

A Police Officer's View of the Habitual Criminal

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Never before in the history of North America has the problem of crime evoked as much discussion and analysis as it does today. Regardless of the discussions and analyses, one fact remains; crime is on the increase in North America.

	Total	Mur- der	For- cible Rape	Rob- bery	Aggra- vated Assault	Bur- glary	Lar- ceny over \$50.00	Auto Theft ¹
United States	+25	+10	+22	+18	+23	+22	+28	+29
Canada	+16	+4	+29	+14	-28	+18	+13	+19

Dr. J. Edwards, Director of the Center of Criminology, University of Toronto, in his introductory remarks at the National Conference on the Prevention of Crime held in Toronto in 1965, stated:

...All the available evidence points to a continuing increase in the amount of indictable crime committed across the whole of Canada, a rise which far outstrips the rise in population...

Dr. Edwards added that there was:

...Mounting concern expressed by the country's senior police officers both in public and more vividly in their annual reports as to their ability to control, let alone get on top of the mounting figures of indictable crime...²

According to some North American police officers, the situation has deteriorated to a level where they "sincerely believe that our democracy is being destroyed by a criminal invasion from within".³

Even though the traditional role of the police has been somewhat modified by the additional social duties the community demands of its police force, the primary duties of a police officer are still:

...To maintain the peace, to enforce the law by preventing violations of it and by taking appropriate action to bring transgressors to justice...⁴

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¹ The F.B.I. Law Enforcement Bulletin, December 1966, p. 8, reporting the 1962 to 1964 period. (Note: All figures in percent).

² J.L.J. Edwards, *Introductory Remarks at the National Conference on the Prevention of Crime*, (1965). Vol. 8, No. 2, C.L.Q. Oct. p. 172 at 173.

³ D.W. Wilson, *Parker on Police*, Springfield, p. 66.

⁴ J. Honsberger, *The Power of Arrest and Duties and Rights of Citizens and Police*, Special Lectures at Law Society of Upper Canada, 1963, p. 1 at 3.

In an effort to arrest the rising swell of crime that is sweeping Canada,⁵ it is imperative that police departments utilize every legal instrument at their disposal. One such legal tool is section 660 of the Criminal Code. This section provides that an habitual criminal be sentenced to preventive detention,⁶ if, in the opinion of the Court, it is expedient for the protection of the public.

An argument against the enforcement of section 660 is that:

... The offender, designated an habitual criminal and sentenced to preventive detention for an indeterminate period is sentenced not for a crime that he has committed, but because he is characterized an habitual criminal and it is anticipated that he will continue a life of crime if not permanently restrained.⁷

In the first place, the habitual criminal is not being punished for a crime he has not committed but rather on the basis of a recurring history of crimes which he has committed. Secondly, on what other criterion can society base the possible future of an individual than on the immediate past record of the particular actor? Furthermore, preventive detention does not necessarily mean that the habitual criminal must spend the rest of his life in a penitentiary. His release on parole is anticipated in section 666 of the Criminal Code which reads:

... Where a person is in custody under a sentence of preventive detention the Minister of Justice shall at least once in every year review the condition, history and circumstances of that person for the purpose of determining whether he should be permitted to be at large on license and if so, on what conditions.⁸

Section 24, sub-section 5, of the Parole Act provides that:

... The powers, functions and duties of the Minister of Justice under Section 666 of the Criminal Code are hereby transferred to the Board and a reference in that section to permission to be at large on license shall be deemed to be a reference to Parole granted under this act.

If, therefore, the habitual criminal demonstrates in a positive manner that he can lead a normal, law-abiding life in the community, he undoubtedly would be recommended for parole during the annual review of his case.

⁵ *Crime Statistics*, Dominion Bureau of Statistics, Ottawa, Nov. 1966, p. 14, reported that in 1963: 874,572 offences were reported in Canada.

1964: 960,917	"	"	"	"
1965: 989,451	"	"	"	"

⁶ Section 659(c) defines "preventive detention" as "detention in a penitentiary for an indeterminate period".

⁷ B.A. Grossman, *The Treatment of Habitual Criminals in Canada*, (1966) C.L.Q. Vol. 9, No. 1, Sept. p. 95.

⁸ Prior to an amendment in 1961, this section only called for a review every three years.

Parliament enacted section 660 for the protection of the public. It is thus a legal avenue available to the police in their persistent endeavor to prevent crime. And, "it has long been recognized that crime prevention is the main purpose of a police force".⁹ One may then pose the question, "Does section 660 prevent crime?" Montreal Police Director Jean Paul Gilbert believes that it does. He demonstrated this point in a speech last year to a civic group in which he stated that he had examined the judicial dossiers of thirty persons who were involved in twenty Montreal murder cases during an eighteen-month period. Director Gilbert went on to say:

J'ai fait extraire des cahiers ce que nous appelons la «feuille de route» de ces individus. Cette feuille contient l'énumération chronologique des crimes qu'ils ont commis depuis qu'ils ont atteint l'âge de 18 ans. Le nombre de crimes apparaissant sur chaque feuille varie selon les individus depuis un minimum de 4 infractions jusqu'à un maximum de 46, la dernière infraction notée étant celle de meurtre, couronnement en quelque sorte de leur carrière.

Ces 30 individus ont à leur actif un nombre global d'infractions s'élevant à 359.

Chaque feuille de route a été étudiée et une ligne tracée au point précis où aurait dû se terminer la carrière criminelle de ces individus qui devenaient des «repris de justice» au sens de la loi... si l'on avait, le moment venu, mis un terme aux activités criminelles de ces individus au moyen de la détention préventive et si on les avait condamnés à une sentence indéterminée, on aurait très probablement évité non seulement la commission de 20 autres meurtres mais encore celle de 16 vols qualifiés et de 130 crimes et délits divers, soit un total de 255 infractions.¹⁰

Parliament, in enacting legislation to deal with the habitual criminal, saw the use of an indeterminate sentence. It is the responsibility of the police, for the betterment of society, to ensure that the law is enforced. In my opinion, Director Gilbert validly stated:

...C'est dans cette perspective de défense sociale et non pas dans un but vindicatif que le service de la police de Montréal entend traduire prochainement devant les cours de justice tous les individus qui, aux termes de la loi, sont les criminels d'habitude.¹¹

In conclusion, while I favour the use of section 660, there are two areas of procedure relating to habitual criminals in Canada that I believe should be modified.

A condemned habitual criminal is returned to the same prison environment which failed to reform him in the past. This procedure

⁹ W.H. Kelly, A paper entitled "The Police", in *Crime and its Treatment in Canada*, edited by W.T. McGrath, Toronto, p. 131.

¹⁰ J.P. Gilbert, *La Détention préventive comme moyen de défense sociale*, Address to a Montreal civic group, Feb. 22, 1966.

¹¹ *Idem.*

must change. His repeated criminal actions clearly illustrate that he requires more corrective treatment than simple association with other inmates. Treatment could be best given him in a specialized correctional institution manned by a highly trained staff. Serious consideration should be given to the construction of such a special institution.¹²

Although the habitual criminal can benefit from parole, he should not have to remain perpetually under supervision. It is my belief that a paroled habitual criminal who does not violate the parole rules during a reasonable period of time following his release on license, should be freed of the obligation of reporting to the parole officer.

These modifications, however, while necessary, are outside the sphere of police activities. The main function of the police is to protect the public. To do so, especially in view of the spiralling crime rate, the police must use every legal aid at their disposal. Section 660 is one such legal instrument. Director Jean Paul Gilbert's decision is worthy of support.

¹² The state of New York recently awarded McGill University a \$45,000 contract to set up a diagnostic, treatment and research center to deal with habitual criminals.