the probation officer in the light of his experiences with the offender feels that the conduct of the offender may lead to the commission of an offence, he may treat the violations cumulatively as "breach". He could also take the same approach to "breach" in instances where he feels that there is no possibility of accomplishing any of the aims of probation. It is categorical, however, that the conditions that are imposed on the defendant should be done in order to accomplish clearly defined aims. And practices towards "breach" should be clearly linked to these aims.

In instances where the offender has committed an offence, the POA states there is a "breach". This form of mandatory breach is not confined to any specific category of offences. The term "offence", however, is not defined in the POA or CYPA. While on probation, if the offender commits an offence that is more serious than the one that

¹⁷ Nigel Fielding, *Probation practice, Client Support Under Social Control* (1984) at p. 74.

he had committed earlier, there would clearly be a “breach”. The court could determine the “seriousness” of the offence committed during probation by referring to the list of non-bailable offences in the Schedule to the Criminal Procedure Code.¹⁸ If the earlier offence had fallen into the category of non-bailable offences the likelihood of an offender being sent out on probation would have been remote. In instances where an offender has committed a less “serious” offence too the probation officer should view the act as a “breach”. Or else it would be difficult to impute guilt to the offender during the trial for that offence. However, irrespective of whether the offence is “serious” the court that granted probation is given the discretion to decide whether to “revoke” probation or not.¹⁹ There is no provision for mandatory revocation in Singapore. How does the court exercise its discretion? One factor that it would look into is the range of options that are available in the event of a “revocation”. The offender could be sentenced for the offence in connection with which the probation order was issued. In addition, the court may also look into the issue of whether the offender will be a threat to the community if probation is revoked and a non-custodial sentence is imposed on him. Would imprisonment serve a useful purpose if there is a revocation of the order? Was there deliberate non-compliance of the instructions of the probation officer? These are some of the criteria the courts have been traditionally using for the purpose of determining whether an order should be revoked or not.²⁰

If the court imposes “conditions” with the aim of accomplishing certain goals, and if “breach” is to be determined in the light of these goals, then naturally “revocation” too should be determined in the context of the same goals. “Revocation” is the second precautionary measure provided for in the probation process to re-examine the decision in regard to “breach”. If probation is to be viewed as a relief from sentencing, the probation process provides that the decision to revoke this relief should remain in the hands of the body that provided the relief, that is, the court. However, here again the decision to revoke probation, may not be based on aims that are pertinent to the goals of probation, and the other goals that Peter English has mentioned may be considered more important by the courts.²¹ It is due to this that it is felt in some quarters that the power to lay down conditions of probation and decide on “breach” and “revocation” of probation should be in a committee of senior probation officers in keeping with well defined aims of probation.²² One of the functions of the criminal court, however, is to punish those who are guilty. The court, however, also has a duty to protect the liberty of the subject. This is the reason why the court has to retain control over a probationary disposition and not leave it to a group of probation officers to decide what measures would be suitable for the offender. In view of the inconsistent practices that may exist in regard to the determination of “breach” and “revocation”, it is difficult to gauge whether the limited goals of surveillance are in effect being accomplished. Since a probation order is issued in lieu of a sentence, it cannot be used merely for the purpose of exercising control in the form of surveillance. That could perhaps,

¹⁸ *Supra*, n(78).

¹⁹ Section 9 of POA.

²⁰ Charles L. Newman, *Sourcebook on Probation, Parole and Pardons* (1970) at pp. 144-145.

²¹ P. English, “Sentencing in Singapore” (1981) 23 Mal. L. R. 1 at p. 19.

²² *Supra*, n(92), McAnany et al., at pp. 331-337; Arthur Blumberg, *Criminal Justice* (1967) at pp. 143-161.

be done as effectively through the devices of binding over, community service orders, suspended sentences and conditional discharges. Probation should serve a more broader goal than surveillance. Section 5 (2) of the POA should be interpreted widely to encompass some of the wider objectives of probation that were explained earlier. These aims can be accomplished if they are ascertained properly and the existing mechanisms in regard to “breach” and “revocation” are directed or utilised towards the attainment of these aims. The format of presentence reports, the dispositional practices of the courts, practices in regard to “breach” and “revocation” will have to change and be in alignment with the wider goals of probation aforementioned.

IV. FUTURE OF PROBATION

The above evaluation of (i) the aims of probation as explained in the POA and CYP, and revealed in the statistics; and (ii) the salient features that have influenced the functioning of the probation process, enabled us to ascertain the “empty centre” that Lao Tzu referred to. In the process of identifying the factors that led to the present morass and then “ruminating” on them, it became clear that probation will be of some significance and use in the future, only if it is viewed as a dispositional measure with goals that are wider than those of “sentences”.

Probation in the future will have to be linked to a process of re-orientating the offender to the art of living.²³ This has to be done to some extent by formulating programmes that would make the offender become aware of the underlying rules that may bring him into conflict situations, when he is pursuing goals that are viewed as legitimate by society. Probation is another re-training scheme for those who have not been adequately moulded by the institutions created by society to influence the masses to engage in “lawful” behaviour. It is a scheme for those who have slipped through the societal sieve. Society is given another change to bring to bear upon the offender its cumulative influence and that is why the offender is allowed to remain in the community, and on completion of his period of probation he is absolved from the stigma imputed to him through a conviction.²⁴ Probation is a relief from a custodial sentence which is the ultimate re-educative tool, so that the community could deal with him through its existing devices, mechanisms and institutions. It is for this reason that probation as a concept should extend beyond mere surveillance and in effect be linked to the creation of programmes that involve “adjustments” to living and crime prevention through supervision and community effort. Thus, probation orders will in the future have to include conditions that relate to community service and restitution.

Other community based control techniques that may be developed in the future may be less costlier and perhaps more effective

²³ A trend of thought that is in keeping with the model proposed for probation in this article is the view that probation should be treated as a public services occupation rather than a human services occupation. “The concept of probation [as a human services occupation] is premised on assumptions of client needs or deficits that will lead to their rehabilitation. Such a formulation plays down concerns about justice, community norm reinforcement, and victim rehabilitation. If instead probation is perceived as a public service [common weal] organization, its primary beneficiary, would be the general public and such concerns would come to the fore”. See *supra*, n(88), McAnany *et al.*, at

²⁴ Section 11 (1) and (2) of POA.

than probation in accomplishing the surveillance objective. Already it would seem some of these techniques do exist.²⁵ If probation, therefore, is to survive as a dispositional alternative to custodial sentences, it will have to surpass the limited objectives that other options to custodial sentences seek to accomplish. In doing so, the probation service will have to deal with higher risk offenders by devising and supervising appropriate programmes. Being aware of the underlying "double bind" rules in society and being able to get around them is what "good conduct" is all about. Probation, therefore, should not be viewed merely as an alternative to a custodial sentence. It should be viewed as a measure that is a part of the hierarchy of supportive mechanisms that sustain patterns of behaviour through means that are different from those adopted in "sentences". Prevention of further crime, which is an aim specified in section 5 (2), is merely a facet of "good conduct". Probation in Singapore should be directed towards promoting and sustaining this form of "good conduct". Unfortunately, it has merely remained another sentencing option in Singapore (as elsewhere) rather than "a jewel in the crown of 'new penology'",²⁶

J. K. CANAGARAYAR*

²⁵ S. Stanley and M. Baginsky, *Alternatives to Prison* (1984) at pp. 65-79; R. K. Schwitzgebel, "Issues in the Use of an Electronic Rehabilitation System with Chronic Recidivists" (1969) 3 *Law and Society Review* 597; S. Shoham, "Suspended Sentence in Israel" (1964) 10 *Crime & Delinquency* 74.

²⁶ *Supra*, n(49) at p. 160 this was the phrase used by Bottoms and McWilliams to describe the manner in which probation was perceived by those involved in corrections thirty years ago.

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APPENDIX I

Approved homes were set up for pre-delinquents and female delinquents who were in need of protection. *Approved schools* were set up for delinquents convicted of offences and for whom probation had failed. These schools offered rehabilitative training for boys between the ages of 14 and 16 — for periods of 3 to 5 years. Such a delinquent had to be discharged by the time he was 19. After 12 months — a boy from an approved home could be released on parole under the supervision of a probation officer. In *approved hostels* lesser emphasis was placed on structured programmes. Those placed on probation with conditions of residence were sent to hostels. Though there was a stress on discipline the boys were allowed to go to work and attend schools on their own. The “homes” and “schools”, however, do not exist as independent units in separate premises. Often two or more of these correctional services were offered within the same premises. The classification below may explain to some degree the medley of correctional services the various institutions perform:

Approved Hostels

- (i) Bukit Batok Boys Hostel (12-19 years)
- (ii) Pasir Panjang Boys Hostel (12-19 years).
 - (a) Probation with conditions as to residence.
 - (b) For orphaned, destitute and refractory juveniles,
- (iii) Jalan Eunus Girls Hostel
 - caters to girls between 14-21 years age, who are orphaned, destitute, ill-treated and who have no homes to return to on their discharge from girls home or children's home; children in conflict with their families; and girls placed on probation with conditions of residence in a hostel.

Approved school/home, place of detention and remand home.

Toa Payoh Girl's Home As an approved home, it serves those involved in prostitution or very promiscuous behaviour. Caters for adolescent girls up to the age of 21, who are subject to a remand order of the juvenile Court or involved in the commission of offences or exposed to moral danger.

Approved school/home

Perak House caters to pre-delinquent boys with behavioural problems between 6-16 years; *offenders* under the age of 12.

Approved school/home/remand home/place of detention.

Singapore Boy's Home
 - for boys under 16
 - provides for rehabilitative training.

Approved School/home

Wilkie Road Children's Home and Katong Children's Home
 - children under 16 years of age; taken in because of convictions for offences; or unfit parents/guardians/unsuitable home environment, ill-treatment/abandoned, destitute or orphaned.

The above classification is based on information provided in a paper presented at a UN-AFEI conference - see Ng Bie Hah: Existing Juvenile Justice System in Singapore (1984) UNAFEI Resource Material (Series No. 25) 132 and information bulletins compiled recently by the Probation Service on “Approved Institutions in Singapore” (1987).

Appendix II

Outcome of Adult and Juvenile Probation
Cases, 1973 to 1980 and 1981 to 1984¹

Years Placed on Probation	Total No off Cases Placed on Probation		Years Cases Classified	Cases Closed as Satisfactory			
	Adult	Juvenile		Adult		Juvenile	
				No	%	No	%
1970 to 1976	2098	1765	1973 to 1979	1706	81.3%	1384	78.4%
1977 to 1981	1236	1236	1980 to 1984	1015	82.1%	922	74.6%
1982 ²	318	251	1982 to 1985	265	85.3%	220	87.6%

Since 1974 probation orders have not been issued frequently to deal with drug offenders. This significant reduction in the use of probation as a dispositional measure in regard to drug offenders has been largely due to the enactment of section 33 of the Misuse of Drugs Act [Cap. 185, 1985 (Rev. Ed.)]. The above statistics, therefore, do not include drug offenders sent on probation. An inclusion of these offenders may have unduly distorted the statistics relating to "satisfactory" cases. Section 33 of the MDA empowers the Director of the Central Narcotics Bureau to examine any person whom he suspects to be a drug user and if necessary direct him to undergo treatment in an approved institution. As to the role of the Probation Services in the supervision of offenders released from Drug Rehabilitation Centres, see K. V. Veloo, "Drug abuse in Singapore - Demand Reduction and Rehabilitation Strategy" (Ministry of Social Affairs) (1985); K. Veloo, "The Uphill Task of Treatment and Rehabilitation of Heroin Addicts in Singapore" (1976) UNAFEI Resource Material Series No. 12 163; John Elliot, "Studies on Drug Offenders" (1974) Research Papers (Vol. IV) (submitted to the Department of Probation and Aftercare Service).

1 Probation Service Annual Report 1984 (1985) at p. 14.

2 Probation Service Annual Report 1985 (1986) at p. 15.

Appendix III

Offences against property

		Adult	Juvenile	Total No. of property offenders sent on probation	Total No. of Probationers (for all offences) sent on probation
1981	Offences against property with violence (OPV)	166	122	288 (46.6%)	
	Offences against property without violence (OP)	101	138	239 (38.7%)	618
1982	OPV	116	101	217 (38.1%)	
	OP	150	118	268 (47.1%)	569
1983	OPV	109	58	167 (38.8%)	
	OP	79	117	196 (45.5%)	431
1984	OPV	111	73	184 (28.9%)	
	OP	234	102	336 (52.8%)	636
1985	OPV	98	72	170 (23.9%)	
	OP	277	130	407 (57.2%)	712
		1441	1031	2472	2966

Appendix IV

Specific Offences against property without violence

	1981		1982		1983		1984		1985	
	A ¹	J ²	A	J	A	J	A	J	A	J
1) Theft of motor cars, vans, lorries.	11	7	12	12	9	4	14	3	23	8
2) Theft of motor-cycles and scooters	13	13	17	8	22	22	54	19	65	25
3) Theft of bicycles	6	25	16	13	9	20	5	7	10	21
4) Theft from motor vehicles	8	9	10	15	2	6	17	12	24	8
5) Theft from dwellings	29	45	37	35	9	35	75	38	90	40

1 Adults

2 Juveniles.

Appendix V

Specific Offences against Property with Violence

	Simple robbery		Housebreaking by day in order to the commission of an offence		Housebreaking by night in order to the commission of an offence		Sub-total	Total No. of property offenders who were involved in acts of violence	%
	A	J	A	J	A	J			
1981	41	30	26	29	63	23	212	288	73%
1982	31	21	3	24	40	23	142	217	65%
1983	20	8	18	15	31	19	111	167	66%
1984	19	23	12	5	42	21	122	184	66%
1985	15	15	15	15	25	14	99	170	58%

Appendix VI

Decisions of the *Juvenile Court* Where Probation was Recommended 1983-1985

Year	Probation Recommended by Probation Officer	Decision of the Juvenile Court			
		Accepted		Overruled	
		Nos	%age	Nos	%age
1983	181	176	97.2	5	2.8
1984	213	199	93.4	14	6.6
1985	265	242	91.3	23	8.7
Total	659	617	93.6	42	6.4

Decision of the *Juvenile Court* Where Probation Was Not Recommended 1983-1985

Year	Probation Not Recommended by Probation Officer	Decision of the Juvenile Court			
		Accepted		Overruled	
		Nos	%tage	Nos	%tage
1983	99	67	67.7	32	32.3
1984	85	61	71.8	24	28.2
1985	79	53	67.1	26	32.9
Total	263	181	68.8	82	31.2

Decision of the Subordinate Courts Where Probation was Recommended 1983-1985

Year	Probation Recommended by Probation Officer	Decision of the Subordinate Courts			
		Accepted		Overruled	
		Nos	%tage	Nos	%tage
1983	198	197	99.5	1	0.5
1984	397	390	98.2	7	1.8
1985	412	409	99.3	3	0.7
Total	1007	996	98.9	11	1.1

Decision of the Subordinate Courts Where Probation Was Not Recommended 1983-1985

Year	Probation Recommended by Probation Officer	Decision of the Subordinate Courts			
		Accepted		Overruled	
		Nos	%tage	Nos	%tage
1983	121	101	83.5	20	16.5
1984	266	238	89.5	28	10.5
1985	314	277	88.2	37	11.8
Total	701	616	87.9	85	12.1

Probation Service Annual Report 1985 (1986) at pp 5-6.

Appendix VII

PRE-SENTENCE REPORT (Form P.O.I)

I. IDENTIFYING DATE

Probation Report No:		Court:
Case File No:		Case No:
Name:		Date Convicted:
NRIC No:		Bail Remand:
Citizenship:		Date Sentenced:
Date of Birth:		Sex:
Race:	Age:	Language Dialect:
Address:		Religion:
Telephone:		
Offence(s):		

II. FAMILY

Nature of Household
 Information about father, mother and significant others
 Family relationships, Marital relationships
 Expectations, hopes and aspirations

III. NEIGHBOURHOOD

Type of neighbourhood
 Nature of home
 Local facilities and institutions
 Relation between family and neighbourhood
 Good and bad neighbourhood influences

IV. FRIENDS AND ASSOCIATES

General information
 Relationship between friends, associates and family
 Influence of friends and associates

V. OFFENDER'S HISTORY

General information
 Appearance and personality
 Physical and mental health
 Educational and Employment History
 Leisure activities
 History of delinquency and crime
 Attitude to offence
 Factors relevant to explaining the offence
 Co-accused persons

VI. OTHER PARTICULARS**VII. PROBATION OFFICER'S ASSESSMENT****VIII. RECOMMENDATIONS**

.....
 Date

.....
 Signature of Probation Officer

.....
 Name in Block letters

DECISION OF COURT