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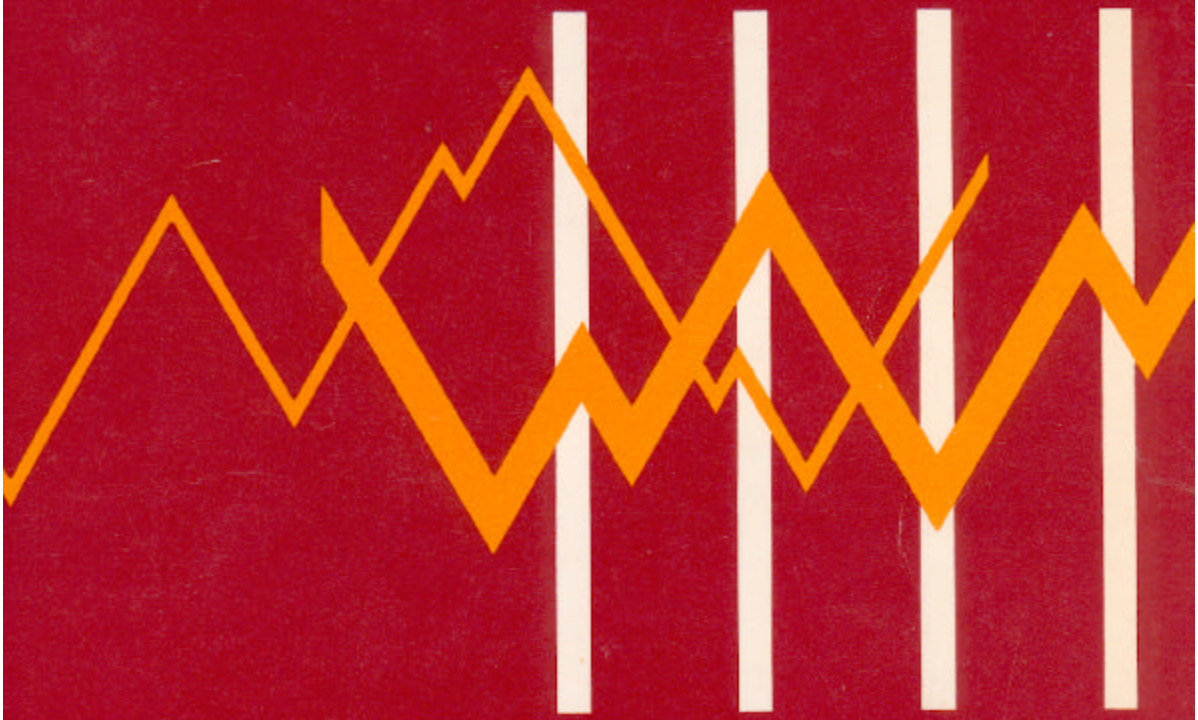
Studies on imprisonment



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Catalogue No. J32-4/9-1975 Price: Canada: $6.50
Other Countries: $7.80

Price subject to change without notice

Notice

This book contains two sections. The first consists of four research papers prepared for the Law Reform Commission of Canada. These papers focus on specific issues concerning imprisonment.

The second section consists of a Working Paper of the Law Reform Commission of Canada. This includes the philosophy of the Commission and recommendations for changes in the law. The proposals in this section represent the views of the Commission.

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Preface

Discussing imprisonment is very much like discussing war. One can be against it in general but in favour of it in specific cases. Unfortunately, the specific cases make up to the general picture.

There are very few people and arguments left today that seriously find in prisons (as in war) a general good. This, we have to remind ourselves, is a relatively new situation since traditionally imprisonment has been justified by good intentions: piety (penitentiary), industry (work houses), reform (reformatories) and rehabilitation (correctional institutions). Bad consequences, perceived from the beginning, were usually regarded as failures of prison management which subsequent reform could cure, rather than as indigenous to the system itself.

There are now very few illusions left. What is left, however, is the problem of what to do with people who are a serious threat to those around them, what to do with our own feelings about people who flagrantly break the social trust we live by and what to do when people resist reasonable demands made on their responsibility for harmful actions.

There is still a general illusion pervading public discussion that imprisonment solves these problems. This illusion can be seen as a carry-over from the forerunners of imprisonment: capital punishment and deportation. These indeed did settle the practical problems and one did not have to face them again. It is therefore perhaps understandable that the demand for capital punishment (and even deportation) arises again and again when the illusion that prisons solve problems breaks down. The general answer to the demand for capital punishment bears this out: it usually consists in a shoring up of the prison ideology by mandatory sentences of long durations and the elimination of release provisions.

The Commission Working Paper on Imprisonment does not solve these dilemmas nor does it propose radical solutions. It does, however, attempt to give a sober account of the situation and provides a rational

framework for accepting necessities as we see them today. Our perception of what is necessary is shaped by historical, ideological and socio-political factors which are the real constraints within which a commission has to operate.

It will be easily recognized by those who have given any thought to prisons at all that the need to banish people from our midst is contained in our concept of separation; that the need to give expression to community feelings is reflected by our concept of denunciation and that we have also made provision for the use of prison as a last resort. What is more difficult to grasp in the working paper is that the proposals contained in the paper are changing the very concept of imprisonment itself. This is best exemplified by our proposals for release procedures where the argument shifts from imprisonment and release as absolute categories to a continuum of degrees of deprivation of liberty. Deprivation of liberty after all is the basic action (stone walls do not a prison make) as liberty for everyone must be the basic equation of the criminal law itself.

Clarifying basic issues, however, must not obscure the need for specific information. All our working papers are based on a great deal of study and consultation. It is impossible to publish, or even to commit to writing all that comes to bear on a working paper. The selection made for this background volume thus deals only with specific problem areas.

In looking at specific issues the first obstacle one meets is the deplorable absence of data. It cannot be said strongly enough that the basic accounting of what we do in the criminal justice process is clearly irresponsible and would not be tolerated in any other area. We will have more to say about this in a forthcoming volume on empirical studies. It has to be said here however that law reform, once it addresses itself to the actual consequences of legal prescriptions and decisions, finds itself at the present time in a virtual vacuum of reliable data. The "September Study" which we present here is a single-handed effort with the assistance of the R.C.M.P. to produce at least some rough ratios of decisions and their consequences. No doubt, it will be questioned; it does not bear out many popular assumptions. And it should be questioned, hopefully in such a way which will raise the larger question: why is it that although individual cases are accountable through the canons of the law, there is no overall accountability for cumulative effects? And clearly, policy cannot be based on the former but only on the latter. It is no surprise that public opinion rests on isolated cases and that legislators are in a similar position when they have to make decisions.

We have omitted a general paper on imprisonment in this volume but felt that we should present materials on release since we make major recommendations in this area. There is also a further study in process examining the administrative law aspects of decision making by the parole

board. The second volume of Studies in Imprisonment also contains a study by Peter Macnaughton-Smith *"The Decision to be Slightly free"* which seriously questions a number of assumptions concerning the effects of parole. Sending people to prison is a fairly simple matter. Knowing what to do once they are there is infinitely more difficult and enabling them to live in society after that experience is highly problematic.

Finally, we present two studies on the subject of dangerous offenders, one by R. R. Price and A. D. Gold, the other by C. Greenland. It is well recognized in several studies, proposals, as well as legislative provisions that it is a relatively small number of dangerous cases which form public opinion on crime and prisons and that they should be treated in a special way. Although the logic of this proposition is sound, an examination of the history of special legislation for dangerous offenders shows that decisions made on the basis of categorical predictions are not sound and these forms of legislation have been largely a failure. This has led the Commission to conclude that, although seriousness of the offence and behaviour of the offender are obviously the basis for the decision to use imprisonment, there is no way by which special categories could be pre-selected. Only the future can show the person's ongoing behaviour and this should determine the kind of constraints we need to place on him.

Unease about prisons will no doubt continue. A great deal depends on the implementation and success of other sentencing measures which were proposed in our working papers on Principles of Sentencing and Disposition, on Restitution and Compensation, on Fines and on Diversion. Even then, unease about prisons should continue and should force us to justify this measure whenever we are impelled to use it.

The September Study
A Look at Sentencing and Recidivism

A Study Paper
prepared for the
Law Reform Commission of Canada

by

Kathryn Barnard
Carol Tennenhouse
and
Mark Krasnick

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Foreword

This study began in response to a number of requests to provide some base data on sentencing and recidivism. It was never the intention of this Commission to attempt a definitive study—instead our request was more modest. We asked just two basic questions:

1. How frequently are the various sentencing options used?
2. How many first offenders can we expect to see in the courts again?

At the time our Sentencing Project started, there was no national data on sentencing and recidivism. Hopefully this study will play just a small part in enabling the appropriate agencies to gather, correlate and then provide answers to these very basic questions about sentencing and about offenders. As a Commission, we believe that actions by governments and officials should be evaluated. Without appropriate information, proposals for change and reform lack the empirical grounding that would make them effective.

1. Introduction

Since biblical times society has been forced to deal with those who commit serious crimes: should they be punished or given another chance? If punished, how? Will this affect the likelihood of their committing further crimes? Unfortunately, there are no simple or definitive answers to these questions. We hope, however, that by looking at the actual experiences of these offenders we will come a step closer to some of the answers.

Because it would have been impossible to trace the experiences of all of Canada's offenders, we focused on a smaller group. And, as the Commission was particularly interested in serious Criminal Code convictions, we chose as our "population" those offenders convicted of their first indictable Criminal Code offence (excluding motor vehicle offences) in September, 1967. They numbered 2,071. We then traced the criminal careers of each over a five-year period* which enabled us to answer our two central questions:

1. How frequently are the various sentencing options used?
2. How many first offenders can we expect to see in the courts again?

Besides noting the original sanction given these offenders and their later involvement in the Criminal Justice System, we tried to find out a little more about them: What was their sex? How old were they? Where did they come from? What were they convicted of? What types of sanctions did they receive? With this information, we can now briefly introduce these offenders before discussing our two central questions.

* We also included 33 cases containing information about criminal convictions in the sixth year.

Male or Female?

Barbara Wootton once said, "From the crude criminal statistics, the most striking and consistent answers that suggest themselves are that crime is the product of youth and masculinity".[1] Very few women embarked on criminal careers in September, 1967. The vast majority of those convicted then of their first indictable Criminal Code offence were men. *See Table 1, page 14.* lows:

*How Old?**

Again, Baroness Wootton's observation seems strikingly accurate: crime *is* the "product of youth". Over one-quarter of our offenders were under nineteen and almost three-quarters were under thirty.
See Table 2, page 14.

* See also Appendix IIA.

Where Were they Convicted?

Not surprisingly, Ontario and Quebec had by far the most productive court systems in Canada. Over half of all the convictions were made in these two provinces. Judges in British Columbia and the Maritimes combined convicted just over one-fifth of the offenders while the prairies were responsible for just under one-fifth. Very few were convicted in the Yukon or Northwest Territories.

See Table 3, page 14.

What Types of Offences Did they Commit?

The majority of offenders committed property crimes, i.e., acts involving other peoples' property. These offences ranged from a simple break and enter to a sophisticated "white-collar" fraud. One in every seven offenders committed an offence against another person while only one in 20 was convicted of a sexual offence.
See Table 4, page 15.

What Types of Sanctions Did they Receive?

In its Working Papers on sentencing, the Law Reform Commission has stressed the social and economic benefits resulting from the use of fines. How often was this sanction used? In our study, less than five per cent of the time. Of course, this doesn't mean that the other ninety-five per cent of the offenders were imprisoned. In fact, over forty per cent were put on probation, given a suspended sentence, or released on bond. However, more than twenty per cent were deprived of their freedom.

See Table 5, page 15.

Was there Something Unusual about September, 1967?

We must consider one more question before examining the results of our study: if we had chosen for our "population" those convicted in any other month of 1967, would our results have been very different? To answer this question, we compared our results with the data collected by Statistics Canada on all those convicted of indictable offences in 1967. There were only minor differences between these two populations.

See Table 6, page 16.

TABLE 1: Sex of Offenders

Sex	Number	Per cent
Men	1,760	85%
Women	311	15%
TOTAL	2,071	100%

TABLE 2: Age of Offenders

Age	Number	Per cent
18 or less	592	28.6%
19–21	512	24.7%
22–29	429	20.7%
30 or more	538	26.0%
TOTAL	2,071	100.0%

TABLE 3: Province of Conviction

Province	Number	Per cent
Ontario	748	36.1
Quebec	512	24.7
British Columbia	224	10.8
Maritimes	209	10.1
Saskatchewan and Alberta	189	9.1
Manitoba	180	8.7
Yukon and Northwest Territories	9	.5
TOTAL	2,071	100.0

TABLE 4: Type of Offence Committed

Type of Offence*	Number	Per cent
Property Offences	1,412	68.2%
Offences Against the Person	287	13.8%
Sex Offences	111	5.4%
Other Criminal Code Offences	261	12.6%
TOTAL	2,071	100.0%

* See pages 17, 20 and 23 for the offences committed. In the case of multiple offences, only the most serious was considered.

TABLE 5: Sanction Received

Sanction*	Number	Per cent
Fine	80	3.9%
Fine or days in default	650	31.4%
Probation, suspended sentence, bond	880	42.5%
Imprisoned for one day only	121	5.8%
Definite and indefinite terms	27	1.3%
Imprisonment for more than one day	313	15.1%
TOTAL	2,071	100.0%

* These statistics are for primary sentences only. In addition to these sanctions, an offender may have been ordered to provide restitution for his/her victim, or meet other requirements set down by the Court.

TABLE 6: Comparison* between September Study Population and all those Convicted of an Indictable Criminal Code Offence in 1967.[2]

A. *Sex of Offenders*			
	September Study	1967 Convictions	Difference
Male	85%	87.4%	2.4%
Female	15%	12.6%	2.4%

B. *Age at Time of Conviction*			
	September Study	1967 Convictions	Difference
Under 20	28.6%	35.7%	7.1%
20–24	24.7%	23.4%	1.3%
25–29	20.7%	12.1%	8.6%
30 or Over	26.0%	28.8%	2.8%

C. *Province of Conviction*			
	September Study	1967 Convictions	Difference
Ontario	36.1%	35.2%	0.9%
Quebec	24.7%	20.1%	4.6%
British Columbia	10.8%	15.3%	4.5%
Sask. and Alta.	9.1%	15.2%	6.1%
Manitoba	8.7%	5.9%	2.8%
Maritimes	10.1%	7.8%	2.3%
Yukon and NWT	0.5%	.5%	—

* These statistics may not be directly comparable: many offenders who committed other indictable Criminal Code offences prior to 1967 are included in the Statistics Canada figures.

The Results

In order to discuss the results of our study, we have divided our offenders into three* distinct groups: those first convicted of a property offence, those first convicted of an offence against a person, and, those first convicted of a sexual offence. By focusing on the experiences of each of these groups separately, we hope to obtain a deeper appreciation of both the use and the success of the various sanctioning alternatives.

PROPERTY OFFENDERS

Almost two-thirds of our offenders were first convicted as property offenders, their offences having involved property belonging to others. These offenders had committed the indictable Criminal Code offences of:

Offence	No. of offenders
theft of a motor vehicle	67
theft over $50	130
theft under $50	585
break and enter	293
possession of stolen goods	121
fraud or false pretences	120
malicious damage	68
attempted theft	24
attempted fraud	4
	1,412

As can be seen, violence or even the threat of violence is absent from almost all of these offences. In fact, these crimes have often been referred

* The experiences of those who were convicted of "other indictable criminal code offences" in September, 1967 were not examined closely. We felt that because of the wide range of crimes which fell within this category there would be little point in undertaking this analysis.

to as "non-violent" property offences. But, before we can adopt this classification we must make one qualification. By definition, the offences of malicious damage and breaking and entering *may* result in situations potentially dangerous to others. We do not know exactly how many of these offences resulted in the creation of this type of danger. We assume that they were few. With this qualification in mind, we can now examine the sanctions given our non-violent property offenders.

Imprisonment, Fine, Probation, or Suspended Sentence?

Figure 1, page 27, reveals a fascinating—though somewhat depressing sentencing distribution. Given that the overwhelming majority of these crimes were non-violent offences, the rate of imprisonment of these *first-time* offenders seems quite high: one offender in five was imprisoned for at least one day.

Imprisonment—For How Long?

The majority of those imprisoned were sentenced to terms of one month or less, including 96 offenders (31.4% of those imprisoned) who were sentenced to only one day. However, at least one first-time non-violent property offender in six was sentenced to more than six months imprisonment.

See Table 7, page 28.

As shown in Figure 1, page 27, many novice property offenders received sanctions other than imprisonment. Over half of these offenders were given a suspended sentence or were put on probation. Just over a quarter were ordered to pay a fine.

How Expensive Were these Fines?

The amounts of these fines raise some interesting questions. Almost seventy per cent of the fines were for $50 or less while fewer than two per cent were for more than $150. Why was the frequency distribution of the amounts of fines so skewed? Were fines being used as effectively as they might be?

See Chart I, page 29.

What if this Wasn't a First Indictable Offence?

So far we have been concerned with the types of sanctions our offenders received following their first conviction in September, 1967. Un-

fortunately many of these offenders did not limit their participation in the criminal justice system to this one offence. In fact, some were convicted of as many as four other indictable offences during the next five years. Did the types of sanctions given these offenders on their subsequent convictions seem to vary according to the number of previous offences they had committed (since September, 1967)?

In his study concerning the sentencing practices of Ontario magistrates, John Hogarth found that at least one-quarter of the magistrates surveyed, "would automatically presume in favour of imprisonment if the offender had a previous criminal record."[3] Our findings seem to reflect this tendency. As can be seen in the following table, a non-violent property offender convicted of one previous indictable offence had a higher probability of receiving a more drastic sentence than did a first-time offender convicted of a non-violent property offence: the chances of being imprisoned for more than one day *trebled* while the probability of being put on probation or receiving a suspended sentence *fell* by almost a half.

This increase in severity was also encountered by third-time offenders. More than half of these people were imprisoned while only one-fifth were put on probation or given a suspended sentence.

See Table 8, page 30.

There can be little doubt then that the more 'experienced' the offender, the greater the probability of imprisonment. The non-violent property offender who had been convicted of four previous indictable offences only stood a one-in-five chance of *not* being imprisoned.

Who Returned?

One of the main questions to be answered when we undertook this study was, "how many of the first offenders could we expect to see in the courts again?" When we began researching this topic, however, we found several other issues which also warranted investigation: did the returning offender always commit the same type of crime? Was the recidivism rate related to the type of sanction imposed? How long did it take before an offender committed a second crime? Was this time lapse related to the type of sanction imposed? With the information we found, we can now answer at least some of these questions.

How Many of the First-time Property Offenders Returned to the Criminal Courts?

Of the 1,412 novice offenders convicted of non-violent property of-

fences in September, 1967, more than seventy per cent did *not* commit another indictable offence during the next five years. In all, only 386 (just under thirty per cent) of our original non-violent property offenders returned to the criminal courts.

What Types of Subsequent Offences?

Although some of our initial non-violent property offenders were found guilty of committing other types of offences on their second conviction, the majority remained non-violent property offenders. In fact, the chances were almost four to one that a first-time property offender's next conviction would be for a property offence.

Third-time Offenders

Almost two-thirds of the original non-violent property offenders who were convicted of a third indictable offence committed a property crime on their third offence. Over half of these offenders were *third-time property* offenders. This tendency to repeat the same type of crime suggests that even offenders classified as being deeply involved in crime may not proceed to commit the more dangerous offences against persons.

Was the Recidivism Rate Related to the Type of Sanction Imposed?

Probably more hours have been devoted to discussing the relationship (if any) between the type of sanction imposed and the recidivism rate than any other issue in criminology in recent years. Yet, to this day there is unanimous agreement on only one point: the only sanction which guarantees to prevent recidivism 100 per cent of the time is capital punishment. Although this study was not designed to develop new theories on recidivism or sentencing practices, we were able to make some very general observations regarding non-violent property offenders.

Non-violent property offenders who had been imprisoned following their first conviction were more likely to be convicted of a second indictable offence than were those who had received non-custodial sanctions. Forty-four per cent of the offenders who had been imprisoned committed a second indictable offence, while only twenty-eight per cent of those who received non-custodial sanctions were convicted of another indictable offence. The criminal careers of the non-violent property offenders who had

been convicted of two, three or four previous serious Criminal Code offences appear to have followed a similar pattern: those who had been imprisoned had a consistently higher rate of return.

See Chart II, page 31; and Table 9, page 32.

When a time dimension is added, another interesting observation can be made: offenders who had received custodial sentences committed their second indictable offence following a slightly shorter period of time than did those who had received non-custodial sanctions.

See Table 10, page 33.

A Word of Caution

In making our observations, two general qualifications must be kept in mind. First, it must be remembered that the category non-violent property offences includes a wide variety of crimes, the maximum terms of imprisonment ranging from two years to life. Although we can assume that the general sentencing trends noted above were experienced by almost all the property offenders regardless of the particular crimes for which they had been convicted, we can't conclude that the imprisonment rates shown in Tables 7 and 9 for example, were identical for each offence. The imprisonment rate for those convicted of break and enter, for instance, was almost three times the imprisonment rate for those convicted of the less serious offence of theft under $50.00.

See Table 11, page 33.

Whereas over half of those first imprisoned for break and enter were sentenced to one month or more, less than fifteen per cent of those imprisoned for theft under $50.00 received this long a sentence.

See Table 12, page 34.

Second, it must be remembered that the types of previous offences committed by each offender vary from case to case. It is quite possible that a person convicted of theft with two previous convictions for manslaughter, for example, would receive a more severe sentence than would a person who, although convicted of the same offence, had already committed two common assaults.

CRIMES AGAINST PERSONS

Since Cain and Abel, we have had to face the problem of how to deal with those who inflict physical injury on others. In our study, almost one out of every seven first offenders belonged to this group of offenders against persons. Their crimes were:

Crime	No. of offenders
manslaughter	1
wounding	5
common assault	127
assault causing bodily harm	83
assault with intent to commit an indictable offence	1
assault of peace officer	34
assault with intent to resist arrest	1
robbery	33
attempted robbery	2
	287

How did our courts react to these offenders?

Sanctions for Offenders Against Persons

It's hardly surprising that several of these offenders received severe sanctions.

Were these sanctions "appropriate"? Of course, this question can't be answered definitely. Given that these offences are usually more threatening to the life and personal security of others than property offences however, we must wonder why the imprisonment rates for these two types of offenders were almost identical.

See Figure 2, page 35.

It's also surprising that almost half of these offenders were ordered to pay a fine while just over one-quarter of the property offenders received this sanction.

Length of Imprisonment Terms

The imprisonment terms given these offenders were slightly more severe than those given property offenders. Still, more than two-thirds of those imprisoned for an offence against a person were sentenced to six

months or less. In fact, not even a fifth of these offenders were given a term of two years or more.

See Table 13, page 36.

Fines—How Much?

As shown in Figure 2, page 35, the most common sanction given was a fine. Although these fines ranged from $10 to $500, the majority were for either $25 or $50. In fact, more than two-thirds of all fines imposed on these offenders were for $50 or less.

See Chart III, page 37.

Type of Sanction Received by "Experienced" Offenders

As with property offenders, several of our original 2,071 offenders committed crimes against persons following their first conviction for an indictable offence in September, 1967. Were the types of sanctions given these offenders more severe than those given offenders who were first convicted of a crime against a person?

As can be seen below, a second-time offender faced a very strong possibility of receiving a more severe sanction than his novice counterpart. In fact, at least one second-time offender in three was imprisoned for more than one day whereas only one first-time "personal" offender in five received this sanction.

Third-time offenders faced even more drastic consequences: more than half were imprisoned. The remaining offenders were fined. Generally speaking, fourth and fifth time offenders encountered a similar sentencing pattern although a few of these offenders were either put on probation or given a suspended sentence.

See Table 14, page 38.

As with property offenders, it must be remembered that several different types of crimes are included under the heading offences against persons. It's quite likely that the imprisonment rates for each of these crime-types varied slightly from the overall rates discussed above. In addition, the types of previous offences committed by each offender probably differed from case to case.*

* See Appendix IIB.

Recidivists

Those who commit homidices or assaults do not usually see themselves as being 'real criminals'. For these offenders, *real* crime is "stealing".[4] And, because the offences committed by these offenders are often the result of "chance" social conflicts and not organized plots by "real" criminals, these people are often characterized as one-time offenders. Did our study support this hypothesis?

The Results

Of the 287 people whose first conviction was for an offence against a person, more than eight offenders in ten did *not* commit a further indictable criminal code offence during the next five years. This relatively low rate of recidivism — less than 20%—is encouraging.

Property, Person, Sexual or Other?

The analysis becomes even more interesting when we examine the activities of those who did commit a second indictable offence. Although almost *thirty per cent* of these second offences were again crimes against persons, more than *forty per cent* were property offences. Only 12% of those who first committed an offence against a person committed a third indictable offence. We therefore did not develop the analysis further.

See Chart IV, page 39.

Was the Recidivism Rate Related to the Type of Sanction Imposed?

We must hedge in answering this question. Although the recidivism rate for novice offenders who had been imprisoned was almost 10% higher than for those who had not been imprisoned, the experiences of the second-time offenders were quite the opposite: while 45.2% of the non-imprisoned offenders were convicted of further crimes, only 40.9% of those who had been imprisoned were returned to the courts.

See Table 15, page 40.

SEX OFFENDERS

Fewer than six per cent of our 2,071 offenders were convicted of a sex offence in September, 1967. Yet the actions of these 111 offenders probably created more public concern than did those of our more than one thousand property offenders combined. Because of the general apprehension and emotional reaction which often accompanies this type of offence, we felt that it would be useful to consider these offenders separately.

What Crimes did they Commit?

These novice offenders were convicted of the indictable offences:

Indictable offence	No. of offenders
rape	8
attempted rape	2
sexual intercourse with female under 14	7
indecent assault on female	37
indecent assault on male	9
other sexual offences	48
	111

What Disposition?

Of the three types of offenders, sex offenders had the highest rate of imprisonment: more than a quarter of these offenders were imprisoned for at least one day. Almost an equal number were put on probation or given a suspended sentence while just over two-fifths were ordered to pay a fine.

See Figure 3, page 41.

Days, Months or Years?

This sentencing distribution appears to be quite similar to the sanctions given those who committed offences against other persons on their first offence. Upon closer examination, however, the similarity all but disappears. Consider, for example, the terms of imprisonment given sex offenders. While more than sixty per cent of the novice offenders who were to be imprisoned for committing a crime against another person received sentences of three months or less, fewer than fifteen per cent of the sex offenders who were to be imprisoned received this short a sentence. In fact,

at least one imprisoned sex offender in three was sentenced to a period of two years or more. Fewer than one out of every eight of those who were to serve time for committing an offence against a person received this severe a sanction on their first offence.

See Table 16, page 42.

Fines

In general, sex offenders received more severe fines than offenders against persons. While almost three-quarters of the fines given personal offenders were for $75 or less, less than a third of the fines given sex offenders were this small. In fact, chances were more than fifty-fifty that the "fined" sex offender would have to pay at least $100. In sharp contrast, not one personal offender in four was fined this severely.

See Chart V, page 43.

The "Experienced" Offender

Only fourteen of the original 2,071 offenders were convicted of a sex offence on a subsequent conviction. Because of this small number it is not feasible to compare these sanctions with those given the 111 novice sex offenders.

The Recidivists

The overwhelming majority of our sex offenders had extremely limited criminal careers. Of the 111 novice sexual offenders, no fewer than 96 offenders —87 per cent—failed to commit a further indictable offence during the next five years. Of the fifteen offenders who were convicted of further offences, one-third committed a property offence and an additional third were convicted of a second sexual offence. However, we must also remember that there are some offenders who were imprisoned throughout the time period and were therefore unable to commit a further offence.

See Chart VI, page 44.

Figure 1: Sanctions of Property Offenders on their First Conviction

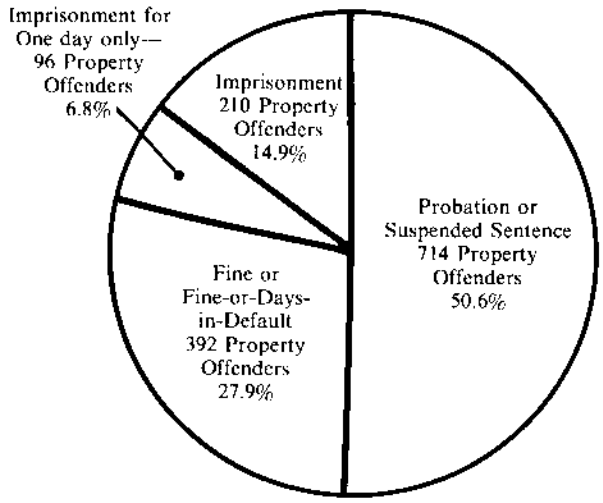


TABLE 7: Imprisonment Terms of Non-Violent Property Offenders on their First Conviction.

Term of imprisonment	Number receiving term	Per cent receiving term	Cumulative per cent
One day	96	31.4	31.4
More than 1 day to 1 month	88	28.8	60.2
More than 1 month to 3 months	38	12.4	72.6
More than 3 months to 6 months	23	7.5	80.1
More than 6 months to less than 2 years	36	11.8	91.9
Indefinite	16	5.2	97.1
2 Years or more	9	2.9	100.0
Total imprisoned	306	100.0	

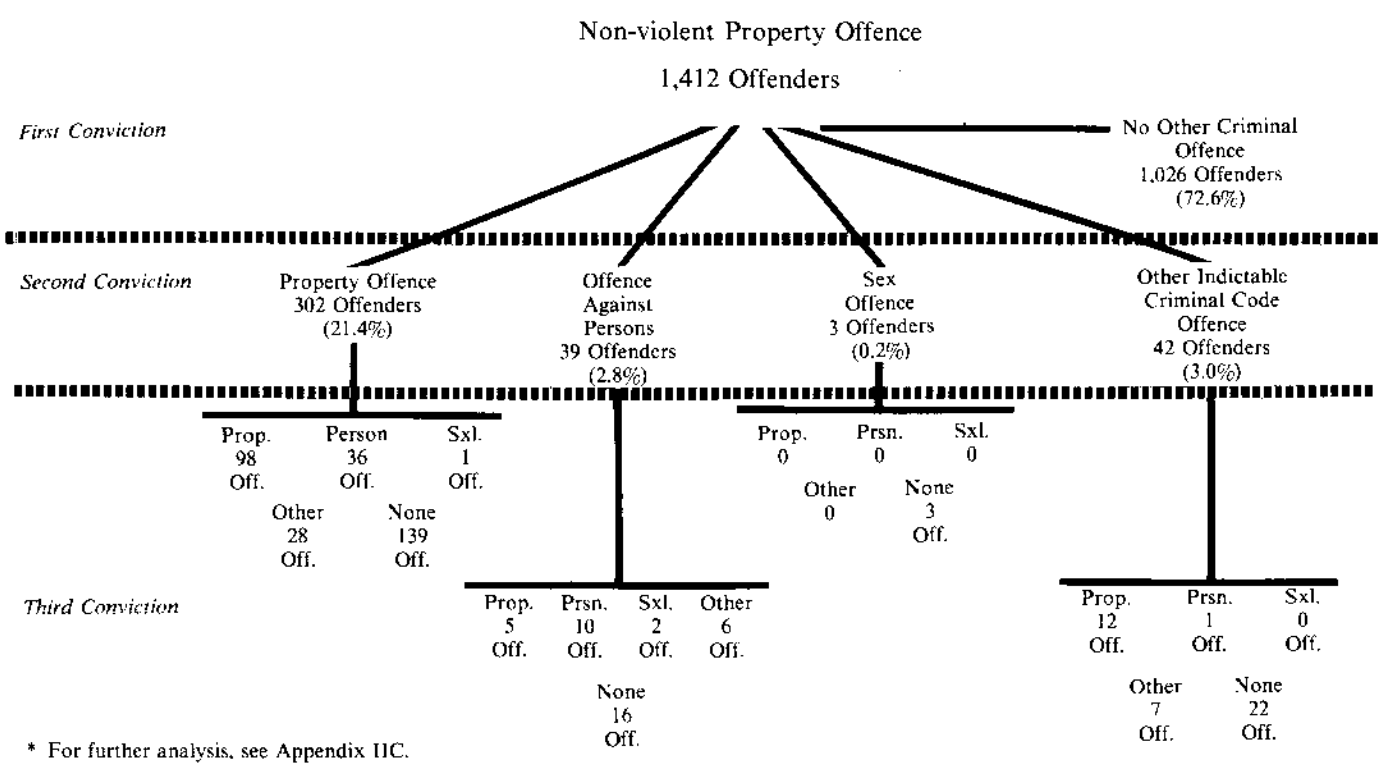
CHART I: Fines* for Non-violent Property Offenders on their First Conviction

* The dollar values of 14 fines were not known.

TABLE 8: Sanctions of Non-violent Property Offenders by the Number of Previous Convictions Held

Number of previous convictions for indictable offences	Fine or Fine-or-days-in-default	Probation or suspended sentence	Imprisonment for 1 day	Imprisonment for more than 1 day	Total number convicted
0	392	714	96	210	1,412
	(27.7%)	(50.6%)	(6.8%)	(14.9%)	(100%)
1	59	103	28	157	347
	(17.0%)	(29.7%)	(8.1%)	(45.2%)	(100%)
2	39	41	8	115	203
	(19.2%)	(20.2%)	(3.9%)	(56.7%)	(100%)
3	22	13	3	88	126
	(17.5%)	(10.3%)	(2.4%)	(69.8%)	(100%)
4	6	6	1	56	69
	(8.7%)	(8.7%)	(1.4%)	(81.2%)	(100%)

CHART II: Subsequent Types of Offences Committed by Original Non-violent Property Offenders*



* For further analysis, see Appendix IIC.

TABLE 9:. Recidivism of Non-Violent Property Offenders

Conviction number	No. of offenders imprisoned*	No. of those imprisoned who committed a subsequent offence	% of those imprisoned who committed a subsequent offence	No. of offenders not imprisoned*	No. of those not imprisoned who committed a subsequent offence**	% of those not imprisoned who committed a subsequent offence
1st conviction	210	92	43.8	1,202	331	27.5
2nd conviction	157	89	56.7	190	76	40.0
3rd conviction	115	74	64.3	88	38	43.2
4th conviction	88	57	64.8	38	15	39.5
5th conviction	56	35	62.5	13	7	53.8

* For more than one day.
** For further analysis, see Appendix IID.

TABLE 10: Length of Time after Sentence before Second Conviction (non-violent property offenders)

	Length of Time in Months							
	3	6	12	24	36	48	60	72
Imprisoned offenders returning within time period (cumulative percentage of all 210 offenders imprisoned for more than one day)	20	25	39	59	72	79	82	85*
	9.5	11.9	18.6	28.0	34.3	37.6	39.0	40.5
Non-imprisoned offenders returning within time period (cumulative percentage of all 1,202 non-imprisoned offenders)	44	79	137	199	246	278	296	301*
	3.7	6.6	11.4	16.6	20.5	23.1	24.6	25.0

* As the second offences committed by 37 offenders were not indictable offences (although their third convictions were for indictable Criminal Code offences), these offenders were not included in this analysis.

TABLE 11: Sanctions for those Convicted of Break and Enter and Theft under $50.00 on their First Offence

	Fine	Probation	Imprisonment for 1 day only	Imprisonment for more than 1 day	TOTAL
Break and Enter	9	207	12	65	293
	(3.1%)	(70.6%)	(4.1%)	(22.2%)	(100%)
Theft under $50.00	268	230	40	47	585
	(45.8%)	(39.3%)	(6.9%)	(8.0%)	(100%)

TABLE 12: Terms of Imprisonment of those Convicted of Break and Enter and Theft under $50.00 on their First Offence

	1 Day	1 Day- Less than 1 month	1 Mo.- Less than 3 months	3 Mos.- Less than 6 months	6 Mos. Less than 2 Years	Indef. (up to 2 Yrs.)	2 Yrs. or more	TOTAL
Break and	12	22	8	10	21	8	1	77
Enter	(15.6%)	(28.6%)	(10.4%)	(13.0%)	(27.2%)	(3.9%)	(1.3%)	(100%)
Theft under	40	35	5	2	4	0	1	87
$50	(46.0%)	(40.2%)	(5.8%)	(2.3%)	(4.6%)		(1.1%)	(100%)

Figure 2: Sanctions of Personal Offenders on their First Conviction

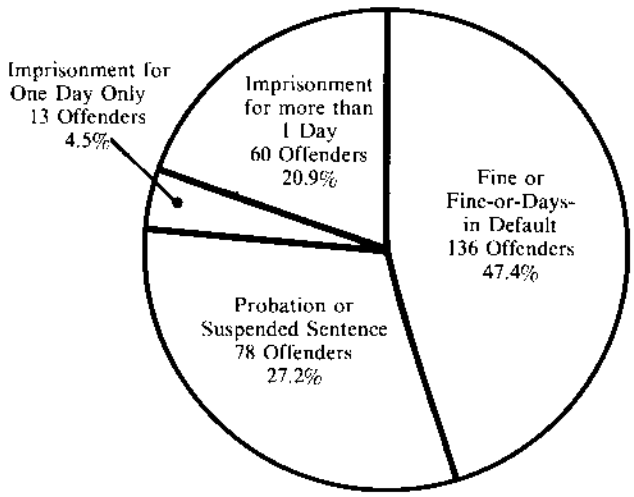
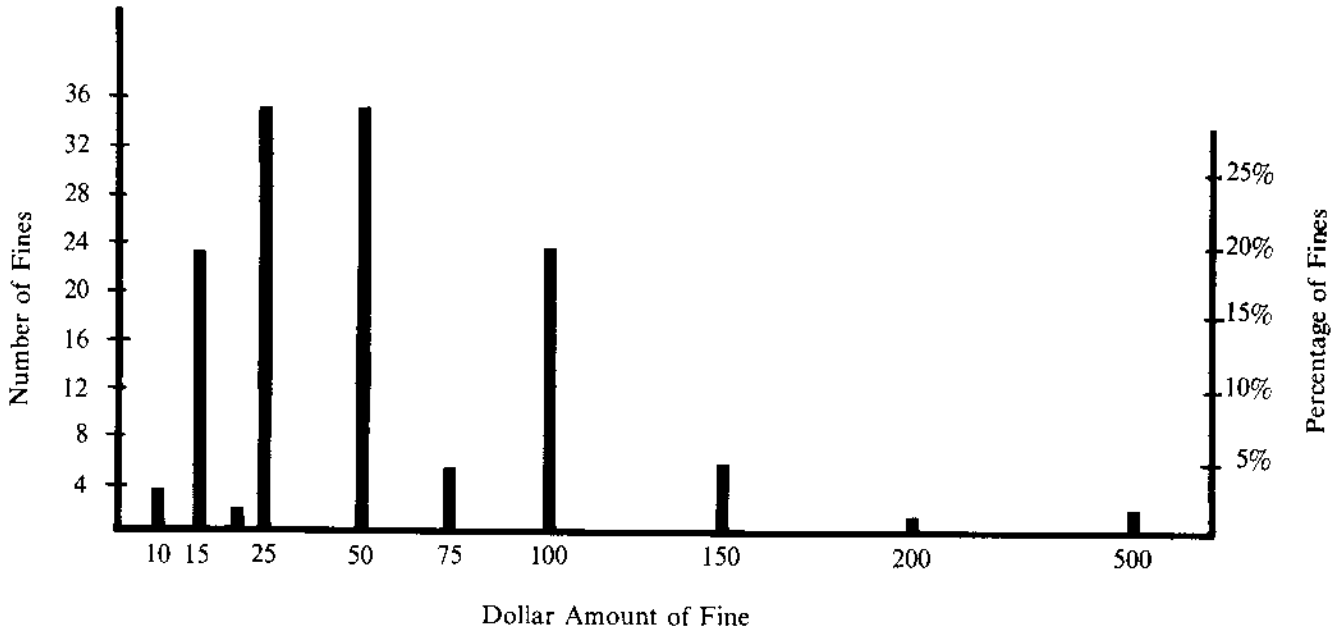


TABLE 13: Imprisonment Terms of Those who Committed Crimes against Persons on their First Conviction.

Term of imprisonment	Number receiving term	Per cent receiving term	Cumulative per cent
One day	13	17.8	17.8
More than 1 day to 1 month	23	31.5	49.3
More than 1 month to 3 months	11	15.1	64.4
More than 3 months to 6 months	7	9.6	74.0
More than 6 months to less than 2 years	6	8.2	82.2
Indefinite	4	5.5	87.7
2 years or more	9	12.3	100.0
Total Imprisonment	73	100.0	

CHART III: Fines* for Offenders who Committed Crimes against Persons on their First Conviction

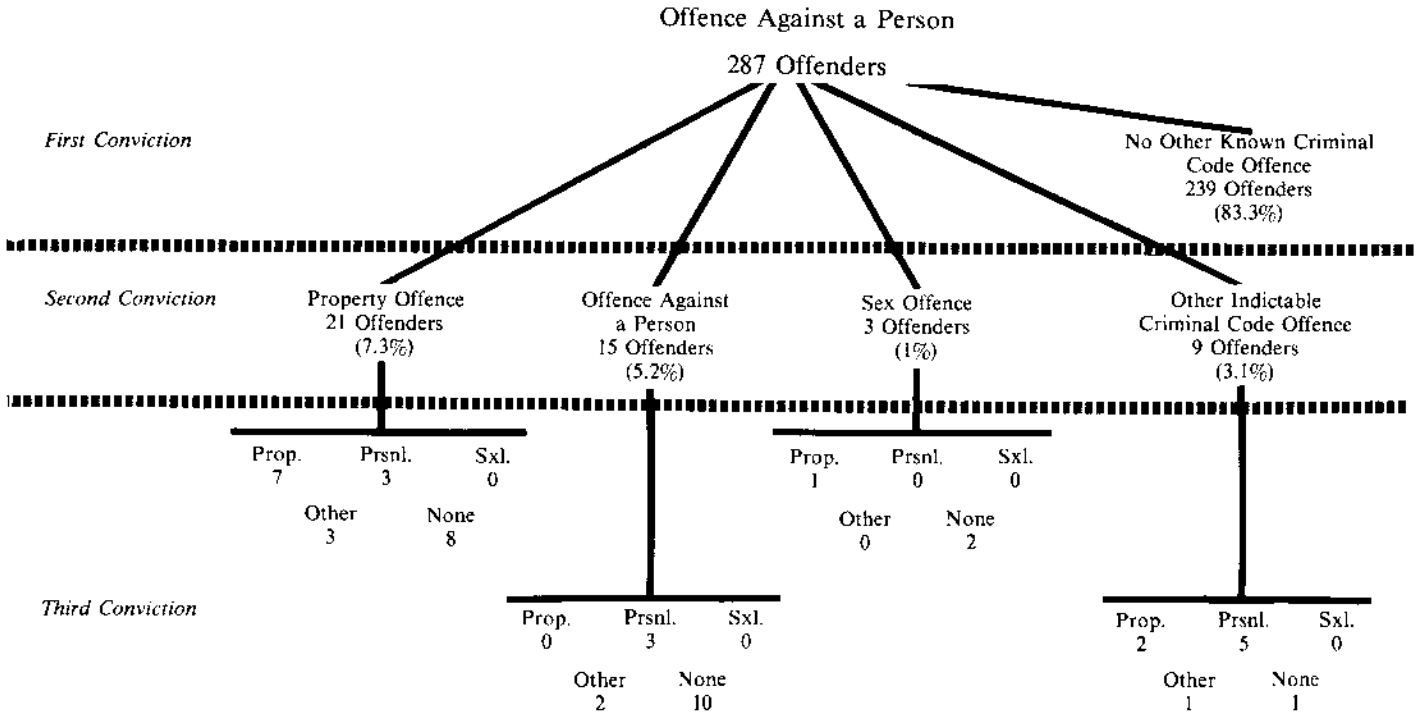


* The dollar value of three fines were not known.

TABLE 14: Sanctions of Offenders who Committed Crimes against Persons by the Number of Previous Convictions Held

Number of previous convictions	Fine or Fine-or-days-in-default	Probation or suspended sentence	Imprisonment for 1 day	Imprisonment for more than 1 day	Total number convicted
0	136	78	13	60	287
	(47.4%)	(27.2%)	(4.5%)	(20.9%)	(100%)
1	32	9	1	22	64
	(50.0%)	(14.0%)	(1.6%)	(34.4%)	(100%)
2	17	0	1	23	41
	(41.5%)	(0%)	(2.4%)	(56.1%)	(100%)
3	10	3	1	19	33
	(30.3%)	(9.1%)	(3.0%)	(57.6%)	(100%)
4	11	1	0	16	28
	(39.3%)	(3.6%)	(0%)	(57.1%)	(100%)

CHART IV: Subsequent Types of Offences Committed by Those Who Were First Convicted for an Offence against a Person*



* For further analysis, see Appendix IIC.

TABLE 15: Recidivism of Those who Committed Crimes against Persons

Conviction number	No. of offenders imprisoned*	No. of those imprisoned who committed a subsequent offence	% of those imprisoned who committed a subsequent offence	No. of offenders not imprisoned*	No. of those not imprisoned who committed subsequent offence**	% of those not imprisoned who committed a subsequent offence
1st conviction	60	17	28.3	227	43	18.9
2nd conviction	22	9	40.9	42	19	45.2
3rd conviction	23	11	47.8			
4th conviction	19	10	52.6			
5th conviction	16	8	50.0			

* For more than one day.
** For further analysis, see Appendix IID.

FIGURE 3: Sanctions of Sex Offenders on their First Conviction.

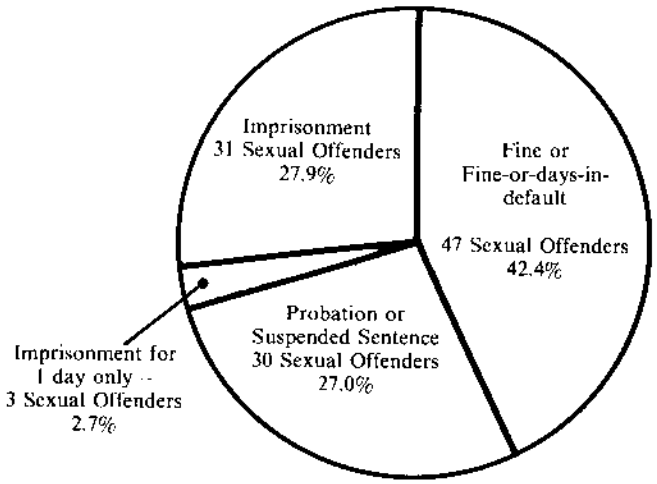
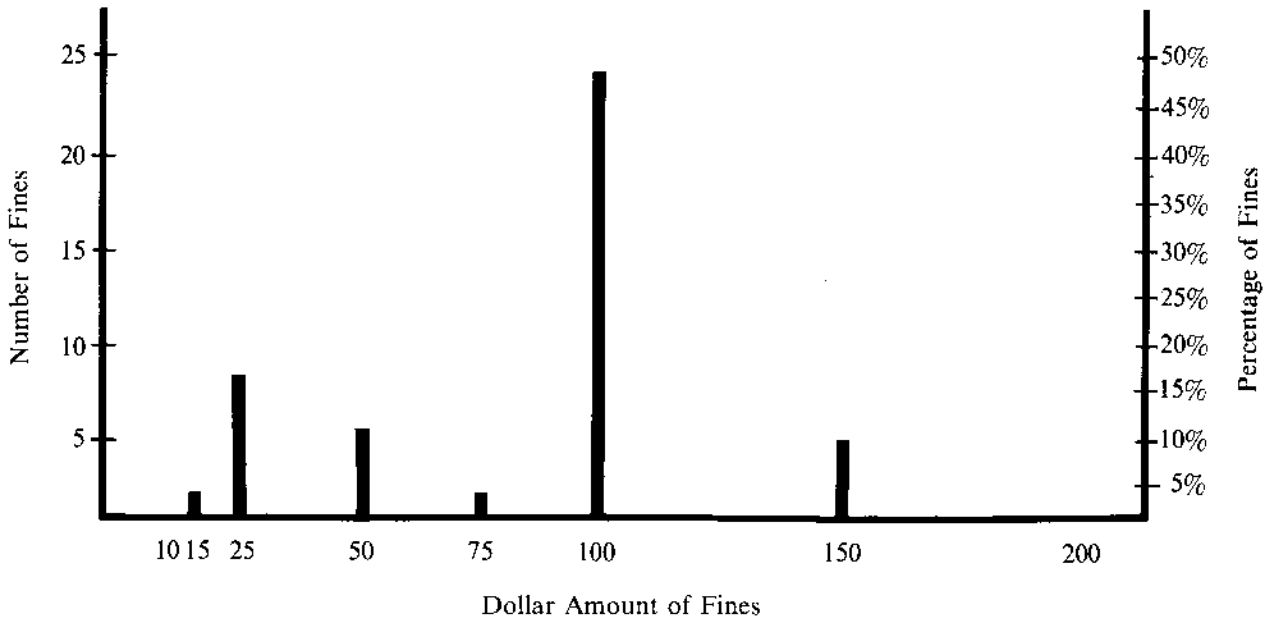


TABLE 16: Imprisonment Terms of Sex Offenders on their First Conviction

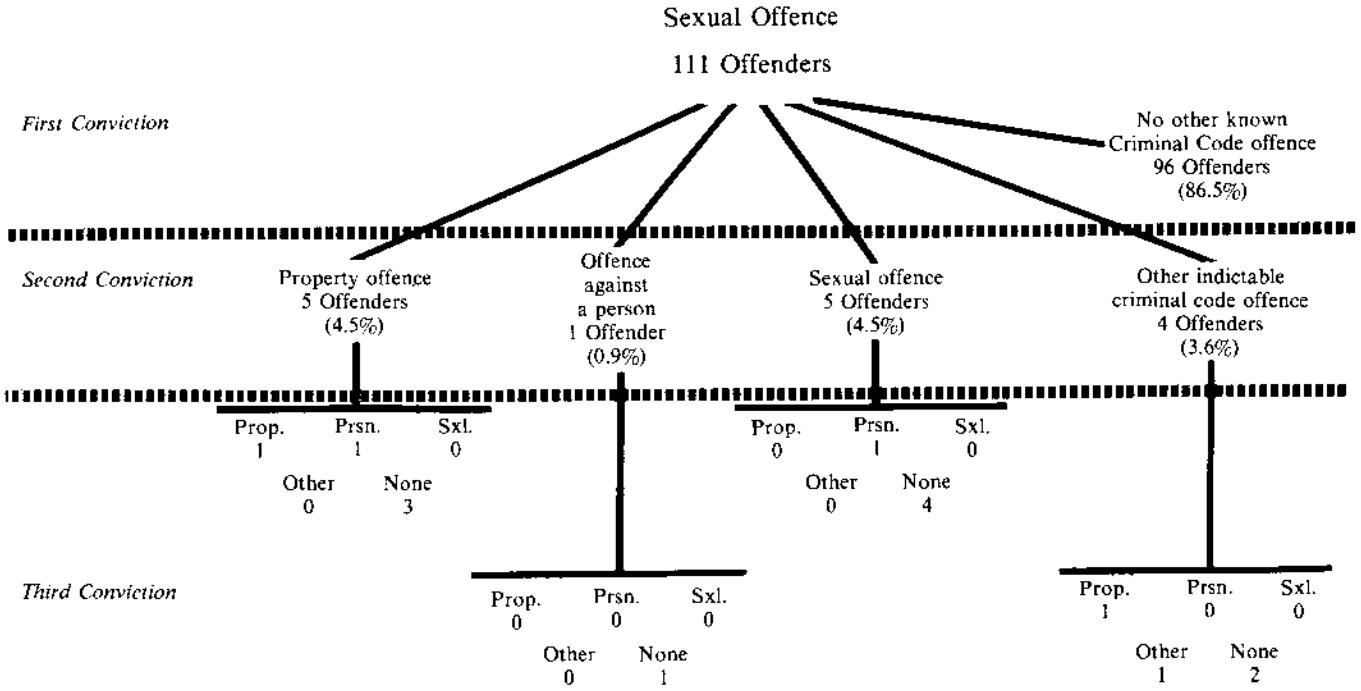
Term of imprisonment	Number receiving term	Per cent receiving term	Cumulative per cent
1 day	3	8.8	8.8
More than 1 day to 1 month	1	2.9	11.7
More than 1 month to 3 months	1	2.9	14.6
More than 3 months to 6 months	8	23.6	38.2
More than 6 months to less than 2 years	6	17.7	55.9
Indefinite	3	8.8	64.7
2 years or more	12	35.3	100.0
Total Imprisonment	34	100.0	

CHART V: Fines* for Sexual Offenders on their First Conviction



* The dollar value of three fines were not known.

CHART VI: Subsequent Types of Offences Committed by Original Sexual Offenders*



* For further analysis, see Appendix IIC.

The Complete(d) Picture

When we undertook this study, we asked two basic questions:

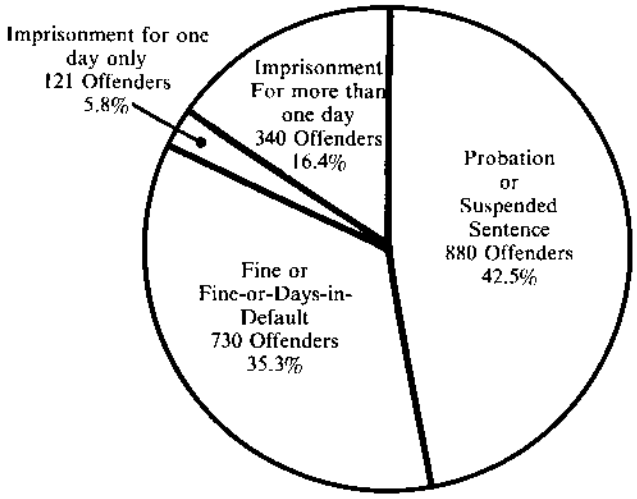
1. How frequently are the various sanctioning options used?
2. How many of the first-time offenders can we expect to see in the courts again?

In answering these questions, we were prompted to raise many more. Some of these have been answered in the course of this study; others will have to await the results of further research. But what of our two original questions?

In the preceding pages, we have tried to provide answers to these two questions by focusing on the experiences of three very different types of offenders—the property offender, the offender against a person, and, the sex offender. Although this approach has been useful in many ways, we must now step back for a moment to view our offenders from a slightly broader perspective: how was *this group* of 2,071 novice offenders sanctioned? How many of the offenders *in this group* were convicted of a second indictable offence?

As can be seen below, the most common disposition granted this group of offenders was a suspended sentence or a probationary term. More than a fifth of the offenders were imprisoned for at least one day while a third were ordered to pay a fine.

FIGURE 4: Sanction of the 2,071 novice offenders.



Finally, how many of these offenders returned? Of the group of 2,071 offenders, at least seven in every ten failed to commit a further indictable offence during the next five years. In all, only 548 offenders (26.5%) were convicted of a second indictable offence.

In conclusion, we wish to raise but one more question, Voltaire once stated, "it is necessity that makes the laws and force that keeps them observed". Was he correct?

References

1. Barbara Wootton, *Crime and The Criminal Law: Reflections of a Magistrate and Social Scientist,* (London: Stevens & Sons, 1963), 5.
2. *Statistics of Criminal and Other Offences, 1967,* Statistics Canada, (Ottawa: Queen's Printer, 1969), 30–35 and 40–43.
3. John Hogarth, *Sentencing as a Human Process,* (Toronto: University of Toronto Press, 1971), 78.
4. M. Clinard and R. Quinney, *Criminal Behaviour Systems: A Typology,* (Holt, Rinehart and Winston, 1967). 22.

Appendix I

IMPRISONMENT

Imprisonment was not a common law punishment.[1] At common law, the task of the judges as commissioners of the general jail was to clear the jails, not to fill them. The punishment for a felony was death and the punishments for lesser crimes included fines, the pillory, dunking, whipping and banishment. Imprisonment was formally introduced into England as a sanction in 1842 when the British Parliament passed legislation permitting offenders to serve their sentence in prisons modelled after the Philadelphia, Pennsylvania system. From this time on, imprisonment was used with increasing frequency. In fact, by 1867 it replaced the established practice of banishing offenders to the colonies.

In Canada, imprisonment as we understand it is also relatively new; it was not until 1837 that the Kingston Penitentiary was built.[2] Modern day imprisonment was a response to brutal sanctions; but it was also seen as a place of exile—a place where an offender would have the opportunity to contemplate his wrongful deeds and thereby become penitent. The place for silent contemplation, solitary confinement with a bible became the Penitentiary. The benevolent Quakers of Philadelphia introduced the concept; a short time later Dickens was compelled to write:

> The system here is rigid, strict, and hopeless solitary confinement. I believe it, in its effects, to be cruel and wrong. In its intentions, I am well convinced that it is kind, humane, and meant for reformation; but I am persuaded that those who devised this system of Prison Discipline, and those benevolent gentlemen who carry it into execution, do not know what they are doing.
>
> . . . I hold this slow and daily tampering with the mysteries of the brain, to be immeasurably worse than any torture of the body; and because its ghastly signs are not so palpable to the eye . . . and it exhorts few cries that human ears can hear; therefore, I the more denounce it, as a secret punishment which slumbering humanity is not roused up to stay.[3]

Simultaneously, an alternative prison system was being developed in Auburn, New York. It stressed correction and rehabilitation through

work, thus departing from the solitary rule.[4] It was this model that we adopted in Canada and it still contributes to modern penal philosophy.[5]

In Canada, there are three types of institutions in which offenders may be imprisoned: reformatories, common jails, and penitentiaries. To some degree, the length of sentence imposed by the Court determines the type of institution to which an offender will be sent. In accordance with the provisions of the Criminal Code, an offender who is to be imprisoned for two years or more is sent to a federal penitentiary. If, however, an offender is sentenced to a term of less than two years, he may be committed to a provincial or local jail or a reformatory. In British Columbia and Ontario, an offender may receive both a definite sentence of under two years (i.e., a sentence fixed solely by the court), and an additional indeterminate term which cannot exceed two years less one day. In this situation, the offender would serve the definite term of his sentence in a common jail or reformatory and would then be considered for parole. If parole is granted, the offender would serve the indeterminate portion of his sentence in the community under parole supervision.

REFERENCES—APPENDIX I

1. *Regina* v. *Turner,* (1975) A. C.
2. Alex J. Edmison, "Some Aspects of Nineteenth-Century Canadian Prisons", in *Crime and Its Treatment in Canada,* ed. W. McGrath (Toronto: MacMillan of Canada, 1965), 279 301. See also Riddell, "A Criminal Circuit in Upper Canada: A Century Ago" (1920), 40 *Canadian Law Times,* 711.
3. Charles Dickens, *American Notes and Pictures From Italy,* (New York: Dutton, 1970), 283.
4. Gustave de Beaumont and Alexis de Tocqueville, *On the Penitentiary System in the United States and Its Application in France,* (Illinois: Southern Illinois University Press, 1964), 54–60. See also H. E. Barnes and N. Teeters, *New Horizons in Criminology* (3rd ed. Englewood Cliffs, N. J.: Prentice Hall, 1959).
5. Richard Splane, *Social Welfare in Ontario 1791–1893* Toronto: University of Toronto Press, 1965) 130 148. See also Canada, *Report of the Canadian Committee on Corrections,* (The Ouimet Report) (Ottawa: Queen's Printer, 1969), 186–7.

   Canada, Department of Justice, *Report of a Committee Appointed To Inquire Into the Principles and Procedures Followed in the Remission Service of the Department of Justice of Canada* (Ottawa: Queen's Printer, 1956), 11, 46 7, 87 9. See also Canada, *Report of the Royal Commission to Investigate the Penal System of Canada* (Ottawa: Queen's Printer, 1938), 9–11.

   Norval Morris, *The Future of Imprisonment* (Chicago: University of Chicago Press, 1974). See also Nigel Walker, *Sentencing in a Rational Society,* (London: Allen Lane, The Penguin Press, 1969); R. Hood and R. Sparks, *Key Issues in Criminology,* (New York: McGraw Hill, 1970); Irvin Waller, *Men Released From Prison* (Toronto: University of Toronto Press, 1974).

Appendix II

SOME FURTHER FACTS

A. Ages of the Offenders

Some recent works in criminology have provided detailed information on the offenders studies including their age, sex, marital status, occupation, and nationality. Unfortunately, this information was not available for our offenders. It was possible, however, to obtain the age of each offender at the time of his/her conviction.

See Tables A1 to A3, pages 55 and 56.

B. Variations in Sanctions

As was discussed in the section on property offenders, each "offence type" includes several different Criminal Code offences. And, although the trends discussed were experienced by the majority of offenders regardless of their particular offence, these rates were not identical for each crime. In the case of property offenders this was demonstrated by comparing the sanctions of those convicted for breaking and entering with those convicted of theft under $50 on their first offence. Similar variations occurred in the sanctioning of offenders against persons and sexual offenders.

See Tables B1 to B6, pages 56 to 60.

C. The Experienced Offender

As the recidivism charts indicated, many of those convicted of their first indictable Criminal Code offence in September, 1967 were not convicted of a second indictable offence. In order to trace the criminal careers of these offenders, we initially grouped them according to the type of offence first committed and then indicated their subsequent convictions. However, it might also be helpful to first group these offenders according to the types of subsequent convictions each received and then trace their criminal history through to the initial type of offence committed.

See Charts C1 and C2, pages 61 to 65

D. Further Notes on Recidivism

Tables D1 and D2 provide additional information on the recidivism rates of offenders who had received sanctions other than imprisonment. Unfortunately, this information was not available for the sexual offenders.

See Tables D1 and D2, pages 66 and 67.

Table A1 Age of Property Offenders at Time of Conviction

Conviction number	Under 16	16–18 Years	19–21 Years	22–25 Years	26–30 Years	31–45 Years	46 Years and over	TOTAL
First conviction	7 (.5%)	457 (32.4%)	366 (25.9%)	202 (14.3%)	97 (6.9%)	197 (13.9%)	86 (6.1%)	1,412 (100.%)
Second conviction	1 (.3%)	78 (22.5%)	149 (42.9%)	62 (17.9%)	17 (4.9%)	32 (9.2%)	8 (2.3%)	347 (100%)
Third conviction	1 (.5%)	36 (17.7%)	101 (49.8%)	44 (21.7%)	7 (3.4%)	10 (4.9%)	4 (2.0%)	203 (100%)

Table A2 Age of Offenders Against Persons at Time of Conviction

Conviction number	Under 16	16–18 Years	19–21 Years	22–25 Years	26–30 Years	31–45 Years	46 Years and Over	TOTAL
First conviction	0	46 (16.0%)	59 (20.6%)	48 (16.7%)	38 (13.2%)	68 (23.7%)	28 (9.8%)	287 (100%)
Second conviction	1 (1.6%)	8 (12.5%)	17 (26.6%)	23 (35.9%)	5 (7.8%)	6 (9.4%)	4 (6.2%)	64 (100%)
Third conviction	0	4 (9.8%)	16 (39.0%)	12 (29.3%)	2 (4.9%)	6 (14.6%)	1 (2.4%)	41 (100%)

Table A3 Age of Sexual Offenders at Time of Conviction

Conviction number	Under 16	16–18 Years	19–21 Years	22–25 Years	26–30 Years	31–45 Years	46 Years and Over	TOTAL
First conviction	0	6 (5.4%)	13 (11.7%)	17 (15.3%)	18 (16.2%)	39 (35.2%)	18 (16.2%)	111 (100%)
Second conviction	0	1 (7.7%)	3 (23.1%)	1 (7.7%)	1 (7.7%)	5 (38.4%)	2 (15.4%)	13 (100%)

Offenders Against Persons

Table B1

Sanctions for those Convicted of Common Assault and Assault Causing Bodily Harm on their First Offence

Offence	Imprisonment for one day only	Imprisonment for more than one day	Fine	Probation	TOTAL
Common assault	8 (6.3%)	14 (11.0%)	63 (49.6%)	42 (33.1%)	127 (100%)
Assault causing bodily harm	1 (1.2%)	14 (16.9%)	48 (57.8%)	20 (24.1%)	83 (100%)

Table B2

Terms of Imprisonment of those Convicted of Common Assault and Assault Causing Bodily Harm on their First Offence

Offence	Indef.	1 Day	1 Day–1 month	1 Month–3 months	3 Months to less than 6 months	6 Months to less than 2 years	2 Years or more	TOTAL
Common assault	—	8 (36.4%)	12 (54.5%)	2 (9.1%)	—	—	—	22 (100%)
Assault causing bodily harm	1 (6.7%)	1 (6.7%)	4 (26.7%)	3 (20.0%)	4 (26.7%)	2 (13.2%)	—	15 (100%)

Table B3

Amounts of Fines for those Convicted of Common Assault and Assault Causing Bodily Harm on First Offence

Offence	$20 or Less	$25–$50	$75–$100	$150–$500	TOTAL
Common assault	22 (34.9%)	33 (52.4%)	6 (9.5%)	2 (3.2%)	63 (100%)
Assault causing bodily harm	3 (6.4%)	24 (51.1%)	16 (34.0%)	4 (8.5%)	47 (100%)

Table B4

Sexual Offenders

Sanctions for those Convicted of Indecent Assault Female, Indecent Assault Male and Gross Indecency on First Offence

Offence	Imprisonment for 1 day only	Imprisonment for more than 1 day	Fine	Probation	TOTAL
Indecent assault–female	2 (5.4%)	11 (29.7%)	8 (21.6%)	16 (43.3%)	37 (100%)
Indecent assault–male	0 —	1 (11.1%)	2 (22.2%)	6 (66.7%)	9 (100%)
Gross indecency	1 (2.2%)	2 (4.5%)	36 (80.0%)	6 (13.3%)	45 (100%)

Table B5

Terms of Imprisonment of those Convicted of Indecent Assault Female, Indecent Assault Male, and Gross Indecency on their First Offence

Offence	Indef.	1 Day	1 Day–1 month	1 Month–3 months	3 Months to less than 6 months	6 Months to less than 2 years	2 Years or more	TOTAL
Indecent assault–female	1	2	1	1	4	2	2	13
Indecent assault–male	0	0	0	0	0	1	0	1
Gross indecency	0	1	0	1	1	0	0	3

Table B6

Amounts of Fines for those Convicted of Indecent Assault Female, Indecent Assault Male, and Gross Indecency on First Offence

Offence	$20 or less	$25–$50	$75–$100	$150	Not known	TOTAL
Indecent assault–female	—	4	2	1	1	8
Indecent assault–male	—	—	2	—	—	2
Gross indecency	1	9	20	4	2	36

Chart C1 *Property Offenders*

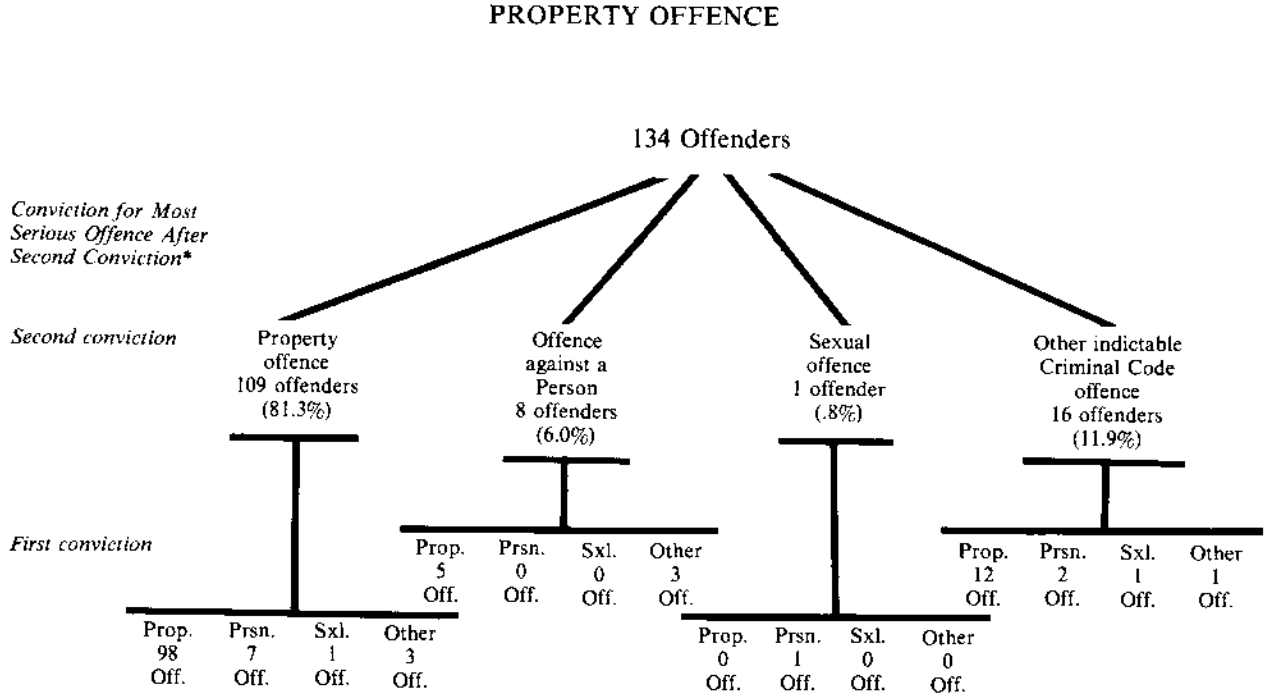
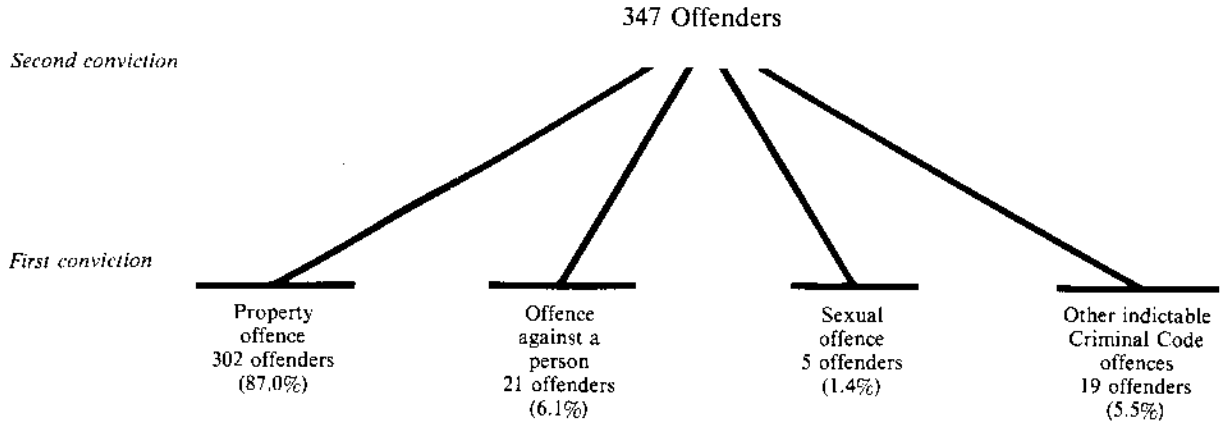


Chart C1 (Cont'd) PROPERTY OFFENCE



.* From the data, it was not possible to establish whether this was a third, fourth, or fifth conviction.

Chart C2 *Offenders Against Persons*

OFFENCE AGAINST A PERSON

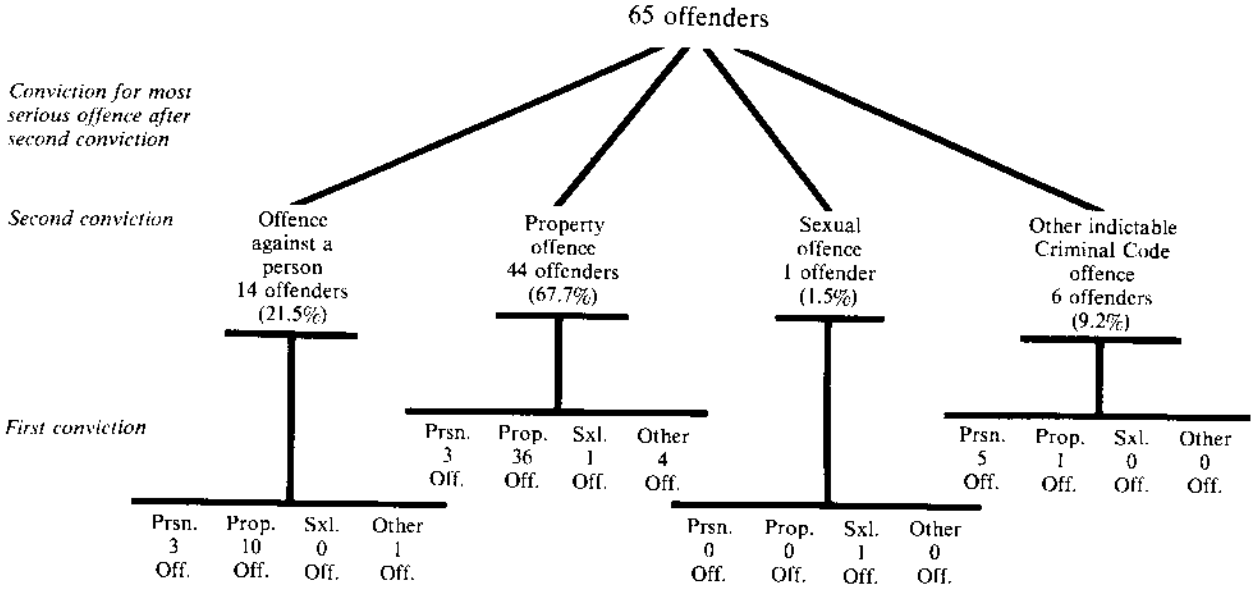
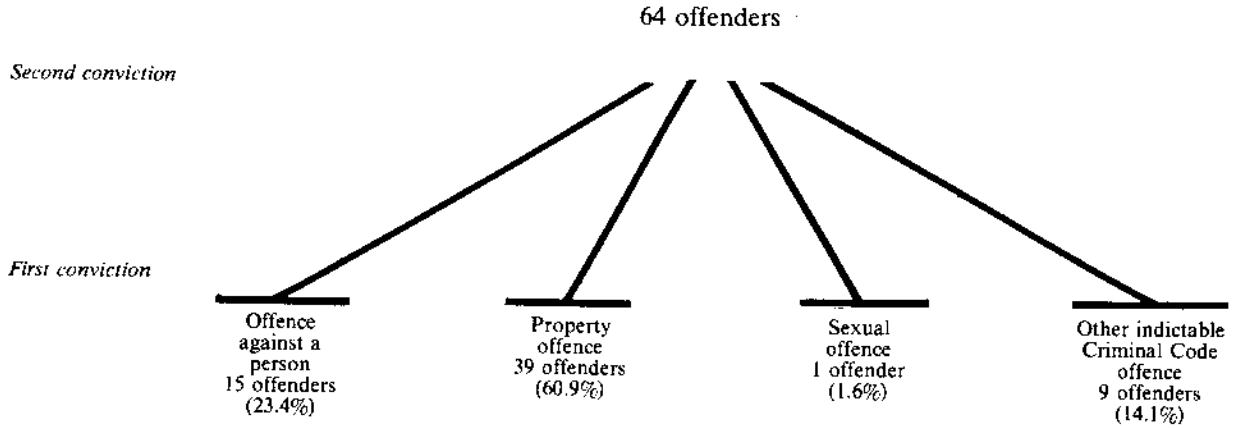
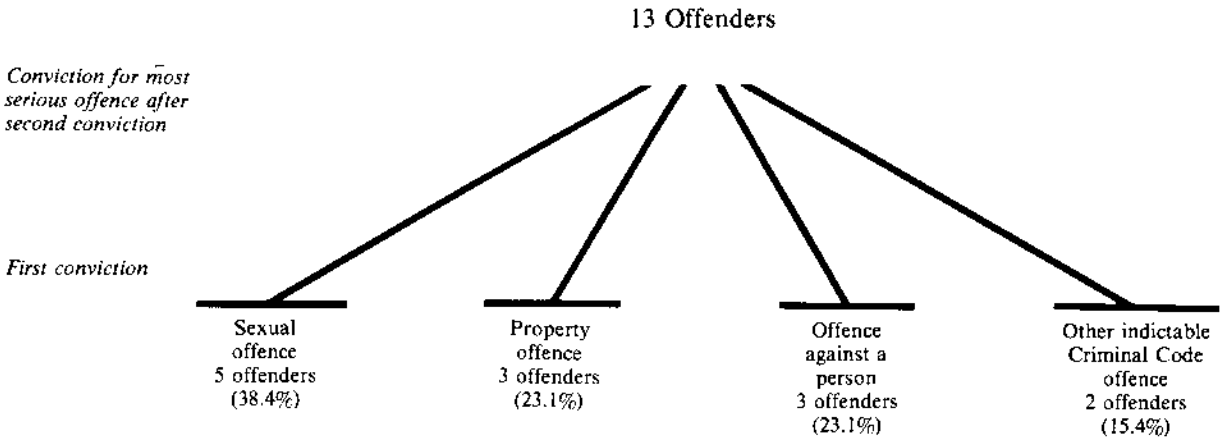


Chart C2 (Cont'd) OFFENCE AGAINST A PERSON



*Sexual Offence**

Chart C2 (Concl.) SEXUAL OFFENCE



* Only three sexual offenders had 2 previous convictions.

Table D1

Property Offenders

Conviction number	No. of offenders fined	No. and per cent of those fined who committed a subsequent offence		No. of offenders Put on probation or given a suspended sentence	No. and per cent of those put on probation or given a suspended sentence who committed a subsequent offence		No. of offenders imprisoned for 1 day only	No. and per cent of those imprisoned for only 1 day who committed a subsequent offence	
1st conviction	392	67	17.1%	714	243	34.0%	96	21	21.9%
2nd conviction	59	21	35.6%	103	43	41.7%	28	12	42.9%
3rd conviction	39	14	35.9%	41	18	43.9%	8	6	75.0%
4th conviction	22	9	40.9%	13	6	46.2%	3	0	0
5th conviction	6	3	50%	6	3	50.0%	1	1	100%

Table D2

Offenders Against Persons

Conviction number	No. of offenders fined	No. and per cent of those fined who committed a subsequent offence		No. of offenders Put on probation or given a suspended sentence	No. and per cent of those put on probation or given a suspended sentence who committed a subsequent offence		No. of offenders imprisoned for 1 day only	No. and per cent of those imprisoned for only 1 day who committed a subsequent offence	
1st conviction	136	24	17.6%	78	15	19.2%	13	4	30.8%
2nd conviction	32	14	43.8%	9	5	55.6%	1	0	0
3rd conviction	17	7	41.2%	0	0	0	1	0	0
4th conviction	10	5	50.0%	3	2	66.7%	1	1	100%
5th conviction	11	6	54.5%	1	1	100%	0	0	0

Appendix III

FIVE YEARS LATER

A study similar to the September Study was conducted using the records of 1,474 offenders first convicted in the first part of September 1972. We compared the results to see whether any change had taken place in sentencing practices in the five intervening years, and found that there was very little difference. The results are presented here for the categories of offences dealt with in the 1967 study: property, offences against the person and sexual offences, and an overall view of all sanctions imposed that month on first offenders.

A. Property Offenders

There were slight changes in the sanctions imposed on property offenders.

See Table A1, page 72.

The rate of imprisonment dropped from 15% in 1967 to 12% in 1972. There were proportionately more fines imposed in 1972, and fewer sentences of probation and one day; the decrease in the last two sanctions appears to be taken up in sentences of absolute and conditional discharges. The total proportion sentenced to probation or one day in 1967 is about the same as the proportion receiving these sentences or discharges in 1972.

Again we looked at break and enter and theft under separately to see the sanctions imposed. In 1972 the limit for theft under had been raised to $200 from the $50 limit in 1967.

See Table A2, page 73.

For break and enter there was a slight increase—2%—in the use of imprisonment since in 1967, while there were decreases in the use of fines, probation and the one day sentence, with a few cases of discharges taking up the remainder.

The use of fines increased in cases of theft under. Use of probation dropped by more than half, with sentences of discharges apparently replacing probation in many cases. One day sentences as well were used much less often. There was a small decrease in the use of imprisonment but it still accounted for one case in sixteen.

B. Offenders Against the Person

There were obvious changes in the sanctions in offenders against the person.

See Table B1, page 74.

The proportion of offenders imprisoned rose from about one in five in 1967 to about one in three in 1972. Fines were used in one-third of the cases, down from one-half in 1967. The total of offenders whose sentences were probation, a discharge or one day in 1972 was about the same as the total receiving probation or one day in 1967.

The offenders convicted of assault causing bodily harm and common assault were examined separately again. (In 1972 common assault was a summary offence, the result of an amendment to the Criminal Code in June 1972. Previously it had been either an indictable offence or an offence punishable on summary conviction; most cases were treated as the latter, but as this information was not available to us we included all cases of common assault in the 1967 Study. In the 1972 Study we retained the cases of common assault for purposes of comparison with the 1967 sentences).

See Table B2, page 75.

In the case of common assault, as in the two property offences, the total proportion of offenders receiving sanctions or probation or discharges in 1972 was about the same as the total receiving probation or one day in 1967. A somewhat lower proportion of offenders was fined in 1972, while the proportion of offenders imprisoned rose.

The rate of imprisonment for assault causing bodily harm more than doubled from 1967 to 1972, when three offenders in eight were imprisoned. The proportion of offenders fined was about two-thirds as great as the 1967 figure—a large decrease. Probation was used less often, but

the proportion of sentences of probation and discharges combined in 1972 was greater than probation in 1967. (Only one person in each group received a sentence of one day.)

C. Sexual Offenders

There were only twenty-six first-time sexual offenders sentenced in the 1972 group. The decrease was apparently a result of changes in the Criminal Code; section 157 now limits the application of the sections prohibiting buggery, bestiality and gross indecency, and in 1972 there were only two cases in these categories compared to 45 in 1967. The sentencing patterns are therefore not comparable. Sanctions in 1972 were as follows:

See Table C, page 76.

D. General Use of Sanctions

The overall pattern of sentencing seems to have changed very little, in fact, from 1967 to 1972. The sanctions imposed on this group of first offenders in 1972 are shown here in comparison with 1967.

See Table D, page 76.

E. Note—Information on the use of Absolute and Conditional Discharges varies from regime to regime. Thus, the figures used for these categories may not be complete.

Table A1

	One day	Imprisonment	Fine or Fine-or-days-in-default	Probation or Suspended sentence	Absolute discharge	Conditional discharge
1,092 property offenders convicted 1972	16 (1.5%)	131 (12.0%)	365 (33.4)	368 (33.7%)	83 (7.6%)	129 (11.8%)
1,412 property offenders convicted 1967	96 (6.8%)	210 (14.9%)	392 (27.8%)	714 (50.6%)	N/A	N/A

Table A2

	One day	Imprisonment	Fine or Fine-or-days-in-default	Probation or Suspended sentence	Discharges	Total
Break and enter, 1972	2 (1.1%)	46 (24.2%)	3 (1.6%)	128 (67.4%)	11 (5.8%)	190
Break and enter, 1967	12 (4.1%)	65 (22.2%)	9 (3.1%)	207 (70.6%)	N/A	293
Theft under $200, 1972	5 (0.9%)	34 (6.3%)	277 (51.0%)	100 (18.4%)	127 (23.4%)	543
Theft under $50, 1967	40 (6.8%)	47 (8.0%)	268 (45.8%)	230 (39.3%)	N/A	595

Table B1

There were more obvious changes in the sanctions imposed on offenders against the person, which can be seen in the next table.

	One day	Imprisonment	Fine or Fine-or-days-in-default	Probation or Suspended sentence	Absolute discharge	Conditional discharge
190 Offenders against the person, 1972	1 (.6)	59 (34.7%)	59 (34.7%)	33 (19.4%)	7 (4.1%)	11 (6.5%)
287 Offenders against the person sentenced, 1967	13 (4.5%)	60 (20.9%)	136 (47.4%)	78 (27.2%)	N/A	N/A

Table B2

	One day	Imprisonment	Fine or Fine-or-days-in-default	Probation or Suspended sentence	Discharges	Total
Common assault, 1972	0	8 (17.8%)	20 (44.4%)	7 (15.6%)	10 (22.2%)	45
Common assault, 1967	8 (6.3%)	14 (11.0%)	63 (49.6%)	42 (33.1%)	N/A	127
Assault causing bodily harm, 1972	1 (2.1%)	18 (37.5%)	15 (31.3%)	9 (18.6%)	6 (12.0%)	48
Assault causing bodily harm, 1967	1 (1.2%)	14 (16.9%)	48 (57.8%)	20 (24.1%)	N/A	83

Table C

	One day	Imprisonment	Fine or Fine-or-days-in-default	Probation or Suspended sentence	Discharges
26 Sexual offenders sentenced	0	11 (42.3%)	7 (26.9%)	8 (30.8%)	0

Table D

	1972	1967
One day	21 (1.4%)	5.8%
Imprisonment	230 (15.6%)	16.4%
Fine	60 (4.1%)	3.9%
Fine or Days in default	471 (32.0%)	31.4%
Probation or Suspended sentence	444 (30.1%)	42.5%
Absolute discharge	99 (6.7%)	N/A
Conditional discharge	149 (10.1%)	N/A
TOTAL	1,474 (100%)	100%

Appendix IV

A SHORT NOTE ON OUR METHOD

In June 1973 the Law Reform Commission began collecting data for a study of sentencing and recidivism of persons convicted of indictable Criminal Code offences. The group chosen was all offenders first convicted in September 1967. All subsequent convictions of these offenders were included in the study.

For purposes of this analysis the most serious offence which resulted in a conviction in any one entrance into the criminal justice system was used as the base unit, so that each offender appeared once in our study for each such occasion regardless of the number of charges involved in each episode. For example, an offender charged with theft, possession of stolen goods and assault to resist arrest, and convicted only of the last two charges, would appear in our study as a case of assault to resist arrest since that is the most serious of the two charges which resulted in conviction. The sentence received on that charge is the sentence counted in the study.

Similarly the most serious sentence was used for the study of sentencing when a combination of two or more sanctions was imposed. If an offender was fined and ordered to pay restitution, the fine was used; if a fine was imposed in addition to a term of imprisonment, the imprisonment was the sanction used in the study. The other sanctions remained available and were examined in the case of additional sanctions on a sentence of one day imprisonment.

We did not have data on disposition of sentences of fines with the alternative of imprisonment in default of payment. Accordingly all such cases are counted as fines rather than imprisonment although in fact some resulted in incarceration.

When the comparison study was begun we took case records of offenders first convicted in September 1972.

Release Measures in Canada

by

Pierre Landreville
Pierre Carrière

Contents

Introduction

Sentences of imprisonment may be fixed, indeterminate or indefinite. In the first case, the date of release may be determined by the sentence which the court must pass by law. However, as in Canada, the courts can generally impose fixed sentences within limits set by law.

An indeterminate sentence is one in which the court does not set any limits. The date of release is decided by an administrative board. Very few countries subscribe to true indeterminate sentences. Such sentences are passed in Canada only in the case of dangerous sexual offenders where legislation provides for a sentence of preventive detention. The Commission's study paper on dangerous offenders discusses this question in depth.

Finally, an indefinite sentence is one in which an administrative board sets the term of the sentence within limits specified by the court. However, such sentences are often called indeterminate sentences. They exist in Ontario and British Columbia by virtue of the Prisons and Reformatories Act.

In Canada, sentences of imprisonment may only be pronounced by the courts and they are generally fixed within limits provided by law. In practice, however, they become indefinite sentences. The sentences imposed by the courts become maximum sentences which very few inmates serve completely *in prison.*

Indeed, although there is only one way to be sent to prison, there are many ways to leave it. Inmates may be released before the end of the term set by the court either by an act of clemency, by application of the legislation which provides for the remission of one quarter of the inmate's sentence (statutory remission), because the inmate has earned a remission by his work, diligence and industry, or by an administrative decision of the Parole Board, which has the power to release an inmate anytime after he has served part of the prison term set by the Governor in Council.

All these measures, and especially parole, have the effect of changing fixed sentences into indefinite sentences. These measures are applied by different authorities, have different goals and purposes and may be applied under different terms and conditions. They may very often contradict each other and even cancel their respective effects. Some measures may have developed by varying their original objectives and may even sometimes have become pure red tape having lost sight of their objectives, as we will attempt to show in this study paper.

Remission

1. GENERAL HISTORY

We will first review the original penological ideas and experiments on remission. We will then examine three initiatives at systematizing this release measure in various penitentiary systems, which gave remission a meaning and form which still exist today but under more complex terms and conditions.

We will also observe that the remission system was most widely accepted in the United States where a large number of States adopted pertinent legislation. We will therefore describe the American experience in this area[1].

A. *Origins*

The first reported case of remission dates back to 1597 in Holland (Sellin, 1944, p. 45). An inmate condemned to twelve years' imprisonment became eligible for a remission. Sentencing dispositions provided that if the administrator could attest to the inmate's good conduct and future rehabilitation, after having served eight years, the last four years would be subject to remission.

In the same country, from 1599 to 1603, Amsterdam prisons (called Tuchthuys) made an annual review of sentences. Each year, accompanied by a clerk, inmates appeared before the high judge and magistrates who then decided on the remission or extension of sentences on the basis of recommendations by the administrators. Such recommendations considered the inmates' good conduct, their assistance in preventing escapes, their testimonies against accomplices and all other forms of assistance to the administration.

During the XVIIIth century, in 1775, Vilain XIIII, high judge of Flanders, believed that the law was unfair by allowing sentences to be extended for misconduct in prison. He therefore recommended that inmates

who behaved well should be granted a form of pardon before the end of their terms set by law (Sellin, 1959, p. 108 and Attorney General's Survey, 1939, Vol. IV, p. 495).

In England, in 1785, W. Paley proposed that inmates be required to perform a specific amount of work instead of serving a term in prison. The inmate's diligence at work would then have a direct effect on the amount of time he would spend in prison. Paley thus rejected sentences measured only in time (Sellin, 1951 and 1959, p. 108). Along the same line, Benjamin Rush wrote in 1787 in the United States that punishment should consider the criminals' character and their progress towards rehabilitation. In his opinion, the law should define and choose a variety of penalties without reference to a specific crime. The length of the punishment, although limited, should be unknown to the inmate. This was an early definition of the theory of indeterminate sentences (Barnes and Teeters, 1952, p. 521).[2]

During the 1800's, Spain also adopted legislation to introduce the notion of remission and rehabilitating work in the penal practices of that period. In 1804, an order on naval prisons enacted that inmate rehabilitation had to be carried out by means of intensive apprenticeship as well as specific and useful work for society. This order was included in a general order issued in 1834 which applied to all the prisons of the Kingdom (Drapkin, 1968, p. 334). Two regulations (1805 and 1807) had preceded this order, one permitted the commutation of sentences for good conduct at the Cadiz prison, and the other, with a more general application, established a remission of two to four months per year for certain inmates (Sellin, 1959, p. 108).

In 1825, in Geneva, the act on prison administration provided a remission for inmates with good conduct. After having served two thirds of their sentences, interested inmates had to present a request for a reprieve to an ad hoc commission which either granted immediate release, set a later date for appeal or denied the request (Lucas, 1828, p. 289).

In 1827, in France, Charles Lucas proposed an elaborate plan under which an inmate had to advance through different stages, and which for all practical purposes, made his sentence completely indeterminate. A disciplinary committee had real discretionary powers on the length of the inmate's detention by the application of successive remissions (Normandeau, 1972, p. 144).

We have briefly summarized the history of the original ideas and experiments carried out with respect to remission, which we can relate to the philosophical trends of the XVIIIth century and beginning of the XIXth century.[3]

Prison sentences ceased to be only punishment. The inmate's rehabil-

itation was slowly recommended and taken into consideration as a sentencing objective. Similarly, work became an element of reform and was used positively. As the sentencing objectives slowly changed, a means of achieving these objectives was sought and flexibility of the sentence seemed to be the answer.

According to the historical data presented earlier, remission took the form of a simple pardon or became a method of reducing the sentence granted under certain conditions. It always led to a release prior to the end of the term set by the court. The inmate's reform, his good conduct and performance at work were usually taken into account in the decision on remission. This release prior to the termination of the sentence was a fundamental characteristic and was not subject to any conditions. The first sentence was then considered as having been completely served.

B. *First Systems*

Until now, remission was considered to belong to new penal practices and ideas[4]. From the practical point of view, it brought flexibility to the execution of sentences, and from the theoretical point of view, it implied a growing connection between good conduct, work and release following rehabilitation.

Three initiatives[5] at systematizing these penological ideas and practices marked the development of remission and contributed to its integration in the penal systems under forms which still exist today.

Colonel Manuel Montesinos y Molina was the first to apply to the Valence prison in 1835, what could be called the foundations of a progressive system. He was convinced that inmates would be more apt to reenter society if they were given more trust in a progressive manner[6]. His prime objective being rehabilitation, he set up a system based on trust and consisting of three separate stages. The purpose of the first stage, which consisted of isolation and unpleasant prison maintenance work, was to appeal to the inmate's gregarious instincts and to form working habits in him. This first stage ended when the inmate's repeated requests to be assigned to a workshop were deemed sincere. In the second stage, he was transferred to a common dormitory and assigned work corresponding to his talents and aptitudes. Montesinos considered that work was the best means of reforming inmates. Work became the expression of the inmate's free will.

The last stage consisted of an "intermediate release" and entailed successfully passing a series of tests. A maximum amount of trust was placed in those inmates who had shown diligence at work and excellent behaviour and who had earned the trust of director Montesinos. These inmates were then granted leaves without escort (nowadays called temporary

leaves). They performed messenger services outside the prison and participated in administrative prison tasks. These inmates were allowed to communicate freely among themselves and to receive visitors, parents and friends. They also completed the apprenticeship of a trade (Drapkin, 1968, pp. 335-336).

Remission was a privilege granted by the prison director at the end of the "prison experience" to those who had successfully passed the tests of confidence and acquired a trade. This reward for good conduct and continued diligence at work could amount to one third of the sentence (Lindsey, 1925, p. 10 and Tappan, 1960, p. 716).

In 1840, Alexander Maconochie applied in Norfolk Island a penal system which he invented and called the "mark system". He invented this system on his return from a state mission at the Van Diemen's Land penal colony. He had been asked to render account of its administration before the parliament. With the objective of reforming inmates, he set forth that the time required for inmates to develop self-control depended on a variety of circumstances and on the inmates' reactions to them. He recommended that the period of imprisonment be indefinite. In practice, the period of imprisonment corresponded to a goal to be achieved by the inmate. This goal or task to be performed was measured in points and the time spent by an inmate in accomplishing this amount of work had a direct effect on the length of his incarceration. The system consisted of three separate stages. The first stage, called the "penal stage", involved very strict discipline and consisted of grouping inmates in work teams of six. Each team member gave his opinion on the choice of his working companions. In the second stage, called "social stage", the six inmates in a team pooled their points which were equally divided among them each day as well as the cost of their feeding or fines incurred for having violated prison discipline. During the last stage, each inmate became independent again in his work and other activities. He accumulated points and even administered his own property (Barry, 1958, pp. 69-79).

Remission related to the number of points accumulated only. Work was remunerated daily with ten points. Points earned were redeemable at the rate of ten points per day of sentence[7]. Inmates had to buy their daily rations with a variable number of points and their savings out of the ten points earned each day were credited towards remission. Inmates could thus save up to five points a day. Additional points were awarded for additional or more difficult work. Any violation of the rules was punished with a fine payable in points. Violations therefore had a direct effect on the length of incarceration (Barry, 1972, p. 93).

In 1854, Sir Walter Crofton adopted the "points" system developed and applied by Maconochie and integrated it in the Irish penal system. The first stage consisted of isolating the inmate for a variable length of

time depending on his conduct estimated in "points". During the second stage, the inmate was transferred to another prison where he was able to work with the other inmates and accumulate "points", progressing through a system of five grades until he became eligible for another transfer to an intermediate prison[8]. There, the inmate worked in an atmosphere practically free of discipline so that his only motivation to carry out his routine activities rested on his personal interest and moral values. His sentence ended with a "ticket-of-leave" paired with some form of assistance[9].

The remission aspect was just as important in the Irish system as in the system recommended by Maconochie except that it lost its priority during the intermediate stage (Pears, 1872, p. 417). Maximum possible remission amounted to one quarter of the sentence calculated after deducting the length of time spent in isolation.

These three men of action were the first to work out a penal system with the reform of inmates in mind and, as a corollary, they created a method which made the length of imprisonment flexible. Remission was included in the system as directly related to the inmates' work and conduct. Since that time, the notion of remission has been accepted and applied in the various penitentiary institutions.

Remission already possessed its main characteristics:

- It is a means of reducing the sentence and motivating inmates to reform by participating in the program.
- It is a means of making the fixed sentence flexible.
- Part of a system of progressive classification of inmates, it is a means of recording the inmates' conduct on a daily basis.
- It is related to work (or participation in the program); indeed, remission days are earned by continued effort; the sentence is thus partly measured in terms of amount of work performed.
- It is related to conduct; indeed, violations of regulations are deducted from days accumulated; it is therefore a means of control.

C. *Remission in the United States*

As early as 1817, the State of New York passed legislation on remission and was the first state to adopt a "good time" law. This law provided for a remission of up to one quarter of sentences five years and under (Sutherland, 1966, p. 577). It seems, however, that this law was not applied in practice and we have been unable to find any explanation for this in available documentation. It was nevertheless the first such law to be voted in the United States.

Sutherland (1966, p. 577) reports that Connecticut adopted a remission law in 1821 with respect to inmates sent to work-houses. Then,

the Tennessee Act of 1836 authorized the governor of the state to reduce the sentence of an inmate by a maximum of two days for each month of the sentence. Sellin (1959, p. 108) compares this American law with the model proposed by Viscount Vilain XIIII in 1775, which we have mentioned earlier.

These were the very first American remission laws. Remission, as a release measure, only grew in popularity during the XIXth century after the American Civil War (Sutherland, 1966, p. 577), under the influence of the Irish system and its propagandist, Sir Walter Crofton. According to Sellin (1959, p. 108), the bill passed by Ohio in 1856 was the one which had the most influence on the subsequent American laws.

The growing acceptance of this measure is due to a sharp increase in the population of American prisons, as demonstrated in the following table:

Prison Population in the United States and American Territories 1850 1890

Census year	Prison population	Fraction of total U.S. population
1850	6,737	1: 3,442
1860	19,086	1: 1,647
1870	32,901	1: 1,171
1880	58,609	1: 855
1890	82,329	1: 757

Source: M. B. Miller (1974).

There were several reasons for the adoption of these "good time" laws. Giardini (1958, p. 3) discusses five which still have a contemporary value. Remission was used:

- As a means of discharging prisoners more quickly, without involving pardon procedures.
- As an alternative, to compensate for the harshness of sentences in a spirit of fairness.
- As an effective means of control in solving disciplinary problems.
- As an incentive for inmates to perform the work assigned to them in prison.
- As a means of rehabilitation: the inmate's attitude is almost always provided for by law. He must work "with diligence" and obey regulations "willingly".

In spite of the variations from one state to another, American laws always show similar characteristics with respect to the following: daily records must be kept on the inmate's conduct and performance at work; the progressive attribution of remission days is provided as well as forfeiture and restoration procedures.

American "good time" laws have often been the subject of controversy both from the theoretical and practical points of view. From the theoretical point of view, they often contradict the laws which recommend the use of indeterminate sentences.

The supporters of indeterminate sentences, who place emphasis on treatment, consider that remission is an anachronism which still allows sentences to be based on time. Giardini (1957) cites two decisions to demonstrate the incompatibility between indeterminate sentences and remission. In 1913, the Attorney General of Pennsylvania enacted that an inmate condemned to an indeterminate sentence was not eligible for remission. In 1927, a Washington court realized the absurdity of the simultaneous application of both legislations.

From the practical point of view, the application of remission entails increasingly complicated administration which makes it difficult to achieve objectives[10].

The Attorney General's Survey (1939, p. 511) concluded that remission should lose some of its usefulness due to the possibilities of parole and well-adapted institutional programs. Remission should nevertheless be retained until three prerequisites have been met: a flexible parole law, a well-administered parole system, and a modern penitentiary system[11].

American history has not influenced penological philosophy by its legislation on remission. It is the influence of the Irish system and the increase in prison population which sparked the expansion of this release measure which has become more of a simple method of control applied more or less automatically.

2. REMISSION IN CANADA

(A) *Legislation*

As early as 1868, in accordance with the powers defined by legislation relative to Confederation, a first law on penitentiaries was voted: "An Act respecting Penitentiaries, and the Directors thereof, and for other purposes"[12]. Section 62 of this act authorizes the Directors of Penitentiaries to make rules and regulations for the keeping of records on the daily conduct and attitude of each inmate so as to determine his right to a reward in the form of a remission of a certain number of days. The max-

imum allowable number of days' remission per month was five, and in the case of inmates who were unable to work, this maximum was two and a half days.

In 1883, another law was passed which modified somewhat the provisions on remission[13]. It introduced a progressive system of remission. Once an inmate had accumulated thirty days' remission at a rate of five days per month, he was allowed seven and one half day's remission per month, and once he had one hundred and twenty days' remission at his credit, he could increase the number of remission days earned each month to ten.

In the case of illness rendering the inmate unable to work, he could nevertheless earn half of the remission to which he was normally entitled.

The law specified that certain offences entailed the total forfeiture of the remission earned prior to the infraction, such as: escapes or attempted escapes, attempted or actual prison breakings, cell breaking or any other alterations made with the intention to escape, and finally, assaults on penitentiary officers.

A law voted in 1906[14] made three changes to the existing provisions on remission. First, it was more generous by raising the number of days earned per month to six days and to ten days after the first seventy-two days' remission had been accumulated. In the case of illness, an inmate could still earn the total number of days' remission per month, at the discretion of the director with the concurrence of the appropriate minister. A breach of parole was considered as an additional infraction and entailed the total forfeiture of the remission earned.

Then, the provisions on remission were not amended again until 1961[15]. In the meantime, a royal commission of inquiry and a committee made recommendations which we will now examine.

The report of the Royal Commission to Investigate the Penal System of Canada (Archambault, 1938) summarized its observations on remission for good conduct, diligence and industry at work in a single recommendation: simplify the rules of application of this measure. The commissioners discussed five regulations. They deplored the fact that remission was only calculated after an initial waiting period of six months. Inmates were thus deprived of this incentive measure provided by law for the first six months of their sentences. The commissioners also considered that the regulation according to which all remission was forfeited after an offence, was very harsh. If the inmate's conduct or attitude at work changed after the penalty, the latter should not be permanent and remission should again be used as an incentive.

Once confirmed, an inmate's illness should not result in the forfeiture of remission. The rule which authorized the directors to deny remission

under such circumstances was unfair. It extended the prison term of sick inmates while inmates in good health were able to accumulate the maximum number of days' remission.

The commissioners also contested the regulation, not provided by law, which limited the possibility of earning remission to working days. Finally, they demanded that consecutive sentences be considered as a single sentence for purposes of calculating remission. This would particularly avoid the repetition of the six months waiting period imposed by another regulation.

The commissioners therefore did not contest the measure but its application as observed at the time of their inquiry. Their only recommendation was intended to eliminate "mean and vexatious" regulations and to improve the information provided to inmates by establishing simple regulations and by keeping inmates regularly informed on the number of days they have earned (Archambault, 1938, p. 246).

The Committee appointed to inquire into the Principles and Procedures followed in the Remission Service first analyzed remission in relation to parole. The practice of forfeiting all earned remission when a paroled inmate is punished with forfeiture was deemed debatable. This criticism was based on the absence of relationship between the motives for earning remission and the subsequent conduct of the paroled inmate. However, because of its strong deterrent effect, it was recommended that the decision to forfeit remission in whole or in part be made by the Parole Board (Fauteux, 1956, p. 61).

Although the authors of the report did not examine the merits of statutory remission, they observed certain irregularities and injustices with respect to the application of this release measure which did not benefit all inmates equally, depending on whether the inmate was condemned to two years or to two years minus one day, depending on the institution where the sentence was served and depending on the remission earned during the first year (Fauteux, 1956, p. 64).

Furthermore, even though remission was supposed to be calculated on a monthly basis, as provided by law, this requirement was practically never met. Each inmate was awarded the maximum remission from the total of which offences were deducted. This prompted the authors of the report to recommend that the application of this measure be uniform and practical and that this release granted for good conduct, diligence and industry at work correspond to a period of mandatory release.

The observations made in these two investigative reports suggest that the application of remission is far from compatible with promoting good conduct and a positive attitude at work. Indirectly, the authors recommended the further integration of this measure in other elements of a re-

habilitation program, such as the classification of inmates, remuneration of their work and mandatory parole. This had been the situation of remission prior to the amendments made in 1961.

When presenting the new law in 1960–1961, the minister reiterated that remission was granted for good conduct and diligence at work (Fulton, 1961). Maintaining these two objectives, he commented on the joint use of remission and parole.

First, both measures should be an incentive for inmates to reform during their term in prison. Secondly, the period on parole should allow a sufficient period of time for supervision. Finally, inmates should be encouraged to accept parole when offered to them so that fewer of them would prefer to be released only at the end of their sentences.

The minister's comments demonstrated that the new law was intended to correct three situations which prevented the compatible application of remission and parole. First, the promotion of one measure should not cancel the other. Inmates should be able to count on both measures. Furthermore, the granting of remission should not unduly shorten the future period of supervision during parole to the extent that it would jeopardize its effectiveness. Finally, the date of release determined after the calculation of remission should not become an incentive for inmates to prefer a later date of release without control to immediate release on parole.

The bill proposed several solutions for the compatible application of both measures and also reacted to the comments made in the Archambault and Fauteux reports. It established two forms of remission: statutory remission and earned remission. The first amounts to one quarter of the sentence. It may be forfeited by reason of bad conduct and is applicable to parole. The second remission is accumulated at a rate of three days per month provided the inmate applies himself to his work. Once earned, it may not be forfeited and is not applicable to parole.

By granting statutory remission upon admission to a penitentiary, the law thus eliminated the six months waiting period provided in previous regulations. A disciplinary board decides on the forfeiture of remission which is limited to a certain number of days even in the case of escapes or attempted escapes. The regulation which prohibited the restoration of forfeited remission days was thus abolished.

By introducing two forms of remission, the minister reconfirmed the primary objective of granting remission for good conduct, diligence and industry at work. He clearly distinguished these two criteria which are still included in the present Penitentiary Act.

The changes made to the Penitentiary Act by the 1968-69 act are very

small and were altogether intended to conform the legal provisions with practices[16]. This law is still in effect today. The commissioner may delegate to an officer his power to forfeit statutory remission and to remit the forfeiture. The offence of escaping is specifically included in the paragraph which provides for the forfeiture of statutory remission.

The earned remission granted to inmates who "applied themselves industriously to their work" by virtue of the 1960–61 act is now dependent upon their assiduous participation in the penitentiary program. Article 24 of the act also indicates that earned remission cannot be forfeited for any reason whatsoever. This provision was eliminated in the 1968–69 act which specifies rather that inmates may benefit from earned remission equal to that they had earned prior to the revocation or forfeiture of their parole or mandatory release. This seems to contradict articles 20 and 21 of the Parole Act which include in the prison sentence to be served any period of remission, including earned remission, then standing to the inmate's credit.

This 1968-69 law known as the "Omnibus Bill" was the subject of lengthy debates in the House of Commons. However, the articles regarding remission seem to have unintentionally escaped notice. We are led to believe that the articles were simply amended to bring them up to date for administrative reasons.

(B) *Administration of the Law*

(1) *Statutory Remission*

As required by law, this form of remission is credited to the inmate upon his admission to a penitentiary. He is credited with the entire amount of statutory remission unless found guilty, during his detention, of a *serious or flagrant offence* (Commissioner's Directive no. 213, para. 7) punishable by forfeiture of statutory remission. Such forfeiture may apply to part or all of the remission credited to the inmate upon his arrival. As stipulated by law, no forfeiture of more than 30 days shall be valid without the concurrence of the Regional Director, nor more than 90 days without the concurrence of the Commissioner. When informed of his penalty, the inmate is also informed on the possibility of a partial or total remission in the interest of his rehabilitation (Commissioner's Directive no. 217, para. 3).

What is considered as a serious and flagrant offence? From a list of fifteen possible offences by inmates (Penitentiary Service Regulations, no. 2.29), twelve have been designated by the Commissioner as serious and flagrant offences. In spite of this list, it is up to the director of the institution or to an officer designated by him to determine the category of of-

fence, taking into consideration the circumstances surrounding each incident (Commissioner's Directive no. 213, para. 9).

An inmate's request to restore the forfeiture of statutory remission cannot be presented before a period of twelve months has elapsed following the offence. As in the case of forfeiture of statutory remission, the restoration of statutory remission of more than 90 days may only be authorized by the Commissioner. His recommendation must establish the circumstances of the forfeiture, comment on the inmate's behaviour since such forfeiture, comment on the inmate's earned remission file, and finally, contain an explicit recommendation on the part of the request to be acceded to.

It is not an overstatement to conclude that the opportunities to forfeit statutory remission are many and that the director of the institution has wide discretion in applying this measure. Furthermore, although the remission procedure may seem to reduce strictness, in practice, it is certainly difficult for inmates who are inclined to defy regulations to meet remission conditions.

(2) *Earned Remission*

This form of remission is granted each month by the classification committee to the inmates who apply themselves industriously to their work. For purposes of applying this measure, work is defined as participation in the activities that are part of the approved program of inmate training in which inmates are authorized or required to participate (Commissioner's Directive no. 218). By their attitude, inmates must demonstrate their interest in rehabilitating and participating in the program.

Earned remission is denied to all inmates who are not available for work for five consecutive days for the following reasons: disciplinary offence, punitive dissociation, illness or injury attributable to their own negligence or fault, and any other reason attributable to their own fault. It is also denied when inmates are absent from work by reason of escape or attempted escape. Finally, it is not granted when the disciplinary board finds an inmate guilty of a serious and flagrant offence penalizing him with forfeiture of statutory remission.

An inmate who is not available for work because he is lawfully absent from the institution is allowed earned remission. However, his conduct during such absence will be taken into consideration.

It is readily noticeable that the definition of the word "work" and of the expression "applies himself industriously to his work" (Commissioner's Directive no. 218) as established in 1963 and maintained until now, allows this measure to be used as a means of control. Indeed, by dis-

tinguishing two forms of remission, the 1960–61 provisions reconfirmed the direct relationship between this measure and two aspects of institutional life: work and behaviour. Moreover, this point of view agrees with the objectives of promoting work and good conduct pursued by the previous laws on remission. It is the directives issued by the Commissioner which made it possible to use this measure as a means of control by extending its application to all aspects of institutional life. The amendments made in 1968-69 simply sanctioned the control aspect which was already well-established in practice.

(3) *General Observations*

The directives mentioned earlier do not give any indication of the red tape involved in the application of this law. Indeed, it is the accounting of remission which makes it possible to set a release date. Statutory remission is credited upon admission to the penitentiary and earned remission is credited on a monthly basis. A variety of circumstances may complicate this administrative task, such as the transfer of an inmate to a provincial prison to give testimony or stand trial, his absence at work for medical or humanitarian reasons or to assist in his rehabilitation, periods when a prisoner is in custody as a result of the suspension of his parole (divisional instruction no. 334), the procedure involved in a request for restoration of forfeited statutory remission, the revocation of parole. All these circumstances must be taken into account in the calculation of remission. They create a considerable amount of red tape which burdens the administration of this law.

Let us now examine the application of this measure and its real impact on the behaviour of inmates and their participation in programs. Information provided on *statutory remission* by the Commissioner of Penitentiaries indicates that it is used as a disciplinary measure for 23% of the population of maximum and medium security institutions. This "disciplinary" measure is forfeited in 70% of cases penalized[17]. This data contrasts with the situation in Quebec where available information indicates that remission is used as such for only 8% of the entire population of Quebec institutions[18]. We must note that, in most cases, forfeiture of remission is the result of an escape or failure to report to the institution within the prescribed time in the case of temporary leaves or day parole. This entails an automatic forfeiture of remission as stipulated by law[19]. We are thus led to the conclusion that remission is only used as a means of control and that this use remains restrictive. Approximately 7% of the prison population of Quebec forfeits a certain number of days' statutory remission. Furthermore, this measure is applied very inconsistently throughout the country, a situation which is bound to be prejudicial to certain inmates.

In Quebec, *earned remission* is used in a manner very similar to statutory remission. Approximately 3% of the inmates do not earn 3 days' remission per month mostly due to their absence from work for five consecutive days. Forfeiture is in actual fact a consequence of a penalty of five days' dissociation or more for a violation of regulations. It is apparent that, in its two present forms, forfeiture of remission does not constitute a penalty but really a double penalty for certain violations of regulations or of the law.

3. SUMMARY

The history of remission has shown its slow emergence from a penal system centered on punishment which often took the form of sordid corporal punishment such as banishment and transportation. Recommended by philosophers, it was timidly experimented with and substituted for corporal punishment, placing emphasis on the inmate's conduct and rehabilitation at work. Remission also added the necessary flexibility to fixed sentences in accordance with the new penal ideas.

Then, thanks to the initiatives of three prison directors (Montesinos, Maconochie and Crofton), remission compelled recognition as an effective means of promoting the new relationship between behaviour, work and rehabilitation. Montesinos stressed the importance of work and Maconochie succeeded in placing the responsibility of their own future on the inmates themselves by applying his point system. Crofton who perfected and further developed this system asked the participants in the London congress in 1872:

> to recognize in the existing system many of the things they desired, such as the abolition of fixed sentences, and the substitution of a labour sentence for a time sentence. (p. 417)

We also mentioned that a man could reduce his sentence by his diligence and industry at work and explained the integration of remission in the existing penitentiary system of Ireland based on a progressive regime.

Remission could then be defined primarily as a means of reducing the sentence and motivating inmates in a rehabilitation program. As a means of reducing the sentence, it is an incentive, giving the inmates the opportunity to affect the length of their confinement. As a means of participating in a progressive rehabilitation program, it is an incentive to good behaviour since the inmates' conduct and diligence at work are reviewed on a daily basis.

These were the first objectives of remission prior to its expansion during the XIXth century, especially in the United States. Other motives then appeared to justify the use of this measure. It became an effective

means of control solving many disciplinary problems. It was no longer considered as an incentive and as an indication of behaviour. Applied automatically, it was no longer an incentive to work. From the administrative point of view, it was often merely a guarantee of the flexibility of the sentence, which was no longer necessary considering the penological developments regarding imprisonment and release measures.

All these measures reflect penological considerations on the place and development of remission, considerations which affected the history of remission in Canada which we will now examine.

The objectives of the Canadian law on remission of 1960-61 were clearly related to the inmate's conduct and work. However, present directives which date back to 1963 insist on behaviour through an enlarged definition of the word "work" and give wide discretion to the directors in the punishment and definition of offences. These directives undoubtedly reveal the legislator's intention to theoretically transform remission into a means of control over all of the inmates' activities. The 1968-69 law acknowledged this aspect of control by substituting the word "program" for "work". In our opinion, a well-adapted program can be an incentive to participate. The amendments made in 1968-69 further revealed the legislator's intention to recognize an objective of control. Objectives have changed since 1960. In order to avoid the type of criticisms made in the Archambault (1938) and Fauteux (1956) reports which denounced certain regulations and irregularities in the application of this measure, its administration was made more complicated to provide for all situations likely to raise new criticism.

Because it no longer meets its original objective, and because penitentiary practices provide other means for motivating inmates, statutory and earned remission should be completely abolished and withdrawn from our penal system[20]. We do not think that the withdrawal of this measure would cause an increase in the population of provincial prisons if the number of persons sent to prison is limited by a continued sentencing policy.

Imprisonment involves participation in programs which in themselves possess motivating elements. Let us examine certain recommendations which have already been made regarding the motivation of inmates by their participation in programs which involve the classification of inmates and remuneration of their work. It is time to give meaning to regulations through rehabilitation programs which would offer immediate privileges from which inmates could benefit each day and not only at the end of their prison term. Remuneration of work could become a motivating factor provided it takes into consideration the inmate's real performance at his designated task and provided it corresponds to a responsibility for each inmate.

Parole conceived as a period of transition and readaptation would correspond to the present needs of persons deprived of their freedom. It would also be an opportunity to extend the objectives of social reentry with assistance in the community. In our opinion, parole is another important incentive for inmates and is also a realizable objective for inmates who participate.

References (Remission)

1. We will not examine the history of remission in France because of its too recent adoption there (statute no. 72-1126 of December 29, 1972). J. Marc's first observations (1973) reveal that the legislator took into consideration the British experience and the integration of this measure in the present structures of the system; he made it an essentially optional measure based on the individualization of sentences.
2. Cf. Barnes, H. E. and Teeters, N. K. (1959, pp. 335–337 and pp. 417–425).
3. Especially Montesquieu, Voltaire, Bentham and Beccaria.
4. The penal practices and ideas mentioned here refer to the very first prison experiments carried out in Rome at the St-Michel prison and in Gand at the Maison de Force.
5. We could also mention Georg M. Obermaier who implemented a system based on work very similar to that of Montesinos at the Kaiserslautern institution in Bavaria.
6. Cf. Drapkin, O. (1968, pp. 315–346).
7. Maconochie applied this system on an experimental basis without any legal justification. Appearing before a Committee in 1850, he pleaded in favour of a fixed sentence in terms of a task to be performed by the inmate.
8. The Irish system is often called the "intermediate system".
9. This original aspect of Crofton will be further examined in our section on parole.
10. A complete review of each of the American states is available in Attorney General's Survey, vol. 1, (1939).
11. Sol Rubin (1963, pp. 313–314) arrived at the same conclusion.
12. 31 Victoria, c. 75, art. 62 (1868).
13. 46 Victoria, c. 37, art. 53 (1883).
14. 6 Edward VII, c. 38, art. 62 (1906).
15. 9 10 Elizabeth II, c. 53, art. 22, 23 and 24 (1960–61).
16. 17–18 Elizabeth II, c. 38, art. 107 and 108 (1968–69).
17. Appearing before the parliamentary commission (justice and legal matters) on April 30, 1974, Commissioner M. Faguy based his estimates on 50% of the maximum security institutions and, seemingly, on all the medium security institutions.
18. The data on Quebec institutions refers to the year ending March 31, 1974. We have only reported the data which was used in the calculation of the percentages quoted in this paper, which covers four institutions.

Institution by type of security	Total population	Forfeiture of remission (number of inmates) earned	statutory
maximum	391	172	0
medium	428	238	6
medium	499	180	84
minimum	125	10	25
Total	1,443	600* (50)	115

* To be calculated on a monthly basis, giving a total of 50 inmates per month.

N.B.—When forfeiture of remission is calculated in relation to the total population of all the institutions shown in the table, we obtain the following percentages:

earned remission — 3.4%
statutory remission—7.9%

19. Indeed, in case of escape, article 22, para. 4 of the Penitentiary Act provides for the forfeiture of three-quarters of the statutory remission standing to credit at the time the offence is committed.
20. The Canadian Criminology and Corrections Association recommended the withdrawal of remission in a brief submitted to the Senate Committee on Parole in Canada (Jan. 1973, pp. 11 12). The Task Force on Release of Inmates Report, presided by Justice Hugessen, contains a similar recommendation (November, 1972, Chap. V, pp. 33-34). The report of the Senate Committee on Parole in Canada (March 1974, pp. 63-66) also recommends that the present provisions on remission be repealed.

Parole

1. DEFINITION

A group of experts gathered at a United Nations meeting in 1954 defined parole in general terms as a measure by which *selected* inmates may benefit, *before the expiry of their prison term,* from a release subject to *certain conditions.* After having been so released, paroled inmates *remain in the custody of the State or of any authority* designated by the State and may be reincarcerated for misconduct. Parole is a penal measure aimed at assisting offenders in their transition from the penitentiary regime of very strict supervision to freedom in society. It is neither an act of clemency nor a pardon.

This definition stresses four important elements of parole.

(A) First, it mentions that inmates are *selected.* Parole committees must consider who could be released and when they could be released. These two decisions may seem very related to one another, but they involve different considerations. Whereas parole committees at the very beginning were mostly preoccupied with releasing the inmates who were less likely to recidivate, increasing consideration is given today to the time of release. Indeed, on the one hand, an increasing number of inmates are released on parole[1] and on the other hand, another measure has been applied for the past few years here and there called *mandatory supervision* which subjects the inmates who have not been released on parole to the same terms and conditions as those who have been, for a period equal to the remission earned for good conduct or to the statutory remission.

(B) The second important element of the definition is that the inmates benefit from a release *before the expiry of their prison term.* Indeed, parole only arises at the end of a prison term and is merely a period of transition included in the sentence of imprisonment. Even though paroled inmates are subject to assistance, supervision and conditions that are similar to those of offenders on probation, the

two measures are very different. Probation is a measure imposed by the court but does not involve imprisonment for the convicted person[2]. It is very often applied in substitution for imprisonment. On the other hand, parole is always granted after a certain period of imprisonment.

(C) The third element of parole is that the release is *subject to certain conditions.* All paroled inmates are subject to certain general conditions. In Canada, the parole certificate mentions seven such conditions. Among other things, paroled inmates must, in addition to abiding by the law, remain under the authority of a representative designated by the Board, report to the police once a month and remain within a designated territory. Furthermore, the Parole Board may impose all other conditions it may deem necessary, such as forbid the consumption of alcohol or forbid paroled inmates from visiting public bars or known criminal hangouts. The violation of such rules can result in reincarceration.

(D) The fourth characteristic specifies that the paroled inmates remain *in the custody of the State.* Even though this part of the definition refers mostly to the notion of supervision, it later mentions that the purpose of parole is to *assist* offenders. The two important notions of *supervision and assistance* are therefore included in this definition.

Historically, the control or supervision aspect of parole was of first importance. Today, however, the assistance aspect is just as important.

This definition does not make any mention of a fifth aspect emphasized by Hawkins (1971, p.6): which authority makes the *decision*? He points out that the decision on release is made by the Executive or by administrative bodies in parole systems of the American type. However, in many European and South American countries whose judicial systems have been influenced by Roman Law, the execution of the sentence and of parole are judicially controlled (Planski, 1973)[3]. Although the North American parole is characterized by an administrative decision, such is not the case in all parole systems. It is therefore understandable that the U.N. experts did not deem it opportune to include the decision-making aspect in their definition.

2. ORIGIN

The idea of a period of transition between imprisonment and total freedom, during which an ex-inmate would be released subject to certain conditions was defined and systematized in Europe at the beginning of the XIXth century. In 1846 (Normandeau, 1972, p. 130), Bonneville de Marsangy, considered by Europeans as the father of parole, gave a speech on

"preliminary liberation". In 1847, he explained his system in the "Traité des diverses institutions complémentaires du régime pénitentiaire".

However, it is in Australia that the concept of conditional liberation was first applied. Indeed, in 1787, the British began to transport their convicts to Australia and in 1790 (Hawkins, 1971, p. 17), the Governor or Lieutenant Governors of the penal colonies were officially authorized to terminate the sentence of inmates, with or without conditions. One of these forms of pardon subject to conditions, called *"ticket-of-leave"*, discharged the inmate of his obligation to work for the government and allowed him to establish himself in a specific area provided he maintained himself and did not commit any offences. Although the *"ticket-of-leave"* was first conceived as an incentive to work and behave, it was progressively granted more liberally. A report written in 1822[4] leads us to believe that the granting of a *"ticket-of-leave"* was considered as a right and no longer as a reward.

Then, in 1839, Captain Alexander Maconochie[5] was placed in charge of the *Norfolk Island* penal colony near the shores of Australia. During the four years he held this position, Maconochie implemented a progressive system by which an inmate could earn a certain number of points to progress to the next stage and finally obtain his *"ticket-of-leave"*, as an alternative to serving a term in the penal colony. This "Mark System" according to which the length of incarceration depended on the inmate's work and good conduct, made him responsible for his own destiny.

This indeterminate sentence experiment, which later had a tremendous impact on the development of penology, ended with a *"ticket-of-leave"* stage. However, as we have just indicated, this *"ticket-of-leave"* already existed in Australia before Maconochie's arrival and he did not attach much importance to it.

It is in Ireland that the *"ticket-of-leave"* became an essential stage of the progressive system and that it really became the foundation of parole as we know it today.

Indeed, Sir Walter Crofton was appointed director of Irish prisons in 1854. He applied Maconochie's *Mark System* placing emphasis on the period of transition and on the *ticket-of-leave* which had been introduced in England and Ireland by the *Penal Servitude Act*[6] of 1853. During the first stage of the system implemented in Ireland, the inmates had to serve a prison term of 9 to 10 months in their cells. The second stage of the sentence consisted of collective work under strict discipline. This stage was divided into four periods through which the inmate had to progress by earning a certain number of points (Marks) by his work, discipline and learning performance. Then, the inmates deemed to have been sufficiently rehabilitated were sent to minimum security intermediate prisons[7]. Fi-

nally, the inmates could be granted a parole.

The *ticket-of-leave,* as applied by Crofton in Ireland, has been considered as the first true parole experiment because it was preceded by a strict selection procedure and was accompanied by assistance and supervision. Indeed, Bonneville de Marsangy indicated that the conditions relative to the revocation of licences were more specific and more strict in Ireland than in England and that they were always executed with punctuality (1864, p. 140). Furthermore, Hawkins (1971, p. 31) points out that parole officers in Dublin provided assistance to ex-inmates by helping them to find employment, for example, in addition to exercising their supervision.

Thanks to the dynamism and personality of Sir Walter Crofton, the progressive system (often called Irish system), indeterminate sentence and parole had a strong impact on modern penology. However, it was Reverend E. C. Wines, secretary of the *New York Prison Association,* who contributed the most to the promotion of these ideas in the United States. An expert on the position of penology in Europe, Wines wrote a number of articles on the principal European reformers, between 1860 and 1870, and published their papers in the annual reports of the Association. He translated the speech on parole given by Bonneville de Marsangy in 1846 in the 23rd annual report of 1867 (Hawkins, 1971, p. 35). He was also the principal organizer of the famous *Congress on Penitentiary and Reformatory Discipline* held in Cincinati in 1870[8], a congress in which the following personalities were active participants: Sir Walter Crofton, Matthew Davenport Hill, an enthusiastic supporter of indeterminate sentences who had been a close friend of Maconochie in Birmingham[9], as well as Z. R. Brockway, the first director of *Elmira.* Wines and Crofton were also the principal organizers of the *International Penitentiary Congress* held in London in 1872.

All these discussions resulted in the opening of the Elmira Reformatory in the State of New York in 1876. Its first director, Z. R. Brockway applied a progressive system almost identical to Crofton's, with the exception that the law did not provide for true indeterminate sentences. The first parole system similar to those applied today was applied for the first time in North America at Elmira.

Parole was accepted quickly in the United States, much more quickly than the indeterminate sentence and independently of it. It was first applied in reformatories and then in the prisons and penitentiaries. In 1900, twenty states (Lindsey, 1925, pp. 30–40) had adopted a parole system.

3. EVOLUTION IN CANADA

The Statute of 1899

Although the parole system was widely applied in the United States during the last quarter of the XIXth century, our Canadian Ticket of Leave Act entitled "An Act to Provide for the Conditional Liberation of Convicts"[10] was inspired by a British law[11]. In fact, as the Prime Minister stated in introducing the Bill in the House of Commons: "The Bill follows, I believe, word for word, the English Act. That Act has been in operation in England for some twenty years and more, perhaps, and I understand, has worked satisfactorily." (Fauteux, 1956, p. 55).

The Prime Minister should have said "for some *forty* years and more" because the Canadian law adopted in 1899 was copied word for word from the English *Penal Servitude Act* of 1853[12] and its amendments of 1864[13] and 1871[14]. The Fauteux Committee justifiably commented in 1956:

> The archaic character of the Act is indicated, to some extent, by the language of some of the statutory conditions which are attached to each licence (p. 56).

since these conditions had been copied word for word from the English Act of 1864.

The general structure of the 1899 statute is as follows:

> The Governor General, acting on the advice of the appropriate Minister of the Crown (now the Solicitor General of Canada), may grant to any person under sentence of imprisonment in a penal institution for an offence against the criminal law of Canada, a licence to be at large in Canada during such portion of his term of imprisonment and upon such conditions as may be indicated in the licence. The licence may, from time to time, be revoked or altered. The sentence of imprisonment is deemed to continue in operation even though the licencee is at large. That is to say, the licencee serves the balance of his term of imprisonment by satisfying the conditions of the licence. The licence may contain any conditions that the Governor General, on the advice of the appropriate Minister, sees fit to apply to the licencee. If the licencee is convicted of any indictable offence, the licence is forthwith forfeited by operation of law and the licencee must return to the institution to serve the balance of his sentence that remained unexpired when the licence was granted. If the licencee is convicted of a summary conviction offence or in any way fails to abide by the conditions under which the licence was issued, it may be revoked by the Governor General, again on the advice of the appropriate Minister, and thereupon the licencee is to be returned to the institution to serve the balance of his sentence that remained unexpired when the licence was granted. The licencee is required to notify the local police authorities of his place of residence and of any intentions that he may have of changing his place of residence. Male licence holders are required to report to the police authorities once each month. Female licencees are not required to report. A licencee is required to carry his licence with him and to produce it when required to do so by a judicial officer or a peace offi-

cer. Any peace officer is entitled to arrest, without a warrant, any licencee whom he reasonably suspects of having committed any offence or who, it appears, is getting his livelihood by dishonest means.

(Fauteux, 1956, pp. 55-56).

At the beginning of the century, the task of preparing the files for the Minister of Justice who advised the Governor General was entrusted to officers of the Department of Justice as part of their ordinary duties. In 1913, this task was assigned to a new section of the Department designated as the Remissions Branch. It seems that this Branch only had one parole officer until 1931 (Fauteux, 1956, p. 8). His duties involved visits to penal institutions, interviews with inmates and generally some investigation of the case of every inmate who applied for parole. After his investigation was concluded, he submitted a report to the Chief of the Remission Service who submitted it to the Minister after having completed it.

In 1938, "the Chief of the Remissions Branch . . . had as assistants three officers seconded from the Royal Canadian Mounted Police".

(Archambault, 1938, p. 236.)

Until 1949, the officers of the Remission Service were all stationed in Ottawa. They visited each penitentiary and the large provincial prisons once each year for the purpose of interviewing inmates who had applied for parole. In 1949, the Service established two regional offices, in Vancouver and Montreal. The Service did not expand any further until 1955. The central administration in Ottawa only employed seven officers. (Fauteux, 1956, p. 8.)

In addition to being administered by an insufficient number of officers, the 1899 statute was the subject of much criticism, most of which was made or summarized in the "Report of the Royal Commission to Investigate the Penal System of Canada" (Archambault, 1938).

The legal provisions stipulate that the Governor General acts upon the advice of the Minister of Justice who himself is informed by officers of his Remissions Branch. However, the members of the Archambault Commission deplore the fact that:

The Branch does not attempt to compile case histories of the applicants in the ordinary sense of the term. The information that is acted upon is very meagre, and is gathered from three main sources:

1. A species of questionnaire completed by the prison officials;
2. Reports from the sentencing judge or magistrate;
3. Letters and representations received on behalf of the prisoner from those in no way connected with the administration of justice. These too often appear to ema-

nate from those purporting to have political influence. There is no pretence at any organized inquiry into the social background of the prisoner or the conditions to which he will return if released". (p. 237).

A. E. Maloney (1949, p. 1076) made the same observations ten years later.

The commissioners then strongly criticized the "rules of general application" (or the criteria) which govern the practice of the Remissions Branch with respect to applications for parole. Stating that the purpose of the Act is to provide that prisoners who have served part of their sentence may have an opportunity to serve the remainder of it under licence at large, they are of the opinion that the *clemency features* mentioned in the memorandum (submitted by the Chief of the Remissions Branch) are not features which ought to be allowed to override the purposes of the Act (p. 239). The Fauteux Committee (1956) unfortunately observed 20 years later in a chapter devoted to these rules that:

> Subject to certain modifications made to them, in order to give effect to a number of the recommendations of the Archambault Commission in 1938, these rules are in many respects the same as they were at the time. . . (p. 62).

The Archambault Commission continued its criticism of the criteria by denouncing pressures made on the officers: "Your Commissioners are of the opinion that in the past officers of the Remissions Branch have listened to, and in some cases acted upon, representations which were not founded on sound principles. Undoubtedly, members of Parliament and those in positions to influence have had too much attention from the officers of the Remissions Branch" (p. 240). Maloney (1949) observed that "political influence carries an improper amount of weight and there is a shocking lack of uniformity in granting licences under the Ticket of Leave Act" (p. 1081).

However, the strongest criticism made with respect to the application of the act is that it was considered as a measure of clemency or "conditional pardon" (Jobson, 1966, p. 60) rather than as a conditional measure which facilitates social reentry. The memorandum submitted by M. F. Gallagher, Chief of the Remissions Branch, to the Archambault Commission was very explicit in this respect[15]. This conception seems to have persisted, at least in practice, until 1956: "The investigation procedure of the Service, however, in the main still reflects the traditional view that a Ticket of Leave is in the nature of an exercise of clemency. . ." (Fauteux, 1956, p. 66).

Finally, the members of the Royal Commission of 1938 made some recommendations with respect to ticket-of-leave and parole:

- The Ticket-of-Leave Act should be amended to give effect to the recommendations contained in this report.

- The Remissions Branch should be abolished, and the services now performed by it should be transferred to the Prison Commission, which will act as a central parole board.
- A parole officer should be appointed by the Prison Commission in each province or group of provinces, according to population, to investigate applications for parole and make recommendations to the Prison Commission.
- The administration of the Ticket-of-Leave Act should be definitely and completely removed from any suggestion of political interference. (p. 360).

Unfortunately, except for a few modifications made to the conditions regarding the selection of cases, "it is right to say that effect has not been given to any of the recommendations of the Commission on ticket-of-leave and parole" (Maloney, 1949, p. 1089)(?

The Fauteux Committee

The appointment in 1953 of a Committee to inquire into the principles and procedures followed in the Remission Service of the Department of Justice of Canada (Fauteux, 1956) by the Minister of Justice was an important step in the development of parole in Canada. Indeed, the report of this Committee submitted in 1956 resulted in the proclamation of the Parole Act in 1959.

The Committee accepted the concept of parole defined by a group of UN experts (1954) and separated it completely from the notion of clemency. "Parole should be an integral part of the whole correctional process. Indeed, the entire system of prison treatment should, from the beginning, be directed toward the probability that parole will constitute the last phase of the sentence of imprisonment" (p. 53). The Committee therefore recommended the creation of a Parole Board (chap. 11).

The Report was very well received by all parties at the House of Commons and the Act was adopted without opposition. The Act provided for the creation of a *Parole Board* composed of three to five members appointed by the Governor in Council for a maximum period of ten years. It also provided for the powers of this Board which consist of decisional powers with respect to the granting of parole and with respect to the suspension and revocation of parole certificates.

The Act also provided for the creation of a Parole Service, as recommended by the Fauteux Committee (1956, p. 83), however, its provisions in this respect are not extensive. The duties of this Service involve the collection and classification of the information required by the Board to make a decision in each particular case. The supervision of parolees is also provided by the Service with the assistance of other agencies.

The Parole Act and regulations were not the subject of any major amendments until 1969[16].

That year, however, acting upon the recommendations of the "Canadian Committee on Corrections" (Ouimet, 1969, ch. 18) presided by Justice Roger Ouimet, the Government of Canada introduced several important amendments to the Parole Act in the 1968-1969 Act to amend the Criminal Code (Omnibus Bill).

This Act which came into force August 21, *1969,* gave effect to many of the recommendations made by the Ouimet Committee, such as:

(1) *To increase the number of Board members*

The number of Board members was increased from five to nine.

(2) *To establish divisions of the Board*

These divisions composed of two members (Ouimet had recommended three members) may exercise all the powers conferred on the Board by this Act. Although the Board was not required by law to grant personal interviews to the inmates when deciding on the granting or revocation of parole, in practice, the inmates were visited by these panels in the penitentiaries[17], which listened to their explanations and made on-the-spot decisions on the granting of parole whenever possible.

(3) *To establish a correctional system of mandatory supervision*[18]

This is a new provision of the Parole Act which applies to the inmates who have been sentenced or transferred to federal institutions after August 1, 1970 and who have not been granted parole. It is stipulated that these inmates shall be subject to supervision under the authority of the Parole Board for the entire period of statutory and earned remission standing to their credit when such credit amounts to 60 or more days. Inmates subject to mandatory supervision are subject to the same conditions as paroled inmates with respect to the suspension, revocation and forfeiture of parole.

This new provision is based on the opinion that if inmates eligible for parole need guidance and supervision, those not eligible for parole have an even greater need for it. The Parole Board provides the same support, consultation and assistance to inmates released under mandatory supervision as to paroled inmates.

4. TERMINATION OF PAROLE

The new Act increased the authority of the Parole Board[19] by permitting it to grant discharge from parole in special cases except in the case of inmates sentenced to death or life imprisonment as a minimum sentence. According to the Ouimet Committee, termination would apply to paroled inmates with preventive detention or life imprisonment sentences.

The 1968-69 statute (c. 38) also provided for day parole[20], a measure which had not been explicitly recommended by the Ouimet Committee. It stipulates that an inmate may be released in the morning, and required to return to the institution at night or for several days returning to the prison on weekends or by other special arrangements. Although the law designates this measure as "Day Parole", this type of release may take various forms and may be granted for various durations, one day, one week or more. The expression "temporary parole" used by T. G. Street (1971, p. 48), former president of the Board, is probably more appropriate.

> This type of parole is employed for two main purposes:
> 1. It can serve to allow continuity of employment or education, where disproportionately serious consequences would result, such as loss of long-term employment, or loss of a year of studies through inability to complete a term or write examinations.
> 2. Temporary parole is also used as a preconditioning for full parole[21], and is frequently employed to test an inmate's ability to function in society and assist his re-integration by employment, attendance at retraining courses, etc. . . ." (Street, 1971, p. 46).

It could be argued, however, that whereas the second application consists of semi-release and thus corresponds perfectly with the purpose of the measure, the first is similar to semi-detention, when the Parole Board grants a parole at the very beginning of a sentence, and should thus fall under judicial competence.

In 1971 and 1972, the Canadian parole system was again the subject of study. On October 1971, the Senate passed the following motion: "That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report upon all aspects of the parole system in Canada".

In June 1972, the Honourable Jean-Pierre Goyer, Solicitor General, appointed a task force, presided by Justice J. K. Hugessen, to examine the organization and methods applied with respect to the release of inmates prior to the expiration of their sentence with emphasis on certain specific points.

The Hugessen Task Force

This task force report, known as the Hugessen Report, was made public during the summer of 1973. It emphasizes two main points: the decentralization or regionalization of the Parole Board, and the rights of paroled inmates.

According to the members of this task force, decentralization, as recommended by several organizations which submitted briefs to the Senate, should be made at the local and regional levels. At the local level, a board composed of three members representing the Parole Service, the penitentiary institution and the population would have exclusive competence over certain categories of inmates. At the second level, regional boards in the five regions of Canada would have competence to make decisions on release, other than those which fall within the competence of the local boards. The regional board could nevertheless coordinate the activities of the local boards. At the third level, the National Parole Board and the Parole Institute would coordinate the activities of the various boards and ensure the uniformity of policy throughout the country.

The report recommends that greater consideration should be given to the rights of inmates and that present discretionary powers be limited. It also recommends the application of a "Due Process of Law" at several stages of the decision-making process. Thus, the decision to grant or revoke a parole would be made following an interview with the inmate concerned. The latter could be represented by a person of his choice. Most of the documents used in making the decision would be made available to him for consultation. The report also recommends that the terms and conditions of the parole certificate be specific and that its revocation be based on tangible facts.

Some of the Committee's recommendations have already been acted upon, for example:

1. In April 1974, the first step towards the regionalization of the Parole Board was made by the appointment of ten new commissioners who are to form regional boards composed of two members in each of the five regions of Canada.
2. Since then, the Board has decided to set forth specific administrative rules regarding suspension stating among other things, that the revocation procedure will be initiated by a written notice given to the inmate.
3. On June 1, 1973, the Solicitor General informed the House that, in the future, the decision to grant temporary leaves, other than those granted for humanitarian or medical reasons, would be made by the Parole Board and that the Canadian Penitentiary Service would no longer grant back-to-back temporary leaves.

4. Furthermore, it was agreed at the federal provincial conference on the correctional process held in Ottawa in December 1973, that the provinces would be allowed to set up parole systems for inmates of provincial institutions.
5. Finally, in accordance with recommendation no. 38 of the Committee, the Criminal Code was amended in 1973 to abolish the obligation to obtain the concurrence of the Governor in Council with respect to the decision to grant parole to murderers.

However, these amendments create an unfortunate precedent. The judge presiding over the trial of an accused convicted of murder is thus permitted to sentence him to a compulsory prison term before becoming eligible for parole[22].

The Goldenberg Committee

The Senate Committee Report is based mainly on a consultation process. The Committee received over one hundred briefs and held 26 public hearings between December 1971 and June 1973 which involved approximately 75 witnesses. It submitted its report in March 1974 which was published in the fall of the same year. The Committee adopted a concept of parole similar to that of the Ouimet Committee. Parole is one *step* in the correctional process. "*All* incarcerated offenders should plan their release on parole with institutional and parole staff" (p. 42).

Like the Hugessen Task Force, the Committee advocates a decentralized parole system (chapter V). Such decentralization explained in recommendations 8 to 21 first implies that "the authority to parole inmates sentenced to imprisonment in provincial institutions should be transferred to provincial governments" (recommendation no. 10) and that "the federal parole authority should consist of a Headquarters Division and Regional Divisions corresponding to Canadian Penitentiary Service Regions, all to constitute one board" (recommendation no. 11). The Committee considers however "that the Regional Division should have full parole jurisdiction for all cases within its region" (p. 68).

Its recommendations to establish rules governing parole application hearings, suspension, revocation and forfeiture procedures (recommendations 35 to 40, 59 to 65) are similar to those of the Hugessen Report. They all reflect the concern of many correctional theoreticians and practitians to establish formal rules that meet standards of fairness.

We also point out that recommendation no. 6 according to which statutory and earned remission should be abolished was examined in the first chapter of this paper. We also agree with recommendation no. 41 of the Committee, that ". . . the last third of every definite term of imprisonment should be a period of minimum parole to which the inmate is *entitled*".

Finally, in our opinion, recommendations 71 to 74 of chapter XI of the Goldenberg Committee Report, entitled "Special Cases", which advocate indeterminate sentences for dangerous offenders, seem to contradict the theories and data submitted in the study paper on "dangerous offenders" published by the Law Reform Commission of Canada. They are also in complete contradiction with the stated position of the Commission in its working paper on imprisonment.

5. CONCEPTS OF PAROLE

The concept of parole has developed through the years but there are still discussions today between:

(A) Those who consider it to be a measure of *clemency*;
(B) Those who consider it to be a *selective penological measure* granted to those inmates who have demonstrated their desire to reform. They generally believe that parole is an effective means of reducing recidivism; and
(C) Those who believe that parole should be considered as a period of transition included in all prison sentences and which should be automatically granted to all inmates without requiring them to apply for it.

(A) *A Measure of Clemency*

This concept prevailed in Canada during the application of the 1899 law until its repeal in 1959. As we mentioned earlier, parole was *a measure of clemency* which was granted in exceptional cases to occasional offenders, to young inmates who had been influenced by "evil companions", to older inmates, to inmates in poor health, to those who gave assistance to the government and even in cases of "improbability of guilt". This concept is unfortunately still accepted by a large proportion of the population but is hardly upheld by those involved in the administration of justice.

(B) *A Selective Measure*

This concept considers that parole is a penological measure which must only be applied to those inmates who have demonstrated their desire to reform or who are very likely to reform and who do not present any threat to the community. This is a *selective measure;* authorities must determine *who* should be released. At the time of W. Crofton and Bonneville de Marsangy, parole amounted in practice to the issuing of a certificate of good conduct since the inmates could only obtain it by successfully passing through all the stages of the progressive system, including the period of preliminary release (day parole). The members of

the Fauteux Committee subscribed entirely to the views expressed in the Archambault Report, according to which parole should only be granted to those who intend to mend their ways and who are likely to succeed[23].

This concept, which prevailed until lately[24], rests on two assumptions:

(1) That the Parole Board is effectively able to select the right candidates, and
(2) That parole is an effective means of reducing recidivism.

See Tables 1 and 2, pages 120 and 121.

These assumptions unfortunately do not resist analysis. First, as demonstrated by Tables 1 and 2, parole was obviously a highly selective measure in Canada from 1959 to 1971. Indeed, (Table 1) from 1961 to 1967, approximately only two thirds of penitentiary inmates who were eligible for parole applied for it. However, this percentage increased from 71% to 89% from 1968 to 1971. Moreover, the Parole Board had granted less than 50% of these applications prior to 1969, the year when the percentage of applications granted rose to approximately 60%. In fact, less than one third of the inmates eligible for parole were generally granted such a release. In 1968, for example, 1,331 paroles were granted from a total of 4,455 eligible inmates, that is less than 30%. The percentage of applications granted also began to increase considerably during 1969 in provincial institutions. On the whole, less than half from 1959 to 1968, and approximately two thirds of inmates from 1969 to 1971, who *applied* for parole were granted such a release. We must point out, however, that they only represented approximately one third of the inmates who could have been released on parole.

Table 2 provides additional information on the selection of inmates by indicating the manner in which penitentiary inmates were actually released from 1959-60 to 1969-70. Even though the figures may not be compared to the previous table because they were calculated on a different annual basis, we can nevertheless observe the effect of selection. Thus, we notice that more than one third of the penitentiary inmates were released by parole during only four of these eleven years, whereas less than one quarter of the inmates were released in this manner between 1962 and 1965.

However,

(1) *Is parole really effective in reducing recidivism?*

(2) *Can the commissioners effectively select the best candidates, those who want to and are able to mend their ways?*

(1) There are very few studies available in Canada on the first question. Two studies (Langlois, 1972 and Waller, 1974) compare the recidivism rate of inmates released on parole and upon expiration of

their sentences. According to these two studies, it seems at first that the inmates released at the end of their sentences have a higher recidivism rate than those released on parole.

According to Table 3, 27.5% of paroled inmates and 53.1% of inmates released at the end of their sentences were convicted of a new offence during the first two years following their release from four Quebec penitentiaries from 1960 to 1962[25]. This gap of approximately 20% between the two methods of release is still present after a test period of five and ten years.

See Tables 3 and 4, pages 122 and 123.

The recidivism rates of Tables 3 and 4 cannot be compared because the samples differ in time (1961–1968) and place (Quebec-Ontario) and the criteria of recidivism also differ[26]. There is also a great difference in Waller's study between the recidivism rate of inmates released at the end of their sentences (68% in 2 years) and inmates released on parole (44% in 2 years). However, the higher success rate of paroled inmates must not necessarily be attributed to the release measure itself. Indeed, there is a great difference between the inmates released on parole and those released upon expiration of their sentences. Among other things, the first have a better record, are usually married and are more educated (Waller, 1974, p. 47)[27]. They also differ by their adaptation to the penitentiary.

These are really the differences which affect the rate of success. When the effect of these variables is controlled, there is no great difference between the recidivism rates of persons of homogeneous background in relation to the method of release. In other words, people with similar characteristics do not have a lower recidivism rate if they are released on parole rather than at the end of their sentences. Waller's study (1974)[28] is very conclusive in this respect. The Canadian data provided by Landreville (1967, p. 304) suggested similar conclusions although subject to further interpretation. They, however, merely confirmed the conclusions of several American studies[29].

(2) However, since the inmates released before the end of their sentences are better candidates than the others, is it possible to verify the assumption that the parole commissioners are able to make an effective selection?

Waller (1974) believes that such verification is impossible. It is the inmates themselves, and not the commissioners, who are able to effectively predict who will succeed after release. Indeed, the two variables, "mode of release" and "application for parole", were very much related to re-arrest within six and twelve months following re-

lease, whereas the variable "granting of parole" was not[30]. Waller also observed that the inmates who did not apply for parole were often those with a bad record who do not find employment after release, who do not have a family and who easily get into trouble under the influence of alcohol and that all these variables figured among those strongly related to re-arrest. This data led him to the conclusion that the apparent success of parole is mostly due to the "natural selection" made by the inmates who do not apply for parole and not to the "selection" made by the National Parole Board.

C. *A Period of Transition*

Finally, a third conception of parole was formed in Canada a few years ago. The recommendations of the Ouimet Committee (1969) clearly emphasized this third concept as a *period of transition* to which all inmates should be subject. Like the members of the American Katzenbach Commission, the members of the Ouimet Committee proposed the adoption of a system called Statutory Conditional Release to which all penitentiary inmates who are not released on parole should be subject. They merely distinguished these two methods of release for "political" reasons[31]. In fact, since the coming into force of this measure, the Parole Board no longer has to decide *who* should be released on parole but *when* an inmate should be paroled.

However, is the Parole Board better able to determine *when* an inmate should be released than it was to determine *who* should be released? The decision being more delicate and based on indefinite criteria, there is nothing to support a positive answer in this regard. It would probably be more advantageous and economical to predetermine the time of release after a specific portion of the prison sentence has been served without any intervention by a selection committee except in special cases.

Indeed, we believe that parole should not be dismissed under the pretext that it has not proven to be more successful than imprisonment in reducing recidivism. Even though parole was not able to attain this objective, it remains a more humane and economical measure than imprisonment.

Furthermore, many offenders sentenced to prison have social adaptation problems which, in our opinion, can be better dealt with when they are at large than in a prison environment. Waller (1974) indicated that the problems most highly related to recidivism are working problems, drinking problems and family problems. Practicians have also observed that a number of released inmates encounter problems of this type. It is therefore logical to believe that offenders could be helped more effectively by attacking these problems in a more aggressive and imaginative manner in

an open environment than during their stay in prison.[32]

We should also mention that many offenders presently incarcerated do not need this kind of assistance and that even if the prison population were reduced substantially, there would still be a number of ex-inmates who would not need assistance and supervision. However, it would be unfair to release these individuals unconditionally before the expiration of their sentence and this is why we recommend that parole, accompanied by assistance and supervision, be conceived as a period of transition included in sentences of imprisonment and that all inmates be subject to it as a rule after having served part of their prison terms.

TABLE 1

Propensity to Apply For and Grant Parole
in Canada Since its Implementation (1959-1971)

Year	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971
FEDERAL													
% of eligible applications	—	85%	64%	64%	57%	56%	61%	68%	66%	71%	75%	83%	89%
Applications granted during the year	994	1,192	1,005	885	663	751	1,127	1,114	1,328	1,331	2,030	2,852	2,785
% of applications granted	44%	34%	35%	32%	26%	29%	37%	41%	47%	42%	62%	64%	61%
PROVINCIAL													
Applications granted during the year	1,044	1,333	1,292	987	1,126	1,101	1,170	1,382	1,760	2,187	3,062	2,081	3,493
% of applications granted	41%	51%	32%	30%	31%	29%	31%	39%	46%	54%	70%	74%	71%
TOTAL													
Applications granted during the year	2,038	2,525	2,297	1,872	1,789	1,852	2,297	2,496	3,088	3,518	5,092	5,923	6,278
% of applications granted	42%	41%	33%	31%	29%	29%	34%	40%	46%	49%	66%	69%	66%

Hugessen, 1973, p. 73

TABLE 2

Release of Male Penitentiary Inmates
According to the Mode of Release (1959 to 1970)

Year	Total inmates released	Released upon expiration of sentence		Released by parole		Other mode of release	
		Number	%	Number	%	Number	%
1959-60	3,290	1,846	56.10	985	29.23	459	13.95
1960-61	2,871	1,714	59.70	1,031	35.91	126	4.38
1961-62	2,915	2,008	68.88	837	28.71	70	2.40
1962-63	3,594	2,739	76.21	786	21.86	69	1.91
1963-64	3,391	2,799	82.54	735	15.77	57	1.68
1964-65	3,739	2,902	77.61	786	21.29	41	1.09
1965-66	3,598	2,594	72.10	950	26.40	54	1.50
1966-67	3,661	2,525	69.00	1,055	28.82	81	2.21
1967-68	3,571	2,180	61.04	1,328	37.18	63	1.76
1968-69	3,646	2,119	58.11	1,466	40.21	61	1.67
1969-70	3,950	1,896	48.00	1,947	49.29	107	2.70

Ciale, 1972, p. 42

TABLE 3

Recidivism rate of inmates released from penitentiaries in the Quebec region during 1960-61-62

Test period	Expiration of sentence No. Rec.	% rel.	% cum.	Parole No. Rec.	% rel.	% cum.	No. Rec.	Total % cum.
1/3 months	97	10.5	10.5	25	3.4	3.4		
4/6 months	108	11.6	22.1	29	4.0	7.4		
7/9 months	88	9.5	31.6	37	5.0	12.4		
10/12 months	67	7.2	*38.8*	26	3.5	*15.9*	477	28.6
13/15 months	52	5.6	44.4	18	2.5	18.4		
16/18 months	31	3.3	47.7	25	3.4	21.8		
19/21 months	29	3.1	50.8	16	2.2	24.0		
22/24 months	21	2.3	*53.1*	26	3.5	*27.5*	695	41.7
3 years	72	7.8	60.9	59	8.0	35.5		
4 years	43	4.6	65.5	49	6.7	42.2		
5 years	29	3.1	*68.6*	27	3.7	*45.9*	984	58.0
6 years	17	1.8	70.4	14	1.9	47.8		
7 years	15	1.6	72.0	13	1.8	49.6		
8 years	9	1.0	73.0	17	2.3	51.9		
9 years	7	.8	73.8	9	1.2	53.1		
10 years	5	.5	74.3	8	1.1	54.2	10.88	65.0
	690	100		398	100			

Langlois, 1972, p. 20

TABLE 4

Recidivism Rate from a Sample
of Inmates Released from
Ontario Penitentiaries in 1968

	Mode of Release					
	Expiration of sentence		Parole		Total	
	No.	%	No.	%	No.	%
Success (2 years)	69	32	117	56	186	44%
Failure (2 years)	144	68	93	44	237	56%
TOTAL	213	100	210	100	423	

Waller, 1974

References (Parole)

1. Several American states use this method to release over 80% of their inmates. Cf. Katzenbach (1967), Correction, p. 61.
2. We point out that, in Canada, section 663(1)b of the Criminal Code permits the court to direct that the accused comply with the conditions prescribed in a probation order in addition to sentencing him to imprisonment for a term not exceeding two years. This type of sentence has been the subject of much criticism by the Ouimet Committee (1969) among others.
3. Cf. also: Lindsey 1975, Hawkins 1971.
4. "Report of the Commission of inquiry into the state of the colony of New South Wales" (J. T. Bigge), *Parl. Papers*, 1822, Vol. 20, p. 645,—cited by Hawkins, 1971, p. 19.
5. Cf. Barry (1958).
6. 16-17 Victoria c. 99 (1853). Cf. Du Cane (1885) Ch. 6.
7. Bonneville de Marsangy had already recommended this kind of "preliminary release" in 1847. In 1864, he wrote (p. 132) that the point system or any other similar method or classification could allow us to presume that the inmates had reformed but it did not constitute sufficient proof. To obtain more positive proof, a kind of penitentiary test should be devised to determine whether or not the inmates have sufficiently reformed to benefit from a period of preliminary release. Crofton was also of this opinion.
8. Cf. Wines, E. C. (ed.) (1871).
9. Cf. Barry (1958) p. 187. Barry also emphasizes (p. 231) the close similarity between the declaration of principles made at the Cincinnati Congress (basic principles of the *American Prison Association*) and the writings of Maconochie.
10. S. C. 1899, c. 49.
11. Probably to avoid "americanizing" our law as the first parole officer of the Dominion, Brigadier Archibal, put it in 1907.
12. This is apparent by comparison of two paragraphs from these laws:

> (a) It shall be lawful for Her Majesty, by an Order in Writing under the Hand and seal Her Majesty's Principal Secretaries of State, to grant to any Convict now under Sentence of Transportation, or who may hereafter be sentenced to Transportation, or to any Punishment substituted for Transportation by this Act, a Licence to be at large in the United Kingdom and the Channel Islands, or in such Part thereof respectively as in such Licence shall be expressed, during such Portion of his or her Term of Transportation or Imprisonment, and upon such Conditions in all respects as to Her Majesty shall seem fit; and it shall be lawful for Her Majesty to revoke or alter such Licence by a like Order at Her Majesty's Pleasure.
>
> 16-17 Victoria, C. IX (1853)
>
> It shall be lawful for the Governor General by an order in writing under the hand

and seal of the Secretaryof State to grant to any convict under sentence of imprisonment in *a penitentiary* a licence to be at large in Canada, or in such part thereof as in such licence shall be mentioned, during such portion of his term of imprisonment, and upon such conditions in all respects as to the Governor General may seem fit; and the Governor General may from time to time revoke or alter such licence by a like order in writing.

S. C. (1899) C. 49. S. 1.

(b) So long as such Licence shall continue in force and unrevoked, such Convict shall not be liable to be imprisoned or transported by reason of his or her Sentence, but shall be allowed to go and remain at large according to the Term of such Licence.

16-17 Victoria, C. 99 S. X. (1855)

so long as such licence continues in force and unrevoked such convict shall not be liable to be imprisoned by reason of his sentence, but shall be allowed to go and remain at large according to the terms of such licence.

S. C. (1899) C. 49 S. 2

13. 27 28 Victoria C. 47 (1864).
14. 34-35 Victoria C. 112 (1871).
15. Cf. Archambault (1938), pp. 249-50.
16. S. C. (1958) c. 38.
17. This practice was abandoned during the spring of 1973 because it overburdened the commissioners' workload.
18. This measure had already existed for some time in the American federal system (Killinger, 1951, p. 364).

    The President's Commission on Law Enforcement and Administration of Justice (Katzenbach, 1967, p. 166) had recommended its generalization in 1967.

19. The Ouimet Committee (1969, p. 348) had recommended that the Parole Act be amended to provide for termination of parole in appropriate cases but that termination be conferred upon a judge or magistrate whereas the law gave such authority to the Parole Board.
20. In this respect, see chapter 3 of our study.
21. Bonneville de Marsangy had already recommended this measure over one hundred years earlier (1847). "We could establish, between the state of absolute detention and preliminary release, an intermediate period which could be very helpful and which would consist of allowing only reformed inmates to work outside the institution with masters or individuals who would agree to employ them *during the day*. The inmates would be required to return to and sleep at the institution in the evening. . ." (1864, p. 132). Crofton applied this measure in Ireland in 1856.
22. According to section 218(6)(*b*) of the Criminal Code, the judge may substitute for the number of ten years which all inmates guilty of murder must serve before becoming eligible for parole, a number of years not more than twenty but more than ten.
23. "The predominant consideration must be:

    > Has the prisoner formed a fixed determination to forsake his former habits and associates and to live as a law-abiding citizen and will he be assisted in that determination by being allowed to serve the balance of his sentence under supervision and at large?"
    >
    > (Fauteux, 1956, p. 64)

24. Mandatory supervision came into force in 1970 and so to speak imposed parole on all penitentiary inmates.
25. Unfortunately, a portion of the sample of inmates were released in 1959 before the coming into force of the new Parole Act (Cf. Ciale *et al.* 1967).
26. Langlois' study (1972) associates failure with a *new conviction* whereas Waller (1974) is more strict associating failure with *re-arrest.*
27. Langlois (1972, p. 9) finds that a much greater number of paroled inmates had a clean record; cf. also Léveillé 1970.
28. "We have looked at both prison and parole only to confirm the conclusions of other studies that they are ineffective in terms of reducing the likelihood of re-arrest". Waller, 1974, p. 192.
29. Cf. Waller, 1974, ch. 1.
30. "Our results suggest that if anyone has "divine insight" it is the inmate. Using the limited prediction model, we found, after accounting for expected probabilities of re-arrest, that the two variables, mode of release and application for parole, were very much related to re-arrest within six and twelve months although not twenty-four months. The variable concerned with the granting of parole, on the other hand, was not found to be related." (Waller, 1974, p. 189).
31. ". . . Some name for this program other than parole should be used so that there will be no confusion between the success rates of parole and the success rates of this new program". (Ouimet, 1969, p. 350).
32. Greater efficiency in this respect would probably not reduce recidivism by an appreciable amount but we are hopeful that it could at least put it off.

Day Parole and Temporary Absence

Day Parole and temporary absence are two measures used in Canada which interrupt, vary and sometimes terminate the period of imprisonment. Work outside the institution and social interaction in the community are two important elements in the application of these measures.

Let us examine their origin and review their application in the United States and Canada.

1. ORIGIN

These two rehabilitative measures which place emphasis on work and the community are derived from the development of the notion of prison labour and from the development of the theory of criminology by the discovery of the social causes of delinquency.

(A) *Prison Labour*

Hard labour sentences always inherently included a coercive aspect which took precedence over the productive aspect of the tasks assigned to the inmates. They were assigned work that was useful to the government but unpleasant and hard to perform and it seems that the number of convicts often corresponded to the manpower needed to exploit the mines, row the galleys or build the roads. . . Colbert's note to the members of the French Parliament is eloquent in this regard:

> Le Roy m'a commandé de vous écrire ces lignes de sa part pour vous dire que, Sa Majesté désirant rétablir le corps de ses galères et en fortifier la chiourme par toutes sortes de moyens, son intention est que vous teniez la main à ce que vostre compagnie y condamne le plus grand nombre de coupables qu'il se pourra, et que l'on convertisse même la peine de mort en celle des galères (Cornil, 1968, p. 388).

> The King has ordered me to write to you on his behalf to inform you of His Majesty's intention to restore the crew of his galleys and increase the number of galley slaves by all means and to urge you, at His Majesty's request, to convict the greatest number of delinquents as possible and to even convert the death penalty to a galley penalty.
>
> (Cornil, 1968, p. 388).
>
> [TRANSLATION]

Other tasks were imposed on the convicts which were sometimes completely useless and sordid and clearly demonstrated the purely punitive and coercive aspect of the original concept of prison labour. Here are three classical examples of such practices: the "water cellar" which required the prisoner to pump day and night to avoid drowning; the treadwheel set into motion by the prisoner's weight who had to climb it unceasingly; the variable pressure winch which was set to revolve a certain number of times per day.

After the first prison experiments, the institutions slowly began to assign more productive tasks and trades were introduced as part of a system at the beginning of the XIXth century. From then on, work was considered as an essential part of the penitentiary system. Many attempts were made to include work in the penitentiary system, met by many difficulties which have always been only partially or temporarily resolved[1]. Among such difficulties, we note the restrictions regarding disciplinary and security measures as well as the quality and stability of manpower. Other problems arose outside the system such as competition from free enterprise and the matter of remuneration[2].

The unsatisfactory integration of work within the penitentiary system was the subject of much discussion on imprisonment[3]. The notion of open environment slowly appeared as an opportunity to solve this problem. The 12th International Penal and Prison Congress held in La Haye in 1950 discussed a number of experiments carried out in minimum security institutions. Recommendations made at this congress contributed to the expansion of open system penitentiaries which seemed to facilitate the implementation of programs with emphasis on farming and industrial work and on the apprenticeship of a trade.

This formula proved to be successful from several points of view wherever it was applied[4]. However, with respect to the integration of the notion of prison labour, the open system was unsatisfactory except in the case of agricultural institutions which were used in the original experiments. Considering the rapid development of agricultural methods and the importance of this sector in the economy of a country, it is readily understandable that the open system could not solve the entire problem of prison labour.

The next step consisted of allowing the inmates to work in the community within private enterprise. The outstanding aspect of this devel-

opment is that work ceases to be a part of the sentence. Every effort is made to permit the inmates to perform their usual work and, if possible, to keep the job they held at the time of the arrest. If they are unemployed, they receive the necessary assistance to find employment. Imprisonment is then interrupted to allow the inmates to work normally in the community.

(B) *Theoretical Development*

There have been many attempts at solving the problems raised by delinquency with a solution placing emphasis on the delinquent's personality. This was a normal solution. Indeed, the great reformers of the second half of the XIXth century had inspired a movement which promoted the development of the inmate's personality. Prison conditions were "humanized" and systematized and programs were instituted. Institutional treatment thus made great str)des towards the mid$le of the XXth century. This approach coincided with theoretical developments at a time when research demonstrated the existence of social causes in addition to psychological and individual causes of delinquency[5].

A community oriented approach then appeared to be more apt to solve the problems of delinquents. Several social elements were included in the programs which had formerly been oriented towards individual treatment. This approach was advocated by the philosophical and scientific minds who supported a period of transition between imprisonment and freedom. Parole and probation services played an important part in the development of this approach because of their programs of assistance and supervision in the community.

This extension of programs to the community was also justified by numerous studies on the ill effects of imprisonment[6]. The results of these studies also formed the scientific basis of the measures recommended to reduce the negative effects of long prison sentences. Institutional programs were thus extended to the community to end the social isolation of inmates.

The remuneration of inmates working outside the institution in private enterprise is obviously the best evidence of this theoretical development following the evolution of the notion of prison labour, the discovery of social causes of delinquency and the evaluation of the prison experience. This notion has a variety of applications and appellations (semi-detention, semi-release, temporary absence, day parole, work release[7]) and the reasons for its application are also numerous (studies, medical or therapeutic treatment, family visits, etc.) although work remains the main authorized activity.

2. AMERICAN EXPERIENCE AND LEGISLATION

The American experience dates back to 1913 when Wisconsin voted the Huber law. Within a general framework of rehabilitation, this law provided that individuals could serve a work release sentence and continue to provide financially for their families by working in the community. This law served as a model for American experiments in releasing inmates for a certain number of hours usually for reasons related to work. Senator Henry Huber who promoted the concept explained it as follows:

> Committing a man to jail with nothing to employ his time defeats the ends of humanity more often than advancing it by depriving his family of its breadwinner. Under the proposed (work release) law is shown the error of his ways, given his sentence, and kept employed so his family is not reduced to want.
>
> (Zalba, 1970, p. 694)

This measure is usually reserved for delinquents guilty of offences punishable by a summary conviction. Few states (North Carolina and Maryland) have extended its application to criminal offences. At the beginning, this law often only applied to vagrants and alcoholics. The measure is therefore associated with short sentences.

The decision to apply this provision of the law is usually left to the discretion of the court[8]. Some states have a Parole Board or a Prison Administration Committee for such purpose. The sheriff of the community is usually the local administrator of this law[9].

There are five reasons which may justify the application of this measure, all of which are clearly mentioned in the law or administrative rules:

(1) To work in the community for remuneration;
(2) To seek employment;
(3) To run a personal business, exercise a profession or maintain a household;
(4) To undertake or continue studies;
(5) To obtain medical treatment.

It is therefore possible to conceive a wide extension of institutional programs to the community provided resources are available. Grupp (1964, p. 6) also mentions that this measure is used informally by judges and sheriffs, a very significant indication of the necessary flexibility of such measures.

Most of the states which provide for a work release sentence for reasons related to work also establish priorities for the use of the inmate's income. Inmates must first pay a lodging fee at the prison as well as a fee related to the operation of the program. The financial support of dependents, personal expenses, debts and other obligations, and finally,

savings to be withdrawn upon release, are usually the other established priorities.

The work release measure having been applied in a variety of ways in the United States, it would be difficult to review all of them[10]. Approximately 30 states presently have such legislation and the federal government adopted this measure in 1965 by voting the *Prisoner Rehabilitation Act*[11]. In addition to the variety of legislation in this regard, the degree of implementation of this measure also varies between these states as well as between the counties of a same state, which makes any generalization difficult[12].

However, in all cases, work release involves imprisonment except during working hours. It differs from the measure which involves the inmate's progression to a halfway house and which is always a measure of transition between a long prison term and freedom. This period of transition is never imposed as a penal sanction by the court. It is one stage in a progressive system; it precedes the conditional or complete release and requires the inmates to have successfully passed the previous stages of the program. This measure of transition is therefore never applied at the beginning of incarceration as it often happens in the case of work release.

In keeping with the evolution from purely institutional to community oriented programs, the law also provided for furlough programs. The federal system introduced this measure at the same time as work release in 1965 in the *Prisoner Rehabilitation Act*. Twenty-two states have such programs and 16 others are planning their implementation. The objective of such programs is to facilitate social reentry by ending the social isolation of inmates. They also contribute to strengthening family relationships, provide an opportunity to make firm plans for parole and are quite simply a period during which the inmates can test their abilities to function in society.

There are many reasons for authorizing a temporary leave from the institution within these different programs, giving flexibility to their application, such as:

(1) To attend funeral services for a relative;
(2) To visit a seriously ill relative;
(3) To obtain medical, psychiatric, psychological care as well as the other services not available within the institution;
(4) To contact a prospective employer;
(5) To make arrangements for a place of residence at the time of release from the institution;
(6) Any other valid reason with respect to the promotion of social reentry.

An inmate must generally have served part of his prison term before becoming eligible for a furlough. This kind of program interrupts the sentence for a short and temporary period of time.

It is reasonable to believe that these community oriented programs will develop further in the future[13] as the *National Advisory Commission on Criminal Justice Standards and Goals* observed in 1973.

3. NOTIONS OF SEMI-RELEASE AND SEMI-DETENTION

Before examining the situation in Canada, it would be useful to review the approach taken up to this point. We have emphasized two factors which promoted the transition from institutional programs to community oriented programs: the notion of prison labour and theoretical development. Work which was originally an inherent part of the sentence ceased to be considered as such. It became a simple economic activity carried out in the community. Theoretical development added social causes to the individual causes of delinquency. Attempts were then made to end the social isolation of inmates and to effect the transition between life in detention and life in the community.

We then quickly reviewed the American experience and legislation. The different laws mentioned each applied in some way the notions of semi-release and semi-detention which we will now discuss[14].

Semi-release is a release measure applied for the purpose of providing a period of transition between a long prison term and freedom. The decision to apply such a measure is not made by the court but usually by an administrative committee. It is one stage in a progressive system which requires the successful completion of the previous stages of the program. Applied in the case of long sentences, a large portion of the sentence must first be served. Its immediate purpose is to allow the preparation of a parole plan or the final release at the end of the sentence. This measure is used mostly to allow inmates to work in the community but the undertaking of studies and other social activities may also justify its use.

Semi-detention is a prison measure applied by the court to eliminate the negative effects of imprisonment. This penal sanction does not refer to any institutional program. It is applied at the beginning of incarceration outside working hours. It is usually applied in the case of short sentences for the immediate purpose of preserving the inmate's job and to provide him the opportunity to support his family.

These two concepts give a different meaning to the notion of work in the community. In the case of semi-release, work takes on a very broad meaning. It becomes a transition project carried out in the community making use of various community resources. In the case of semi-de-

tention, however, work is defined as the inmate's usual occupation and is therefore directly related to the local economic structure and involves the participation of the employers.

As a result of theoretical development, the notions of semi-release and semi-detention relate differently to the necessity to end the social isolation of inmates and to facilitate the progressive social reentry of offenders. Semi-detention reduces the negative effects of imprisonment by shortening the prison term and by maximizing social interaction. Semi-release as a period of transition for inmates with long prison sentences complements the objectives of furloughs within progressive social reentry programs.

4. THE SITUATION IN CANADA

(A) *Preliminary Observations*

In Canada, penological practices have followed penological developments which have made the line between the institutional approach and the community approach less distinguishable and which have allowed the notion of prison labour to abandon its purely punitive aspect.

Before approaching the situation in Canada, we would like to make two observations of informative value. First, in order to place this fourth section in line with the previous sections, and to avoid any confusion between semi-detention and semi-release in Canada, we will examine Canadian legislation with respect to semi-detention. We will then indicate the provincial measures, different from the federal measures, which apply the notion of semi-release.

Semi-detention is now permitted and used in Canada by virtue of a law assented to June 15, 1972[15]. According to this law, the court may:

> Where it imposes a sentence of imprisonment on the accused that does not exceed ninety days, order that the sentence be served intermittently at such times as are specified in the order and direct that the accused, at all times when he is not in confinement pursuant to such order, comply with the conditions prescribed in a probation order.

The decision to apply this measure is made by the courts which usually prescribe weekend detention in Quebec. Applied from the very beginning of imprisonment as a penal sanction, it can also be carried out on a daily basis in the form of interrupted imprisonment during working hours.

The conditions of semi-detention prescribed in the probation order are an important element of this measure. On the one hand, they define the specific terms to which the inmate must conform and on the other

hand, they refer to the personnel required to ensure that such terms and conditions are respected. Lack of data prevents us from making any specific criticism which, in any event, would be more suitably presented in another paper.

Let us now examine the provincial provisions relating to semi-release. Two Canadian laws, a federal law and a provincial law, made it possible for inmates to work outside the institution[16]. With the specific authorization of the local chief of police and to perform specific work, inmates from Ontario reformatories or industrial farms could be allowed to work in their community and could sometimes be allowed to sleep there. According to Lavell (1926, pp. 85-93), the program proved to be quite successful after five years of operation (1920-1926), with a failure rate of only 4.3%. However, it was abandoned in spite of its success. The economic structure of that period played an important part in this program and strong criticism overcame the supporters of this project.

Saskatchewan adopted a system quite similar to that of Wisconsin, mentioned earlier, by voting the *Corrections Act* in 1967[17]. Its "apprenticeship through work" program remains outside the judicial sentencing process. It applies to offenders convicted of provincial violations only.

In Quebec, section 19 of the *Probation and Houses of Detention Act,* assented to May 27, 1969, allows inmates to participate in a program carried out in the community under the authority of the director general. This program may consist of work, studies or any other activities likely to promote the social reentry of inmates who have been convicted of provincial or municipal violations.

(B) *Day Parole*

(1) *Definition and Principles*

This semi-release measure was introduced in Canadian legislation in 1969 borrowing the objectives of the American concept of "work release" which, by its diversified application, possesses characteristics which belong to both semi-detention and semi-release[18]. As we will see later on, however, this ambiguity has been removed from the application of day parole in Canada.

As stipulated in section 2(*b*) of the *Parole Act,* day parole is a legal provision by which an inmate may be authorized to serve part of his prison term outside the institution where he is held. It requires the inmate to return to prison "from time to time" or "after a specified period". It does not terminate the period of imprisonment. Day parole may be granted to carry out a specific activity or project during the period of imprisonment. It applies the same notion of "project at large" as parole.

The decision to grant day parole is made as usual by the Parole Board with the difference that the inmate's behaviour inside the institution is not considered as a criterion.

Another characteristic which emphasizes the relationship of this release measure with the period of imprisonment is that the inmate is "deemed to be continuing to serve his term of imprisonment" and is thus subject to the obligations and privileges of uninterrupted imprisonment. The inmate who is granted day parole does not have the status of the ordinary paroled inmate whose parole certificate specifically defines the terms and conditions of his release.

(2) *Criteria of Application*

Day parole is granted for rehabilitative purposes to allow the inmate to keep his regular job[19], to continue his professional or academic training for a specific period of time and to benefit from a program of preparation for parole.

There is no specific eligibility date provided for day parole; however, inmates are usually required to serve a large portion of their sentences. The Board has set the minimum limit of one year's imprisonment before becoming eligible for parole. Day parole is usually applied either just before or just after the eligibility date for ordinary parole. This implies that it is not an automatic period of transition granted to all inmates and that it is often an additional stage. We are also led to the conclusion that day parole is applied quite often to a category of inmates which hardly corresponds to the criteria for ordinary parole. As a corollary, day parole seems to be a test to be successfully passed before ordinary parole is granted[20].

The duration of day parole is very flexible; it may vary from very short to very long. First granted for a period of three months, day parole is now usually granted for a period of four months and may even be extended in special cases at the discretion of the Board. The Board also has discretion to vary any initial projects for which day parole had been granted. As a rule, the Board tries to be very flexible in its decisions while preserving as much control as possible over these programs.

Day parole projects are very similar varying somewhat in their application depending on the place where they are carried out (community correction centers, maximum, medium or minimum security institutions). These variations relate mostly to the time of return and flexible weekend leaves. Furthermore, the district representative shares his responsibilities with the director of the institution when the inmate stays in a community correction center.

The present situation could be summarized as follows: eligibility for day parole is usually determined either in relation to ordinary parole or in relation to mandatory supervision. There are no criteria which exclude a category of inmate from the outset, however, as opposed to the criteria applied in granting ordinary parole, the "project at large" is given much consideration. It seems that the importance of a project is given more consideration than the individual himself. A "serious project" is likely to be carried out successfully (evaluation of personality and environment) and is readily compatible with a rehabilitation program. From the relationships between day parole and the other methods of conditional release, we are led to believe in the existence of a kind of system of "progressive" conditional liberation.

(3) *Criticism*

Our criticism of day parole will deal with the two aspects we considered during our study of day parole. We will first examine the conception or nature of these programs and then their operation in terms of administrative responsibility and physical resources.

Our analysis is more oriented towards a search for the actual situation than towards accomplishments from which we derived a definition of day parole and evaluated its success with certainty. It is difficult to grasp the situation of day parole because it is constantly changing through a series of adjustments. The flexibility of the program is its trademark both at the higher levels of the Board and Service and at the officer level. Attempts are being made to unify the concept of day parole as a promising means of rehabilitation.

The various conceptions of day parole justify the variety of application of this measure[21]. It is applied to difficult cases which do not meet the usual criteria for granting ordinary parole, especially in relation to mandatory supervision. The experience with this new clientele, which remains to be evaluated, is undoubtedly the most important attainment with respect to the objectives of this release measure. The program is also considered as a period of transition to be provided to the largest number of inmates. In this respect, it is evidently related to the eligibility date for ordinary parole. Day parole is also used as an extension of or substitution for an institutional program of professional training or treatment. It thus permits the use of resources not available within the institution. Finally, it is considered by some inmates as a "progressive" release taking into account the difficulties and special circumstances which justify its trial application, or as a period of preparation for life in society.

We have been able to detect two orientations in the procedure and use of day parole. Legal interpretations and the subsequent development

of policies have revealed a constant concern for *systematizing* the use of this release measure. Attempts have been made to set an "eligibility date" and projects must be "authorized" by the Board. A regulation also limits the flexibility of application of this measure. This characteristic of *flexibility* is mostly present with respect to application as a result of the various conceptions mentioned earlier which express the officers' desire to make it as flexible as possible. In their opinion, the "project" is always therapeutic even before its authorization.

We are now discussing a subject which will be dealt with further in a working paper on imprisonment. The types of decisions made by the Board as well as its role in the administration or supervision of sentences are discussed at length in this paper. Our only observation here is to point out the lack of uniformity of criteria applied at all levels of the correctional system.

We have observed two problems with respect to the operation of day parole programs. First, a problem of authority arose due to the complementary use of day parole and temporary leaves. We first observed that the now mandatory community investigation carried out before a temporary leave is made under the responsibility of the National Parole Service. It is recognized that this Service is best qualified for this task, however, it is illogically not included in the decision-making process. Secondly, prior to June 1, 1973[22], certain inmates were granted back-to-back temporary leaves before the eligibility date or following a negative decision by the Board which amounted to long periods of time. In the first case, the Board was faced with an accomplished fact and in the second case, its decision was annulled in practice[23]. This problem relates to the integration of a correctional program.

The last problem relates to the unsuitability of institutions from which such day parole projects can be implemented[24]. The proximity of the institution to the place of work has become a requirement for the definite implementation and general use of this release measure in the community. Available institutions are presently inadequate[25]. Very few of the resources used at this time really function adequately because most of them were not conceived to provide lodging for inmates on day parole; efforts are made to use existing institutions. The program is therefore physically limited in addition to its inherent problems.

(C) *(Temporary) Parole*

Often confused with day parole, their objectives are really very similar. Temporary parole has often been used to extend day parole to the weekend. It is more independent from the eligibility date for ordinary parole and thus can be granted very soon after confinement but for shorter and more specific periods of time (special projects). It is especially applied

to group projects. Its principal characteristic is that it adds more flexibility to day parole programs.

(D) *Temporary Absence*

(1) *The Law*

Introduced in the Penitentiary Act in 1960-61, temporary absence was submitted as an administrative measure which would decentralize decision-making in cases where a temporary leave from the institution is deemed justified by special and unforeseen circumstances:

> I am quite sure hon. members will appreciate that there are many, many situations in which it becomes cumbersome and administratively unwise to seek the authority of His Excellence the Governor General every time it appears desirable to allow an inmate, for a short period, to be absent from the penitentiary.
>
> (Fulton, 1961)

Section 26 therefore permitted the Commissioner or the director of a penitentiary to authorize the temporary absence of an inmate, with or without escort, "for medical or humanitarian reasons or to assist in the rehabilitation of an inmate". The 1960–61 Act has remained unchanged.

This provision was introduced in the Prisons and Reformatories Act in 1968–69 (s. 36), at a time when the penitentiary system applied this measure with increasing frequency within the framework of institutional programs.

In Quebec, section 20 of the Probation and Houses of Detention Act, assented to in 1969, confers the same authority to the Regional Director in the case of inmates convicted of provincial violations. This provincial law has been applied with increasing frequency for similar reasons.

(2) *Administration*

Temporary absence is therefore a temporary release measure applied as much as possible within a wider rehabilitation program. There are no legal provisions for the granting of temporary leaves at any specific times or regular intervals during a sentence of imprisonment. Practice has however established strong contingents of inmates on leave at special times of the year around Christmas, New Year's Day and Easter. The Solicitor General announced on January 16, 1973 that 1,386 inmates had been granted a minimum temporary leave of three days during the 1972–73 Christmas season. Temporary leaves are also often granted to prepare for or complement a conditional release measure. The following figures submitted to the Senate March 3, 1972 reveal the scope of this temporary absence program:

Year	number of Temporary leaves
1969	6,278
1970	18,008
1971	30,299

Temporary leaves are usually granted for rehabilitative, humanitarian or medical reasons. The figures available in this regard for the whole of Canada date back a few years[26] and are not suitable for scientific interpretation. In five out of six Quebec institutions, the percentage of temporary leaves granted is distributed as follows[27]:

rehabilitative reasons	53.3%
humanitarian reasons	2.5%
medical reasons	44.2%

A directive issued by the Commissioner of Penitentiaries explains these categories in detail. Medical reasons do not require any comments a priori and we are unaware of the difficulties which may arise with respect to application. They are granted with escort and out of necessity. Humanitarian reasons usually refer to special, civil or religious events which normally require the presence of all members of the family. Illness and hardships in the family are also considered as humanitarian reasons to grant a temporary leave. Leaves for rehabilitative purposes are usually granted to strengthen personal relationships, to continue education or professional training, to join the labour market or to participate in community activities including recreational activities.

Since January 28, 1972[28], temporary absence without escort may not be granted unless the inmate has served at least six months of his term of imprisonment. Leaves may only be granted in exception to this general eligibility rule for humanitarian or medical reasons and in such circumstances, the inmates must always be escorted. This eligibility rule is also varied by special restrictions and conditions prescribed in Commissioner's directive no. 228:

> 1. No temporary leave may be granted for rehabilitative purposes to inmates who have been sentenced to life imprisonment or preventive detention, or who are recognized members of organized crime, before they have served three years of their sentence.
>
> 2. No temporary leave may be granted without escort for any reason whatsoever to inmates convicted of murder, up to three years before their eligibility for parole.
>
> 3. No temporary leave may be granted for rehabilitative purposes to inmates recognized by the courts as dangerous sexual offenders.

Other restrictions are provided in the cases of inmates who have had their parole suspended, who have been refused parole, who have been convicted of kidnapping or skyjacking, or who have committed offences of a sexual nature. Inmates whose ordinary or mandatory parole has been

forfeited or revoked, as well as inmates convicted for escaping or being unlawfully at large, must serve six months or three years (according to their category) before again becoming eligible for a temporary leave. The directive provides for other cases which are however too special to mention here.

A selective system has therefore been developed to ensure public protection in the case of temporary leaves granted for rehabilitative purposes. In the case of temporary leaves granted for humanitarian or medical reasons, the decision rests more on the terms and conditions of the leave, that is whether or not the inmate should be escorted, than on the authorization to be at large.

In addition to the objective rules mentioned above, the inmate's eligibility for a temporary leave for humanitarian and rehabilitative purposes is established from several criteria of evaluation, such as his participation in the institutional program, the quality of his family relationships, the potential impact of a temporary leave on his family situation, the incentive provided by this measure and finally, the inmate's expected conduct on leave.

A community investigation by the National Parole Service always precedes the granting of temporary leaves without escort for rehabilitative purposes. The first investigation is updated with each subsequent temporary leave. The institution and the inmate must always designate a sponsor in the community (which may be an individual or an agency) for each leave.

We must add to the above description that facilities are also provided for the granting of temporary leaves to groups of inmates for rehabilitative purposes such as: a social project (theater), special programs (A.A. meeting), participation in sports or sports events.

(3) *Criticism*

We observed, on the one hand, that the legal provisions on temporary absence have remained unchanged since 1960–61 and, on the other hand, the number of temporary leaves granted has increased remarkably since 1969, especially in 1970. The law intended to allow inmates to leave the institution for a temporary period of time within a practical and effective administrative framework. According to the Act, the exercise of this power, which was then related to the exercise of the prerogative of mercy, became an integral part of the inmate training program. It seems that temporary leaves were granted in consideration of pressing and unforeseen circumstances until 1969 and then as part of a program. This development is best observed in the available figures on the granting of temporary

leaves. Because of constant change however, it is impossible to establish criteria for the assessment of such a program.

Directive no. 228 of the Commissioner is decisive with respect to the nature of temporary leaves. It is really a privilege granted by the Commissioner or the director of the penitentiary. Whereas the notion of temporary absence is customarily considered to resemble a "period of transition in the community" (to the extent that it has come into conflict with that of day parole), this aspect of "privilege" should be abandoned in favour of the present development of this program.

Accurate figures on the granting of temporary leaves are presently unavailable. Indeed the categories of data collected vary across the country as well as within a same region. Also, different elements are included in these categories giving undue importance to certain categories and affecting the true scope of the program[29]. Due to these flaws, we are unable to rely on Canadian statistics to support our analyses[30] and we completely agree with the comments made by the Senate Committee on available statistics:

> Statistical information on other programs such as remission, probation following imprisonment, temporary absence, etc., is either non-existent or almost meaningless.
> (Senate Report, p. 125)

(E) *Summary*

We have completed our observations on day parole and temporary absence constantly referring to the term of imprisonment. Indeed, we reviewed the notion of prison labour which, when community oriented, is best described by the expression "community project". Strictly speaking, the notion of work has come to include the undertaking of studies, professional training and gradual entry in the labour market.

It was also our intention to emphasize theoretical developments, observing that the discovery of social causes in addition to the purely individual causes of delinquency and the study of the negative effects of imprisonment justified the implementation of a social reentry program.

Before examining the situation in Canada, we briefly reviewed the situation of the countries where this double development occurred. The measures implemented to carry out these ideas were diverse and so were their integration in programs. Finally, the rules and regulations provided in the various legislations complicated their application.

In Canada, day parole and temporary absence clearly have characteristics of semi-release and their integration in the correctional system is also based on that concept. A portion of the term of imprisonment must be served before either of these measures can be applied and the eligibility

date for either of these measures must be regulated. This first principle of application would establish a progressive release system which would inevitably involve a period of confinement but the stages and criteria would be known in advance by the courts, the inmates and the administrators of the institution.

The eligibility date for day parole should precede the eligibility date for ordinary parole. With respect to the eligibility date for a temporary leave granted for rehabilitative purposes, the present delay of six months should be replaced by a fraction of the total prison term but the first temporary leave should precede the eligibility date for day parole. The progressive character of these measures should be the decisive criterion for eligibility.

Because of its objectives, a release measure is necessarily community oriented. The decision to grant these measures should also reflect this community aspect and should therefore fall under the competence of the most qualified body, the Parole Board. Single authority with respect to these measures intended to effect the progressive reentry of delinquents in society, would put an end to the present ambiguous situation by settling the problem of responsibility for decision. Single authority would also result in improved control over programs and improved integration of programs in the correctional system.

With respect to day parole, we believe that it should be assessed systematically after a specified fraction of the term of imprisonment has been served and that it should be applied with great flexibility. The authorized project developed with the assistance of professionals from the institution and from the Parole Service should meet the fundamental criteria based on an individualized program of social reentry. The duration of the project should not be established in terms of the eligibility date. It could be of very short duration corresponding to the present motives for granting a temporary leave for rehabilitative purposes, except for reasons related to family and professional relationships. Day parole should include all projects which precondition for full parole. It would then become a period of transition.

On the other hand, temporary absence should fall within the competence of the Parole Board and should be granted primarily for the purpose of maintaining or establishing meaningful interpersonal relationships with the inmate's wife, children, relatives and sometimes close friends[31]. The requirement to carry out a community investigation should be maintained. The results of the first temporary leave would be added to the date on the assessment of the social environment and would serve to establish a program of regular leaves somewhat similar to the Swedish program[32].

The system of transition should therefore consist of specific stages and specific eligibility criteria known to the inmates from the beginning of their incarceration. The various release stages should never be considered as a privilege or a right but as an opportunity to promote the social responsibility of inmates.

[Temporary] day parole should remain an additional measure applied to release an inmate for a specific period of time and for a specific project in consideration of the serious prejudice that would be caused to the inmate or his immediate family if such project were delayed. [Temporary] day parole could also be granted in special cases at the beginning of the period of imprisonment taking into consideration the reasons for imprisonment.

Temporary absence for medical and humanitarian reasons should continue to be granted according to the criteria presently applied by penitentiary authorities. Additional reasons cannot be included in a program and do not justify the intervention of the Parole Board. Only the Canadian Penitentiary Service may authorize a temporary absence with or without escort for such reasons.

The purpose of these recommendations is to improve the present situation in four areas:

- Improve public information on the administration of these measures;
- At the penitentiary level, the measures will be applied objectively according to specific criteria;
- At the professional level, the measures will remain a flexible means of carrying out a correctional program;
- At the judicial level, the sentence of imprisonment will consist of a period of detention always followed by gradual stages of social reentry.

We believe that the correctional system should be simplified to allow it to function as economically as possible and to attain its objectives.

The present application of the two release measures we have just examined do not completely meet the objectives of justice and equity.

References

(Day Parole and Temporary Absence)

1. A good review and analysis of the difficulties in introducing industrial work in penitentiary programs may be found in Sutherland and Cressey (1966, chap. 25, pp. 537 553).
2. Cf. Gill, H. B., (1931, pp. 83 101).
3. Cf. Morris, N., (1965, pp. 267–292).
4. Cf. Cornil, P., (1968, pp. 394–396).
5. Referring particularly to the research work carried out by the Chicago School and by other writers such as Shaw, McKay, Sutherland, Cloward, Ohlin, Cohen, etc.
6. Critical studies were undertaken in various disciplines such as architecture, psychology, behavioural psychology, sociology and psycho-sociology. A recent work by Nagel, W. G., (1973) makes an excellent review of this criticism from data collected in penitentiaries. It also has a very good bibliography.
7. For a review of the various American concepts of work release, cf. Grupp, S. E., (1965, pp. 8 9).
8. For the opinion of a judge on this measure, cf. Sloane, J., (1964, pp. 42–44).
9. For a study from the sheriff's viewpoint, cf. Grupp, S. E., (1967, pp. 513–520).
10. The best summary on the application of work release in the United States may be found in three articles written by Grupp, S. E., (1963, 1964, 1965).
11. Cf. Carpenter, L., (1966).
12. Cf. Ayer, W. A., (1970, pp. 53 56).
13. Several European countries (France, Belgium, Denmark, Sweden, Norway) have set up programs similar to the American experiments in their objectives. Their methods of application sometimes differ substantially according to the legislations and correctional systems. Available documentation is unfortunately insufficient to permit us to make a detailed analysis of these programs to detect major differences or aspects likely to give a new perspective to the American approach. Note that the European programs are never as extensive as the American programs both as regards their place in the correctional system and as regards the inmate population involved.
14. The following definition of these concepts only takes into consideration the experiments described earlier.
15. 21 Elizabeth II, art. 662.1 (1972).
16. 6 7 George V, c. 21, art. 3 (1916) and Statutes of Ontario (1921), c. 93.
17. For a more complete comparison with the Huber law, cf. MacDonald J. A., (1968).

18. Chapter 2, third section, of this paper contains a brief comment on the objectives of day parole as stated by the former chairman of the National Parole Board.
19. In this respect, cf. the comments by Landreville *et al.* (1972 pp. 44–45).
20. This "test" aspect is commented upon in Landreville *et al.* (1972, pp. 48-49).
21. To illustrate day parole, here are some statistics for the Quebec region which cover 175 cases of day parole between April 30, 1972 and April 30, 1973. The data shown below was collected in the form of a questionnaire.

    - 60% of inmates found a new job
    - 88% of projects were carried out

    duration (in weeks) of day parole:

    0-4 ..... 16.6%
    4-12 ..... 37.7%
    12-18 ..... 12.6%
    18 and over 33.1%

    61.1% of inmates were recidivists

    - relation to other methods of release:

    (a) granted before eligibility date 40%
    (b) granted upon eligibility date 2%
    (c) granted after eligibility date 37%
    (d) granted before mandatory release 4%
    (e) no relation 17%

    We point out that this data was made available to us and not collected as part of our work. We have presented it for its descriptive and suggestive value.
22. The Chairman of the National Parole Board announced a new policy on that date, which put an end to such practices.
23. This conflict of jurisdiction between the National Parole Board and the Canadian Penitentiary Service was the subject of discussion in other works: Landreville *et al.* (1972, pp. 54-55), Hugessen (1972, pp. 29–32), Report of the Senate Committee on Parole in Canada (1974, pp. 99-102).
24. This problem of inappropriate residence was pointed out on many occasions in our review of the various legislations in the second part of this chapter.
25. As ascertained by the following facts: the transportation problems at Stoney Mountain, the limited number of beds at Cowansville, double population at Montée St-François, the transfer problems at the St-Hubert Community Correction Center, the comments raised by the report on annex farms.
26. We have the national data made available to the Senate Committee on Parole in Canada.
27. The following is the data that was made available to us for each Quebec institution:

    See table, page 147.

28. Additional restrictions were imposed following an incident which raised much publicity. As a result, 366 fewer inmates were granted a leave for the 1972–73 Christmas season than for the 1971–72 Christmas season, as the Solicitor General informed us in a press release on January 16, 1973.
29. We have mostly extrapolated from the Quebec region where we were able to control the compilation of data. Open cooperation by most of the institutions is another methodological guarantee.
30. Here are three examples which illustrate this observation on the various recording systems used in the institutions:

(a) At the regional level: Quebec institutions have not used "back-to-back" temporary leaves much but rather day parole. However, the categories include the same elements and the first measure has disappeared in favour of day parole.

(b) At the institutional level:

1. The category "work outside the institution" may include the daily maintenance work performed in an institution other than that where the inmate is detained.

2. The category "medical reasons" may include group X-ray examinations outside the institution.

31. Thirty-one percent of temporary leaves authorized in Canada between September and December 1971 (Senate Committee on Parole in Canada) were granted for such reasons compared to 24% of temporary leaves authorized in Quebec between April 1, 1973 and March 31, 1974.

32. Two kinds of leaves are granted. The "regular" leave is an integral part of the sentence and, according to the sentence, the type of institution and the category of the offence, regulations provide an eligibility date for the first leave and other leaves at fixed intervals unless an inmate's file contains adverse reports. The decision to grant such leaves is made by a regional administrative board or by the penitentiary administration.

Special leaves are granted according to well-defined criteria:

(1) To visit a seriously ill relative or to attend funeral services for a relative.
(2) To give testimony in court or to protect the inmate's civil rights in some way.
(3) To contact a prospective employer or make arrangements for a place of residence in anticipation of a conditional or final realease.
(4) To be at large for a few hours if the inmate's application is justified.
(5) To be transferred to another institution.

It is interesting to note that inmates who are granted a work release licence may also be granted leaves for weekends and other civil holidays. Inmates belonging to the category of young adults may also be granted a special leave up to two evenings a week.

This measure is widely used in Sweden and evidently successful. Most violations consist of delays in returning at the prescribed time or returning in a drunken state. This leave system has made institutional life more natural and less tense. Cf. Erikson, T., (1968, pp. 417–427) who was personally involved in the development of this program.

Number of temporary leaves (Quebec region)*

Type of institution and total population	Total number of temporary leaves	Reasons		
		Rehabilitative	Humanitarian	Medical
Minimum security 125	570	354	34	182
Maximum security 391	443	3	1	439
Maximum security 160	274	2	5	267
Medium security 428	1,452	1,005	47	400
Medium security 499	1,847	1,082	27	738

*data compiled from April 1, 1973 to March 31, 1974.

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