A REPORT BY JUSTICE

BREAKING THE RULES

CHAIRMAN OF COMMITTEE

PAUL SIEGHART

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The Problem of Crimes and Contraventions

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PAUL SIEGHART

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INTRODUCTION

1 In 1975, nearly two million convictions for criminal offences were recorded in the Courts of England and Wales. Making allowances for duplications – the same person may have been convicted of more than one offence on the same occasion, or more than once in the same year – that still means that somewhere around 1,900,000 different people – about one in 23 of all men, women and children in the population – were convicted in that year alone. Those are startling figures, and they have not changed significantly since then. No wonder there is so much talk about the crime wave and our lawless society.

2 When one looks at the figures in greater detail, the picture becomes rather less alarming:

Indictable offences		
Violence against the person	36,331	
Burglary	69,266	
Robbery	3,458	
Theft and handling stolen goods	218,728	
Fraud and forgery	19,589	
Criminal damage	38,467	
Sexual offences	6,846	
Others	9,796	
	402,481	(20%)
Non-indictable offences		
Motoring offences	1,180,614	
Others	405,584	
	1,586,198	(80%)

3 The truth is that, in our modern, complex world, Parliament has found it necessary to regulate so many everyday activities that it has become well-nigh impossible for even the honest and law-abiding citizen to get through the average year without infringing some regulation or other. Since the breach of any of these regulations is a criminal offence under some statute, the law can easily make criminals of us all.

4 JUSTICE has become increasingly concerned about this problem in recent years. In 1975, its Council therefore decided to appoint a

special Committee to study it, and to make recommendations. This report is the work of that Committee, and has been endorsed by the Council.

5 The Committee's work has taken a great deal of time, largely because they thought it right to ascertain some important facts about the state of the English criminal law, and it turned out that no one knew what those facts were. The Committee therefore decided to undertake some original research, which was carried out almost entirely by volunteers, and so took a good deal longer than it might have done had we been able to pay for it all. Another piece of research was to find out how other countries dealt with this problem.

6 In one respect at least, this report will probably disappoint some people. There has been a movement for several years, especially in the United States of America and in some quarters here too, for substantial measures of 'decriminalisation' – that is, for removing all sanctions from some conduct which is now unlawful, such as abortion, drunkenness, street prostitution, or the possession and use of cannabis. While there may be strong arguments for the 'legalisation' of some kinds of conduct which are now prohibited in the United Kingdom, these questions still evoke much controversy – of the kind from which JUSTICE has, by long-standing tradition, always kept apart. Instead, our concern here is a different one: the removal from the category of 'crimes' of a large number of offences on our statute book which are no more than breaches of some regulation which (for the purposes of this report) we assume to be necessary for the maintenance of an orderly society, but the infringement of which carries no real moral blame in the public mind. It is to that more limited, but no less important, question that we have addressed ourselves, leaving it to others to debate and decide whether some of the categories of conduct concerned should be visited with any sanctions at all.

7 While the Committee has been at work, others too have begun to express concern about this problem, and several distinguished people – including Sir Robert Mark[1], and most recently Lord Devlin[2] – have drawn public attention to the defects in our system. JUSTICE therefore hopes that this report will stimulate at least the beginning of reform, and that it will not be too long before the first steps are taken. As will be seen, there are several options, and even the simplest and easiest one would do at least something to mitigate the mischief. Though the others would involve more effort, their benefits would be even greater.

[1] In an address to an Automobile Association dinner in October 1976.

[2] In a talk entitled 'Law and Order in a Free Society', first broadcast on Radio 3 in December 1979, in which he said: "The first thing that our law-makers should do is to restore to the word 'crime' its traditional meaning of something that is wicked and shameful. Violence, dishonesty and disloyalty [to the Crown] are generally shameful acts. There should be put out of criminal law all acts that are not wicked or disruptive. This means in effect drawing a distinction between a law and a regulation. I see no difficulty about removing from the criminal law the whole vast area of it that is now covered by regulation."

8 The Committee has had valuable help from several people, including serving judges and officials, who by convention could not formally serve as members or be named here, but for whose contributions we are most grateful. This is also the place to express the deep indebtedness of JUSTICE to all those who have helped to carry out the Committee's research, and in particular:

Great Britain

The Nuffield Foundation, for the generous 'Small Grant' which made possible the compilation and classification of the source material:

John Doris, barrister of Gray's Inn, who carried out that seemingly endless task;

Jane Cowtan, who transferred most of his work to magnetic cards;

IBM (UK) Ltd., who made their facilities available for that transfer;

The Twickenham College of Technology (now Richmond-upon-Thames College), together with Professor Bryan Niblett, of the Department of Computer Science, University College of Swansea, who helped to plan the system for the creation of the computerised files and the necessary retrieval programs, and who made its own computer available in the early stages;

Professor Paul Samet, of the Department of Computing at University College London, where our computer files are now stored, and where a large computer has been made available for the testing and running of the programs;

Simon Whittaker, who has written, tested and run all our computer programs, entirely in his unpaid spare time;

Nihal Jayawickrama, a former Permanent Secretary of the Ministry of Justice of Sri Lanka, who has helped with research in the final stages of the Committee's work (and would have been able

to start earlier had the present government of Sri Lanka not prevented him from leaving his country for a year).

Europe

Professor Johannes Andenaes, Institute of Criminology and Criminal Law, University of Oslo;

Federal Ministry of Justice, Bonn;

Dr Erik Harremoes, Dr. Frits Hondius and Miss Marguerite-Sophie Eckert, all of the Council of Europe, Strasbourg;

Dr. Ludwig Martin, former Federal Chief Prosecutor, Karlsruhe;

Dr. Rudolf Machacek, Judge of the Federal Constitutional Court, Vienna;

Ministry of Justice and Dr Kerstin Anér, Secretary of State, Stockholm;

Madame Nicole Questiaux, Conseil d'Etat, Paris;

Professor Torkel Opsahl, Institute of Public Law, University of Oslo;

Dr. Manfred Simon, Lausanne;

Professor Dr. Stefan Trechsel, University of Berne.

9 We are also most grateful to all those others who have taken much trouble to help us with domestic information, and in particular to HM Treasury, HM Customs and Excise, the Board of Inland Revenue, and the Central Ticket Office of the Metropolitan Police.

10 Now that the material we have collected is available, we hope that others too will use it as a basis for further research on the state of our criminal law.

CHAPTER 1

THE PROBLEM

1.1 All criminal prosecutions in England and Wales start in the Magistrates' Court. Ninety-six per cent of them finish there: only the 4% which constitute serious crimes are committed to the Crown Court, where they can be tried by a judge and jury. Of the 2,031,000 prosecutions in 1978, only 82,000 were sent to the Crown Courts: the magistrates dealt with the rest.

1.2 In a typical week, a bench of magistrates in an urban area might dispose of 35 prosecutions for failing to renew the vehicle licence for a motor car, 10 for failing to obtain a television licence, and as many as 100 written pleas of guilty to a variety of breaches of the Road Traffic statutes and regulations. In that same week, there might be 10 cases of theft, 3 of assault, and 3 or 4 cases might be sent to the Crown Court.

1.3 All those cases will have been dealt with in much the same way. The defendant will have been accused of having committed a crime. If he appears and pleads not guilty, the case will have to be proved against him, beyond reasonable doubt, by sworn evidence called by the prosecution. If he pleads guilty or he is convicted, he will be punished in one of the ways prescribed for punishing criminals. And the conviction will form part of his criminal record – with all that this implies for him in the fields of employment, insurance, etc.

1.4 There may once have been a time, long ago, when such a system made good sense. The crimes known to the law then were modes of behaviour which the respectable citizens of the time condemned as so wrong that nothing less than punishment by the State was enough to stigmatise them.

1.5 But today our world has become a great deal more complicated. To keep some semblance of order in our modern society, there have to be many regulations. Various kinds of chaos would ensue if we did not observe them. So there must be some sanctions to discourage us from breaking them, by making it uncomfortable for us if we do.

1.6 Largely because we have long had a well-developed system of

criminal prosecutions and criminal courts, the sanctions which Parliament imposes for breach of modern regulations are still those apt for the commission of crimes. Typically, a regulatory Act of Parliament requires that people should behave in a particular way in some defined circumstances, and goes on to provide that failure to do this 'shall be an offence', punishable on conviction by certain penalties (within a prescribed maximum) which can be imposed only by the traditional criminal courts, after a traditional criminal prosecution. More often, the Act gives a government department power to make regulations by statutory instrument, and it will be those regulations (which Parliament will seldom have the time to debate in detail) which will create a host of new criminal offences.

1.7 The result is that those who fail to renew a whole variety of licences (whose object is often only to collect revenue for the State), or have made a minor nuisance of themselves by failing to furnish some information to a government department, find themselves classed with robbers, rapists and murderers – prosecuted by the same procedures, coming before criminal courts, punished by the same methods, and ending up with a 'criminal record'. For a number of reasons, we think that this is an undesirable state of affairs.

1.8 However complex and enlightened our modern society, it is still just as important as it ever was that people should not kill or injure each other, exploit each other by force or fraud, or steal or destroy things which it has taken valuable time and effort to make and acquire. Respect for the criminal law is at least one way, and a very important one, of maintaining the minimum civilised standards which make a peaceful society possible and workable.

1.9 But respect for the criminal law can only be maintained if it conforms with those standards of morality to which the great majority in a population subscribes. If the law makes a public ass of itself, people will treat it with contempt. In the absence of any other common standards, such as uncritical belief in a single established religion, there will then be nothing to replace the criminal law as a set of minimum rules for social conduct.

1.10 But people simply do not regard many of the modern statutory offences as 'crimes' in the same way as murder, robbery, rape and arson. They agree that there have to be rules and regulations – indeed there is often strong pressure for the Government to 'ban' something or other – but they do not see the man who sells bananas off an unlicensed street barrow, or the motorist who forgets to sign his driving licence, or the firm that fails to make its statutory return to some

public authority until after the due date, as 'criminals'. To that extent, for far too many people, the law seems to have become an ass.

1.11 Not only that, but this state of affairs also provides endless, and unnecessary, occasions for friction and hostility between the police and the public. In Great Britain, the police do not wish, and are not intended, to be seen as the personification of the power of the State over its subjects. On the contrary, their role is meant to be that of the friends of the law-abiding citizen, and his protectors from malefactors – though unfortunately that is not how they are always perceived. However that may be, they rely greatly on the public's willing cooperation in their task of keeping the peace. That benign model is soon put at risk when it becomes increasingly difficult for any adult citizen to retain law-abiding for long, and when the policeman must frequently turn into his enemy and prosecutor in detecting and bringing him to 'criminal' justice for some breach of one of the thousands of regulations which have to be enforced. Moreover, as more and more people every year acquire a 'criminal record' for some breach of a regulation, public condemnation of real crime must necessarily diminish.

1.12 The use of our hard-worked – and largely unpaid – magistrates, and their paid staff, to enforce this mass of regulations is an unwarrantable waste of scarce resources. So is the use of the police to prosecute many of these 'offences'. The skills and qualities of a trained police officer are of the highest value, and they are in chronically short supply. The independence and experience of a magistrate is a priceless asset in relieving stresses within a local community, and exercising the authority of national law in a way which that community can accept and respect. Court staff have a wealth of experience and expertise in dealing with criminals. It cannot be right that all these assets should be largely deployed in collecting undisputed debts to the State or one of its public authorities, or enforcing regulations whose breach no one would regard as 'criminal'. If there were a substantial number of such cases which could be dealt with satisfactorily without taking up the time of either the police or the Courts, then it would be highly desirable if they could be removed from there.

1.13 At the same time, the great bulk of the rules of conduct which are enforced, in our present system, through criminal offences created by statutes and statutory instruments are rules which we need to keep. We cannot simply dismantle them: on the contrary, we need (if we can) to find even better ways to ensure that they are observed. Our society today depends on a multitude of complicated interactions between many people and processes. Without rules and regulations, it could rapidly become chaotic, to the ultimate disadvantage of all its members.

1.14 But there is a distinction between the kind of conduct which all of us perceive as criminal – such as murder – and the kind of conduct which is no more than a breach of one of the multitude of rules and regulations which we only need for good order – such as the height above the ground at which a vehicle's excise licence must be displayed on it. To distinguish the two, we shall call the former class 'crimes', and the latter class 'contraventions'.[1] We know, of course, that it may sometimes not be easy to decide whether some conduct is better classified as one or the other, and we shall return to the problem of drawing the line in Chapter 3 below. But we believe that there are many offences now known to the law about whose proper classification most people would agree.

1.15 What we should therefore try to do is to see whether there may not be some way in which we can take out of our existing system of criminal law those offences which are clearly no more than contraventions, while making it at least no more attractive, and preferably even more uncomfortable, for people to commit them. To do that, we must first see what our present criminal law in fact contains.

[1] We have chosen that word in preference to several others used abroad to connote breaches of regulations lacking the attributes of true criminality, such as transgressions, infringements or violations.

CHAPTER 2

THE STATE OF THE ENGLISH CRIMINAL LAW

2.1 At an early stage of our discussion, we began to wonder how many different criminal offences it was possible for people to commit in England and Wales. Some of us were naive enough to think that it should be easy to discover such a simple thing. In the event, it proved to be the most difficult task we set ourselves. Several years and many hundreds of man and woman hours later, we still do not know, though we can now make a rather better guess than before.

2.2 On the face of it, it might seem surprising that no authority in this country should be able to provide the information required – not even the Home Office, the government department with prime responsibility for the state of the criminal law. The reason is that, in contrast to countries which have criminal codes, our criminal law has grown up over many centuries and is scattered in statutes ranging from early times. Since the 1960s, governments have shown some interest in codifying it, the preparatory work being largely done by the Law Commission and the Criminal Law Revision Committee. Some areas have already been dealt with (such as those of theft and related offences, and of criminal damage) and others are under review. But a great deal remains to be done. On top of that, there is a mass of statutory instruments, a great number of which create many more criminal offences.

2.3 There is no single publication which contains all the criminal offences there are. Most of them are scattered throughout many reference books, together with the bound volumes of Public General Acts and Local Acts, and the equivalent volumes of statutory instruments. Even these cannot all be up to date. Each year, new legislation changes the picture. Then there is the further complication of local offences: these can be created by national legislation which provides for local adoption, or by local Acts, or by bye-laws. Each time there is a proclamation of emergency under the Emergency Powers Act 1920, the regulations under it create new offences which cease to exist when the emergency ends. Lastly, new statutes creating new criminal offences often do not come into force until someone makes a commencement order, and it is often quite difficult to find out whether that has yet

been done.

2.4 That state of affairs is itself something of an indictment of our criminal law. To a layman, it may seem quite extraordinary that he cannot even find out for himself all the things which the State visits with criminal punishment, apart from the few obvious ones which everybody knows. True, if he contemplates any particular course of conduct, he can consult a solicitor to advise him whether it would be lawful; and if that solicitor has a tolerably complete reference library, or long experience in the field in which his client intends to operate, there is a good chance that the client will be given the right answer to his question. But all that takes skilled professional time, and therefore costs money. So long as all breaches of State-made rules are treated as crimes – with all the serious consequences of criminal prosecution, criminal trial, criminal conviction and a criminal record – we think it indefensible that the ordinary citizen cannot find out for himself what the law of the land prohibits him from doing, and that even his professional advisor needs to do a good deal of research in order to find it out for him.

2.5 To give just one example at random, we have been told of a recent case where it took a qualified solicitor the best part of a day (at a cost of £150) to discover whether a label which his client had prepared for a packaged soft drink would infringe any relevant regulations. He found at least three different sets of regulations, all amended by further regulations, made in different years under different Acts. If the label had declared the content of the package as '6¼ Fl Ozs – 178 Mllts', one of these regulations – the Weights and Measures (Marking of Goods and Abbreviation of Units) Regulations 1975, as amended, made under the Weights and Measures Act 1963 – would have made the client certainly guilty of four (and probably of five) separate criminal offences, each punishable with a maximum fine of £20 under s.52(1) of the Act, namely –

(a) putting a plural 's' at the end of "Oz", and at the end of "Mllt" – forbidden by Regulation 5(1);

(b) putting a dash between the imperial and the metric measure – forbidden by Regulation 12(5);

(c) using an abbreviation ("Mllt") other than a scheduled one – forbidden by Regulation 5(2);

(d) using initial capital letters – probably also forbidden by Regulation 5(2).

Only if the label said '6¼ fl oz/178 ml' would no criminal offence be committed. Plainly it was worth consulting the solicitor before printing the label.

2.6 One obvious recommendation flows from this: an appropriate government department should publish as soon as possible, and thereafter keep up to date, a complete list of all criminal offences (other than merely local ones) known to the law, containing the definition of the ingredients of each offence, its source in statute or regulation, its mode of trial, its maximum penalties, and any special features (such as the fact that it can be committed only by the holder of a justices' licence, or can be prosecuted only with the leave of the Director of Public Prosecutions). That list should be compendiously indexed and cross-referenced, so that every offence can readily be found from every possible relevant starting point, and copies should be available for reference in all public libraries, and for sale in Government Bookshops at an affordable price.

2.7 That, we have been told, would take much time and cost much public money, even if it extended only to the 'national' law of England and Wales, and not to offences created by Public Local Acts, let alone bye-laws. It is therefore one of those things which would today be marked with the rubric 'when resources permit' – and in the foreseeable economic climate it might be a long time before they did. We cannot judge whether that is right. But if it is, one is led to wonder how many other countries there are in the world where the Government can no longer afford to tell its subjects, in accessible form, what the criminal law is.

2.8 Even if it *is* thought to be too expensive to do the job in the way we think it should be done, that is not the end of the matter. Only some of the expense lies in searching through the many reference books. The greater part lies in the process of publication – or, strictly, re-publication. Happily, that last part is daily becoming cheaper, thanks to the advent of computers. Both statutes and statutory instruments are currently being inscribed in computer-readable form, designed to be accessible in human-readable form by those who have access to the necessary terminals, and the minimal skills needed for using them. We see no reason why some of that exercise should not be devoted – at far less cost than typesetting, printing and the distribution of paper – to the construction of a comprehensive and up-to-date computerised data base of the criminal law of England and Wales, which would then be available for 'publication' wherever there is a terminal which can be connected to the data base, to which the ordinary citizen can be given access, and which he or she can use with a minimum of technical instruction or help. As will be seen below, we have ourselves, independently, made a fair start on this – at a cost of a few thousand pounds

in manpower and computer time. While that would have been beyond our own straitened means without the generous help we have received from others, the cost of completing the task would be a miniscule item in the budget of any government department.

2.9 But even if *that* is thought to be too much work, reform need not be delayed. There are other alternatives. One – which is not our preference but which is perfectly feasible – would be a continuing but irregular process of piecemeal reform by which, from time to time, visible and obvious groups of candidates could be transferred from the category of crimes to a new category of contraventions – without troubling to see what other (and equally meritorious, but less obvious) candidates there might be at that time. While that would doubtless create many anomalies, it has the merit of British pragmatism, without too much regard for logic and consistency. If the economic state of the nation can afford nothing better, then at least that would be a cheap way of making a start. Our own view is that we could and should do better – but that requires as a first step the compilation and publication (whether in printed or in computerised form) of a complete list of the criminal offences known to the law of England and Wales.

2.10 In the absence of such a publication, we decided to conduct some research of our own. With a degree of innocence which, in the light of our experience, now seems almost heady, we decided to see how much we could find out for ourselves about the current content of the English criminal law. Aided by a helpful 'Small Grant' from the Nuffield Foundation, we commissioned a member of the Bar to list and classify all the offences dealt with in the then latest edition (1975) of *Stone's Justices' Manual*. The task proved substantial and took a long time, but thanks to our researcher's perseverance it was eventually completed.

2.11 In order to be able to draw some preliminary conclusions for ourselves, and to enable others to draw more detailed ones later, we decided that our list should include as much relevant information as possible. Accordingly, for each of the offences mentioned in *Stone*, we noted –

(a) the statutory words creating the offence;

(b) the most recent source, by Act and section or Statutory Instrument and paragraph, of those words;

(c) the mode of trial of the offence (summary, on indictment, or either way);

(d) the maximum fine on summary conviction;

(e) any requirement for the consent of the Attorney-General or the Director of Public Prosecutions.

2.12 Next, since intent is one of the crucial factors in the commission of criminal offences – and could be an important factor in deciding whether any particular act or omission should continue to be treated as a 'crime', properly so called – we noted against each of the offences in our list whether the criminal intent necessary for its commission fell into one or more of the following six categories:–

(A) Deliberate dishonesty[1];

(B) Deliberate physical injury to other persons;

(C) Satisfaction of sexual desires;

(D) Carelessness[2];

(E) Deliberate omission or failure;

(F) Other basic or specific intent.

This is of course not the only way of classifying the different kinds of criminal intent in English law. Nor is it necessarily the best. But after much thought and discussion, we concluded that it would be the most suitable one for our purposes. Where none of these categories applies, the offence is one of the increasing number which can be committed without any criminal intent at all.

2.13 Finally, we thought it useful to classify all our offences by reference to the apparent purpose for which they had been created. For this, we drew up the following list of 19 possible categories of 'presumed public policy' (i.e. mischief or risk of mischief to be avoided, or benefit to be promoted or supported), and marked each offence in our list with the category or categories into which it seemed to fall:–

(G) Avoidance of unmeritorious economic benefit;

(H) Avoidance of unmeritorious non-economic benefit;

(I) Avoidance of undeserved economic damage to identifiable individuals or classes;

(J) Revenue-raising;

(K) Avoidance of economic damage to the public at large[3];

(L) Avoidance of non-economic injury to offender[4];

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[1] Indicated by such formulations as 'dishonestly', 'with intent to deceive', 'with intent to defraud', 'calculated to deceive', fraudulently', etc.

[2] Including 'recklessness', 'negligence', and similar statutory expressions, with or without foresight of consequences.

[3] Other than failure to raise public revenue.

[4] 'Protecting people from themselves'.

(M) Avoidance of non-economic injury to other identifiable individuals or classes;

(N) Protection of non-human life;

(O) Protection of inanimate property[5];

(P) Protection of public amenities[6];

(Q) Protection of public health[5];

(R) Protection of public safety[5];

(S) Protection of public order[5];

(T) Avoidance of public offence;

(U) Avoidance of public nuisance;

(V) Protection of public institutions[7];

(W) Obtaining information;

(X) Promoting conformity with administrative directions or conditions[8];

(Y) Promoting other public policy[8].

Here again, this is only one of many possible ways of classifying the grounds on which a State may wish to regulate various kinds of conduct, but here again we thought it was the one that would best serve our purposes – and, we hope, those of others who may take our own work further.

2.14 To be of continuing use, our list has to be in a form where any errors can be corrected, and where the changes in the law which take place every year can be accommodated. Most important of all, the list must be in a form from which different kinds of information, in different combinations, can easily be retrieved.

2.15 For all those reasons, we decided that the entire list should be prepared from the beginning in a form which could be stored and processed in a computer. This added yet another dimension of delay to our work, as we had no money to pay anyone for doing this. However, thanks to the generous and unstinting help of the organisations and individuals mentioned in paragraph 8 of the Introduction to this report, all that work was eventually done. Some more detailed notes about it are given in Appendix A, where a sample of one of our computer searches is also reproduced.

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[5] Where category M does not apply.

[6] 'The environment'.

[7] Administration of justice, elections, etc.

[8] Where no other category applies.

2.16 All this has taken much more time than we had originally planned. The result is very far from being perfect, but it tells us some interesting – and sometimes disquieting – things about the scope and size of our problem. What is more, our material is in a form which will enable a good deal of important further research to be done hereafter.

2.17 Before we give our results, we must describe their limitations, which are still considerable. We set out with some hope that we might be able to construct a reasonably complete taxonomy of the English criminal law. What we have been able to construct instead is one that is substantial, but incomplete in at least the following respects:–

(a) It does not include some crimes at common law which have not yet been enacted in statutory form, such as affray, riot, kidnapping, outraging public decency, etc;

(b) *Stone* does not attempt to be a complete compendium of all the criminal law there is, and only describes in detail those offences which are sufficiently common for Magistrates' Courts to need a ready guide for them; there are therefore not only some offences created by the common law and by statute which are not described there, but also many more created by statutory instruments – such as those made under the Factories Act 1861, the Offices, Shops and Railway Premises Act 1963, the Prices Act 1974, and doubtless many others;

(c) Our list does not include offences created by Public Local Acts or local bye-laws;

(d) The list is now out of date in two major respects:–

(i) it contains no offences first enacted after 1 January 1975, and will still contain any offences repealed and not re-enacted after that date;

(ii) many of the maximum fines will have been changed by the Criminal Law Act 1977.

Apart from that, our list will doubtless contain errors and omissions which will need to be corrected hereafter, and opinions could probably differ about the attribution of the 'criminal intent' and 'presumed public policy' categories in some borderline or doubtful cases.

2.18 However, even with all those provisos, our incomplete and out-of-date taxonomy has some striking tales to tell. For instance–

- Even our incomplete list contains more than 7,200 distinct and separate criminal offences. We think it probable that a complete list might contain far more than that. For each

offence, there are also the associated 'inchoate' offences of attempting to commit it, conspiring to commit it, inciting others to commit it, and aiding, abetting, counselling or procuring its commission. Those considerations alone could multiply the final figure by several times.[9]

- Around 5,600 of our offences were triable only summarily.
- No criminal intent of any kind is required for the commission of about 3,750 of our offences – that is, over half the total number. Of those, just over 3,500 are triable only summarily, and about 3,050 of these attracted (as at 1 January 1975) a maximum fine of £100 or less.
- Nearly 3,000 of the offences requiring no criminal intent were last enacted (which will of course include some re-enactments) since 1960.

2.19 Such results must always be interpreted with a good deal of caution. But these seem to give considerable support to the following inferences:–

- During the last 50 years or so, and especially during the last 20, Parliament has made increasing use of the 'offence of strict liability' (i.e. an act or omission made punishable by law as a crime even though there was no criminal intent of any kind) in order to regulate people's conduct;
- At the same time, Parliament has considered the overwhelming majority of these 'crimes' not serious enough to warrant more than a small or moderate fine, let alone the option of trial by jury;
- In short, Parliament has, in this century, been creating (though recently more often by statutory instrument than by statute) more and more criminal offences which, in many other countries, would be treated as contraventions rather than crimes.

2.20 Our computer programs can also be used for more sophisticated enquiries. For example, they can extract from our list all the offences which fulfil any predetermined set of criteria – such as 'offences last enacted before 1935, triable either way, carrying a maximum fine of no more than £50, requiring an intent of carelessness (and no other), and apparently enacted for the protection of public amenities (and possibly for other purposes also)'. We have ourselves carried out several

[9] With a little legalistic pedantry, one could enlarge even our own list: see Appendix A, paragraph 3.

such searches, and the results are set out in Appendix B. But a great deal more work could usefully be done, especially the addition to each of the offences in our list of the number of prosecutions for it in a recent sample year, so that one could see how much of a burden each of them places on the criminal process. That could perhaps be done from the statistics returned to the Home Office.

CHAPTER 3

WHERE SHOULD THE LINE BE DRAWN ?

3.1 When considering problems in our own legal system, it is often helpful to see how other countries deal with similar ones. Social conditions will often be different there, and so will the national institutions and traditions. Foreign solutions cannot therefore simply be transplanted here, in the hope that the graft will 'take'. But that is no reason why we should not try at least to learn from foreign experience. We have therefore looked at the legal systems in many other European countries, and in the United States of America, and we summarise what they do about this in Appendix D.

3.2 In most of those countries, crimes and contraventions are easily distinguishable – because their legislation was prepared from the beginning with that distinction in mind. In the law of England and Wales, things are rather different. For a long time, there was a distinction between felonies and misdemeanours, now finally abolished. Some of our crimes are still pure creatures of the common law, but most now derive from statute. Some are imprisonable, and others not. Some are arrestable, and others not. Some can be tried only on indictment in the Crown Court, some only summarily in the Magistrates' Court, and some can be tried either way. Those different lines are all drawn in different places, and no one of them furnishes any useful distinction between crimes and contraventions. Would it be feasible to superimpose such a new distinction on our existing criminal catalogue ?

3.3 Some might argue that it cannot be done at all. However, we believe that view to be mistaken. If one part of a scale is plainly black and another is plainly white, the fact that there are various shades of grey in between does not justify the contention that the entire scale is grey, and only grey. In our criminal law, no one would dispute that there is a black area, consisting of real crimes – such as murder, rape and robbery. Is there an equally indisputable white area ? We think there is, as the following examples will show:–

(a) A motorist fills in the right form for the renewal of his vehicle licence with all the right information. He takes it to the Post Office at the right time, together with his valid insurance and MOT certificates, and the right amount in cash. When he gets home, sadly ignorant of the law, he sticks the new licence disc on the near-side upper (and not the lower) corner of his windscreen. Either at that moment, or at the latest when he (or indeed anyone else) backs the car out on to the road, they all become guilty of a criminal offence under Regulation 16 of the Road Vehicles (Registration and Licencing) Regulations 1971 as amended (now S.I. 1973 No. 870), made under the authority of s.37 of the Vehicles (Excise) Act 1971.

(b) A bus driver moves house. Knowing his legal obligations, he writes the right letter to notify the Commissioners of his change of address, correctly addresses the envelope, but does not post it until 8, rather than 7, days after the move. He is guilty of a criminal offence under Regulation 10 of the Public Service Vehicles (Drivers' and Conductors' Licences) Regulations 1934 (now to be found in S.I. 1972 No. 1061) made under the authority of s.163 of the Road Traffic Act 1960.

(c) Some weeks later, the same bus driver receives a message to ring the local hospital urgently. He scribbles the number in pencil on the back of his PSV licence. This time, he has committed an offence under Regulation 9.

(d) A workman is killed at the factory. His employer sends the man's National Insurance card to the widow. Just after it arrives, she goes to stay with her married daughter, leaving the card behind. Having failed forthwith to deliver it to a local insurance office, she is guilty of a criminal offence under Regulation 3 of the National Insurance and Industrial Injuries (Collection of Contributions) Regulations 1948 as amended (now in S.I. 1973 No. 1441), made under the authority of s.117 of the National Insurance Act 1965.

3.4 Such examples can easily be multiplied: clearly there is a white area of present 'criminal offences' which no one can seriously categorise as criminal conduct in any reasonable meaning of the term. Those are the obvious initial candidates for transfer to the category of contraventions.

3.5 As we have reported in paragraph 2.18, our computerised list of criminal offences contains around 3,750 – more than half the total number – *which require no criminal intent of any kind for their*

commission. On grounds of space and cost, we cannot print them all out in this report. But many of them would be agreed by almost everyone to fall clearly into the white area of contraventions, especially those where the only reason of public policy for their enactment appears to be:–

(a) obtaining information (of which we found 116);

(b) avoiding public offence (21);

(c) avoiding public nuisance (11);

(d) revenue-raising (44);

(e) protection of public amenities (66);

(f) promoting conformity with administrative directions or conditions (*other* than any of the public policy objectives which already figure in our list) (121).

And there may well be many more.

3.6 To complete our simile, we must consider the grey area – that is, those offences which cannot be immediately categorised either as real crimes, or as breaches of regulations which plainly do not import any criminality. It turns out that this area presents fewer problems than might at first appear.

3.7 We believe that, if there is room for error in carrying out any reform of this kind, it is better to err on the side of caution. We therefore recommend that, at all events until a good deal of experience has been gained in drawing a legal distinction between crimes and contraventions, all those offences should remain crimes about which reasonable people could credibly hold the view that the conduct concerned involves some real and deliberate moral turpitude. That means that the following categories of offence in our list should *not* be transferred to the class of contraventions:–

(a) those which require deliberate dishonesty (of which we have found 607);

(b) those which require an intent to inflict deliberate physical injury on other persons (63);

(c) those which require a sexual criminal intent (77);

3.8 That leaves three other categories:–

(d) those which require, as the appropriate criminal intent, only carelessness (including recklessness or negligence) (106);

(e) those which require deliberate omission or failure (188);

(f) those which require what we have called 'other basic or specific intent' – that is, the intent to do the act described in the statute or regulation, but without any of the other intents listed above (2,384).

3.9 In these last three categories, it would be desirable to proceed ad hoc, in order to sort the wheat from the chaff. Doubtless some guidance can be obtained from the other features of each of these offences contained in our list – such as whether the offence can be tried on indictment, what the maximum penalty for it is, and what was the 'presumed public policy' for enacting it at all. Most people, for example, would probably rate activities deliberately putting public health or safety at risk as more likely to be 'criminal' than those which merely reduce the amount of information available to public authorities. But to make decisions of that kind, one must look at each of these offences separately.

3.10 Sometimes, one will find that the same offence can be committed in very different circumstances – for example, so trivially and inadvertently as to be an obvious contravention, or so gravely and deliberately as to be an obvious crime. In such cases, the existing offence clearly cannot be transferred to the category of contraventions as it stands. Either it will have to be left as a crime, or it will at some stage have to be divided into two – one having the necessary attributes to make the conduct criminal, and the other, lacking all those attributes, which can be reduced to the status of a contravention. There are of course many examples of such divisions on our statute book already, as for instance the offence of merely exceeding the speed limit (which requires neither a deliberate intention nor any danger to the public), and the more serious offence of what used to be 'driving at a speed dangerous to the public', and is now included in 'reckless driving'.

3.11 Another possibility might be to create a third category of 'criminal contraventions' to cover at least part of the grey area, generally defined as the commission of any contravention with intent to deceive or defraud, or to gain a dishonest advantage for oneself or any other person, or to cause damage to another. Logically, that would be a sensible thing to do, for it would make the real distinction between crimes and contraventions even clearer. But it would involve a good deal of re-writing of the existing statute book, and is therefore probably not worth doing except as part of the future preparation of a comprehensive criminal code.

3.12 To summarise, we believe that out of our list of over 7,200 statutory offences –

(a) many of the 3,750 or so which require no criminal intent of any kind would prove to be suitable candidates for transfer to the class of contraventions;

(b) none of those requiring an intent of deliberate dishonesty, deliberate physical injury to others, or sexual gratification (of which there are only about 750) should be transferred to that class;

(c) the remaining 2,700 or so may well include a substantial number which could also safely become contraventions.

3.13 As we have already explained, our list is incomplete and now also five years out of date. Largely for that reason, we have not ourselves undertaken the detailed task of selection for transfer to the category of contraventions. In any case, this is ultimately a task for Government and Parliament. Our material is available for that purpose, though it will of course first need to be completed and brought up to date.

CHAPTER 4

OPTIONS FOR REFORM

4.1 We have seen that many foreign countries have long since resolved this problem. Their solutions generally display two features:—

(a) in their legal systems, crimes and contraventions form distinct categories;

(b) the penalities for infringement of these categories are imposed by different entities — the ordinary criminal courts in the case of crimes, and some other public authority (often the administration) in the case of contraventions — and have different consequences for the citizen.

4.2 The first of these is of course a necessary condition for any reform in Great Britain also. Even if nothing else were done, drawing a formal distinction between crimes and contraventions in English law would go some way towards increasing respect for the remaining truly criminal part of that law, and that would be an important benefit. Such a reform would therefore not be merely cosmetic, and we believe that it should be undertaken in any event. It is, in any case, the condition precedent for any further steps along this road.

4.3 That first step would require legislation, but of an essentially simple kind. What would be necessary would be one or more Acts declaring that, on and after the appointed day, the offences listed in the Schedule to the Act shall cease to be criminal offences and shall become contraventions. Doubtless there would need to be ancillary and transitional provisions, but that would be all.

4.4 In future legislation, Parliament would need to apply its mind specifically to the question whether new categories of conduct to be regulated should be made crimes or contraventions, and provide accordingly.

4.5 Without more than this, all the rest of the existing apparatus for enforcing regulations would remain unchanged. Contraventions would continue to be prosecuted by whoever prosecutes them now (which is only too often still the police); they would come before the same courts (in virtually all cases, the Magistrates' Courts); they

would need to be proved by sworn evidence beyond reasonable doubt; and they would continue to attract the same penalties as they do now. But at least the contravening citizen would no longer suffer the stigma of being prosecuted and tried for a crime, convicted of a crime, and acquiring (or adding to) a criminal record – and that, in our view, would be a substantial and valuable step forward.

4.6 Is it feasible, at the present time, to go further than this, and begin to move towards the second step – that is, a different procedure for imposing penalties for contraventions which will not always and necessarily involve the criminal courts ? We think it might be.

4.7 Without attracting much public notice, things have already begun to move in that direction, and several categories of what in truth are contraventions are already penalised without involving the police or the courts. The best-known of these is the fixed-penalty system for parking offences, known to every motorist through the ubiquitous 'parking ticket'. But there are others too. For instance –

(a) HM Customs and Excise have for many years exercised statutory powers to seize and forfeit goods, and to compound prosecutions for Customs offences and civil condemnation proceedings, without any recourse to the courts;

(b) The Board of Inland Revenue also have power, which they frequently exercise, to impose penalties and compound prosecutions for tax offences;

(c) during the 40 years that Exchange Control was in force, HM Treasury had and exercised powers to impose administrative measures in respect of offences under that system of control;

(d) Local Authorities, acting as agents for the Department of Transport, have and exercise powers to compound prosecutions for failure to renew vehicle licences.

We have had most helpful evidence from these authorities, the gist of which is set out in Appendix C. It appears, on the whole, that these particular systems of imposing sanctions for contraventions have worked fairly and well and have led to no major problems, nor do they seem unduly costly to administer – certainly not by comparison with the cost of criminal prosecutions. So far as we know, there has been no consistent body of complaints about their workings.

4.8 If systems for penalising contraventions can work in the cases of those administrative agencies, we see no reason in principle why they could not work in others. For many of the forms of conduct which

Parliament attempts to regulate by law, there is a single public authority already charged with keeping order in that particular field – indeed, it is usually that authority which originally promoted the Act of Parliament. A gradual expansion of this kind from the existing precedents could lead to an increasing degree, sector by sector, of true separation between the methods of punishing crimes and contraventions in our legal system. But certain cautions must be voiced here.

4.9 First, it is a long-standing and deeply-ingrained tradition in Great Britain that the Executive should have no powers to impose direct penalties on the citizen, without the intervention of the Courts. That, at least, is the theory – but as we have seen, the practice does not entirely bear it out. We already have at least five major public agencies which do just that, without any apparent harm to our constitutional principles. But if there is to be any expansion of such arrangements, it can only come about step by step, subject to strict safeguards and regular evaluation. This is not a reform which can safely be carried out at a stroke.[1]

4.10 Secondly, if such powers are to be expanded, their exercise must always remain subject to judicial review – as those which now exist already are. In many of the other European countries where such powers are common form, judicial review by the administrative courts is also common form, and in general works well. Here, we have no administrative courts, and any expansion of administrative powers to impose penalties must therefore be accompanied by adequate provisions for review by the ordinary courts.

4.11 An obvious candidate for that function will lie readily to hand. In the measure that categories of contravention are withdrawn from the Magistrates' Courts, those hard-pressed bodies will acquire at least some capacity for additional work. Being the Courts with the greatest accumulated experience in the punishment of contraventions, they would be the ideal forum for the kind of judicial review which we regard as essential.

4.12 In practice, the sort of procedure we have in mind would work something like this:–

(a) whenever the public authority charged with responsibility for the relevant sector of public conduct obtained evidence amounting to a *prima facie* case of a contravention, it would notify the alleged contravenor by letter and invite

[1] as was demonstrated in Portugal in 1979: see Appendix D.

his explanation;

(b) failing a satisfactory explanation within a fixed time, the authority would impose a prescribed penalty, and notify the contravenor what his options are;

(c) those options would be either to comply with the penalty imposed (e.g. to pay a fine) or, if he challenged the imposition of the penalty, to give notice of his objection (on a form supplied to him) to his local Magistrates' Court;

(d) if such a notice is given, the burden would be on the authority to satisfy the Magistrates' Court, by sworn evidence and beyond reasonable doubt, that the alleged contravenor had committed the contravention complained of.

4.13 Where there is no dispute, therefore, the matter would be disposed of by consent between the authority and the citizen. When there is a dispute, it would be disposed of in the Magistrates' Court precisely as it is now. In order to deter unmeritorious disputes, the Magistrates' Courts would need to have power to impose greater penalties than those which the authority itself could impose, though it would always be a matter for the discretion of the Court whether to exercise that power.

4.14 Such a system would of course require all sorts of ancillary provisions. These would have to be carefully thought out, but we can see no fundamental difficulties in doing so. Particular care would need to be taken where the amount of the penalty was left in the discretion of the public authority concerned – even within statutory limits – rather than fixed in advance either in a single amount (such as the present fixed penalty for parking offences) or on some non-discretionary scale, related perhaps to the period of default or the loss to the public revenue. Such discretions already exist where the circumstances of the contravention can vary widely, as in the case of Customs and Excise or Inland Revenue, and this has not so far led to any significant public disquiet. But such disquiet might well arise if many more public authorities were given similar discretions, even with our proposed safeguard of giving the contravenor the right in all cases to have the matter determined by an independent Magistrates' Court. New discretions of that kind should therefore, in our view, only be given after full consideration and public debate, and with ample administrative safeguards (quite apart from the right of recourse to the Courts) to ensure that they will not be exercised arbitrarily or oppressively. It would, of course, also be necessary to preserve an appropriate system of appeal from the decisions of Magistrates' Courts, at least on points of law.

4.15 One obvious advantage of such a system would be a great saving of time and public money. We are not ourselves equipped to calculate what that would amount to, but there is every reason to think that it could be very substantial indeed. At the moment, the prosecution of every contravention involves the time of the informant, the court staff and the magistrates in preparing and checking the summons and its accompanying documents, and in laying the information and issuing the summons. The informant then has to arrange a suitable hearing date, serve the summons and associated documents on the defendant, and return endorsed copies to the court. Even if the defendant has sent in a written plea of guilty, there will have to be present in court at the hearing at least two lay magistrates, one court clerk, one court usher, one prosecutor, one informant, and one police warrant officer. If no written plea of guilty has arrived, several prosecution witnesses will also have to attend, often for several hours.

4.16 As a guide, we have been told that the cost to the Post Office alone of prosecuting a TV licence case in 1973/74 averaged around £10, even though 90% of those cases went undisputed. For the 54,210 convictions for that offence in that year, that adds up to a total of over £500,000 – and this does not include the costs of the Post Office investigation leading to the prosecution (about £5 per case at that time), the cost of the court staff, or the cost of recovering any fine imposed but unpaid. In 1974, the cost of a TV licence was £12 for colour and £7 for black-and-white – much less than the total cost of enforcing payment from evaders.

4.17 By comparison, a system such as we envisage would involve the same costs in only two areas: the original investigation, and the recovery of any penalty imposed by consent but nonetheless not paid. For all the rest of the elaborate, time-consuming and expensive procedure, there would be substituted a single official and some standardised correspondence. Clearly, the possible savings could be very large.

4.18 One other advantage of such a system would be the opportunity to use rather greater imagination in the devising of suitable penalties for contraventions. We still tend to rely far too heavily on the fine – a notoriously capricious penalty which seldom keeps pace with inflation, falls with widely different severity on people of different means, and can be written off against tax by many people as a business expense. Nor is it enough, in many cases, to stop people from persisting in their conduct. But having one's car towed away is known to be a far greater deterrent against parking on yellow lines than having to pay £6. That procedure also removes the obstruction, which is after

all the object of the parking regulations. It might be that having one's TV set impounded could likewise be a far greater incentive to buying a licence than the present elaborate and costly procedures for enforcing payment of the licence fee through the criminal courts. Again, shutting down a restaurant is known to remove the cockroaches from the kitchen far more quickly than prosecuting the owner in order to impose a fine on him. The scope for devising more effective means of enforcing regulations is substantial, and the public authorities concerned are better placed than anyone for working out the necessary ideas – subject always, of course, to the need for the approval of Parliament, and the opportunity of recourse to the Courts.

4.19 What we recommend, therefore, is this:–

(a) As soon as possible, legislation should be introduced to draw a formal but clear distinction between crimes and contraventions – in one go, if the nation can afford it; bit by bit, if it can not.

(b) Thereafter, step by step, the procedures for penalising contraventions should gradually be modified. Wherever practicable, enforcement by the imposition of appropriate penalties should become the primary responsibility of the public authority responsible for keeping order in that sector of conduct, subject to adequate safeguards, and with the citizen in the event of disagreement always having the option of having the matter decided by an independent Magistrates' Court.

4.20 One last question remains: how much practical difference would such a process of reform make to the number of criminal convictions imposed on the citizens of England and Wales in a full year ? We believe that the reduction could be very substantial, not only because of the number of criminal offences which could be transferred to the category of contraventions, but because of the very large proportion of annual convictions for which some of these account. For example, it is clear from the 1975 statistics (see Introduction, para. 2) that nearly 75% of the non-indictable convictions in that year were for motoring offences, a large proportion of which are likely to be contraventions rather than crimes. At that time, speeding offences on public roads other than motorways accounted for about a quarter of all motoring offences. If a motorist drives at 40 mph in a built-up area, that is undoubtedly a contravention, but it can hardly be said to be a crime by itself – unless that speed is so fast as to create a real danger, in which case the law already provides for the more serious offence of reckless driving. Endorsements to driving licences, and any future 'points' system, could of course continue as penalties for motoring contraventions, as they now are for motoring 'crimes'.

4.21 Of the remaining quarter or so of non-indictable convictions recorded in 1975, the following four groups between them accounted for no less than two thirds:–

Drunkenness (with or without aggravation)	28%
Failure to hold a vehicle excise licence	26%
Failure to hold a TV licence	9%
Obstruction of the highway (other than by a vehicle)	4%

4.22 We have nothing original to add to the vexed question of how we should deal with our public drunks – except to suggest that few would regard them as criminals on that account alone. Whatever else is done for or against them, we would have thought it plain that the 'criminal offence' of simple public drunkenness could safely become a contravention, carrying no criminal stigma. Mere failure to obtain or renew vehicle or TV licences may be important matters for the public revenue, but can surely be at least as satisfactorily penalised as contraventions as by turning forgetful citizens into criminals. (Deliberate dishonesty or fraud in those contexts is of course another matter, and there is no reason why it should not remain a crime.) And the street traders who obstruct the highway with their barrows cannot be viewed by many as conducting themselves in a criminal fashion, and there would hardly be a public outcry if their future status were to be changed to that of contravenors.

4.23 If only those four groups of offences – and, say, three quarters of the motoring offences which now come before the Magistrates' Courts – had been contraventions in 1975, that would have reduced the total number of criminal convictions in that sample year by around 1,150,000. The Magistrates' Courts would have recorded only about 430,000 convictions for non-indictable offences instead of 1,586,000 – slightly more than the total number of convictions for indictable offences in the same year. And the overall rate of criminal convictions in the population at large would have been cut by well over half. That surely cannot be an undesirable result in a nation that cares about both law and order, but has hitherto not found a sensible way of distinguishing between the two.

For convenience of reference, we have printed the Summary of our Conclusions and Recommendations at the end of this report, at p.51.

APPENDIX A

THE COMPUTERISED FILE OF ENGLISH CRIMINAL OFFENCES

THE DATA

1 Our list comprises all the individually identifiable offences dealt with in the 1975 edition of *Stone's Justices' Manual*. For each offence, we have recorded the statutory words by which it is defined – e.g. 'entering an aircraft drunk' (though few are defined so crisply). Where the offence can only be committed by a restricted class of persons (e.g. the holder of a PSV licence) or in restricted circumstances (e.g. while on licensed premises), our defining words include that fact. The rest of the information is coded, for each offence, in a unique number consisting of 30 digits, arranged as follows:–

No. of Digits	*Information*
3	Year of enacting or enabling statute (omitting the initial '1')
3	Chapter number of that statute
1	Whether the conduct constituting the offence is defined in the statute itself (code 0) or in a statutory instrument made under it (code 1)
3	Relevant section number of statute
2	Serial number of offence where more than one is created by the same section
1	Mode of trial: summary only (code 1), either way (code 2), or indictable only (code 3)
3	Maximum fine (£) on summary conviction of first offender (code 999 for offences not triable summarily)
1	Consent required for prosecution: DPP (code 0), AG (code 1); otherwise blank
3	Year of relevant statutory instrument (omitting the initial '1')
4	Number of relevant statutory instrument
3	Paragraph or Part number of relevant statutory instrument
3	Serial number of offence where more than one is created by the same paragraph or Part

That number is followed by the appropriate letters indicating the categories of 'criminal intent required' and 'presumed public policy' to which of the offence appears to belong (see Chapter 2, paras. 2.12 and 2.13).

2 For example 'entering an aircraft drunk' is the only offence created by paragraph 45 of the Air Navigation Order 1974 (1974 S.I. No. 1114), made under the authority of s.21 of the Civil Aviation Act 1971 (Ch. 75). In 1975, it was triable either way, and carried a maximum fine of £400. It requires no criminal intent, and seems to have been enacted in order to protect public safety and inanimate property, and to avoid non-economic injury both to the offender and to other identifiable individuals and classes. We have therefore coded it as –

971 075 1 021 00 2 400 974 1114 045 000 RLMO

3 As we were concerned to distinguish between different offences, we have tried (within reason) to avoid describing offences in ways which, were they used to frame an indictment, would render that indictment bad for duplicity or insufficient particularity. For example, where the offence is defined as 'doing, causing or permitting to be done' some act, we have treated those as three separate offences. But there are limits: for instance, we treated as a single offence 'molesting, disturbing, vexing or troubling, or by any other means disquieting or misusing [preachers or clergymen] ministering or celebrating any sacrament or any divine service, rite or office in any cathedral, church or chapel, churchyard or burial ground'. (Strictly, this definition could be said to create no fewer than 480 possible offences.) In a few cases also, we have had to rely on the summary of the offence given in *Stone*, even though there may be different modes of committing it, not there set out. This was more often the case with offences created by statutory instruments rather than by statutes.

4 Where *Stone* did not specify the maximum fine on summary conviction, we assigned £400. Where *Stone* cited a statutory instrument as made under the authority of more than one section of the enabling statute, we included the one that seemed most relevant – and, failing that, the first one there cited. Where *Stone* cited an offence as being created by more than one statutory instrument, we gave as its source the latest of these; this was the safer choice, since the later would probably contain references to the earlier, but not the other way round. This means that we may sometimes have cited a paragraph or Part number of a statutory instrument other than the one which now creates the offence.

5 All that information was first dictated on to tape, and then transcribed on a typewriter which also recorded it on magnetic cards. From there, it was transferred to a computer-readable magnetic tape, where it now resides in the form of three files: the offences, the statutes, and the statutory instruments. In the course of such transcriptions, there is of course scope for error and corruption, and our files are no exception. We have corrected what we can, but by no means everything.

THE PROGRAMS

6 We have devised our main program in order to be able, within reason, to carry out almost any useful search among our offences. That means that we must be able to discover both how many offences fall into any given class, and what those offences are. For the first, we have a 'count only' option; for the second, a 'list and count' option. The first of these will simply print out the criteria defining the class which we have specified for the search, and the total number of offences in the file which have been found to satisfy them. The second, after printing out the criteria, will print out successively all the information held about each of the offences which is found to satisfy them: that is, the statutory words defining the offence, and (if required) its legislative source in statute or statutory instrument or both, its mode of trial, and its maximum fine on summary conviction. Each offence in the list printed out is sequentially numbered, so that the program counts as well as lists.

7 The criteria for each such search can be very simply specified on a single punched card, which can include all or any of the following options:–

(1) a project number for that particular search;

(2) whether the exercise should be 'count only' or 'list and count';

(3) whether the search is to be limited to a specified statute, or to all the statutory instruments made under it, or to a specified statutory instrument, or to all statutes or statutory instruments enacted in a specified year, or before or after a specified year, or during a specified period of years;

(4) whether the search is to be limited to a specified mode of trial;

(5) whether the search is to be limited to offences carrying more, or less, than a specified maximum fine;

(6) whether the search is to be limited to offences which can be prosecuted only with the consent of the Attorney-General, or the Director of Public Prosecutions.

8 In addition, the programs offer a very wide variety of options as to the categories of 'criminal intent' and 'presumed public policy' in which offences must be comprised if they are to be counted or listed in the exercise. For up to 10 of those categories at a time, the researcher can specify whether he requires the offences for which he is looking to fall into –

(7) all of them (and possibly others);

(8) one or more of them (and possibly others);

(9) all of them (and no others);

(10) one or more of them (and no others);

(11) none of them;

(12) not all of them.

Up to 6 requirements can be made in the same search, subject only to a minor constraint of space on the card.

9 All this enables sophisticated searches of many different kinds to be carried out, quickly and cheaply, on the data in the file. But the value of the results will depend on the accuracy and completeness of the file. As we have explained in paragraph 2.17 of Chapter 2, and in paragraph 5 of this Appendix, our file is not complete, nor is it likely to be entirely accurate. We have therefore prepared further programs which enable any data in the file to be corrected (e.g. if it contains errors; if, say, the maximum fine is changed; if, on reflection, it is thought better to assign the offence to different categories of 'criminal intent' or 'presumed public policy'; or if the offence is re-enacted in a new statute or a new statutory instrument; or to be deleted (e.g. if an offence is repealed altogether); or for a new data to be added (e.g. if an altogether new offence is created). We have not so far used these programs to bring our file up to date: before any authoritative work is based on its contents, that will of course have to be done – especially in respect of the substantial changes in maximum fines wrought by the Criminal Law Act 1977.

10 By way of illustration, we reproduce on the next two pages the print-out of one of our 'list and count' exercises:–

HAVING ALL THE FOLLOWING CHARACTERISTICS (AND NO OTHERS):-

MENS REA:–

(01) OTHER BASIC OR SPECIFIC INTENT

PRESUMED PUBLIC POLICY:–

(01) AVOIDANCE OF NON-ECONOMIC INJURY TO OFFENDER

(0001) A PERSON UNDER THE AGE OF 18 ENGAGES IN STREET TRADING ON A SUNDAY IN CONTRAVENTION OF SECTION 20 OF THE CHILDREN AND YOUNG PERSONS ACT 1933

CHILDREN AND YOUNG PERSONS ACT 1933, S. 20

MODE OF TRIAL : SUMMARY ONLY
MAXIMUM PENALTY ON SUMMARY CONVICTION: £20

(0002) A PERSON HAS IN HIS POSSESSION A DRUG MENTIONED IN PART 1,2 OR 3 OF SCHEDULE 2 OF THE MISUSE OF DRUGS ACT 1971

MISUSE OF DRUGS ACT 1971, S. 5

MODE OF TRIAL : EITHER WAY
MAXIMUM PENALTY ON SUMMARY CONVICTION: £400

(0003) A PERSON SMOKES PREPARED OPIUM

MISUSE OF DRUGS ACT 1971, S. 9

MODE OF TRIAL : EITHER WAY
MAXIMUM PENALTY ON SUMMARY CONVICTION: £400

(0004) A PERSON USES PREPARED OPIUM OTHERWISE THAN SMOKING IT

MISUSE OF DRUGS ACT 1971, S. 9

MODE OF TRIAL : EITHER WAY
MAXIMUM PENALTY ON SUMMARY CONVICTION: £400

(0005) A PERSON FREQUENTS A PLACE USED FOR THE PURPOSE OF OPIUM SMOKING

MISUSE OF DRUGS ACT 1971, S. 9

MODE OF TRIAL : EITHER WAY
MAXIMUM PENALTY ON SUMMARY CONVICTION: £400

(0006) A PERSON HAS IN HIS POSSESSION ANY PIPES OR OTHER UTENSILS MADE OR ADAPTED FOR USE IN CONNECTION WITH OPIUM SMOKING BEING PIPES OR UTENSILS WHICH HAVE BEEN USED BY HIM OR WITH HIS KNOWLEDGE AND PERMISSION IN THAT CONNECTION OR WHICH HE INTENDS TO USE OR PERMIT OTHERS TO USE IN THAT CONNECTION

MISUSE OF DRUGS ACT 1971, S. 9

MODE OF TRIAL : EITHER WAY
MAXIMUM PENALTY ON SUMMARY CONVICTIONS: £400

(0007) A PERSON HAS IN HIS POSSESSION ANY UTENSILS WHICH HAVE BEEN USED BY HIM OR WITH HIS KNOWLEDGE AND PERMISSION IN CONNECTION WITH THE PREPARATION OF OPIUM OR SMOKING

MISUSE OF DRUGS ACT 1971, S. 9

MODE OF TRIAL : EITHER WAY
MAXIMUM PENALTY ON SUMMARY CONVICTIONS £400

APPENDIX B

SOME PRELIMINARY RESEARCH RESULTS

The total number of offences on the file is 7,208, created by 466 statutes and 37 statutory instruments. The following Tables show the numbers satisfying various specified criteria.

TABLE 1

Number of all offences by time periods of most recent enactment (or re-enactment)

Enactment	*Number*
Before 1901	469
1901 – 1910	53
1911 – 1920	185
1921 – 1930	272
1931 – 1940	454
1941 – 1950	427
1951 – 1960	969
1961 – 1970	1,485
1971 and after	2,901

TABLE 2

Number of all offences by mode of trial (as at 1 January 1975)

Mode of trial	*Number*
Summary only	5,598
Indictable only	423
Either way	1,169

TABLE 3

Number of all offences by maximum fine on summary conviction (as at 1 January 1975)

Maximum penalty	*Number*
£10 or less	752
£11 to £25	944
£26 to £50	1,056
£51 to £100	2,416
£101 to £200	416
£201 to £400	1,080
£401 or more	544[1]

[1] including all offences triable only on indictment.

TABLE 4

Number of offences triable only with official consent

Consent required	*Number*
Attorney-General	31
Director of Public Prosecutions	131

TABLE 5

Number of offences requiring no criminal intent *by time periods of most recent enactment (or re-enactment)*

Enactment	*Number*
Before 1901	107
1901 – 1920	37
1921 – 1940	219
1941 – 1960	458
1961 and after	2,930

TABLE 6

Number of offences requiring no criminal intent *by mode of trial (as at 1 January 1975)*

Mode of trial	*Number*
Summary	3,487
Indictable only	7
Either way	253

TABLE 7

Number of offences requiring no criminal intent, *and triable only summarily, by maximum fine on conviction (as at 1 January 1975)*

Maximum penalty	*Number*
£100 or less	3,055
More than £100	432

TABLE 8

Number of offences by criminal intent

Criminal intent required		*Number*
(A)	Deliberate dishonesty[1]	607
(B)	Deliberate physical injury to other persons	63
(C)	Satisfaction of sexual desires	77
(D)	Carelessness[2]	106
(E)	Deliberate omission or failure	188
(F)	Other basic or specific intent	2,384
	None	3,747

[1] 'Dishonestly', 'with intent to deceive', 'with intent to defraud', 'calculated to deceive', 'fraudulently', etc.

[2] Including 'recklessness', 'negligence' and similar expressions, with or without foresight of consequences.

TABLE 9

Number of offences by presumed public policy

Public Policy		*Number* (no other public policy)	*Number* (others also)
(G)	Avoidance of unmeritorious economic benefit	105	644
(H)	Avoidance of unmeritorious non-economic benefit	0	34
(I)	Avoidance of undeserved economic damage to identifiable individuals or classes	210	505
(J)	Revenue-raising	119	192
(K)	Avoidance of economic damage to the public at large[1]	159	446
(L)	Avoidance of non-economic injury to offender[2]	24	801
(M)	Avoidance of non-economic injury to other identifiable individuals or classes	474	1,832
(N)	Protection of non-human life	258	372
(O)	Protection of inanimate property[3]	35	401
(P)	Protection of public amenities[4]	112	254
(Q)	Protection of public health[3]	343	498
(R)	Protection of public safety[3]	287	2,208
(S)	Protection of public order[3]	10	18
(T)	Avoidance of public offence	68	120
(U)	Avoidance of public nuisance	39	192
(V)	Protection of public institutions[5]	554	936
(W)	Obtaining information	283	1,065
(X)	Promoting conformity with administrative directions or conditions[6]	138	171
(Y)	Promoting other public policy[6]	179	206

[1] Other than failure to raise revenue.
[2] 'Protecting people from themselves'.
[3] Where category M does not apply.
[4] 'The environment'.
[5] Administration of justice, elections, etc.
[6] Where no other category from G to W applies.

TABLE 10

Number of offences requiring no criminal intent *by presumed public policy*

Public Policy		*Number* (no other public policy)	*Number* (others also)
(G)	Avoidance of unmeritorious economic benefit	24	125
(H)	Avoidance of unmeritorious non-economic benefit	0	0
(I)	Avoidance of undeserved economic damage to identifiable individuals or classes	48	147
(J)	Revenue-raising	44	71
(K)	Avoidance of economic damage to the public at large[1]	50	132
(L)	Avoidance of non-economic injury to offender[2]	13	660
(M)	Avoidance of non-economic injury to other identifiable individuals or classes	190	1,230
(N)	Protection of non-human life	35	94
(O)	Protection of inanimate property[3]	7	128
(P)	Protection of public amenities[4]	66	137
(Q)	Protection of public health[3]	222	315
(R)	Protection of public safety[3]	139	1,702
(S)	Protection of public order[3]	6	10
(T)	Avoidance of public offence	21	35
(U)	Avoidance of public nuisance	11	118
(V)	Protection of public institutions[5]	64	109
(W)	Obtaining information	116	322
(X)	Promoting conformity with administrative directions or conditions[6]	121	154
(Y)	Promoting other public policy[6]	159	184

[1] Other than failure to raise revenue.
[2] 'Protecting people from themselves'.
[3] Where category M does not apply.
[4] 'The environment'.
[5] Administration of justice, elections, etc.
[6] Where no other category from G to W applies.

APPENDIX C

EXAMPLES OF ADMINISTRATIVE ENFORCEMENT OF REGULATIONS IN THE UNITED KINGDOM

1 Several administrative agencies in the United Kingdom kindly responded to our invitation by submitting written evidence, which we have found most helpful. In this Appendix, we can do no more than summarise it.

Fixed Penalities under the Road Traffic Acts

2 The 'parking ticket' procedure is now so well known that we need not describe it here. But the Central Ticket Office of the Metropolitan Police, which administers it in London, gave us some useful statistics for 1974.

3 In that year, no less than 2.1 million tickets were issued. Only 44,000 cases (2% of the total number) were taken before the courts, though that proportion was expected to increase with the coming into force of sections 1 to 5 of the Road Traffic Act 1974.

4 These prosecutions, and the complex procedures leading to them, occupied a staff of 340. About another 100 were engaged on matters incidental to the processing of the tickets, such as dealing with some 3,000 letters per week from people making representations about the tickets that had been issued to them.

Customs and Excise

5 The laws imposing both customs and excise duties (originally under separate administrations, but since 1909 administered together by HM Commissioners of Customs and Excise) have had a long and chequered history. At different times, different duties have been recoverable in civil proceedings or by criminal information, and different statutes have imposed different penalties for various offences connected with the evasion of duties. An important power vested in the Commissioners has for a long time been that of seizing and forfeiting infringing goods.

6 Under what is now s.152 of the Customs and Excise Management Act 1979, the Commissioners may (among other things) 'as they see fit... compound any proceedings for an offence or for the condemnation of any thing as being forfeited' under the Acts. If the Commissioners have evidence to justify proceedings for an offence, they will exercise that power, in those cases where they think it proper and suitable, by giving the alleged offender the option to pay a specific sum as an alternative to proceedings being instituted against him. If a claim is made that goods are not liable to forfeiture, the Commissioners are obliged by statute to bring what are termed condemnation proceedings, which are of a civil nature. But those proceedings too can be avoided or settled, on such terms as the parties may agree, through the exercise of the Commissioners' power under s.152.

7 But the Commissioners emphatically do not regard the exercise of this power as the imposition of an administrative penalty. Rather, they see it as offering the offender a choice between making the payment or having the allegations against him heard before a court.

Inland Revenue

8 In theory, every case of tax evasion of which the Board of Inland Revenue possesses sufficient evidence could be made the subject of a criminal prosecution. The Board are not, however, bound to prosecute in all such cases but may instead accept a pecuniary settlement, including an amount by way of penalty. The main legislation about penalties is contained in ss.93–107 of the Taxes Management Act 1970. Most cases of tax evasion, and in particular those in which the taxpayer makes a full confession and gives the Board full facilities for investigation, are dealt with by imposing monetary penalties graded according to the gravity of the offence rather than by prosecution, and generally the amount of the penalty is agreed between the Inspector and the taxpayer without resort to formal proceedings.

9 In the result, criminal prosecutions for tax fraud are undertaken only in a small minority of cases. This is partly because the tax legislation clearly envisages that severe money penalties will be the common punishment of the tax evader, and partly because of the inherent limitations in prosecution proceedings – for example the burden of preparing cases to the standard required in Court, and of seeing them through the Courts. The Board therefore prosecutes only in a selection of the most serious cases of fraud, but the amount of tax involved is only one factor taken into consideration. Where such proceedings are launched, charges are preferred under the general criminal law. With a few minor exceptions, there are no criminal charges special to Inland Revenue.

10 In the year to 31 October 1978 there were about 18,500 settlements where penalties were involved. The amount recovered was nearly £47 million, of which about £9 million related to penalties and about £10 million to interest on the under-assessed tax. In the year to 31 March 1979, the number of persons convicted in criminal proceedings brought by the Board was 184, and 8 persons were acquitted.

Exchange Control

11 Broadly speaking, under the Exchange Control Act 1947, all financial transactions with non-residents, all transfers of overseas property between residents, and all transactions in foreign currency, required the consent of the Treasury. Most of the administration

of the control was delegated by the Treasury to the Bank of England, which in turn authorised offices in the United Kingdom of most British and foreign commercial banks to execute a wide range of transactions. More limited permissions were given to stockbrokers and solicitors in their capacity as 'authorised depositaries', and to certain travel agents and bureaux de change; for other transactions, individual consents had to be sought.

12 However, except for offences under Part IV of the Act which were the responsibility of HM Customs and Excise, the Treasury retained the principal role of securing compliance with and detecting evasion of the Act, employing a small specialised staff on this work. The volume is indicated by the following figures:–

	Possible Offences Investigated	*No offence Established*	*Prosecutions Instituted*
1975	435	115	11
1976	317	92	19
1977	498	195	15
1978	348	138	14

13 Prosecutions for offences under the Act required the consent of the DPP, or (outside England and Wales) an appropriate Law Officer. Among the reasons for not prosecuting offenders might be a shortage of admissible evidence, or mitigating circumstances. But in any case, the Treasury was as much concerned to get the loss of foreign currency put right as to seek the punishment of the offender. For this, certain administrative measures were available, of which the most important were –

(a) requiring the offender to comply with the Act, e.g. by repatriating a foreign bank balance;

(b) permitting the offender to make good the foreign exchange loss by purchasing the equivalent foreign currency (at a premium) in the investment currency market, and immediately surrendering it (without the premium) by sale for sterling at the current rate in the official foreign exchange market;

(c) directing the sale of property acquired in breach of the Act;

(d) imposing full restrictions on the transfer abroad of any United Kingdom assets left here by an absconding resident offender, or on the External Account of a non-resident one.

Although the imposition of such measures was not intended to operate as a penalty, in some circumstances that could have been their effect.

Keeping or Using Unlicensed Vehicles

14 Under section 3 of the Vehicles (Excise) Act 1971, what is now the Minister of Transport has powers to mitigate penalties similar to those of Customs and Excise which we have already described.

15 Reports of offences under section 8 of the Act (unlicensed vehicles being kept or used on a public road) are made by police forces, traffic wardens and various other official bodies (e.g. HM Customs and Excise). The majority come from the police.

16 The reports are checked against the vehicle records. If an offence is revealed, details of the licensing position are extracted. (If a licence was in force when the vehicle was seen the report is scrapped).

17 The action to be taken on the reports is then assessed. Local Authorities act as agents of the Minister in matters of this kind, and the action taken on reports of unlicensed vehicles is in accordance with a code of treatment laid down by the Department.

18 In certain circumstances an alleged offender is offered, by letter, the opportunity of paying a penalty as an alternative to legal proceedings. Whether or not such an offer is made depends very largely on the rate of duty applicable to the vehicle in question and the amount of back duty apparently outstanding. The offer of an opportunity to pay a penalty in settlement of an offence is not ordinarily made if the records show that an alleged offender has previously committed a similar offence. At this stage the recipient of the letter has the opportunity to disclaim responsibility for the offence, or to advance any mitigating circumstances which might lead to a reduction in the amount of the penalty.

19 Prosecution for the offence is only considered if the penalty is not paid, or if the circumstances of the report are such that the opportunity of paying a penalty is not offered.

APPENDIX D

CRIMES AND CONTRAVENTIONS ABROAD

Research in comparative law is notoriously difficult and time-consuming. Soon after we began our work, we therefore sought the help of the Institute of International and Comparative Law, and prepared a questionnaire for circulation among selected departments of law in European universities. In the event, the Institute was unable to elicit any responses. Personal contacts in Austria, the Federal German Republic, France, Norway, Sweden and Switzerland proved more successful, but were limited to those countries. In the end, we were fortunate in being able to enlist the help of the Directorate of Legal Affairs of the Council of Europe in Strasbourg. Within a few weeks, we had replies from the Ministries of Justice of most of its 21 European member states. Our thanks to all those who were able and willing to help in that research are recorded in paragraph 8 of the Introduction to this report, and necessarily brief summaries of the state of the relevant law in all those countries (as well as the United States of America) are set out below.[1]

As will be seen, every one of these countries – with the exception only of the United Kingdom, Eire and Malta – has at least made a start in the direction of separating crimes from mere breaches of regulations, and many of them have developed the distinction to a high degree. In all those countries, the general law furnishes safeguards against abuse of administrative authority; the details of these vary according to the countries' constitutional and legal systems, and are not reproduced here.

AUSTRIA

There is a clear distinction between criminal offences and 'administrative transgressions' (*Verwaltungsübertretungen*). Broadly speaking, conduct causing, or carrying a 'concrete risk' of causing, damage or harm (usually to individuals) is classified as a criminal offence; conduct carrying only an 'abstract risk' of harm, or which is a mere breach of order, is classified as an administrative transgression. In recent decades, there has been a tendency to convert some of the lesser criminal offences into administrative transgressions, and to create administrative transgressions rather than criminal offences when there has been legislation in new areas.

Criminal offences are tried before the ordinary courts, and lead to criminal convictions and corresponding entries on the central criminal register. Penalties for administrative transgressions are imposed by the competent administrative authorities, under procedures regulated by the general codes of administrative penal law and administrative procedure. The penalties usually take the form of fines, but may include certain kinds of disqualification (e.g. withdrawal of a driving licence), and in a few cases short-term imprisonment. There is no central register of administrative transgressions.

Appeal against the imposition of an administrative penalty is to a succession of instances under the general rules of appeal, up to the Administrative High Court on questions of administrative law, or the Constitutional Court on questions of constitutionality. A complaint to the recently-created Ombudsman is also available.

Although this system has operated successfully for many years, it presents certain problems, principally because of the complete separation between the administrative and the ordinary processes. This precludes any appeal to the ordinary courts from the decision of an administrative authority (even in the case of the imposition of short-term imprisonment), and can lead to double jeopardy through the imposition of penalties, for the same act, by both the ordinary criminal court and the appropriate administrative authority. A step-by-step comprehensive reform of administrative penal law is therefore now under way, and the Government has already presented to Parliament its first legislative project for that purpose.

BELGIUM

The direct imposition of administrative penalties is confined to infringements of various laws relating to employment – covering such things as child labour, hours and conditions of work, industrial health and safety, sex discrimination, public holidays, employment protection, employment agencies and so forth.

Under a law of 10 June 1971, the Ministry of Employment and Labour may impose, for each such infringement, a fine of between £7 and £140, with a maximum of between £2,800 and £7,100 for all infringements established against one employer at one time. These fines may only be imposed if the infringements could be the subject of a criminal prosecution, but the appropriate prosecuting authority decides not to prosecute because the infringements are not sufficiently grave. After giving the employer the opportunity of putting forward his defence, the appropriate fine may be imposed, supported by a reasoned decision. If the employer does not pay, the fine may be recovered through the competent court, which may modify or annul the decision if it is legally defective. From that court, there is an appeal under the ordinary civil procedure.

CYPRUS

Certain breaches of regulation which involve no guilty mind or guilty intention, and/or which are not of a serious nature, may be punished by the imposition of a fine by an administrative authority.

[1] All money sums are converted at the approximate rates of exchange ruling in March 1979.

Examples are breaches of regulations relating to Social Insurance, Factories Legislation, the Buildings (Security, Health and Welfare) Regulations and Employment Legislation, where fines may be imposed by the appropriate officers of the Ministry of Labour without recourse to the courts. Similarly, fixed fines may be imposed by municipal authorities for minor traffic contraventions; if such a fine is not paid within a certain time, the offender is prosecuted in the ordinary way. In some cases, disqualifications may also be imposed.

There is a general right of appeal to the courts against such decisions, and the remedies of mandamus, prohibition, quo warranto and certiorari are available. There is also a constitutional right of recourse to the Supreme Court against administrative decisions of public authorities.

No major problems have arisen with this system.

DENMARK

In the case of some minor criminal offences an offender may, on the proposal of the police, be able to avoid prosecution by admitting his guilt and paying a fine, not exceeding £150. Similar arrangements exist in some special areas, notably for fiscal offences, where the proposal is made by the appropriate administrative agency. In those cases, there is no maximum limit for the fine.

EIRE

As in the United Kingdom, there is no distinction between crimes and other kinds of punishable unlawful conduct.

FEDERAL GERMAN REPUBLIC

There is a fundamental distinction between criminal offences and 'infringements of order' (*Ordnungswidrigkeiten*). Infringements of order are defined by the relevant law (now the Infringements of Order Law of 24 May 1968) as acts prohibited by law which can only be punished by a fine. Since 1949, the West German Federal and State legislatures have followed the policy of classifying as infringements of order all those acts which require the imposition of a penalty by the State, but which are not sufficiently morally blameworthy to need the sanction of imprisonment, or the attachment of the stigma of a criminal conviction to the offender.

If an infringement of order comes to the notice of the competent administrative authority, it may confine itself to admonishing the infringer, with or without the imposition of an 'admonitory fine' of between 50p and £5 (up to £10 in the case of traffic offences). If that is considered insufficient – or if the infringer does not accept the admonition – the administrative authority may issue a preliminary decision imposing upon him the payment of a full administrative fine

of between £1.25 and £250 (or more if the relevant regulation so provides). This decision may also impose certain disqualifications, including a disqualification from driving for a period of between one and three months.

That decision has no effect if the infringer does not agree to it. In that case, he may enter a protest within one week; if he does, the issue is decided by the local court where the administrative authority has its seat. That court is not bound by the preliminary decision: it can, if it thinks fit, impose a heavier fine or a longer disqualification. From there, there are various avenues of appeal.

Double jeopardy is avoided by the principle that, if the act constituting an infringement of order is at any time prosecuted as a criminal offence, the administrative penalty is automatically annulled. Moreover, a criminal court of first instance can at any time change over to 'infringement of order' proceedings, and vice versa.

No theoretical or practical problems have been reported.

FRANCE

There are three categories of offence which may be punished by the criminal courts: crimes, which come before the Courts of Assize; delicts, which come before the Correctional Courts; and contraventions, which come before the Police Courts. These categories are distinguished by the maximum penalties with which they may be visited. If the offence is punishable with imprisonment for 5 years or more, it is a crime; for more than 2 months but less than 5 years, a delict; and for 2 months or less, a contravention.

But much other conduct is regulated by special statutes, which provide for administrative sanctions. The sanction most widely used is the withdrawal of the licence or authorisation required to pursue the relevant activity: such as driving vehicles; operating a hospital, clinic, foster home or restaurant; exercising some professional activity; etc.

The statute will specify the administrative authority competent to impose the sanction. That may be a Minister, the Prefect of the Department, or a special body created by the statute. As a matter of general administrative law, once such a sanction has been imposed there is always an appeal to the administrative courts, and ultimately to the Conseil d'Etat, which has developed an extensive case law in this field. For example, it often requires that the competent authority should give the person affected the right to make representations in his defence before imposing the sanction.

If the conduct concerned is made an offence which the criminal courts can punish, the Conseil d'Etat will only allow an administrative sanction to be imposed in addition if the relevant statute expressly so

provides.

Convictions by the criminal courts are recorded on a central register; administrative sanctions are not.

GREECE

There is a distinction between criminal offences and administrative contraventions. The latter are penalised by the competent administrative authority, generally by way of a fine. Where the relevant regulation provides also for imprisonment (up to a maximum of 6 months), the sentence can only be imposed by a criminal court.

Appeals against administrative decisions imposing penalties for administrative contraventions go to the administrative courts.

No problems have arisen with these procedures.

ICELAND

Certain breaches of the law are not regarded as sufficiently serious to be classified as offences against the criminal law. These include tax offences, customs offences, and offences against the Traffic Act, the Liquor Act, the Notice of Change of Domicile Act, and Police Regulations. If, in the case of such offences, the appropriate administrative agency considers that a court would not impose a fine beyond a prescribed amount (ranging from £7 in the case of traffic violations to £350 in the case of the illegal import of goods), the agency may offer the offender the opportunity of settling the case by the payment of a fine. If the offender agrees and pays, that is the end of the matter, and there will be no entry in the national penal register. If he does not, the case will be referred to the court, whose convictions are entered on that register.

No problems, theoretical or practical, have been experienced with this system.

ITALY

The criminal code is now divided into two categories of offence: delicts and contraventions (the top category of 'crimes' having been merged with delicts some years ago). Contraventions require no guilty intent (such as dishonesty or violence) other than to commit the unlawful act, and are punished, following criminal proceedings in the ordinary criminal courts, by fines or imprisonment up to a maximum of 3 years.

Recently, a new category of 'administrative breaches' (*illiciti amministrativi*) was introduced, and a large number of what had previously been contraventions has been transferred to this category by successive 'depenalisation' measures. Broadly speaking, these cover

conduct which does not threaten the general social order, and is not sufficiently serious to attract the stigma of a criminal prosecution and conviction.

There is not yet a single code of procedure governing administrative breaches: different procedures are laid down in the different statutes which have created them – dealing, for example, with the collection of taxes, the protection of works of art and of nature, road traffic, etc. In general, the procedure is initiated by the competent administrative agency; the main penalty is a fine, though there may also be disqualification or withdrawal of a concession or a licence.

There are several different avenues of appeal, some provided by the special statutes and others under the general administrative law.

LIECHTENSTEIN

Offences against the criminal law are distinguished from breaches of laws for which public authorities may impose penalties. Broadly, the latter comprise infringements of administrative regulations, though in some areas these too fall within the competence of the criminal courts.

Administrative penalties may take the form of fines, disqualifications, and in some cases imprisonment. They are imposed by the appropriate governmental offices, or specially instituted commissions. There is always an appeal to the administrative courts, and ultimately to the Constitutional Court.

MALTA

As in the United Kingdom, there is no distinction between crimes and other kinds of punishable unlawful conduct.

NORWAY

The criminal law distinguishes between major and minor offences. But there are also some areas of conduct which attract punishment without being made criminal offences, in order to simplify procedure and to eliminate the stigma of criminal conviction in cases which are not serious, which involve few legal problems, and where the evidence is normally not disputed.

The punishment takes the form of a fine, imposed by the police – or, in the case of illegal parking, by local authorities.

Appeal to the courts is available.

Although the Constitution provides that 'no one must be convicted except according to law, or be punished except according to judicial sentence', the Supreme Court held in 1973 that the punishments applied by this procedure were not unconstitutional.

PORTUGAL

The criminal law distinguishes between crimes (or delicts), and contraventions. Contraventions are defined as punishable voluntary acts which consist only of a violation of or failure to observe the law, independently of any guilty intent. Where a contravention is punishable only by a fine, the accused may pay it at any time before the final hearing, and so bring the proceedings to an end.

By a Decree-Law of 24 July 1979, a detailed procedure was laid down for the sanctioning of a new category of 'infringements of order' (*contra-ordenacões*), which was to include all existing contraventions. Thenceforth, these were to be punished only by a fine between £2 and £1,000, to be imposed by the competent administrative authority after giving the person concerned the opportunity of making representations in his defence. If the infringement was minor, the authority might confine itself to an admonition, combined with a requirement to pay not more than £5. Appeals to the ordinary criminal courts, of the place where the administrative agency had its seat, were provided in all cases.

However, the Decree-Law contained no provisions for a gradual transition to the new regime, and this led to substantial difficulties. Its operation has therefore now been suspended, pending a more detailed study of the most appropriate means of bringing it into operation.

SPAIN

A distinction is drawn between criminal offences punished by the criminal courts, and conduct sanctioned by administrative penalties.

Administrative agencies can impose various fines, suspensions and disqualifications for infringements of regulations.

There are two kinds of appeal: to the administrative courts, and to the Constitutional Court (by way of [*amparo*]).

This system presents several problems, including that of double jeopardy, and the possibility of an increase in the penalty on appeal. Legislation to resolve these problems is in contemplation.

SWEDEN

Although the criminal law draws no distinction between criminal offences of different degrees of gravity, some minor violations have recently been made subject to the imposition of fines by an administrative authority instead of being prosecuted before the criminal courts.

The person concerned can appeal against such a decision, either to a court, or to the Ombudsman, or to the Attorney-General.

A working group of the National Swedish Council for Crime Prevention has made recommendations about the principles to be followed if this system is to be extended in future.

SWITZERLAND

A special procedure was introduced in 1970 for the imposition of 'order fines' for a list now comprising 68 different minor Federal offences, as well as additional Cantonal ones.

The maximum fine is £25, and is imposed directly by the police officer who establishes the commission of the offence. Such a fine cannot be entered on the Federal criminal register. If it is paid on the spot or within 10 days, and the amount is less than £12.50, it cannot even be entered on the Cantonal criminal register. If the offender does not pay, the case is reported to the court in the ordinary way.

The only problem is that, without entries on registers, the punishment cannot be increased for those who repeat such offences.

TURKEY

There is a distinction between criminal offences, and infringements of public regulations for which an administrative authority may impose a fine.

Such fines are not entered on the criminal register. Except in the case of traffic offences (for which the fines are very light), there is an appeal to the courts.

The system has raised neither theoretical nor practical problems.

UNITED STATES OF AMERICA

Conduct of the kind which we categorise as 'contraventions' in this report falls mainly within the competence of State, rather than Federal, legislatures and courts. There is a wide range of practice among the different States and many experiments have been tried, of which some are still in progress.

The American Law Institute has prepared a Model Penal Code, which has been adopted by a large majority of States, and accepted by the Federal government. This creates a new category of 'violations', defined as follows in paragraph 5 of section 1.04 :—

> 'An offense defined by this Code or by any other statute of this State constitutes a violation if it is so designated in this Code or in the law defining the offense or if no other sentence than a fine or fine and forfeiture or other civil penalty is authorised upon conviction or if it is defined by a statute other than this Code which now provides that the offense shall not constitute a crime. A violation does not constitute a crime and conviction of a

violation shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.'

Many of the States have now adopted the violation category suggested in this Model Penal Code, but a few of them have included imprisonment as a possible sanction even for violations.

CONCLUSIONS

1 In England and Wales, it is now impossible to ascertain the entire content of the criminal law at any given time. It is not the task of any single public authority to know what it is, or to make it publicly available (2.2 – 2.3).

2 Accordingly, the ordinary layman has no means of finding out for himself (that is, without consulting a solicitor, often necessarily at considerable expense) what he can and cannot do without running foul of the criminal law. We think that this is an indefensible state of affairs (2.4 – 2.5).

3 After a good deal of research, we have found and listed the details of over 7,200 different criminal offences in the law of England and Wales. We think it probable that there are altogether far more than that, but no one yet knows how many. Of the ones we found, more than half require no criminal intent of any kind for their commission (2.18).

4 We have done some preliminary research on the classification of these offences (Appendix B), but much more remains to be done.

5 Only a minority of all these 'criminal offences' involve any degree of moral turpitude in their commission. The bulk of them are not 'crimes' in any sense in which the general public understands that concept (1.10).

6 All this invites avoidable disrespect for the criminal law, and puts an unnecessary burden on the police, and on magistrates and their staffs (1.11 – 1.12).

7 In some areas of conduct, penalties for 'criminal' breaches of regulations are already imposed directly by public authorities, with the consent of the offender and without any recourse to the courts (Appendix C), and most other European countries have much more highly-developed systems of that kind (Appendix D).

RECOMMENDATIONS

1 An appropriate government department should publish as soon as possible, and thereafter keep up to date, a complete list of all criminal offences known to the law (other than merely local ones), with all their relevant characteristics and a compendious index and cross-referencing system. Copies should be available

for reference in public libraries, and for sale in Government Bookshops at an affordable price (2.6). Although this would be a substantial task, its cost could probably be much reduced through the use of computers (2.8).

2 The existing criminal statute book should be divided, progressively if it cannot all be done at once, into two categories: crimes and contraventions (2.9; 4.3 – 4.5).

3 The category of crimes should be confined to those offences about which reasonable people could credibly hold the view that the conduct concerned involves some real and deliberate moral turpitude (3.7).

4. The category of contraventions should not include any conduct requiring an intent of deliberate dishonesty, deliberate physical injury to others, or sexual gratification (of which we have found about 750 in our list). It should include many of the present offences which require no criminal intent of any kind (of which we have found about 3,750), and some of those which require only carelessness, omission, failure, or other kinds of intent involving no moral turpitude (of which we have found about 2,700) (3.12).

5 Thereafter, and subject to important safeguards, the enforcement of regulations and the imposition of penalties for contraventions could gradually be transferred to the public authorities charged with the relevant sectors of public conduct (4.8).

6 New kinds of penalty for contraventions could be designed in order to ensure greater conformity to Parliament's policies (4.18).

7 The imposition of any penalty by a public authority for a contravention should always be subject to judicial review, at the option of the alleged contravenor, by his local Magistrates' Court (4.10 – 4.13).

8 Apart from reversing the current trend of disrespect for the criminal law, the adoption of our recommendations should also save a great deal of time and public money (4.15 – 4.17), and could reduce the total annual number of criminal convictions by more than half (4.20 – 4.23).

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