THE SENTENCING POLICY AND PRACTICE OF SINGAPORE COURTS

It is said that one of the most distinguishing features of the legal process is that its decisions are reasoned and not arbitrary. I propose to review one area of the courts' work which is least fettered by principles and standards. This is the sentencing of offenders after they are convicted. The period covered is 1964 and 1965.

Dr. R. M. Jackson, that very learned critic of the English legal system has said:

> An English criminal trial, properly conducted, is one of the best products of our law, provided you walk out of court before a sentence is given: if you stay to the end, you may find that it takes far less time and inquiry to settle a man's prospects in life than it has taken to find out whether he took a suitcase out of a parked motor car.[1]

Is this observation equally applicable to our courts? Do our courts in passing sentences upon offenders pursue consistently some definite penal philosophy? Are the particular sentences passed by our courts capable of being related to some objective standards or criteria?

Let me bring to light a remarkable inconsistency in the results of two similar cases. They both concern offences committed during the disturbances in Singapore last year. In the first case, *Anwar* v. *P. P.*[2] the accused, Anwar, was found to be in possession of an offensive weapon, a knuckle duster, in the vicinity of Alexandra Road — an offence under s. 25(1) of the Public Order (Preservation) Ordinance, 1958.[3] Anwar's submission that he was carrying the knuckle duster for the purpose of defending himself was rejected. The Magistrate convicted Anwar and sentenced him to one year's imprisonment and six strokes of the cane. On appeal to the High Court, the Chief Justice of Singapore, altered the sentence of imprisonment to one of three months and affirmed the sentence of caning.

In another case, Criminal Appeal No. 178 of 1964, the accused person, Seah Ah Poh, was also charged with having contravened s. 25(1) of the Public Order (Preservation) Ordinance, 1958. Seah was found one night in the same month of September along a back-lane off Prince Philip Avenue, a proclaimed security area, with a motor-cycle chain equipped with a handle. Seah was convicted by a District Judge who imposed a sentence of one year's imprisonment and six strokes of the

1. *The Machinery of Justice*, 1960, (3rd ed., 1960), at p. 211.
2. [1965] 1 M.L.J. 63.
3. F.M.O. 46 of 1958.

cane. On appeal to the High Court, the Judge hearing the appeal, not the Chief Justice, affirmed the conviction but altered the sentences to one day's imprisonment. The one day's imprisonment was deemed to have been served by the presence of Seah in court during the day. The result was that Seah walked out of court at the end of the day, a free man, whereas Anwar would have to suffer three months' imprisonment and four strokes of the cane.

Can these different sentences be explained by reference to some principle or criterion? The second judge did not attempt to do so and, in my view, they are not reconciliable. The argument in favour of the individualisation of punishment does not appear to have been relevant. The Chief Justice did not decide on the sentences of three months' imprisonment and four strokes of the cane for Anwar on the ground that they were designed to rehabilitate him. Neither did the second judge choose the sentence of one day's imprisonment for that reason. Neither judge appears to have considered the social background of the offenders and what the best treatment was for each of them.

Caning, as a penal measure, has disappeared from the armoury of most modern legal systems. Its progressive abandonment is due to both utilitarian and humanitarian objections. Most modern societies are unwilling to tolerate cruel and excessive punishment of offenders even if they can be shown to be efficient in deterring convicted offenders and potential imitators. A humanitarian may argue against the retention of caning on the ground that it is too brutal a measure. An abolitionist may also argue that caning has not been demonstrated to possess a deterrence superior to other less brutal measures, such as imprisonment, and that in the absence of such evidence we should not tolerate it.

In Singapore and Malaysia caning is a penal measure not infrequently imposed on offenders by our courts. I wish to explore the guidelines, if any, which our courts have laid down for the imposition of this measure.

I have earlier referred to *Anwar's* case.[4] in which it will be recalled, the Chief Justice of Singapore affirmed a sentence of four strokes of the cane on Anwar. The Chief Justice said in the course of his judgment:

> ... I accept that the court will normally not impose a sentence of caning unless violence has been used, I do not think this is a case where the court should take into consideration whether or not violence was in fact used. The circumstances of time and place must be considered and we all know that this was not the first of such disturbances but the second when the ordinary public in this state was subject to or witnessed such violence as I hope we will never see again. Taking, as I must take, that fact into consideration, the sentence of caning in this case in my opinion is a perfectly proper one and that sentence must remain.[5]

What guidelines can we derive from these words of the Chief Justice?

The Chief Justice says caning will normally not be imposed unless

4. *Supra,* n. 3.

5. [1965] 1 M.L.J., at p. 63 C.D.

violence has been used. It does not follow, however, that whenever violence has been used, caning will be imposed. What else must be present before it is appropriate? The Chief Justice does not tell us.

Neither is it possible to gather such information from his decision in *P. P.* v. *Sau Chok Hoon*.[6] In that case Sau was convicted of two offences: armed robbery and voluntarily causing hurt. Sau had robbed a member of the public who called for help. Another member of the public, responding to such call, attempted to apprehend Sau and was stabbed by him with a knife.

For the first offence, the District Judge sentenced Sau to serve three years' imprisonment and to six strokes of the cane. For the second offence, Sau was given a sentence of six months' imprisonment. On appeal to the High Court, the Chief Justice set aside the sentence of caning. The Chief Justice has given no written grounds for his decision.

Sau has used violence in the commission of the two offences. The Chief Justice did not think it was an appropriate case for a sentence of caning. Query: why not?

In *Anwar's* case, no violence was used but the Chief Justice upheld a sentence of caning. In justification thereof, the Chief Justice said, "The circumstances of the time and place must be considered and we all know that this was not the first of such disturbances . . ."[7] I do not find this reasoning adequate because it is too vague and does not appear to be indicative of some objective criteria.

Perhaps the Chief Justice had in mind something along the following line. When a society is afflicted with a serious outbreak of violence, the courts are justified in imposing upon offenders an abnormally punitive sentence in order to deter him and potential imitators. Caning is a penal measure which has a high deterrent value and may be imposed.

It should be remembered, however, that Anwar had not, in fact, been shown to have participated in the rioting in Singapore. His offence, like that of Seah Ah Poh, was the possession of an offensive weapon. We should be cautious, lest in pursuing the objective of deterrence, we end up in making a scape-goat of Anwar.

We have seen that the High Court has left the guidelines very vague. Perhaps for this reason, the percentage of reversals of this particular form of sentence by the High Court is dramatically high. In the period under review, there were seven appeals against sentences of caning from subordinate courts to the High Court. The High Court set aside six of these sentences and affirmed only one.

On the subject of the High Court providing guidelines for the subordinate courts on sentencing it is, I think, regrettable that the High Court do not more often give written grounds of decision. Even in

6. Magistrate's Appeal No. 64 of 1965, (unpublished).

7. [1965] 1 M.L.J., at p. 63 C.

cases where only an oral judgment is given, it is desirable that a transcript of it be made from the tape-recording and a copy of it be sent to the Magistrate or District Judge from whom the appeal came and another copy be kept in the file of the case in the Registry of the Court. At the moment, I am informed that the tape-recordings of the oral judgments are kept for a period after which the recordings are rubbed out.

The following are some facts and figures about appeals from Magistrates' and District Courts and their outcome.

In 1964, the High Court heard 168 appeals from the decisions of Magistrates and District Judges. In 98 of these cases, approximately 58 *per cent,* the appeals were dismissed. Of the rest, the High Court quashed the convictions recorded in the lower courts in 22 cases, *i.e.* approximately 13 *per cent.* In 42 cases, or 25 *per cent,* the High Court set aside the sentences imposed by the subordinate courts.

In the first seven months of 1965, the High Court heard 62 appeals from the decisions of subordinate criminal courts. In 33 of these, *i.e.* 53 *per cent,* the appeals were dismissed. In 7 the convictions were quashed. In 21 cases the sentences imposed by the lower courts were set aside and the High Court imposed in their place different, usually less severe, sentences. The percentage has gone up over that for the preceding year by 9 *per cent* to 34 *per cent.*

In reviewing these cases I met repeatedly with a number of trends. First, it was often the case that the High Court thought the sentence imposed by the Magistrate or District Judge excessive. This is however ambiguous. Is the punishment excessive for the offence or the offender or both? The courts seldom articulate what they regard as their objectives in imposing a sentence. My impression is that the dominant penal philosophy of our judiciary is a retributionist one and when they say that a punishment is excessive, they generally mean that it exceeds some unpublished tariff which they follow. My impression was formed in part from a perusal of the decisions of the High Court in its appellate jurisdiction and in part from the sentences they imposed in criminal cases tried by the High Courts in its original jurisdiction.

In the period under review, the High Court recorded convictions in 82 cases tried by it. In 60 of these the convicted persons were sentenced to imprisonment, to detention at a Reformative Training Centre, or to corrective training. In 7 cases the sentence of death was imposed. A fine was imposed in only one case. In two cases the convicted persons were conditionally discharged. In 4 cases the convicted men were placed on probation. There were also three sentences of caning.

In suggesting that retribution appears to be the dominant philosophy of our judiciary, I am not suggesting that our judges are wholly unresponsive to other aims of penal measures. I am however suggesting that our judges generally give greater emphasis to retaliatory and quantitative retribution and deterrence than to other objectives such as the needs of the individual offender and how best to reform him.

I have also observed that Magistrates and District Judges give a higher degree of emphasis to deterrence and retribution than do High Court Judges. I shall quote one quite typical case. This is the case of *Fang Swee Yong* v. *P. P.*[8] The facts of the case were that Fang gave a shop, selling television sets, a forged cheque and thereby induced the shop to hand over to him a television set on hire-purchase. When the shopowner discovered the forgery he complained to the police. The television set was subsequently returned by Fang's father and the shop-owner wrote to the police withdrawing the charge. The proceedings against Fang for cheating were however not discontinued and Fang was convicted.

It appears that Fang was 34 years old, married, with six children. He was the sole bread-winner of the family and was a clerk by occupation. This was his first offence.

The Magistrate sentenced him to 4 months' imprisonment. The Magistrate's reasons for his choice of sentence were that:

> The offence was committed with a high degree of deliberation and the measure of punishment must be in proportion to the malignity appearing in the intention of the appellant.

The philosophical underpinning of the Magistrate's decision is clearly a full-blooded retributionist one. He did not seem to have given much weight to the facts that Fang was a first offender, that the television set was in fact returned to the shop and that sending Fang to prison would deprive his family of its only bread-winner. Most importantly, the Magistrate did not seem to be looking for a measure that is likely to reform him and which is not needlessly inhumane.

On appeal to the High Court, the Chief Justice of Singapore set aside the sentence of imprisonment and placed Fang on probation.

There is another interesting case which, I think, illustrates the dangers of making decisions about sentencing which are not related to articulated objectives and principles. This is the case of *Thio Kim Kee* v. *P.P.*[9] The accused, Mrs. Thio was found in an opium den. Being found on premises used for the purpose of smoking prepared opium is an offence under s. 10(2) (b) of the Dangerous Drugs Ordinance.[10] Thio pleaded guilty to the charge and was convicted. It was then found that she had a record of five previous convictions for similar offences of being in possession of prepared opium and of utensils used in the smoking or preparation for smoking of opium.

Thio had been bound over twice, she had been fined once, and had served three sentences of imprisonment. It is, I think, right to infer that Thio is an opium addict and that these sentences have all failed to reform her.

8. Magistrate's Appeal No. 64 of 1965. (unpublished).

9. Magistrate's Appeal No. 246 of 1964, (unpublished).

10. Cap. 137 of the Laws of Singapore, 1955.

When the Magistrate came to pass sentence on Thio, he was in difficulty for several reasons. He said that he did not regard Thio as an ordinary criminal and that she should be cured of her addiction rather than punished. He was desirous of sending her for treatment to the Opium Treatment Centre at St. John's Island under a detention order but he thought he did not have the power to do so.

The Dangerous Drugs (Temporary Provisions) Ordinance,[11] which was first enacted in 1954, was renewable yearly. It was renewed yearly until 1963 when for some reason it was allowed to lapse. Under that Ordinance, a court convicting a person for the first time of an offence under s. 10 of the Dangerous Drugs Ordinance, shall make an order remanding the convicted person for a period of examination by the Opium Treatment Centres Advisory Committee.[12] The committee will report on, among other things, whether a period of treatment at an Opium Treatment Centre will be likely to contribute to his moral and physical reformation and rehabilitation. After considering the report upon such person, the Court may order that he be detained at the Opium Treatment Centre for a period of between 3 and 12 months or to imprisonment for a period of 3 months. The Ordinance, however, also provides that, "Upon a second or subsequent conviction for such offence he shall be sentenced to imprisonment for a term of one year and shall in addition be liable to a fine not exceeding $2,000." [13]

The Magistrate was therefore right in saying that his power to deal with Thio under that ordinance no longer existed. I cannot help wondering why the Ordinance was allowed to lapse on the 7th August, 1963. Unless this was done for some good reason, I should like to ask for its resurrection.

The Magistrate would appear to be mistaken in thinking that, had the ordinance been in existence he could have dealt with Thio in the way desired. This is so, because Thio was not being convicted under section 10 of the Dangerous Drugs Ordinance for the first time. It was her fourth offence since the enactment of the (Temporary) Provisions Ordinance although, for some unexplained reason, Thio has never had the benefit of treatment at the Centre.

The Magistrate, frustrated in being unable to attain the desired result, sentenced Thio to six months' imprisonment, expressing the hope that "In the particular circumstances of this case, [Thio] would no doubt be given the benefit of treatment at a hospital which has been gazetted as an opium treatment centre." [14] On appeal to the High Court, the Chief Justice of Singapore set aside the sentence of imprisonment and substituted therefore a fine of $100.

11. Cap. 138 of the Laws of Singapore, 1955.

12. S. 4.

13. *Ibid.*

14. The Opium Treatment Centre at St. John's Island is legally constituted as a hospital.

It seems to me that fining Thio $100 is like pouring water down a duck's back. We should have learnt from Thio's record of previous convictions that a fine of $100 is unlikely to deter her or to reform her.

In my submission, the most appropriate sentence to be imposed on Thio would have been an order of probation with the requirement that she reside for a specific period at the Opium Treatment Centre. This course of action is available under section 5(3) of the Probation of Offenders Ordinance.[16] Such an order Should, of course, not be made unless a medical report has been asked for and received which recommends such a course of action.

In concluding this review I should like to make a few suggestions.

I would like to advocate, adopting a proposal of Dr. Nigel Walker's,[16] that courts should be obliged to give reasons for their choice of sentences. When I speak of reasons, I mean something more specific than such common statements as: "In all the circumstances of the case I consider this an appropriate sentence."

What would be the advantages of a general obligation of this kind?

It is in accordance with the principles of natural justice. It would be likely to lead to a rationalisation of sentencing since sentencers would have to indicate the considerations which in their view justified their decisions, and this would prevent them from being influenced by emotional reactions to the offence of the offender. It would lead to more consistency in sentencing policy. "Certain factors would become recognised as valid reasons for the choice of particular sentences, others would be rejected as irrelevant. Differences in practice between various courts would become obvious, and would be removed as a result of decisions of the Appellate Courts." [17]

My second suggestion concerns the need to assist our judges, and magistrates to be better informed about the treatment of offenders. Dr. R.M. Jackson has observed, and I think rightly, that:

> In order to get legal qualifications it is necessary to make some study of criminal law with procedure and evidence, but the treatment of offenders is not included.[18]

There are a few progressive law schools which have included the treatment of offenders and criminology, generally, in their curriculum.

Dr. Jackson goes on to say:

> A barrister may acquire a substantial practice and be appointed a ...

15. Cap. 135 of the Laws of Singapore, 1955.

16. *Crime and Punishment in Britain,* (Edinburgh, 1965), at pp. 231-232.

17. D.A. Thomas, "Sentencing: the Case for Reasoned Decisions", [1963] *Criminal L.R.* 243.

18. *Op. cit.* n. 1 *supra,* at p. 198.

> magistrate, ... a High Court Judge and be no better informed in these matters than any ordinary citizen. There is no more reason to suppose that because a person is a lawyer he is knowledgeable about the treatment of offenders than there is to ascribe such knowledge to a chartered accountant or any other professional man.[19]

In recognition of this fact, the judiciary in other countries has undertaken various projects in order to better inform themselves. I should like to mention only one. In England, an annual meeting is held under the auspices of the Lord Chief Justice which is attended by judges, magistrates, justices of the peace, criminologists, officers from the prisons service, from the after-care service, psychiatrists, psychologists, sociologists and lawyers. The meeting discusses problems of sentencing and treatment of offenders. The sentencers have also allowed themselves to be experimented upon. They are grouped into small committees and are asked to pass sentences on a number of selected cases. The other experts then analyse their answers and discuss them. This is a project which we may well wish to emulate.

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19. *Ibid.*

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