ALTERNATIVES TO IMPRISONMENT IN GHANA: A FOCUS ON GHANA'S CRIMINAL JUSTICE SYSTEM

by

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Alternatives to Imprisonment in Ghana: A Focus on Ghana's Criminal Justice System

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ABSTRACT

This thesis investigates and evaluates Ghana's criminal justice system and the sentencing policies and practices of the courts and their effects on incarceration rates. The study shows that sentencing policies and practices in post-colonial Ghana have not made any substantial departure from the penal and criminal justice policies inherited from the British. It demonstrates the extent to which judicial decisions and prison practices have contributed to prison overcrowding and recidivism rates. Ghana's approach to finding solutions to her crime problem appears to have been fragmentary, often contradictory, and lacking in any clear-cut policy direction. The thesis offers new policy options as alternatives to present conflict resolution and imprisonment practices in Ghana.

The administration of justice in Ghana is largely urban-centered and very expensive. Among the more than 70% of citizens who live in the countryside, the majority are not adequately reached by the prevailing Westminster system of justice. Therefore, most disputants rely on traditional courts. The *first* recommendation of this thesis, therefore, is that traditional or informal methods of resolving conflicts be integrated into the Westminster system. Traditional dispute strategies may remove offenders from the negative effects of incarceration, meet victims' needs and protect society.

Second, and most important, this study recommends that the idea of legal pluralism in Ghana be implemented via the co-existence of multiple approaches to dealing with crime within the administration of justice. The reality of legal pluralism could be made possible through the eclectic approach adopted in this research: that is, through the utilization of multiple theories and praxes.

The *third* recommendation has to do with a review of the structure and policies of the administration of justice to reflect the values and traditions of Ghana, along with the use of other approaches for crime control. These include non-custodial alternatives to

incarceration that involve the communities through their accredited traditional leaders, District Assemblies, area, town and village committees and religious bodies.

The limitations and shortcomings of these alternatives, the several criticisms and on-going controversy regarding deinstitutionalization of corrections are acknowledged and discussed in the thesis.

Dedication

Dedicated to my wife, Christiana Agyepong-Gyamfi,
and children,
Doris Adjapong, Abigail Akomah, Lily Janet Ayimah and Linda Asaah Gyamfi.

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I am greatly indebted to all who made this thesis feasible to undertake. Especially, I like to place on record the immense assistance I received from my supervisors - Prof. Margaret A. Jackson and Prof. John W. Ekstedt. These were not only my supervisors, but they also provided every assistance - funds to travel to Ghana to conduct the research, books and moral support - for the completion of the work. Their patience have been immeasurably wonderful.

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Also, my deepest appreciation to the numerous respondents, especially His Lord Chief Justice of Ghana, Mr. Justice JENK Archer, and all the other justices of the Judicial Service, the Speaker of Ghana's Parliament, Mr. Justice DF Annan, the Director of Public Prosecutions, Mr. Badoo, the Director of Ghana Law School. The chiefs, politicians, and all the other respondents whose names I am not able to publish for lack of space, but whose invaluable responses have been duly recognized and appreciated, I say thank you. My Ghanaian student colleagues at SFUdeserve a pat for their concern. Dr. Francis Adu-Febri of Victoria, B.C., and Dr. Ken Attafuah of Vancouver also deserves a special mention and recognition.

Last but nonetheless the least, my sincere and heartfelt gratitude and thanks go to my spouse, Christiana, and children Abigail, Lily and Linda Gyamfi for their patience and love. But for their prayers and encouragement, it is doubtful whether I could have made it.

Notwithstanding, anything contained in this work is mine and so I claim responsibility for any shortcomings or lapses.

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Chapter I

Introduction

Prevention of crime is more important than its punishment (Becaria 1764).

Part One

1.1.1. Discontent with the administration of justice

Discontent with the administration of justice has had, what Pound (1906[1] cf Gyandoh 1989:1131) called, an "ancient and unbroken pedigree." Such discontentment in the past has led to calls for outright abolition of criminal justice institutions, penal laws, punishment and incarceration (Christie 1977, 1981; Mathiesen 1974, 1980; Steinert 1984; Hulsman 1986). The repressive nature of punishment and imprisonment, prison overcrowding, and failure of incarceration to deter and/or reform have also led to calls for a "fixed numerical ceilings to prison population as a contribution to fight the inhumanity of overcrowding" (Scheerer 1984). Moreover, criminal justice institutions and administration of justice have been bemoaned as "too costly, too painful, too destructive, too inefficient for a truly civilized people" (Burger[2] 1985 cf. Gyandoh 1989: 1133). It is also far too slow and too complex. Burger (cf. Dye 1984:91) believes that rising crime in American society is due to inadequacies in the administration of justice. According to him, the system of criminal justice does not deter criminal conduct. He has therefore called for major reforms in the administration of justice. Estey (1985)[3] also believes that there has been "gradual removal of the common man *(sic)* from the common law", resulting in unequal justice and indiscriminate application of incarceration as the primary form of punishment by all nations.

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1 Address by Roscoe Pound, The Causes of Popular Dissatisfaction with the Administration of Justice, 29th Annual Meeting of the ABA, in St. Paul, Minn. (Aug. 29-31, 1906), reprinted in Transactions of the Annual Meeting of the ABA 395. cf Gyandoh 1989.

2 Keynote address 1906 ABA Annual Conference in St. Paul by Chief Justice Warren E. Burger of the United States. cf. Gyandoh 1989.

3 Address by Hon. Mr. Justice W. Z. Estey, "The Changing Role of the Judiciary, 23rd Australian Legal Convention (Aug. 8, 1985), reprinted in L. INST. J., Oct. 1985, at 1071, 1078. cf Gyandoh 1989.

Adeyemi (1984), Kibuka (1979), Archer (1991)[4], Gyandoh (1989), Amissah (1981), Harvey (1966), Rawlings (1982)[5] and Coyle (1993), have called for criminal justice reforms in post-colonial Africa. In Ghana, for instance, discontentment with the administration of justice is exemplified in the establishment of military and public tribunals by military governments who seize political power. Thus, military and public tribunals have come to exist as 'new' mechanisms of justice dispensation and social control (Ray 1986 see PNDCL 24 and 78).

According to Gyandoh (1989: 1135) "there is a crisis of indeterminate proportions facing criminal justice administration in post-colonial Africa". While colonial nations have taken advantage of new developments, particularly research findings in the field of criminology to reform and/or modernize their criminal justice systems, independent African nations are still holding on to these colonial institutions in their original forms. Gyandoh advocates gradual, meticulous, careful, and purposeful law reform so that "warped up notions of popular justice are not used as a pretext for dismantling the entire criminal justice systems, or depleting it of all integrity" (1134). According to him, the task of "immediate objective investigation and remedial responses, institutional or otherwise", is crucial so that criminal justice systems are not rendered "irrelevant to the crucial national business of the administration of justice" (1135,1137).

With specific reference to Ghana's penal system, a number of people have noted its failure to return the offender to society as a reformed citizen. For example, in an address to the Annual Conference of Association of Judges and Magistrates of Ghana in 1991, Chief Justice P. E. N. K. Archer, admitted that Ghana's Criminal Code and Criminal Procedure Code are not only 'very outmoded' or out of touch with reality, but also their principles and objectives have failed. He advocated amendments to the penal system to make room for

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[4] Address by Chief Justice P. E. N. K. Archer to the Annual Conference of the Association of Magistrates and Judges of Ghana in Oct. 1991. Reported in The People's Daily Graphic and The Ghanaian Times: Ghanaian daily newspapers: 23 October 1991.

[5] Ft. Lt. Jerry John Rawlings' maiden address to Ghanaians on the eve of the overthrow of the constitutional government on 31st December 1981 (see also the establishment of the Provincial National Defence Council Revolution Proclamation Decree, PNDCL 1 and PNDCL's 24 and 78. Govt. Printer, Tema).

alternatives to incarceration. It is for such reasons that a critical evaluation of the history, policy directions, influences, and functioning of the administration of justice in Ghana is being undertaken via this thesis.

1.1.2. Research goal

The study attempts to determine whether current sentencing and penal policies and practices, especially for incarceration, are successfully implemented in Ghana. Thus, attempts will be made to determine whether such practices are consistent with stated goals of the policies. This examination will be done as a policy analysis through archival examination, statistical documentation, and interviews with significant actors of the Ghanaian penal system.

1.1.3. Research questions

The central questions addressed are:

1. Are current sentencing policies and practices of Ghanaian courts reflective of the colonial justice system's policies?
2. What are the policy outcomes, that is, are the policies effective in accomplishing the goals in practice?
3. What dominant traditional attitudes and values on justice do Ghanaians hold?

In searching for relevant information to answer these questions and achieve the research objective, the thesis delves into:

a. the philosophies underlying the administration of justice in colonial Ghana.
b. the nature of sentencing practices in post-colonial Ghana.
c. the relationship between sentencing policies and practices and incarceration rates.
d. the attitude of Ghanaians towards traditional/informal methods of justice administration, and,
e. the nature and processes of traditional/informal methods of conflict resolution.

1.1.4. Organization of chapters

Chapters one and two concentrate on the conceptual aspects of the study. In these chapters, the introduction, research goal, research questions, aims and objectives, a brief background information on Ghana and the history of Ghana's criminal justice system have been discussed. Under the history of Ghana's criminal justice system, penal importation from colonial Britain, the continued impact of the Westminster system of administration of justice, and the consequences of imprisonment have been dealt with. Also discussed in these chapters are the literature review, theoretical perspectives, policy concept and analysis, the systems theory, and research methods and problems faced during the research.

Chapter three gives a survey of some of the informal justice mechanisms in advanced and 'native societies' of advanced nations. This chapter also highlights the strategy of conflict-resolution based on traditional customary law, norms, and values in Ghana and elsewhere. The chapter concludes with a description of a traditional court sitting in Ghana and the status of chiefs and traditional courts after the Bond of 1844 was signed. Part one of chapter four discusses criminal justice policy. While part two of the chapter analyses penal policies in Ghana, part three examines judicial and prison statistics. Chapter five focuses on responses to interviews conducted on a broad range of criminal justice issues of which alternatives to incarceration is the main focus. While chapter six discusses alternatives to incarceration, the final chapter, seven, deals with conclusions and recommendations.

1.1.5. Problems posed by incarceration

The propriety in preparing a person for freedom under conditions of captivity has constantly been doubted (see Scheerer 1986; Steinert 1986; Lea and Young 1985; Christie 1977). These scholars believe that resocializing offenders for normal life in the general or open society in an 'abnormal' and closed community, or training persons for responsible living by giving them no responsibility whatsoever, is difficult if not impossible. This is because the realities of life in prison and the values internalized by inmates are, largely, incompatible with the values and practices expected by society.

Furthermore, it has been argued that prison conditions deny prisoners' attributes they need to develop into good citizens. They are also denied the essential minimum of any sense of responsibility. Decisions concerning their sleeping, waking, eating, doings, and acting habits are made for them from 'above'. While unity and sense of community contribute to personal growth in the outside society, these are discouraged in the prison lest the many prisoners overwhelm the few officers. In society, leadership is seen as an ultimate virtue while this characteristic is identified, isolated and blunted in prison. Assertiveness, a characteristic encouraged in normal everyday living, is equated with aggression in prison and repressed. Other qualities, such as self-confidence, pride, and initiative, are eroded by the experience of prison into self-doubt, obsequiousness and lethargy. The process of prisonization and inculcation of prison sub-culture, exemplified in the use of argots, and other deviant acts such as sodomy, becomes the misery of innocent and unsuspecting inmates. Moreover, learning of techniques for big time crime and/or gangster become part of inmate subculture (see Goffman 1966; Sykes 1971; UN Crime Prevention and Treatment of Offenders Newsletter No. 87/7; Nortey 1986).

Under these conditions, it is unrealistic to expect offenders to survive successfully in the wider society on discharge. A limited use of the prison has therefore been advocated. Lea and Young (1984: 267) for instance, view the demand for a limited use of the prison as based on the simple fact that the result of prison experience produces "pitiful inadequates

or hardened criminals." As they put it, any "hospital which made people more sick than they originally were, and where each visit made the next more likely, would have been shut down years ago."

Adeyemi (1968: 67) also believes that any action, social or legal, is presumably inadequate if it cannot achieve its desired objective. It is also dysfunctional if it has the opposite effect. In his view a sentence of imprisonment is a socio-legal action aimed at achieving one, or a combination of the following purposes: retribution, specific or general deterrence, protection of the public, and, reformation and rehabilitation. However, according to Adeyemi, its 'essential' aim is the resocialisation of offenders in order to make them responsible and self-supporting members of society.

Accordingly, the all-important question is whether or not a sentence of imprisonment achieves this 'essential aim'. As shown in this essay, the sentencing policies in Ghana may not have achieved the essential aims of deterrence, reformation, and resocialization of offenders. The sentencing policies and imprisonment may be both inadequate and dysfunctional. Alternatives to incarceration through the development of new penal policies are therefore being suggested as new policy options.

In Ghana, the concrete problem of prison overcrowding and overuse is further compounded by ;

1. the closure of two prisons in January 1993[6] ,
2. the over 200% overcrowding in the prisons,
3. the reduction of government expenditure on the Ghana Prisons Service,
4. the inability of government to increase prisoners' daily feeding rate in the wake of inflation and high prices of food (West Africa 5-11 July and 15-22 Aug.1993).
5. the indiscriminate use of incarceration by the courts, resulting in over 11% increase in committals, and the problems posed by imposing long and harsh sentences, and,

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[6] Cape Coast and Ussher Fort prisons, the two oldest prisons in Ghana were closed down after nearly a century of their being declared unsuitable not only for human habitation, but also for use as prisons. These prisons like most other coastal prisons were first used by the Europeans as slave warehouses. The Ussher Fort and Cape Coast castles were in fact, closed down as prison facilities following persistent demand by the Ghana Tourist Board to use these buildings as tourist attractions.

6. the apparent 'get tough' attitude of government[7], and society towards offenders as evidenced by governments' attitude towards treatment of offenders, and sentencing and correctional practices.

Also, the continued use of antiquated buildings - mostly colonial castles used to hold slaves - as prisons, the absence of clear-cut penal philosophy and policy and, the lack of training and rehabilitation facilities for both prison officers and prisoners have aggravated the problems of imprisonment.

1.1.6. The incompetence of crime prevention apparatus

It is argued in this thesis that, the Ghanaian state apparatus for dealing with crime as an inescapable problem is becoming less competent and less trustworthy. This thesis explores the alternative possibilities of enhancing the effectiveness and competence of the judicial system through public participation in the decision-making and policies regarding prevention, apprehension, processing, and treatment of offenders. It further examines the possibility of incorporating traditional methods of conflict resolution into the Westminster[8] system. Finally, the essay evaluates how effectiveness and competence could be achieved through decriminalization and depenalization of certain behaviours, and/or aspects of the Criminal Code, and privatization of the correctional system in the long term.

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[7] Governments' attitude towards crime and criminals is manifested in the way and manner debates on the Criminal Codes and the Criminal Procedure Codes and their amendments have been conducted in Parliament or worded. Moreover, such tough stance is apparent in the establishment of courts like Special Courts (CPP, NRC and AFRC), Special Military Tribunals (NLC and NRC) and Public Tribunals (PNDC) (see also Criminal Code and Criminal Procedure Code, Acts 29 and 30 of 1960; Criminal (amendment) Codes of 1971; 1979; 1982;1993 and Parliamentary Debates on the Codes in Hansard 1960, 1965, 1993.

[8] The Westminster system of administration of justice as used in this thesis refers to the system of administration imposed by the British on Ghana and other nations they ruled. This system of administration has been variously described as colonial or imperial administration. I refer to the system of administration of justice introduced by the British as the Westminster system. The Westminster system is premised on common law practices such as law on tort and equity. The Westminster system is accusatorial as oppose to the French inquisitorial system (see Kimble 1963; Apter 1963; Ward 1963; Danquah 1957; Padmore 1965; Harvey 1966)

Part Two

1.2.1. Background: Ghana, land and people

Ghana, with Accra as the capital city, is a unitary republican West African state of 15.1 million people inhabiting an area of 238,537 square kilometres (92,000 square miles). A plural or multi-ethnic society, there are more than 54 related but differing languages. These languages belong to the Kwa branch of the Black Volta Comoe group of languages of West Africa[9]. The country is divided into 10 administrative regions and 110 local government districts.

The annual population growth rate is approximately 2.6% with an approximate life expectancy rate at birth of 55 years. In 1992, 46% of the population were between the ages of 0-14 years, 50% between 15-64 years, and 4%, 65 years and over. There is one physician for every 22,970 citizens, and functional literacy is estimated at 40%. There are 610 police stations and posts, and 15,000 police personnel. This means that one police station or post serves 24,755 people, and for every police officer, there are 1,000 people to protect. The total number of courts in 1992 were 223 and the number of judges and magistrates, 235. The ratio of courts is 67,713 citizens to one court while that of judges and magistrates is 64,255 citizens to one judge or magistrate[10] (Statistical Service of Ghana: 1993; Judicial Service of Ghana: 1992; Police Headquarters 1992).

Since 1983, Ghana has embarked on an Economic Recovery Program (ERP) to put the economy on a 'sound footing'. The World Bank, the International Monetary Fund, and other donor agencies have described Ghana's ERP as "a star pupil in economic reform" or a model success story worthy of emulation by other third world countries (Africa Report March-April 1994: 24). However, poverty, exemplified in low wages, unemployment, underemployment, high prices of goods, especially, food items, and services is

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[9] For a full account of the languages spoken in Ghana see Migeod's Languages of West Africa (1965); Danquah (1935); Madina Survey (1973); Fage (1959); Dickson (1969)

[10] In Ghana, like most other British colonial nations, the Westminster system of the administration of justice is largely recognized as urban centered. Although data from other nations to support this argument are not available it widely known that Nigeria, Sierra Leone, The Gambia, and Tazania have all complained about the urban nature of modern courts. Horwitz (1990) for instance, in arguing for the establishment of "popular justice" in post apartheid South Africa pointed out that the administration of justice in South Africa is urban centered. Therefore, Ghana's problem is not all that unique. What is unique though is that all post-independence governments have attempted to 'popularize' justice by introducing 'special' courts. However, all these courts have also been urban centered.

widespread. There is, thus, a declining standard of living. Some workers in public corporations and services have been laid-off or retrenched by government. There is structural unemployment, but the official unemployment rate has been estimated at 60% (New African. Sept. 1994).

While Ghana's Gross National Product (GNP) in 1993 was $420 per capita, her balance of payment deficit was in the region of $300 million and foreign debt, $4.5 billion[11]. Industries and most services are producing far below capacity. The gap between the rich and the poor and between rural and urban people keeps widening. Inflation is officially put at 27.7% per annum. Most government departments and services are thought to be inefficient and full of red-tape. Corruption is endemic and widespread in both private and public sectors. People openly receive 'gifts' for official work performed. Governments' efforts to eradicate crime, especially corruption is largely defeated by inflation and the high cost of living. It is not expected that economic and social conditions will substantially improve beyond present levels before the turn of the twenty-first century.

Teenage pregnancy and child labour are rampant. The introduction of a new educational system, the Junior and Senior Secondary Schools, have 'mushroomed' thousands of school pupils and students into leaving school prematurely. In the 1992-93 academic year alone, 200,000 students completed Senior Secondary School and are awaiting admission into the Universities. However, most of them can not pursue advance studies because of inadequate facilities in the country's tertiary educational institutions. They can also not be absorbed by the labour market, not only because of the present economic environment, but also, because most of them are too young to be employable.

Under the present socio-economic conditions, therefore, there is little risk in predicting an upsurge in the volume and incidence of crime by the year 2005 when Ghana's

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[11]. Unless otherwise indicated, statistics cited in this section of the essay are from World Banks' World Development Reports (1989; 1990; 1993); IMF (1985; 1988; 1992 in African Development 10 (1/2). EO Boateng and K. Ewusi's A Poverty Profile in Ghana (Washington DC: World Bank); K Ewusi 1984 ISSER Technical Pub no.43; Douglas Rimmer's (1992) Staying Poor: Ghana's Political Economy 1950-1990; The Ghanaian Chronicle Jan 27-30 and Jan. 31- Feb. 2, 1994 nos.26 and 27 respectively; The Statesman no. 35 Weekending Jan. 30 1994; Free Press Jan. 28- Feb. 3, 1994, Ghana Living Standards Survey of the Statistical Service of Ghana 1993, Mike Adjei's Death and Pain: Rawlings Ghana. The Inside Story (1994) Newsweek Nov. 14, 1994.

population will have reached 20.2 million. Increases in crime may also lead to more offenders being gaoled if the present sentencing policies remain unreviewed. Further delay in the review process could therefore be costly both in terms of human and material resources. It may not be too late for Ghana to begin from the beginning.

1.2.2. Brief history

Ghana, previously the Gold Coast, attained her independence from Britain on 6 March 1957, after 450 years of European contact; 143 years of the 'Bond of 1844', and, 53 years of nationhood[12]. Ghana has had four civilian and four military governments since independence. Ghana has never changed any civilian government through the ballot box. There have been four republics and republican constitutions. The first republic was declared from the British in 1960, and three granted by the military after long periods of military rule. It can be argued that constant and violent change of governments has deprived the country of any meaningful and sustainable development policies and strategies.

Since January 1993, Ghana has been experimenting with multi-party presidential democracy - the 4th Republic - with Ft. Lt. Jerry John Rawlings, chairman of the last military regime, the Provisional National Defence Council, as President. With the advent of multi-party democracy, it is hoped that the military will stay out of politics for peace and tranquillity to prevail. Hopefully, the country will be able to draw up comprehensive national development policies that takes into account the administration of justice and treatment of offenders.

The 1993 Fourth Republican Constitution has sections on Bill of Rights, Laws of Ghana, and the criminal justice institutions: the Judiciary, the Police, and the Prisons.

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[12] The first Europeans to set foot on the Gold Coast were the Portuguese led by Joan de Santarem and Pedro de Escobar. This voyage was commissioned by Prince Henry the Navigator. They rounded Cape Three Points and landed at Cape Coast in 1471. After ten years of off and on contacts the Portuguese decided to build a fort and in 1781 Don Diego de Azambuja was dispatched to the Gold Coast for that purpose. The now infamous Elmina Castle was the outcome of Azambuja's voyage. The Portuguese were followed by the Danes, Dutch, English and the Germans respectively. The Bond of 1844 -signed 6th March - was an agreement between Fanti (coastal) chiefs - chiefs of Cape Coast, Anomabu, Donadie, Assin Atendanso, Assin Apemanim, Abura, Dominase and Denkyira - and the British. Although the general notion is that the Bond was between six Fanti chiefs, in reality there were eight chiefs (Fantis's and non-Fanti's) who signed the agreement. March 6 was consciously selected and agreed upon by the British and Gold Coasters for Ghana's independence to coincide with the 143rd anniversary of the signing of the Bond. For a detailed discussion of the Bond, see Danquah (1957), Sarbah (1905) Kimble (1963), and Metcalfe (1963), Hayford (1970); Adu Boahen (1975); Rimmer (1994).

Under the Bill of Rights, traditional guarantees of rights to life, liberty, prosperity, due process of law, and equal protection under the law have been entrenched. Also, freedom of speech, the press, assembly, travel, and abode have been strengthened or fortified. There are also provisions for a Human Rights Commission, and Ombudsperson. These, no doubt, are positive developments in ensuring that the rights of people are adequately protected and not unduly encroached upon. However, the death penalty is maintained (Chapters 4, 5, 11, 15, 16, 18, and Arts. 3 {3} {b} {a} and 13 {1} of 1993 Constitution and Criminal Code {Amendment Act} 1993). Also, the perennial problems of prison overcrowding and the lack of public interest and participation in the administration of justice still linger on and may continue to linger on for as long as policies of the criminal justice institutions remain unchanged.

In December 1993, Parliament enacted a new Courts Act, the Courts (Amendment) Act, 459, which purports to establish a new system of judicial administration based on Ghana's unique socio-political and cultural traditions: an infusion of popular justice (Public Tribunals), Westminster judicial dispensation, and a new system called Community Tribunals. The new Courts Act seeks, *inter alia*, to make administration of justice available, accessible, and affordable to the 'masses'.

Under the Courts Act, district and circuit courts cease to operate. In their place are Community, Circuit, and Regional Tribunals each comprising a panel of three with a trained lawyer as chair. Community Tribunals may be akin to traditional/native courts only in so far as it is a committee, but in every respect, it represents a clear departure from all existing norms and legal traditions in Ghana. The Ghana Bar Association (GBA) as a characteristic response, opposed the new Courts Act. It cautioned that non-lawyers sitting with lawyers may create problems in matters of law. Moreover, the Association contended that the functions of Community Tribunals could be performed better, efficiently, and more effectively by either a magistrate or a judge siting alone. Therefore, it is a waste of resources and time to create community courts, the GBA contends. However, these

Tribunals, as set out in the Courts Act of 1993, could not be established by 6 January 1994 as demanded because of lack of staff and suitable court buildings. This, together with the GBA and Judicial Services' reactions, resulted in an amendment to the Act to allow existing courts to continue to operate until all necessary infrastructure have been put in place (see Est. of Community, Circuit and Regional Trubunals Act, Act 459, 1993; Courts {amendment} Act 1993; GBA letter no. 34 of 12 March 1993; Judicial Service letter no. 0124 of 4 February 1993). Given Ghana's present economic situation, it is doubtful whether these Tribunals will ever be established.

Part Three
History of Ghana's criminal justice system

1.3.1. Introduction

This section traces the history of Ghana's criminal justice system to show how the policies of the British colonial administration were orchestrated to undermine native institutions including the traditional court.

Colonization and introduction of colonial institutions and values in the Gold Coast/Ghana did not start on any well laid out process. Years of bitter struggle among the Europeans to control trading routes and rights, especially, slave trading and slavery with the natives, also, years of bickering and animosity between the Europeans and the natives, and, among the various natives, finally settled with Britain gaining full control over some coastal areas of the Gold Coast through the "Bond of 1844." Between 1828 and 1842, however, a Committee of British Merchants was tasked by the British government to administer the forts on the coast on its behalf. The Committee's chairman, George Maclean, exercised criminal jurisdiction within and without the .rts to achieve "compliance by the power of his personality and, when necessary, the strong red-coated right arm of his soldiery" (Kimble 1963: 193; see Padmore 1953; Ward 1963; Seidman 1969; Wight 1946).

In 1841, ninety-one persons had been incarcerated in the Cape Coast Castle, some of whom had been in gaol for four years (Parliamentary Papers, 1842 Vol. 12 p. 15, cf. Seidman 1969: 434). This may have marked the beginning of imprisonment in the Gold Coast. When the administration of these forts reverted to the Crown in 1843, Maclean was appointed a Judicial Assessor a role similar to that of present day chief justice. This position enabled him to sit in native courts to try cases in accordance with 'native customary law' and the principles of British equity (Ward 1963; Metcalfe 1963; Wight 1946; Seidman 1969).

1.3.2. Implications of the Bond of 1844

The British entered into an agreement with some Fanti chiefs in 1844. Under this agreement, the chiefs asked the British for protection from attacks by other ethnic groups. These areas became known as 'Protectorate Territories.' "The Bond of 1844," as prepared by Maclean, the Judicial Assessor, and signed by Commander Hill, the Governor, states that:

1. Whereas power and jurisdiction have been exercised for and on behalf of Her Majesty the Queen of Great Britain and Ireland, within divers countries and places adjacent to Her Majesty's forts and settlements on the Gold Coast; we, chiefs of countries and places so referred to, adjacent to the said forts and settlements, do hereby acknowledge that power and jurisdiction, and declare that the first objects of law are the protection of individuals and of property, that,
2. Human sacrifices, and other barbarous customs, such as panyarring, are abominations and contrary to law, and, that,
3. Murders, robberies, and other crimes and offences, will be tried and inquired before the Queen's judicial officers and the chiefs of the districts, moulding the customs of the country to the general principles of English law.

Done at Cape Coast Castle before his Excellency the Lieutenant Governor; on this 6th day of March, in the year of our Lord 1844 (Danquah 1957: 22; Sarbah 1904; Crooks 1923; Cruickshank 1853; Ward 1963; Metcalfe 1964; Bennion 1962; Casely Hayford 1970; Kimble 1963); Adu Boahen (1975).

The chiefs were not involved in the drafting this Bond, and no attempt was made to educate them to repress their 'cruel and barbarous' customs and practices which "are abominations and contrary to law" (Bennion 1962:8). Panyarring, otherwise kidnapping, is the failure by a person to pay a debt, resulting in that person's family member or even a

stranger being kidnapped and held hostage until the debt was paid - usually under coercion from the near relations of the seized person (Bennion 1962; Sarbah 1905; Danquah 1957).

The Bond should not be perceived as an agreement between two parties who agreed on equal terms of enforcement because it granted no special rights and liberties to the natives. Rather, it was the chiefs who granted rights and liberties to the British. It did not create, enlarge or confirm liberties emanating from the British source to the areas now under British jurisdiction. By this Bond therefore, a free people, not subjected to any sovereign power voluntarily placed themselves under a binding agreement to the British. Thus, the chiefs placed the exercise of certain specified ancient rights, and liberties, (eg. the right to constitute their own courts) in bondage to the Queen of England. This was an unprecedented event in the sense that two minds, separated by over eight thousand kilometers of sea, unconnected by race, but by 'trade', should so easily forge such a juridical link between them.

The Bond gave the British something they never possessed before in law: the right to introduce the Westminster system of administration of justice and try cases not otherwise in law within British jurisdiction. A few months after the Bond was signed, on 5 August 1844, the Governor, Commander Hill, wrote to the Secretary of the Colonies in London extoling the virtues and necessity for introducing the British common law in Ghana, and the suppression of native laws (Sarbah 1905:289; Metcalfe 1964; Ward 1966).

Claridge (1915) believes that the Bond brought the natives under better a control and clearly defined their relationship with the British. Danquah (1957:7) similarly, sees the diminution and abrogation of certain ancient rights, and liberties of the natives as securing, "a better maintenance of their society which was growing more complex by reason of their contact with a society based on a differently organized system of values". It is true a 'better control' was gained by the British over the natives, but how better maintenance of society the British system brought is debatable. The Bond signified an end to the policy of negotiations that hithertofore characterized British dealings with the natives.

In its place, came a policy of imposition of a 'superior order' (i.e. British institutions, ideas, and rules) on an 'inferior order', that is, traditional institutions.

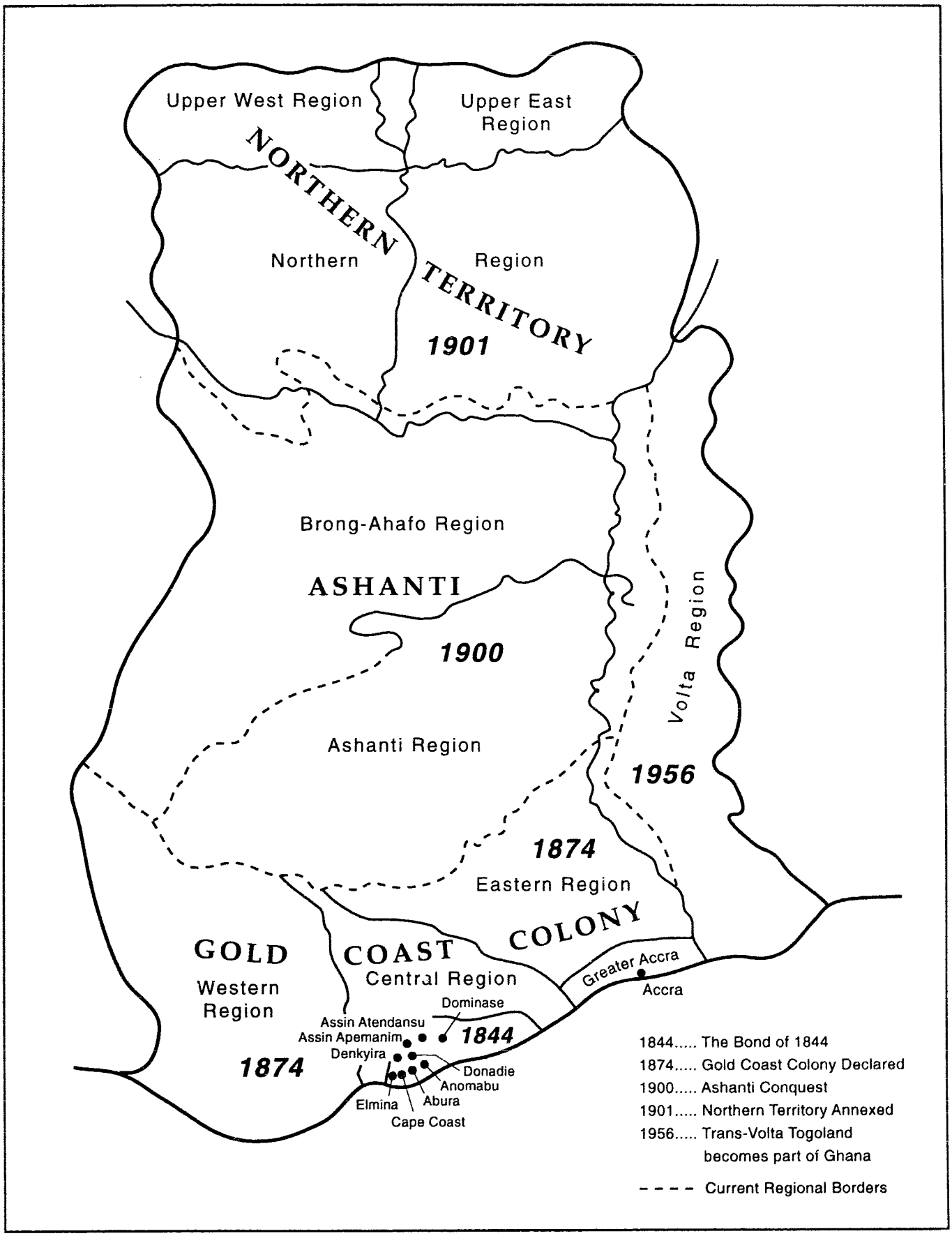
Initially, the British allowed the traditional courts to punish criminals. However, they realized that it offered them victims for precisely those human sacrifices they were determined to eradicate. To protect against 'barbarous punishments', sentences gradually came to be carried out in the forts (Sarbah 1905:99, 185 see Eyison and Seidman 1969; Danquah 1957; Kimble 1963; Ward 1963). Where traditional courts were permitted to carry out a sentence, it was done under the supervision of the British 'to ensure that the execution took place in accordance with humanity and the practice of civilized nations' (Fiztpatrick 1849 cf. Seidman 1969:434; see also, Wight 1946; Ward 1966; Daniels 1964).

The Bond of 1844 acknowledged British jurisdiction *de facto* in the areas surrounding the forts. The Bond called into play the British Foreign Jurisdictions Act of 11 April 1843, which granted the Crown, full jurisdiction over areas where it had *de facto* jurisdiction. By this Act, the Queen was authorized to enact laws and constitute courts for the Gold Coast and other settlements. Consequently, the Foreign Jurisdictions Act of 24 August 1843, enjoined the Queen to exercise power over countries outside her domain on the same basis as her authority in the Crown Colonies. This enabled the British to pass the first Supreme Court Act of the Gold Coast in 1853. This Act enabled newly created Westminster courts to deal with both criminal and civil cases arising within the settlements under British jurisdiction while traditional courts dealt with "customary law" (Kimble 1963:204; Metcalfe 1964: 189; Harvey 1966: 196; see Ward 1963; Casely Hayford 1970; Seidman and Eyison 1969). Under this new dual system of administration of justice, a person could be prosecuted by the British for doing an act considered normal under customary law and vice versa.

1.3.3. Gold Coast as a Crown colony and the creation of colonial institutions

In 1874, thirty years after the Bond of 1844, the British unilaterally declared Gold Coast a Crown Colony. The original Colony covered most parts of the southern part of present-day Ghana. Between 1874 and 1904, however, through military expeditions (Ashanti Region), and annexation (Northern Territories, that is, Northern, Upper West and Upper East Regions), the present day Ghana, with the exception of the Volta Region was brought under British administration. The British extended criminal jurisdiction already operating in the Colony to cover these areas after the 'new territorial arrangements' and, the traditional justice systems operating in these areas were also suppressed. The territorial arrangements were completed in 1956 when, through a plebiscite, the former German colony of Togoland, now British Trust-territory of Trans-Volta Togoland, became part of Ghana and renamed Volta Region (see Kimble 1963; Ward 1963; Metcalfe 1964; Adu Boahen 1975). Figure 1 shows a map of Ghana indicating the gradual extension of British rule after the Bond of 1844 was 'signed'.

Figure 1. Extension of British Rule after the bond of 1844



In 1876, a new Supreme Court Act was passed. Under this Act, a Chief Justice, a member of the executive council was appointed to replace the judicial assessor. The Chief Justice was enjoined to strengthen British jurisdiction by establishing more courts in regional and district centers. District Commissioners and officers-in-charge of police stations were given additional roles as judges and magistrates. The appointment of police officers as magistrates (Police Magistrates, PM's) may have also marked the beginning of police prosecution in Ghana. Later, puisne judges were also appointed in several towns. These were all British. The prime objective in selecting all white judges and magistrates was to ensure that the objective of introducing English common law remained on course. Thus, colonial administrators who had little or no training in local traditional law, and in British law, were tasked to oversee traditional courts and judge cases involving the interpretation of custom and tradition. Appointing members of the executive as judges and magistrates was in clear violation of natural justice, separation of powers, rule of law and common law practice. It also violated the judicial principle that restrains interested parties from sitting, adjudicating or participating in decisions affecting a suspect. Bushe (1934, in Shaidi cf Mushanga 1992: 7), Assistant Legal Adviser in the Colonial Office, has described this practice as "retrograde step in the colonial administration." Similarly, Morris (1972a: 150 in Shaidi cf. Mushanga 1992; 7) has asserted that:

> The executive gives the law and administers it. Political officers adjudicate upon their own orders and, if need be, upon their own conduct. No court can control them, no lawyer is even allowed to watch them. A native may appeal from Caesar to Caesar, but is otherwise without redress. The result to my mind will be the complete subordination of law to policy ... We have built a sound proof wall round the administration of native justice and, since no echo can reach outside world, the system of course 'works satisfactorily'.

The chief justice was further empowered to admit barristers, solicitors, or other 'fit and proper persons to appear' in the Supreme Court. In 1877 provision was made for aggrieved persons to appeal to the *Privy Council* in London (Kimble 1963: 304; see Harvey 1966; Seidman 1969; Metcalfe 1964; Amissah 1981; Gyandoh 1989; Gyandoh and Griffiths 1969).

In 1878 a Native Jurisdictions Act was passed to facilitate and regulate the exercise of the power and authority of traditional courts. It provided procedures by which chiefs could exercise their power and authority. This seemed a logical step to integrate two judicial systems: traditional and the Westminster courts. But, it rather increased the pre-eminence of the British legal system, upon which chiefs came to depend for confirmation of their judicial authority. Court registrars were appointed who largely determined which court should hear which case. Moreover, magistrates had power to transfer cases from one native court to another, their own court, land court, or a divisional court of the Supreme Court. Furthermore, District Commissioners were given general powers of supervision over traditional courts, and a judicial adviser constantly examined court records to correct obvious errors of law or fact, set aside bad judgments, order retrial in another court, disallowed unjustified court orders, and generally, ensured that 'justice' was done.

During this period, in 1873, a Police Ordinance was passed to replace 'native' policing with a centralized policing - the Gold Coast Police Force. Due to mistrust of natives, policemen were recruited from Nigeria. These men, mostly from the Hausa enclave of northern Nigeria could hardly speak or write English. It was therefore easy for the British to manipulate them to brutalize the natives. Current police resentment and suspicion in Ghana could be traced back to these escort *kotis*, and *bature yafares,* zombies, or those who only take orders and use force.

In 1883, the Native Jurisdictions Act was repealed and re-enacted, with profound modifications. This Act made decisions of traditional courts subject to appeal to the British Crown. Moreover, the jurisdiction of the traditional court was recognized only in so far as such jurisdiction was regulated, and sanctioned by the Full Court. Further, traditional courts were re-organized to compose of head chiefs and subdivision or village chiefs. Their civil jurisdiction was limited to land questions under customary law and personal actions in which the subject matter did not exceed in value seven ounces of gold or twenty-five pounds sterling. Although limited fines, not imprisonment, were permitted in criminal

cases, defaulters could be imprisoned for up to three months. Finally, aggrieved persons could appeal to the District Commissioner who in turn could refer the case to a Divisional Court (Dispatch No. 37, 30 Jan. 1883, from Rowe to Derby: CO/96/149 cf. Kimble 1963: 462; Elias 1963; Metcalfe 1964; Harvey 1966). These further curtailed the judicial powers of native authorities. By implication, a superior authority and power, that is, the Supreme Court, had been imposed by the British. The Bond and subsequent Acts gave the British profound influence over the lives of natives.

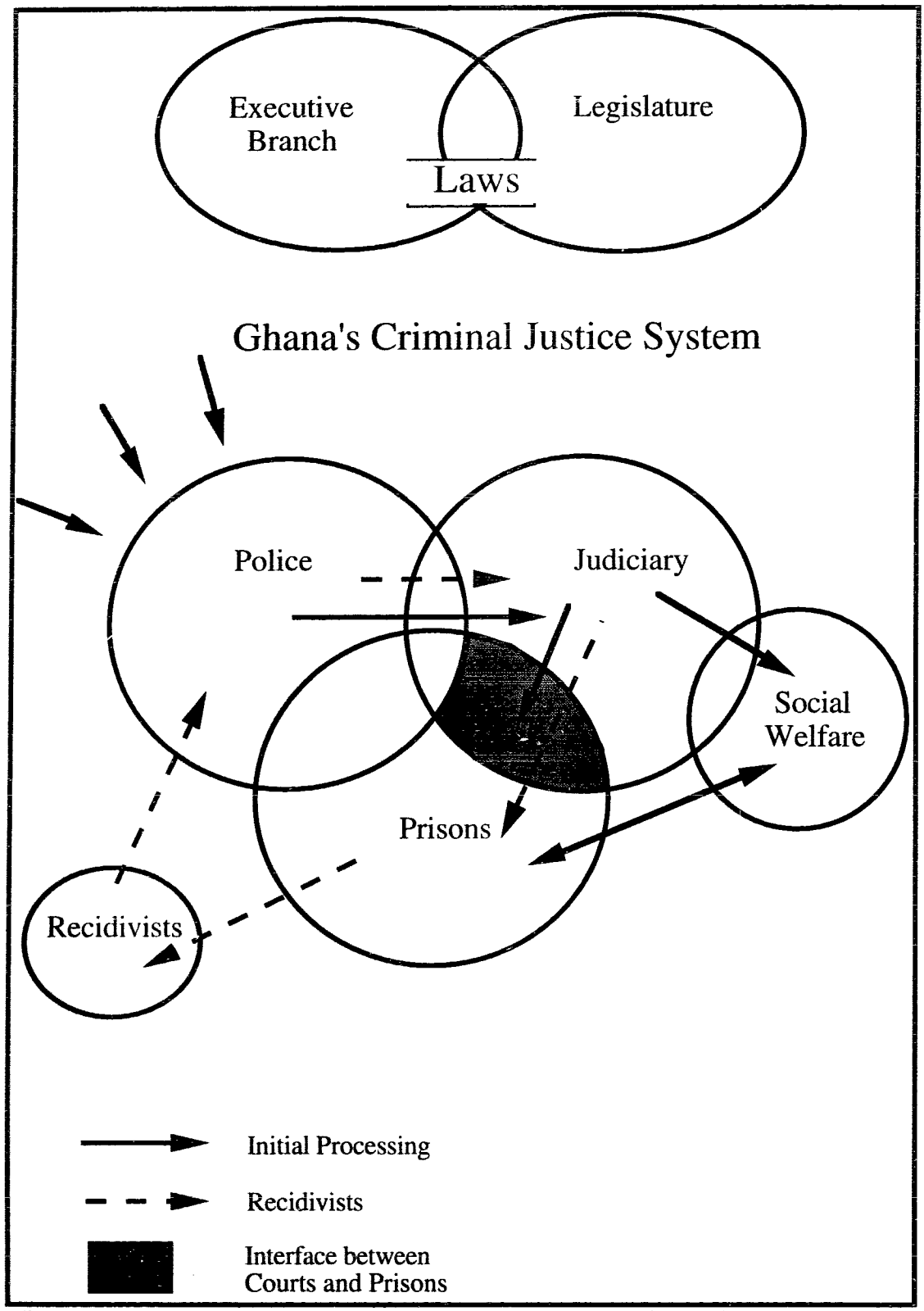
In 1892, a new Criminal Code, was adopted. This Code, a lineal descendant of Sir James Stephen's Draft Code (1878), of England, took precedence over existing laws in Ghana, including native laws (Seidman and Eyison 1969: 66; Kimble 1963; Metcalfe 1964; Wight 1946; Ward 1964; Amissah 1981; Gyandoh 1989; Daniels 1964). Although, in theory the jurisdiction of the chiefs' court was not affected by the Supreme Court Ordinance, in practice, they became swallowed up by the paraphernalia of the 'modern' justice system. The Bond and subsequent penal policies were aggressively utilized by the British to gain access to rule, acquire land, exploit minerals, and other economic interests. The 1876 Supreme Court Ordinance continues to influence Ghana's legal system both in structure and administration. Similarly, the 1892 Criminal Code continues to influence the administration of justice in post-independence Ghana. The only major change since independence is that, whereas under the colonial Ordinance appeals lay with the West African Court of Appeal (WACA) established in 1928, and subsequently, to the Privy Council in London, it now lay with the Supreme Court of Ghana.

1.4.1. Ghana's current criminal justice institutions

Ghana's current Criminal Justice system consists of the judiciary, the attorneys or defenders, prosecutors, the police, the prisons, and to some extent, the Department of Social Welfare. The law enforcement component consists of the Police Service, and the Attorney-General's Department or the prosecutors. The judicial component consists of the Judicial Service, and the Ghana Bar Association or judges and attorneys. The corrections component consists of the Prisons Service, and to a lesser extent, the Department of Social Welfare. While the Prisons Service takes custody of adult prisoners and young offenders committed by juvenile courts to Borstal detention, the Department of Social Welfare administers the Boys' Remand Homes, and Industrial Training Centers. Ghana has no Remand Homes and Industrial Training Centers for girls. Through the above institutions, Ghanaian society identifies, accuses, tries, convicts, and punishes people who break societal norms expressed in law. Legal sanctions in Ghana include death, imprisonment, detention, fines, payment of compensation, and liability to police supervision (Sec. 294 of Criminal Procedure Code, Act 30 1960).

Figure 2 shows the processes of law making and administration of justice in Ghana.

Processes of Law Making and Administration of Justice in Ghana



The diagram shows the process of law making and administration of justice in Ghana. It is the laws made by the Executive and the Legislative arms of government--which are highly enforced by the judiciary--that gives rise to prison overcrowding, recidivism and the rise in crime. It is the interface between the judiciary and the prisons with which this study is mainly concerned.

Ghana faces an upward trend in the incidence and volume of crime (Nortey 1977; 1986), prison overcrowding and poor diet (West Africa 5-11 Jul. and 15-23 Aug. 1993), a decline in public and government confidence in the criminal justice institutions (Public Tribunals in Ghana, PNDCL 24 and 78; Attafuah 1993; Gyandoh 1989), and a general uncertainty about the principles, purposes, potency and/or practices of punishment. Unfortunately, these contemporary crises of Ghana's criminal justice system have not stimulated re-thinking about the future of societal responses to the administration of justice, especially, punishment and incarceration.

It is common knowledge that Ghanaian laws have not been attuned to the social context after 38 years of independence. Basically, the substantive criminal laws remain the common laws bequeathed by colonial Britain at independence (Harvey 1966; Amissah 1981, 1987; Gyandoh 1989; Seidman and Eyison 1969; Seidman 1969; Attafuah 1993). The assumptions of the penal system and the machinery for implementing these assumptions are essentially British. As Seidman and Eyison (1969: 82-83) eruditely point out:

> No systematic review of penal policy has taken place, and little official attempt has been made to articulate the difficulties involved in the application of European norms and policies in the Ghanaian context - or, indeed, to articulate the difficulties of devising new and perhaps more appropriate and effective policies.

Sentencing practices in Ghana appear to aggravate the prison problem. This is because in applying sanctions, the courts generally resort to an excessive use of imprisonment. Relying on imprisonment as the primary form of social control has resulted in overcrowding in the prisons with its attendant health hazards and insecurity to prisoners, prison officers, and society at large. Even with the disagreeable, dehumanizing, and torturous tropical conditions, imprisonment has failed to reduce recidivism rates and crime in Ghanaian society. Rather, imprisonment appears to have further criminalized most convicted offenders.

Chapter II

Review of Literature;Theoretical Perspectives Policy Concept, Policy Analysis And The Systems Theory Research Methods

Part One: Review of Literature

2.1.1. Introduction

Demand for alternatives to incarceration has received increased attention from scholars and politicians of varied persuasions. This is in part because history has shown that society's efforts to deal with offenders have been at worst inhumane, at best inefficient, usually ineffective, and at all times confused (Gottfredson 1979: 151). Therefore, the basic philosophical assumptions about the function of imprisonment in a system of crime control are constantly being re-examined, and new directions being explored and tested. For example, the basic aims and purposes of some penal systems have been re-assessed (Kuhlhorn 1979; Backman et. al, 1979), and the rationale and consequences of the "treatment" ideology, and use of the medical model in corrections, have been evaluated (Lipton, Martinson and Wilks 1975; Wilson 1975; Bartollas 1985; Bartollas and Miller 1978). As well, the sentencing processes have been severely scrutinized with the hope of increasing its justice and fairness and lessening unwarranted disparities (Hirsch 1976; Dershowitz 1976; Roberts and Doob 1989).

Korn and McCkorkle (1959: 368-370) maintain that corrections today has come about as a result of accident, power play by rulers with vested interests, and meagre attempts at innovation by correctional authorities. They suggest that the decision about what to do with offenders in society historically has been based on one or more of a limited number of social objectives. These objectives - retaliation, disablement, deterrence, protection of society, and reformation - have influenced correctional policies, past and present. Glaser (1964 cf. Cohn 1976), Sutherland and Cressey (1970:325-29), and Schrag (1971), have identified three basic stages - revenge, restraint, and reformation - in their summary of the history of corrections. Each stage is characterised by a particular emphasis

in handling offenders. One may add reintegration of the offender into the community as a fourth stage (see also Bartollas 1985; Bartollas and Miller 1978).

2.1.2. Critical criminologists

Critical criminologists have also examined the ideological role of the prison in modern capitalist society. They suggest that incarceration is a mechanism of "disciplining the workforce, both directly through physical control, and indirectly through ideological control" (Rusche 1982; Melossi 1976, 1982; Melossi and Pavarini 1980; Foucault 1979; Ignatief 1978; Schwendinger and Schwendinger 1981 cf Lynch and Groves 1989: 118). Critical criminology applies Marxian theory to explore the ways in which law and criminal justice, as forms of social control, have been used to contain class struggle and maintain class divisions at different times in different societies. It gives an historical account of how crime, law, and social control develop within a wider social, economic, and political context. Lynch and Groves (1989:6) believes that by placing issues related to crime and crime control in their social and historical perspectives, a deeper appreciation of the matter can be made.

Foucault (1979) thinks there is an association between the industrial revolution and the development of the prison. He views the prison as a method of punishment that transformed the ideology of punishment from that of corporal and other inhumane punishments. Fine (1980, cf Lynch and Groves 1989: 117)) also believes that the "prison in modern capitalist society reinforces ideological notions about criminals which justify the repression of the lower classes and thereby reaffirm the class structure of capitalism."

2.1.3. Arguments on reform and safe custody.

Cressey 1965; Eaton 1962; McCleery 1969; Murton 1969; Nelson and Lovell 1970; Piliavin and Vadum 1968 (cf. Cohn 1976: 269-283; see also Bartollas 1985, have given the primary reason for the failure of correctional services in general and the prison in particular to change or 'cure' offenders as the philosophical cleavage between those who

favor rehabilitation and those who advocate custody or control. According to these authors, rehabilitationists believe that they have the knowledge and expertise to accomplish their goal of reformation and rehabilitation. Therefore, ample resources and opportunity to improve upon the effectiveness of their treatment programs are needed. However, they are frustrated at every turn by those who prefer punishment and control to rehabilitation.

While Robinson and Smith (1971: 79-80) do not believe that such a cleavage exists, Kassebaum, Ward and Wilner (1971: vii) are not as confident that treatment programs and custodial concerns can or do co-exist. Ericson (cf Ratner and McMullan 1987) however believes that it is an illusion to think that a fundamental dichotomy exist between rehabilitation and punishment. He thinks that debates about rehabilitation and punishment miss the point because rehabilitation is for punishment, or more broadly, for the efficient suppression of crime and criminality. To Ericson, the bottom line is social control and nothing else.

Whether a cleavage exists or not, there is overwhelming evidence to suggest that imprisonment has failed to rehabilitate most criminals and reduce crime. Accordingly, minimal use of the prison has been advocated. Lea and Young (1984:266) maintain that, the prison should be used in those circumstances where there is extreme danger to the community. In their opinion, where full-term imprisonment is necessary, it should restrict itself to civilized forms of containment. Life inside the prison should be as free and as 'normal' as possible. Waller (1974) also believes that long-term imprisonment may impair the ability of offenders to function adequately in the community upon release. Therefore, every effort should be made to return offenders to the community at the earliest possible time.

A report of the Royal Commission of the Department of Correction Services in New South Wales, Australia (1978) recommended, *inter alia*, that incarceration should be as short a period as possible. In the Commission's view, if alternatives are inappropriate at first, they should be used as soon as it is reasonably safe. Moreover, those imprisoned

should be housed in the lowest appropriate security, and, as few offenders as possible should be incarcerated after all appropriate alternatives have been exhausted.

Similar sentiments have been expressed by the Law Reform Commission of Canada (1976). The Commission recommended that, imprisonment as an exceptional sanction should only be used: to protect society by separating offenders who are a serious threat to the lives and personal security of members of the community, or to denounce behavior society considers highly reprehensible and which constitutes a serious violation of basic values, or to coerce offenders who wilfully refuse to submit to other sanctions. A British government White Paper published in 1990 emphasized that imprisonment "can be an expensive way of making bad people worse" (West Africa 1-7 Nov. 1993: 1977). These advocates are calling for the use of incarceration as a last resort in sanctioning offenders. This is because the efficacy of the prison as a reformative and/or rehabilitative institution has been challenged constantly (see Martinson 1974, 1976, 1979; de Hann 1986, 1990; Jobson 1977; Hudson 1993).

A number of countries have recognized the negative and ill-effects of incarceration. They have therefore instituted fresh policies that minimize the use of incarceration by finding non-custodial alternatives. In some advanced countries, for instance, imprisonment is only used on offenders whose needs, can "best be met by confinement", or unless other alternatives would, "deprecate the seriousness of the offence," or "unless the protection of the public is at stake" (The American Bar Association 1975).

Ghana's penal philosophy appears to uphold retributive deterrence and incarceration rather than other forms of punishment. Reformation and rehabilitation in Ghanaian prisons have never been tried. This assumption is based on the virtual absence of training and rehabilitation facilities for offenders and lack of highly trained correctional personnel.

2.1.4. Critics of decarceration

Some critics have described alternatives as nothing but mere "net-widening" (Austin and Krisberg 1981; Bottoms 1983; Chan and Zdenkowski 1986; Cohen 1985; Mathiesen 1983, 1986, 1990; Scull 1984, 1987, 1991). Chan and Ericson (1981: 39) for instance, believe both provincial and federal prison populations in Canada are at an all time high in spite of alternatives.

These and others assert, among other things, that the growth of community corrections is typically accompanied by the maintenance and increase in incarceration. They also believe that the growth of community corrections has been synonymous with "net-widening." Moreover, Police Chiefs of Canada meeting in Halifax, Nova Scotia (Aug.-Sep.1993), advocated the abolition of day passes and parole to hard-core prisoners (BCTV Crime News 1/9/93: 18.30 hrs.). The chiefs expressed growing concern about abuse of parole and the negative effects alternatives have on public safety. They have therefore called for the review of existing community corrections to limit its scope. Furthermore, a professor of criminal justice in an American university (host of CNN Moneyline 21/9/93: 2045 hrs.) also disagree that imprisonment has failed because, the "prison takes bad people off the streets." This view is shared by University of Minnesota sociologist, Ward Boyd who also advocates for harsh penalties for offenders (A&E, American Justice, December 2 1993: 17hrs).

Using the province of Ontario, Canada, as a case study, McMahon (1992) has explained that the growth of community program of probation has rather been accompanied by a decrease in incarceration. Moreover, net-widening did not occur during the period of alternatives. McMahon has also questioned the methods used by some of these researchers. She contends, for example, that while Cohen over-generalized his data, Chan and Ericson dealt with absolute figures. Also, the critics' data did not go beyond 1978 (p55). Fattah (cf Ratner and McMullan 1987), however, contends that net-widening is an unanticipated negative consequence of alternatives, rather than a latent objective of reforms. Such

criticisms seem to express genuine concern about the negative side-effects of alternatives. But, these concerns will always persist if sentencing policies and practices are not reformed. Moreover, such critisms must be taken with a "pinch of salt" for the simple reason that they fail to answer the all-important questions of whether imprisonment deters, reforms, rehabilitates and as such, reduces recidivism and crime. The criticisms also fail to recognize that at any given time criminals in society, or offenders who go unpunished outnumber those in jail. Moreover, the critics do not seem to recognize the devastating effects of imprisonment and the personal risks long-term incarceration creates for prison and other officials who work with the inmates. Hence the need for viable, cheaper, and more humane forms of punishment and alternatives to punishment continue to be advocated and sought for.

2.1.5. Literature on Third World criminology

Criminological literature on third world, especially sentencing and incarceration and its effects have been minimal and sporadic. For example, the lack of criminal justice data, research-based information, as well as the unreliability of existing data in Africa have been widely recognized. Also, the uphill task of collecting criminological data has been noted (Leon 1992; Mushanga 1988; Clinard and Abott 1973; Cohen 1982; Brillon 1986; Clifford 1974; Rotimi and Oluruntimehin 1992; Asuni 1990).

A United Nations Social Defence Research Institute report in 1988 (cf Mushanga 1992: iii) on the state of criminological literature in the third world commented that:

> There is little comprehensive systematically collected knowledge and information on the history, main trends and the state of the art of criminological theory and research in the developing countries and on the relationships between such theory and research, on the one hand, and criminal justice policy and practice in the developing world, on the other. That as in many other fields, information flow in the criminological-theory-research field is presently limited to flows within the developed world to the developing countries. It is well recognized that there should be a more complete global flow of information and knowledge especially in terms of a reciprocal flow from developing to develop countries and a "South-South" flow within the developing world.

Cohen (1982:85) has also pointed out that while literature on anthropology of law in the third world is vast and complex, the material on crime and incarceration is rather sparse and poor. He attributes this either to criminologists' lack of interest in the third world, or, as he states, they treat "it in a most theoretically primitive fashion, while the general literature on development and colonialism is remarkably silent about crime." Most of the literature on crime are studies done by people other than third world scholars (for instance the work of Seidman 1968, 1969; Clinard and Abbott 1973; Clifford 1974; Brillon 1986; Cohen 1982; Sumner 1982; Trubeck and Galanter 1974; Huggins 1980). Where third world scholars have been involved, grants and funding have come from sources and agencies in the 'developed world' who may have their own hidden agenda, or who may insist that such studies conform to 'Western standards.' Theoretical bases of such studies have therefore been,

> made-for-export Western criminology and the paternalistic vision of social control guided by professionals and experts who have to tell backward African societies about crime problem they do not realize they have (Cohen 1986: 291; see also Asuni 1990; Kayode 1978 and Rotimi and Oluruntimehin 1992).

Most third world theorists' explanation of crime contain implicit Durkheimian underpinnings: industrialization releases people from traditional social controls and brings about rapid social change unmatched by an equal development of new structures and regulations. There is also rural-urban migration resulting in urban density and overcrowding. Modernization brings about mechanical relationship and anomie. Crime is, therefore, the price for the rapid social change (Clinard and Abbott 1973; see Mushanga 1974, 1983; Kibuka 1979; Adeyemi 1977; Clifford 1963, 1974; Shelley 1981; Nortey 1977).

These scholars see third world crime as a by-product of modernization that can not altogether be prevented but can be ameliorated. They believe that crime is an inevitable process of developmental stages and that third world countries will have to replicate the phases through which the developed world has already passed. Thus, they suggest an

almost exact linear relationship between the extent of development and the sophistication of crime. Crime, the result of social change, the product of overrapid modernization, can be explained in terms of universal processes that cross cultural lines - such as anomie, urban drift, or social disorganization. Hence, Clinard and Abbott (1973) believe that the rates of crime and their sophistication are not only the price for progress but an index for progress.

Some radical criminologists have challenged the modernization theory as short-sighted and too simplistic. They believe that modernization theory does not account for the processes of colonization, imperialism, and dependency when discussing third world crime. Boehringer and Giles (1977, cf Sumner 1982:22), for instance, believe that without a radical criminology rooted in an understanding of imperialism, there is no possibility whatsoever of addressing the crime problem of third world countries. Sumner (1982), Cohen (1982), and Mahiber (1984), see the recognition of these processes, especially, the creation of colonial law, which in turn created new categories of crime and provided labor for capital, as essential in understanding third world crime. Moreover, the role of the police should be adequately accounted for when discussing third world crime (Seidman 1978; Mahiber 1984; Sumner 1982; Cohen 1982,1986). These scholars emphasize that third world development is "not simply a retarded replay of western European history" (Cohen 1986:291), and that, crime is, "an integral ally of capitalist penetration into third world" (Sumner 1982:33).

Cohen (1982:86) cautions third world countries against the wholesale acceptance of criminological theories and crime control models long discredited in the developed countries. He wonders why developing countries are abandoning their traditional methods of mediation, conciliation and informal dispute resolution that have long survived alongside colonial legal institutions in favor of centralized, bureaucratized, and professional criminal justice systems which have largely proved to be inefficient elsewhere. According to Cohen, developing nations are emulating developed nations at a time when these nations are talking

about community treatment, and extolling the virtues of mediation, conciliation, and informal dispute resolution.

Cohen (1982:89) points out that the history of crime control is not only a history of changing modes of production, but also, of ideas and ideologies. Therefore, the ideological manifestations that influenced the establishment of criminal justice institutions in the third world by the colonialists should always be borne in mind. He cautions third world nations not to go through the same mistakes of the West "to discover an awful truth" (p 92). All modes of colonization - missionary, military, economic, liberal, or political - in Cohen's view, were "consciously intended to destroy or manipulate previous *traditional* (italics mine) systems. Legal control was built into the process from the outset, not tagged on afterward, and law was a chosen mechanism to achieve particular social change" (97).

Criminal justice institutions were central to the apparatus of colonial repression of indigeneous institutions. Cohen's standpoint is shared by Sumner (1982), Brillon (1986), and Coyle (1993). Cohen (1982), Dodds (1979), Huggins (1985), Seidman (1969), Sumner (1982), and, Ninsin (1986), have all pointed out that the administration of justice by the colonialists was essentially directed toward establishing capitalist social and property relationship. Hence, its failure to promote traditional forms of conflict resolution.

Indeed, the processes of colonization, imperialism, and dependency must be recognized when discussing third world development/crime. However, the recognition of these processes alone will not magically lead to full comprehension and solution of third world development/crime. By over-emphasizing these processes, radical criminologists pay little attention to the positive influence of colonial law and administration of justice in third world nations.

It is in recognition of the positive contributions of colonial law, as well as its short-comings, the need for cultural and societal specific criminology, and the need to preserve the rich traditional judicial processes of these former colonies that Brillon (1986) advocates an interdisciplinary approach to the study of crime and the administration of justice in

Africa. Brillon (1986) advocates "ethnocriminology" as the relevant criminological perspective for Africa and third world.

Ethnocriminology is the integration of systems of law and justice based on indigeneous ancestral practices as studied by juridic anthropologists, and the new penal codes, judicial procedures, and social defense policy studies by Western criminology. While no in-depth elaboration of the theoretical and methodological implications of ethnocriminology as a perspective has been offered, Brillon also seem to have committed the same fallacy of modernization theorists by assuming that crime and other 'social pathologies' are indicators of anomie (p.11).

Crime and justice administration in Africa have also been portrayed as if Africa is a homogeneous entity. What similarities do Ghana and Nigeria, Mexico and Brazil, India and China, or India and Pakistan, for instance, have apart from either being on the same geographical region, continent, or being black, metizo, brown, or being referred to as third world? It may even be erroneous to think that Ghana and la Cote d'Ivore, or Ghana and Togo, or Ghana and Burkina Faso are similar simply because Ghana shares common borders with these countries. It is not only simplistic, but also erroneous to believe that because the United States and Canada are both developed countries, share common borders, speak English, and were once ruled or colonized by the British they are homogeneous, that is, have the same culture, or are to be treated similarly. It is, therefore, difficult if not impossible, to classify nations of Africa, Asia, or Latin America, as one class distinct from the so-called first and second worlds. Most of these nations have nothing in common save propinquity and colour. They vary in social organization, political structure, occupations, living standards, religion, outlook, and linguistics. However, most radical scholars commit the fallacy of reducing the varieties of social, cultural, economic, and political conditions in third world into a single common denominator (see Birkbeck 1985).

Birkbeck (1985: 215-245) therefore disagrees with Cohen, Sumner, Huggins and all those who believe in a distinctive third world theory. In his view, a distinctive third world theory is imprecise and deals not adequately with geographical variations and differences. Birkbeck (major work in Ecuador 1974; Colombia 1979; and Venezuela 1982) advocates for a "regionally specific theory" that deals principally with spatial organization of social phenomena and secondly to time in analyzing third world crime. Regionally specific theory;

> draws as much on geography as it does on criminology or the general principles of methodology, ... and, ... represents one possible outcome of the application of the comparative method in criminology and the social sciences (p 227, 228).

Birkbeck (p 225) asserts that theoretical debates, concerned with the attack on, or defense of, general models of socio-economic development or general perspectives of studying crime, has hindered real interest in establishing regional specificities.

Certainly, some similarities may and do exist between and among most nations, especially, those sharing common borders - certain radicals will not admit that most of these nations/ethnic groups had known no peace and unity, but had constantly engaged in inter-tribal feuds and warfare before the advent of colonialism. They contend rather that it is colonialism that created 'new' borders and barriers among colonized nations, thereby depriving them of unity and integration. However, as the saying goes, "man *(sic)* is like all other men, like some other men, like no other man" (Kluckhon and Murray 1968); likewise, 'every society is like all other societies, like some other societies, like no other society', and that, 'the proper study of any society is the society itself' - "the proper study of man *(sic)* is man" (Alexander Pope 1977).

In other words, every society has its unique history, values, customs, norms, traditions, and worldview that shape its economy, politics, culture, and philosophy. Recognizing the unique characteristics of every society is important for the understanding and appreciation of that society's peculiarialities. Therefore, to lump countries together as third world just because they are underdeveloped or perceive Africa as homogeneous and

prescribe uniform solutions to their problems may not help solve peculiar problems facing individual societies. It is in this respect that the various perspectives are being described as both one-dimensional and, theories of impotence (to recap Macuse 1992 and Leys 1967), and, instead advocate a multi-dimensional, regionally, nationally, and even societally specific approaches to the study of crime and development in Africa/third world.

Imprisonment in Africa is essentially a colonial institution. Natives' use of the prison can be traced to the coming of the Europeans and the introduction of slave trade and slavery in the sixteenth century. Although 'crime' and punishment had existed in pre-colonial Africa, various methods of disposal other than incarceration existed to deal with offenders. In exceptional circumstances and cases, 'inhumane' methods such as banishment, mutilation, and even death, were employed against offenders. Punishment was essentially aimed at restitution, peace-making, and conciliation rather than retribution and incarcerative deterrence (Seidman 1969; Adeyemi 1977; Lowy 1978; Nader and Todd 1978).

The prison system as a colonial legacy has been described as "totally unsuitable to African culture. It is also a very expensive use of scarce resources to take a large group of people out of society to render them totally unproductive, and then have to feed, clothe and care for them" (Coyle 1993). Coyle has, therefore, urged African countries to "examine their heritage and to look to traditional forms of community justice," instead of looking up to the "Western example of locking up more and more people in prison" (cf West Africa 1-7 Nov. 1993:1977; see also, Mushanga 1988; Clinard and Abott 1973).

2.1.6. Ghanaian criminology

Criminology in Ghana is in its infancy. As an intellectual discipline for academic study, very little attention has been devoted to it in Ghana's institutions of higher learning. Government support and encouragement to scholars, researchers and law enforcement agencies has been erratic. Harvey (1966: 15) believes that "empirical research into the legal institutions is still substantially limited to a fairly primitive impressionism." While government and society express concern about crime, such concerns appear to be mere rhetoric since they are not backed by any effective, concrete and comprehensive policies and action. There is no single 'Ghanaian' criminology text book. Government sponsored criminological research is either unthinkable or simply not perceived as feasible. Nevertheless, a number of vital issues regarding Ghana's penal system have appeared in scholarly articles and occasional papers (for example, Seidman, Seidman and Eyison in Milner 1969; Nortey 1977). Also, the Judicial Service and the legal profession as well as, civil and criminal law, and constitutional issues have been well documented (Harvey 1966, Gyandoh 1989; Amissah 1981; Daniels 1964; Gyandoh and Griffiths 1969). Media, and official reports, and government statements also constitute other sources of information on the criminal justice system.

In his sessional address to Parliament in April 1993, Ft. Lt. Jerry John Rawlings, Ghana's President, advocated for the administration of justice at the "grassroots level," in which, "the people participate, where the equality of justice is self-evident and transparent, and where decisions advance the individual and collective well-being of the community or district." Rawlings believes that a system of justice in which chiefs, community leaders, heads of families and social groups administer ordinary "people's justice" is the best antidote for the hydra-headed crime/judicial problems in Ghana.

Rawlings' call for "people's justice" may be resented by most Ghanaians because of the record of the Committees' for the Defence the Revolution (CDR's), Public Tribunals, and other 'revolutionary' organs of the Provisional National Defence Council

(PNDC) military government of which he was the leader. However, the inclusion of chiefs, elders, and community leaders, who were excluded from the Public Tribunals in the administration of justice under the PNDC, is interesting and remarkable. The call is, however, bereft of a clear vision so long as the questions of decentralization and democratization of the Criminal Justice Institutions, and the high handedness of both government and the judiciary towards offenders, exemplified by the rates of incarceration, have not been addressed. Whether a new judicial dispensation is called 'people's justice' or not, Rawlings' call for the blending of tradition and modernity, that is, integrating traditional methods into existing Westminster judicial procedures, and, the involvement of 'all Ghanaians' in justice delivery could be vigorously pursued to its logical conclusion.

Part Two
Theoretical Perspectives

2.2.1. Introduction

It is anticipated that two outcomes will result from the study of Ghana's penal system:

a. a fresh look at the effects of colonial legal institutions in Ghana, and,

b. an exploration of the possibility of integrating traditional or informal methods into the 'modern' system of administration of justice.

The two issues are related to the administration of justice, especially the evolution of the Westminster system in Ghana, and informal methods of resolving disputes. The theoretical approaches of ethnomethodology, political economy, and the systems theory, are, therefore, deemed relevant in providing insight into the administration of justice, especially the sentencing policies and practices of the courts and their effects on crime and recidivism in Ghana.

These perspectives have their strengths but none of them may adequately explain the issues being investigated. It is in recognition of the strengths and limitations of these paradigms in informing a sound criminological research and analysis that a study of the administration of justice and penal policies requires a synthesis of these perspectives

(Ratner et al., 1987). Therefore, an eclectic approach supported by empirical data would be utilized to enhance our understanding of the administration of justice, especially the penal policies and practices, and incarceration rates in Ghana. Such an approach would also help to overcome the partial-knowledge problematic of these paradigms (Attafuah 1993).

2.2.2. Ethnomethodology

Ethnomethodology is a study of the social structure. It is concerned with structures of social interaction that describes "a body of commonsense knowledge and the range of procedures and considerations by means of which ordinary members of society make sense of, find their way about in, and act on the circumstances in which they find themselves" (Heritage 1984: 4). Ethnomethodology tries to uncover the 'methods and social competence' that are employed "in constructing our sense of social reality". It views social reality as 'rational accomplishments' of the individual and makes the methods and knowledge that members possess into a topic for analysis. Ethnomethodologists seek to analyze accounts provided by people in particular contexts (Jarry and Jarry 1991: 205).

Garfinkel (1967) and Zimmerman (1970) regard social reality as the product of individual and collective accounts of perceived situations. Such accounts could refer to the localized organization of conduct within which a framework is both trusted and acted upon as if morally binding. Ethnomethodology also attempts to reveal how individuals could make sense of their environment by examining the implicit taken-for-granted rules that underlie organizational life (Hammond 1986). These rules or commonsense activities are of major sociological significance since it is through these rules that social interaction creates an inter-subjective character of social reality.

As a study of the 'folk methods' by which people come to understand and produce the features of co-ordinated interaction and social organization, ethnomethodology relies on what everybody knows in order to demonstrate the "reasons and reasonable nature of its procedure and findings" (Mann 1984:115). Ethnomethodologists analyze the unfolding and self-revealing nature of a social setting and the course of action to reveal structures of

interaction. Thus, studies on queuing, court rooms, official records and their various uses, and, the structure of children's conversation have been greatly enhanced by the ethnomethodological approach (Garfinkel 1967a; Cicorel 1968; Atkinson 1978; Wieder 1974 cf. Borgatta and Borgatta 1992).

Ethnomethodology is justified in so far as it can assist in gaining insight into the everyday taken-for-granted conceptions and effects of punishment and imprisonment administered by the state through the criminal justice system. An ethnomethodological perspective, in addition, enables the critical examination and evaluation of 'traditional commonsense' methods of conflict resolution based on propitiation, reconciliation, and peace-making. Perhaps a criminological counterpart of ethnomethodology is what Brillon (1985) has called 'ethnocriminology': which allows an integrative study of traditional pre-colonial, colonial, and post-colonial laws into the administration of justice in Africa.

2.2.3. Neo-Marxism

Marxism is a theoretical perspective that directs attention to the broadest structural features of society (Brickey and Comack 1986). The theory explores the strategies through which the administration of justice has been applied to contain class struggle and maintain class divisions at different times in different societies. It gives an historical account of how the administration of justice develops within a wider social context.

As a perspective, the Neo-Marxian theory of society is an attempt to develop a coherent theory of politics and/or the state based on Marxian philosophy (Knuttila 1987). Neo-Marxian theories of state include the study of deviance; the sociology of law in its stage of emergence, interpretation and action; and the study of the welfare state itself (Attafuah 1993).

There are four sub-divisions of the Neo-Marxian perspective. These are instrumentalism, Gramscian class-conflict, capital logic and structuralist perspectives. This thesis is informed by the structuralist perspective of neo-Marxian conception of law and administration of justice.

2.2.4. Structuralism

Structuralism conceives the state as acting on behalf of capital. Structural Marxists believe that surface events are to be explained with reference to deeper structures. The theory posits that the constraints and limitations of structure determines the direction of society. This is exemplified by Marx's claim that consciousness, politics and law are best explained with reference to their socio-economic underpinnings (DeGeorge and DeGeorge 1972). Structuralists further believe that relations between component parts of a structure are more important than the individual elements making up the structure (Ollman 1976), and that individual elements themselves "are comprised of sets of relations" (Keat and Urry 1975:120). In other words, the whole (structure) is greater than the sum - individual elements - of its parts. Therefore, any individual element or fact, for example, law and administration of justice, must be considered in its wider or holistic context (Greensberg 1981), or its totality (Jay 1973, cf Lynch and Groves 1989).

Structural Marxists argue that law is the outcome of the constraints and contradictions of capitalism (Gold et al 1975a:35). This is not to say that law always and everywhere operates in the interest of the ruling class. Rather, in their quest to unearth the deeper forces that shape law, structuralists argue that there are inherent functional imperatives in capitalism that are beyond the conscious manipulation of the most powerful capitalist(s) (Lynch and Groves 1989:26).

Sumner (1982) offers a Neo-Marxian method of studying the administration of justice in third world countries. Sumner's comparative and historical approach to the explanation of crime and social control could be described as crucial to any scientific analysis of the administration of justice in most third world nations (1982:6 cf Attafuah 1993). His thesis could be described as marking a radical departure from the narrow parochial and ahistorical orthodox theories of most third world criminologists: Clinard and Abbott (1973), Nortey (1977), and, Kibuka (1979). These theorists see crime mainly as

the effects of modernization and urbanization. For example, Clinard and Abbott (1973:v) in their attempt to explain crime in developing countries stated thus;

> Today the process of development is bringing pronounced changes, and among the more serious is the general increase in crime. In fact, one measure of the effective development of a country probably is its rising crime rate (cf Sumner 1982).

This assertion has been described by Sumner as too simplistic an Euro-centric ideological proposition (Sumner 1982:xi-xii, 2). This is because the role and effects of colonialism and colonial institutions were and are given scant attention by Clinard and Abbott, and most of the scholars writing about crime in the third world.

Sumner calls for a critical examination of the role of colonialism, colonial institutions, the nature of capitalism, and, the forms of crime and justice capitalism produce in order to understand the crime problem in the third world. He conceives development as grounded in the capitalists' appropriation and exploitation of other people's land and labour (1982:xiii). Hence "colonial capitalist penetration, with its production of new crime categories and new crimes in the third world become pertinent areas of scholarly attention" (Attafuah 1993: 74). Class structures and class relations fostered by capitalism, and the attempts by neo-colonial states to respond to particular forms of lower class reaction to the contradictions of the neo-colonial economy also deserve scholarly attention (Sumner 1982).

Although neo-Marxian perspective has its limitations, such as its overt determinism, and its failure to explain how people change the structures they create and under which they live (see Hinch 1992), together with ethnomethodology\ethnocriminology, and systems approach they have greater theoretical relevance than other theories in the analysis of the state and administration of justice in Ghana.

These theories will make it possible to examine the concept of crime/deviance in pre-colonial Ghana. They also make the discussion and or analysis of the introduction and impact of the Westminster system of administration of justice in Ghana possible. Furthermore, these perspectives enable an examination of the continued use of colonial criminal justice institutions by the ruling elites - the compradors of imperialism.

Part Three
Policy Concept, Policy Analysis And The Systems Theory

2.3.1. Introduction

As a policy orientated study, this thesis is also informed by the policies, directions and philosophies of Ghana's colonial criminal justice system. It is by looking into the history of the criminal justice system that a full comprehension of certain concepts, policies and standards could be deduced. This requires a brief summary of the concept of policy, the concerns of policy analysis, and the central focus of the systems theory that influences much of the planning for justice (Clark 1984; Connidis 1982; see also Berrien 1968; Barber 1993; Miller 1965; Ackoff 1974; Ackoff and Emery; Ekstedt and Griffiths 1988).

The discourse on policy, its concept, nature, focus, and dimensions as presented in this part argues that policy sets out the broad paradigm of an issue(s). Policies are made with specific moral, political, ideological, and philosophical directions and cleavages in mind. Consequently, policies are influenced, largely, by people's worldview, politics, and ideology. Policy study has to do with fundamental questions not only about intent, but also, about actual performance. Policy involves making a conscious choice between and among alternatives. It signifies the scope of state action or inaction as defined by a guiding principle(s) that are either clear and coherent or obscure and confused(ing). It takes the form of explicitly stated objectives, or may be inferred from an action or inaction (Dye 1986; Pal 1989; Rein 1979; Ekstedt and Griffiths 1988; Laver 1986; Hill and Bramley 1986; Snarr 1993; Levine *et. al.* 1980).

2.3.2. The policy concept

Policy study and issues have become more interesting, especially, over the past three decades. Despite the interest, however, there is not a single satisfactory, intellectually coherent definition of what policy is all about or implies. This is because the word is used differently by the executive, legislators, judiciary, bureaucrats, line managers, line staff,

and lay people. An eclectic and pragmatic approach in analyzing public policy and criminal justice and penal policies, has therefore been adopted (see, Hill and Bramley 1986; Hudson 1993; Laver 1986; Mood 1983; Rein 1976; Quade 1982; Leung 1985; Palfrey et al., 1992; Ekstedt and Griffiths 1988; and Weimer and Vining 1992). In their incisive analysis of policy making in Canadian Corrections, Ekstedt and Griffiths (1988) describes policy as both a concept and an activity that implies wisdom in statesmanship and prudence in the course of action *or inaction* (italics mine) chosen by government. Such an action or inaction sets the parameters of directions largely followed by government. The authors emphasize that policy making is not always a 'ratio al, linear process where each step is either knowable or predictable' (p.104). Similarly, Hill and Bramley (1986), quoting Jenkins (1978: 15), describe policy as a set of interrelated decisions of political actor(s) that concerns the selection of goals and the means of achieving them within a specified situation. Eulau and Prewitt (1973), Leung (1985); Palfrey et al., (1992); and Weimer and Vining (1992) also sees policy as the main thrust or approach and methods adopted by actors and players to resolve a problem(s). The policy actors could be the executive, the legislature, the judiciary, and other powerful interest groups in society (Pal 1989; Ekstedt and Griffiths 1989; Dye 1986; Brooks 1989; Levin *et. al.* 1980; Weimer and Vining 1992; Palfrey et al., 1992). Pal (1989: 2; see also Levin *et. al.* 1980: 116-151) thinks that policy is the same as position or stance; specific course of action; or, just a rule. He believes policy denote "a plan, a coherent vision, a direction and a resolve to get on with the job" (pp. 8,125). To him, "public policy is not just what government does but why it does it." Brooks (1989: 17) similarly believes that programs constitute the most concrete aspect of what is generally called government policy.

Dye (1986) attempts to bring together the several definitions when he asserts that policy is what governments do or simply do not do. However, Dye's definition is rather lean because governments' inaction may not be deliberate. Therefore, what governments consciously and deliberately refuse to do would be described as policy but what they

unconsciously do not do may not be policy. Thus, policy may be seen as an expression of meaning to an issue or issues (Ekstedt and Griffiths 1988; Pal 1989; Brooks 1989; Connidis 1982; Clark 1984; Nagel 1980; Quade 1982; Waller 1979 and Ackoff 1973; Weimer and Vining 1992; Palfrey et al. 1992).

Quinney (1970: 12) believes that power and allocation of values are basic in informing public policy. In his view, groups with special interests become so well organized that they are able to influence policies that affect all persons (see also Waller 1979; Pal 1989; Dye 1986; Brooks 1989; Rein 1986; Waller 1979; Ekstedt and Griffiths 1988; Levin *et. al.* 1980). Rein (1976) similarly believe that, policies are determined and informed by a complex perception of social, economic and political issues. In other words, policies are concerned with choice among competing values. From this perspective, therefore, questions of what is culturally or morally desirable can not be excluded from policy discussions and decisions. Moreover, designing public policies presupposes the recognition of problems that need solution. Several obstacles can and do frustrate policy formulation. These include different people wanting different things, and, the complex and changing nature of reality. Therefore, designing a coherent policy is an endemic problem since any choice involves risks, uncertainties, and, manifest and hidden opposition from those who may not agree with the change process. In Ghana, for instance, some people simply resent change. Such people are called the *MBA's, me baa eha akye,* and are tagged *ibi so we come meet am*, "I have been here for a long time; that is how it has been done in the past and that is how is should always be done". To such people, it may be very difficult to convince about the need and necessity for a change.

Wilson (cf Bottoms and Preston 1980: 162) astutely asserts that designing public policies require a clear and sober understanding of the nature of man, and, above all, the extent to which that nature can be changed. Wilson sees humans as "refractory enough to be unchangeable but reasonable enough to be adaptable" (pp xii, xvi). Wilson scorns the

view that the only morally defensible and substantially efficacious strategy for reducing crime is to attack its 'root causes' as a basis for public policy.

Some policies change in response to social, economic and political changes. When socio-political and cultural realities change, there is a scramble for new ideas and perspectives that will organize a framework for the development of specific programs. Such new policy framework is determined by ideological preferences, and socio-cultural and political realities. However, older frameworks are not necessarily forsaken: administrative pragmatism and eclecticism provide continuity with the past (Connidis 1982; Pal 1989; Dye 1986; Brooks 1989; Rein 1976). Unlike those who advocate for a break with colonial law and institutions, I rather prefer integrating the existing structures with emerging ones. Breaking with existing structures will certainly be inimical to the Ghanaian society. Research should rather focus on increasing fundamental understanding of social conditions and the processes that can fuse tradition and modernity.

Policy, whether public, social, or penal, may, either be institutional, game, systematic, rational, incremental, elitist, or process, or even a fusion of all of these (Dye 1986; Rein 1976; Hudson 1993; Hill and Bramley 1986; Brooks 1989; Pal 1989; Ekstedt and Griffiths 1988; Connidis 1982; Waller 1979). Rein (p23) believes that choosing a particular policy could be risky and full of uncertainties. Therefore, one useful approach in designing a particular policy is to examine recurring issues and how they relate to other issues. The issue that has prompted this work is the excessive and indiscriminate use of incarceration that has resulted in overcrowding in Ghanaian prisons. The excessive use of incarceration may have also had negative effects in deterring offenders, and on society at large.

2.3.3. Policy analysis

Experts distinguish between policy advocacy and policy analysis. Policy advocacy or formation, uses skills of rhetoric, persuasion, organization, and activism to pursue its goals. Policy analysis, on the other hand, makes possible the dissection of policy issues

through systematic enquiry. It offers opportunity to approach societal problems in a dispassionate manner to determine the impact and relevance of programs and offer alternatives where a policy seems to have failed. Policy analysis is essentially proactive in the sense that it deals with the planning of future policies or serves as a vehicle for innovation. Policy analysis addresses public problems, especially, about how society should organize and conduct its affairs (Hudson 1993; Nagel 1980; Pal 1989; Rein 1986; Ekstedt and Griffiths 1988; Hill and Bramley 1986; Laver 1986; Mood 1983; Levin et. al. 1980; Barnard in Bottoms and Preston 1980; Wilson 1975). Pal (1989:24) has distinguished between two types of policy analysis: academic and applied. While academic policy analysis deals with the "relationship between policy determinants and policy content," applied policy analysis, is rather, characterized by the "relationship between policy content and policy impact." Applied policy analysis addresses such fundamental questions as: Is this policy doing what it is intended for? Is it doing it effectively and efficiently? and, evaluative questions like, are there no better alternatives? The approach in this study could be described as both academic and applied in so far as, the work raises, explains, evaluates, tries to understand, and change existing policies. Policy analysis hinges on three styles: descriptive, such as content and historical analysis; process; and, evaluation, both logical, empirical, and ethical (Pal 1989: 27).

The underlying rationale of any public policy is the provision of a 'net benefit' for the society. Therefore, the success or failure of any public or social policy may be measured against the background of its direct, political, economic, and social impacts (Pal 1989; Brooks 1989; Rein 1976; Wildavsky 1979; Levin *et. al.* 1980 Dye 1986; Nagel 1980). Examining a policy's direct impact is to measure its efficacy *vis-a-vi*is the problem it is designed to solve. Thus, direct impact deals with the effect of the policy on the target. If the effect is devastating or negative, then such a policy is said to have failed to effect the desired change(s). However, if it alters significantly the behavior and patterns of the target, then, it can be concluded that such a policy has been positive or worked. Another plausible

way of measuring the success or failure of a public policy is its political implications. Government's popularity is mostly measured by the way it handles pressing national problems. Therefore, governments strive to implement policies that may appear to appeal to the citizenry no matter its ramifications on society and the economy. Hence government continues to recruit and train more law enforcement personnel, while the courts deal 'mercilessly' with offenders to assure the public that they are concerned about street crime.

The failure of most public policies is the result of several reasons. These include the failure to perceive end and goals, lack of proper and effective implementation strategies, mistrust between and among the various political and social actors, and finally, lack of understanding between and among implementing agencies. Policies may also fail because they were not adopted or did not produce satisfactory results (Wildavsky 1979; Rein 1979; Brooks 1989; Dye 1986; Ingram and Mann 1980). This thesis is primarily concerned with postadoption failure of sentencing policies of Ghanaian courts that may have resulted in prison overcrowding, and, increased recidivism. Penal and sentencing policies in Ghana may have succeeded in its incapacitative role and thus, fulfil the political goals of the power elites, but, may not have had any meaningful and significant impact on crime control. Public or social policies must have legitimacy and work in the interest of those for whom they are meant if they could be described as effective.

2.3.4. The systems theory

The systems theory has been employed to analyze, explain and solve a wide range of social problems and issues. Despite its wide recognition and application, there is no one acceptable definition of the systems theory. Consequently, a plethora of definitions of the systems approach exists. Notwithstanding the numerous definitions, however, all systems analysts agree that it is necessary to take a holistic approach in studying social institutions or problems. This is because, as Gigch (1978:1) has pointed out, small solutions that only embrace a part of the problem or a part of the system neglect to take into account the impact of the interaction and the interrelationships of other systems. Nilsson (1972: 2 cf Connidis

1982: 11-12) also sees the systems theory as "a rational framework for complex problem solving emphasizing hierarchies of systems and their interrelationships. Most often the problems are illstructured and the objectives unknown and undefined" (see also Berrien 1968; Barber 1993; Connidis 1982; Miller 1965; Ackoff 1974; Ackoff and Emery 1972). Ackoff and Emery (1972) believes that the task of the systems theory is to identify the parts - subsystems - and their interrelations with the whole while still retaining a primary focus on the part. Churchman et al.; (1971 cf. Gigch 1978: 2) similarly believes that the application of the systems theory to analyze problems may be "the only way we can reassemble the pieces of our fragmented world: the only way we can create coherence out of chaos." This is because the systems theory enables researchers to study problems or systems in the context of other problems or systems and not in isolation of other systems.

A system is a set of components or patterns that interact with other components or patterns in sufficiently regulatory manner to justify attention (Kuhn 1974: 21 cf Connidis 1982: 13). Gigch (1978: 2) sees a system as an assembly or a set of related elements, an aggregation of living or non-living entities or both (see also Ackoff and Emery 1972; Ackoff 1972; Connidis 1982; Kuhn 1971, 1974). Ackoff (1974: 18) sees a system as "a set of interrelated elements, each of which is related directly or indirectly to every other element, and no subset of which is unrelated to any other subset." A systems theory therefore, could be described as a cluster of strategies of inquiry and an organized space within which many theories may be developed and related (McClelland cf. Berrien 1968: 13, see also Connidis 1982:8). It may also be conceived as a procedure for carefully balancing the pros and cons, subjects and objects or advantages and disadvantages of making a specified change in the tasks or procedures or roles of an organization or institution. A systems analysis therefore refers to task oriented organizations (see Malinowski 1922; Radcliffe-Brown 1952; Parsons 1951; Berrien 1968; Barber 1993; Connidis 1982; Miller 1965; Ackoff and Emery 1972).

The systems theory has been encouraged as an important theory or method in solving policy and scientific problems because of its emphasis on the whole - holistic - rather than atomized units (Connidis 1982; Berrien 1968; Gigch 1978; Ackoff and Emery 1972; Ackoff 1974; Barber 1993). Berrien (1968: 12) sees the systems theory as having the advantage of making possible the studying of a wider variety of phenomena than theories limited to particular disciplines (see also Connidis 1982; Barber 1993). A systems theory "is amenable to and in fact encourages the inclusion of many and varied theoretical approaches, expanding the range of potential explanations for the numerous aspects of social system operations" (Connidis 1982: 8). Malinowski (1922) and Radcliffe-Brown (1952) have argued for the application of the systems theory in analyzing social institutions and social problems. These authors are concerned with how one institution fit into and impact upon other institutions or how one part of an institution relate to the whole. Thus, the authors see social institutions - political, family, education, economic and religious - as an integrated system and not as atomized units independent of other institutions. In other words, no system operate in isolation of other systems but every system is both dependent and interdependent of other systems for their efficient functioning (see also Berrien 1968; Barber 1993; Gigch 1978; Connidis 1982; Miller 1965; Ackoff 1974; Ackoff and Emery 1972).

A system may be open or closed. An open system is one that responds to inputs. In other words, it possesses other systems within which it relates, exchanges, and communicates (Kuhn 1974; Conniddis 1982). Connidis (1982: 25) argues that open systems have the ability to infuse informal methods of analyzing or solving social problems into a formal structure. Closed systems however function within themselves, that is, they move to a steady state of equilibrium that is solely dependent on the initial conditions of the system (see also Berrien 1969: 14-15; Gigch 1978; Kuhn 1974; Ackoff 1974; Ackoff and Emery 1972). While entropy may increase, remain in steady state, or decrease in open systems, in closed systems entropy never decrease (see Miller 1965: 203; Berrien 1968: 16;

Gigch 1978; Kuhn 1974; Ackoff 1974; Ackoff and Emery 1972; Connidis 1982). Criminal justice institutions as a subset of social systems are widely perceived as an open system (Barber 1993; Connidis 1982; Berrien 1968; Sutherland 1973 Katz and Kahn 1969; Parsons 1967). Consequently, criminal justice and penal policies may be perceived in the wider context of public and social policies, that is open systems. Therefore, as an open system criminal justice policies or administration of justice should reflect changing societal goals. Policies and practices should always be conceived within the broader context of the socio-political and cultural beliefs and practices of society. In other words, the policies and practices of the administration of justice as a subsystem - part - should reflect the values of the whole - holistic - society.

The systems approach attempts to show whether an institution is performing according to policy objectives, expectations, directions or set goals. The need to take a fresh look at Ghana's criminal justice system, especially the sentencing policies and practices is predicated on the belief that current policies may have failed to meet societal goals - does not reduce crime, too expensive, and also far removed from the ordinary person. In the words of Connidis (1982:2), the major concern in applying the systems theory to the administration of justice is to determine how their policies and practices or operations affect the behaviour of the actors and players in the system in particular and society as a whole. The primary objective for employing the systems theory is to attempt to integrate all available methods, practices and research in the administration of justice in Ghana into the existing Westminster model.

2.3.5. Functional necessity of alternatives to incarceration

Alternatives are perceived as a functional necessity underlying the changing socio-economic, cultural and politico-ideological conditions of Ghana. Since 1983, Ghana has embarked upon an economic recovery programme. This has led to the restructuring of most basic social institutions of the country. Unfortunately, criminal justice institutions seem to have escaped such restructuring.

In 1982, the then military government, the Provisional National Defence Council, (PNDC) established Public Tribunals to try specified offences and to 'popularize justice' because the Westminster judicial system was believed to be innocuous and out of date with the 'aspirations of the people'. The functions, methods, and directions as well as achievements and set-backs of the Public Tribunals have been dealt with in a scholarly manner (see Attafuah 1993; Gyandoh 1989; Ray 1986). Aspects of Ghana's criminal justice institutions, especially the judiciary, have also been examined (Amissah 1981; Gyandoh 1989; Harvey 1966). However, there is a dearth of research on the overall system, especially, its *modus operandi*, as well as how each component impacts on the other. Also, the relationship between sentencing practices and penal policies and their cumulative effects on crime in Ghana needs re-examination.

Part Four
2.4.1. Research methods

An historical examination of Ghana's criminal justice system has been accomplished through critical qualitative research techniques. Critical qualitative research cuts through surface appearances by locating social phenomena in their specific socio-historical and cultural contexts. It addresses and analyzes the effects of law on both those on the 'margins' and the "ostensive social structure and its ideological manifestations and processes" (Harvey 1992:19; see Glaser and Strauss 1967; Strauss and Corbin 1990; Kirby and McKenna 1989). In this regard, how the Criminal Code and penal practices articulate with the reasoning of the power and ruling elite in Ghana is examined. Also, the effects of Ghana's accusatorial and adversarial legal system and penal philosophies of deterrence and use of incarceration are considered. These objectives have been accomplished through the review and evaluation of colonial and post-colonial Criminal, and Criminal Procedure Codes, judicial, and prison statistics.

Specifically, semi-structured, open-ended interviews, the majority of which were audio recorded, archival research, anthropological, and ethnohistorical literature, as well as

a descriptive statistical base have been utilized. As a guided conversation, in-person interviews has elicited rich detailed materials from the interviewees (Lofland and Lofland 1984: 12). It gave me an opportunity for "heuristic discovery and the flexibility to respond to new insights with unanticipated avenues of questioning ... by making it possible for participants to speak in their own words" (Palys 1992: 167).

Interviewees were selected through a purposive sampling technique. The main objective was to identify individuals and groups either well informed about, or affected by, the administration of justice in Ghana. Thus, 65 respondents were interviewed between the period 17 January and 24 March 1994. Fifty-nine interviews were face to face, three were conducted on the telephone, and two, through writing. Those interviewed were drawn from the Bench and the Bar of Ghana, legal professors, criminologists/sociologists, psychologists, politicians, prison and police officials, priests, social workers, traditional rulers - chiefs, the general public, and current and ex-inmates. Some of the interviews among the inmate and ex-inmate population were conducted in local languages either directly by me or, through interpreters. Six were in Akan, four in Ga, four in Ewe, three in Hausa, and three in Dagbon[13]. In this regard, the units of the sample for this thesis were not selected by a random procedure, but were intentionally picked because of their unique qualities and characteristics. In purposive sampling, therefore, judgment and knowledge of the characteristics of the subject being studied are important, especially where it is known that certain individuals, through their very characteristics, will provide in-depth information on the subject better than randomly selected individuals. A purposive sampling technique was useful in this study that evaluated the causes of success or failure of sentencing policies and incarceration in Ghana.

Archival research helped to unearth episodic materials such as speeches, official letters, and publications. Government publications, Ghana Law reports, Prison, and

[13] The interviews with the Ga, Ewe, Hausa, and Dagbon respondents were conducted through interpreters.

Judicial reports were the main focus of the archival research. Parliamentary debates on Ghana's penal codes, as well as newspaper and journal articles were also consulted.

Ethnohistory has made 'history from below' possible, and provided "an historical account from the point of view of the oral historical record within the community" (Jarry and Jarry 1991: 205). Oral historical record as told by chiefs and other respondents has to do with the mechanisms and procedures for dispute settlement in traditional Ghana. Finally, I was privileged to observe nine court proceedings - two from High Courts in Accra, two each from Circuit courts in Accra and Kumasi, and one each from Accra, Kumasi, and Takoradi magistrate courts. I also sat in the gallery of the Supreme Court as it gave its reasons for ruling against the continued celebration of the 31st December Revolution of the ex-PNDC government. I also observed the proceedings of three traditional/native courts. These are the Okyehene at Kyebi, the Dormaahene at Dormaa Ahenkro, and the chief of Akim Maase's courts. The first two courts have paramountcy status, but Maase has not. Maase is situated in rural Eastern Region. Policies governing the administration of justice, and traditional mechanisms of conflict resolution are assessed in the context of these findings.

2.4.2. Problems faced in data collection

Every research is bedeviled with problems peculiar to it. It is not possible to believe that studies conducted by either seasoned or amateur reseachers are without frustrations.

It must be pointed out at this stage that my quest for information about crime and administration of justice in Ghana, especially on rates of incarceration and its effects on recidivism, has been very difficult and even near impossible. While documentation at the Judicial Service has been sporadic, the Research Department of the Service has no single typewriter. Reporting to this department by the regions is haphazard, lackadaisical, and piecemeal. Therefore, there is no comprehensive data base for the Judicial Service. The Prisons Services' Criminal Record Office also lacks adequate logistics and well-qualified personnel. While records are not up to date, the outfit has no comprehensive statistics on

inmates, especially, their antecedents or socio-demographic backgrounds. The same story holds true for the Attorney-General's Department.

The Inspector-General of Police (IGP) refused my request to interview him and some selected police personnel in-spite of earlier assurances. He had demanded and obtained copies of the questionnaire for study. The legal officer of the Ghana Police Service was asked to comment, which he did. He recommended the interview since the questions contained nothing inimical to the Police Service. Despite the recommendation, the IGP would not yield. The IGP explained that he could not grant the interview because I did not channel my request through the Director of Prisons. I drew his attention to the fact that I was not commissioned by the Prisons Service to do the research, but still, he would not yield. Other police personnel, however, did grant me audience. However, in order not to expose these police personnel to any danger, no names will be mentioned.

The Minister of the Interior who wrote to confirm the granting of the interview prior to my departure to Ghana had apparently forgotten about it. The meeting was therefore rescheduled because he had a 'very important national assignment' on his hand. When the meeting was finally convened Col. Osei Wusu said he had little to offer and so referred me to the Prisons' authorities for whatever information I needed "with my blessing." Before I could utter a word, he bid me good-bye and asked me to leave.

While one judge initially tried to bully me, another tried to intimidate me with threats and shouts. However, they gave up and co-operated when I drew their attention to the letter sent to them by the Honorable Chief Justice of Ghana urging them to give me audience. Their attitude toward me suddenly improved. The only female Supreme Court judge of Ghana, Her Lordship Mrs Justice Joyce Bamford Addo, would not agree that I take down notes or tape her responses. I would have left her office but as a sign of respect I stayed to ask a few questions. I observed that she was very nervous. Unfortunately, one of the two female Circuit Court judges also refused my tape recording the interview. Therefore, I had to record by writing. I nevertheless found her answers very insightful and

revealing. She was one of the few judges who boldly told me about the rottenness of the judiciary and the police, especially, about police prosecution - the Judicial-Police Prosecution (Ju-Pol) branch of the Ghana Police Service.

One respondent remarked that answering all the questions is tantamount to writing my thesis for me. Two respondents refused me audience explaining that the research will not bring food to the hungry. All attempts to speak with the Attorney-General and Minister of Justice failed because each time I called, I was told he was either too busy to give me audience, or attending cabinet meeting, or had gone to either the Supreme Court or Parliament. So, also, was the head of the Drafting Section of the Attorney-General's Department who was also very hard pressed for time. The Director of Public Prosecutions duly conveyed their apologies which I accepted. Questionnaires left with Honorable Mr. Kwamena Ahwoi, Minister of Local Government, and Mr. Ato Dadzie, Secretary to the President, at their own request, are yet to be received.

Authorities of the Ghana Prisons Service, my employers, gave me access to the information needed on condition that nothing 'bad' will be published against the Service, and also on condition that a copy of the thesis will be made available to the Service. This is unusual an instruction because the hallmark of any scientific work is its publication for either replication, verification, or falsification.

This research is without respondents from the northern half of Ghana because at the time of the field work, clashes between and among some ethnic groups of the north had led to the death of more than 2,000 people. It was, therefore, considered unsafe to travel to the three regions of the north, namely, the Northern, Upper West, and Upper East regions. All but ten of the respondents are males. The small number of females is due to the sample methodology I used. By using a purposive sampling technique more females could not be interviewed because very few of them fell into the categories interviewed.

The final problem, though not the least, was financial. Although my professors secured a return ticket for me to travel to Ghana for the research, and although I was

awarded a graduate fellowship for the Spring Semester, 1994, these were just not enough to meet my budget projections. I, therefore, had to cut my projections down drastically. This resulted in engaging only one as opposed to two research assistants and combining many tasks to achieve maximum results. The cost of internal transportation alone took more than half of the resources that I had, not to mention the amount spent on xeroxing and obtaining other valuable information I needed. Notwithstanding these problems, the trip and fieldwork have been successful experiences because I had the opportunity to meet with well-informed people who freely gave their views about the subject matter of the thesis and on wide ranging problems affecting the administration of justice in Ghana.

Chapter III

Informal Justice In Simple And Complex Societies
Processing of Crime In Ghana.
A Traditional Court Sitting In Ghana.
The Status Of Chiefs After The Bond of 1844

... Your mistake is always assuming that Western institutions are a stereotyped model upon which all forms should be based. It is this delusion that is at the bottom of half the wars and predatory aggressions carried on by Europeans against men of other races. If reforms are wanted ..., it is not either Western or Eastern reforms, but measures suited for the people, and not other peoples. The assumption that reforms so-called must be constructed upon Western models is a pure product of Western exclusiveness, and is opposed both to ... common sense. - Count Tolstoy, Review of Reviews 15 May 1901.

Civilized people know... about their own intelligence ..., history, but they know nothing whatever about those people they condemn to extinction simply because they do not understand them (C. S.Salmon 1924 Ex-Colonial Administrator of the Gold Coast cf "The Crown Colonies of Gt. Britain". p85)

Part One
Informal Justice In Simple And Complex Societies

3.1.1. Introduction

This chapter discusses conflict and dispute resolution through informal mechanisms in both traditional and 'complex' societies. It is proposed that informal and peace-making overtures that involve the people at the grassroots level through their traditional rulers could play an important role in reducing Ghana's crime, and prison overcrowding. However, while informal mechanisms are being encouraged in some 'advanced' societies, traditional or simple and emerging societies, like Ghana, seem to be rather discarding these mechanisms, and instead, emulating Western crime control models and strategies. It is recommended that informal mechanisms could be infused into existing crime prevention models since they are as potent today as they were yesterday.

The chapter gives a summary of the general concept and definition of informalism. Also, some of the informal dispensations encouraged in advanced societies, and informal mechanisms of the aboriginal people of Canada and elsewhere have been highlighted. The nagging question the chapter tries to answer is, why has little attention been paid to the implementation of informal methods of resolving disputes in Ghana although statutes and

constitutions are replete with chapters that recognize and encourage this form of administration of justice?

Several writers have distinguished between native, traditional, customary, or primitive system of administration of justice and the various kinds of judicial dispensations, also called informal mechanisms, practised in some societies (see Allison 1987; Horwitz 1989; Bepela 1987; Burman and Scarf 1990; Seekings 1989). Similarly, Durkheim (1964) distinguishes between mechanical and organic solidarity. In his view simple traditional societies are those societies that resolve their conflict through informal mechanisms, hence in these societies, relationship is organic. On the contrary, as societies become complex, relationships become more formalized and complex types of rules are needed to regulate the behavior of societal members. In such situations relationship are based on mechanical rather than organic solidarity. In this thesis, however, informalism is used to denote both the largely unwritten precedents or traditional, 'primitive', and simple forms of social control practiced in most simple societies, and the various forms or mechanisms outside the 'normal' or formal legal institutions found elsewhere. Informal methods are, thus, those mechanisms outside the purview of formal systems that are largely written and follow codified legal rules, traditions, and norms.

Traditional methods of resolving disputes have been variously described as, native law, customary law, primitive law, or pre-colonial law. The term 'traditional law' is prefered to others that have been used and misused to denote, or imply either laws of savages or uncivilized people. In this vein, my understanding and use of the term traditional law is similar to Nader and Todds (1978: 29) which implies a system of beliefs and practices, largely unwritten, and relative to a particular ethnic group, community, society, dominion or kingdom.

3.1.2. Informal justice revisited

Traditional social control, like modern social control, takes several forms. It ranges from the scornful stare of disappointing parents at a child for misbehaving to the execution of an offender. Varying mechanisms of social control can be identified as either informal (private or largely unwritten) or formal (public or largely written). Private forms of social control could be described as the everyday actions used to express approval or disapproval for the behavior of others. Informal controls could also form the basis for social learning. Social control mechanisms in traditional societies are described as informal methods of conflict resolution in so far as such mechanisms are either oriented towards resolving disputes without stigmatizing anyone as a criminal; re-uniting the litigants; or, not incapacitating the offender; or both (see Nader and Todd 1978; Shaidi 1992; Hoebel 1961; Diamond 1978; Dundas 1921; Cory 1924; Lowy 1978; Driberg 1928; Malinowski 1926).

Traditional societies are generally thought to have no 'specialized' agencies or institutions that create norms. The responsibility of creating and enforcing norms rests with the people through their traditional rulers, clan heads and other identifiable groups. Dispute settlement was, and is, generally geared towards a compromise and reconciliation. This has been described as, 'give a little and get a little', rather than 'winner takes all' in 'complex' or 'modern' industrial societies (Chambliss and Seidman 1982: 40; see also Nader and Todd 1978; 1964; Lowy 1978). Driberg (1928: 65 in Mushanga 1992) has also argued succinctly that, in traditional societies' laws or norms direct:

> how individuals and communities should behave towards each other. Its whole object is to maintain an equilibrium, and the penalties ... are directed, not against specific infractions, but to the resolution of this equilibrium ... The deterrent or purely penal theory does not enter into primitive law.

Similarly, Clifford (1964: 478) has argued that the African concept of crime or infraction was/is socially oriented. The African view crime or deviance as any act or omission that has detrimental effect on the community and not just the individual perpetrator and the victim(s). Collective responsibility was/is therefore the objective achieved in practice as far as crime and its reaction was/is concerned. Collectivity affects people's attitudes and shapes

their conceptions of their neighbors. Hence every adult female or male is regarded as mother or father in most societies in Africa (see Blakemore and Cooksey 1981: 17 in Mushanga 1992). In rural Ghana, and even urban areas, today, it is not uncommon to hear younger people calling older people who have no relationship with them at all - father, mother, uncle, or aunt. Collective responsibility thus, gives credence to social control since it is the responsibility of every adult member of the community to check those who 'go astray'. This constitutes order and discipline among the traditional people. That order and discipline in traditional Africa greatly impressed Gibbons (1936: 81-82) who comments thus; "to an African, good manners are of vital importance - much more than to a European." Similarly, Wight (1946: 34), also impressed by the order and discipline of traditional Ghana, concluded that contrary to what the colonialists believed, "the African is temperamentally law-abiding ..." Although these observations may have changed over the years because of urbanization, mass movement of people, acculturation, and monetary economy, it is still true that traditionalism is very deeply embedded in the life of the African, both in the rural countryside and the urban areas.

The continued reliance on informal mechanisms to settle disputes in most parts of Africa seems to negate Chambliss and Seidmans' (1971: 25-26 see also Durkheim 1964) views that the lower the level of complexity of a society, the more emphasis is placed on informal dispute-settlement mechanisms based on reconciliation, and the more complex a society, the more the emphasis placed on rule enforcement. It must also not be forgotten that, over 70% of the people of Africa live in the rural countryside where traditional methods of social control still prevail, albeit, with little changes. Horwitz (1992: 1) makes a lucid point when she says that community dispute resolution mechanisms are an integral part of traditional Africa. They existed in pre-colonial and colonial, and have existed in post-colonial Africa, changing very little in form and structure. However, Horwitz's view that the traditional court is a patriarchal or male dominated and male directed institution is not shared by this author. This is because females were/are involved in the traditional court

process. Moreover, traditional forms of the administration of justice were/are not autocratic as Horwitz would want us believe. This is because within the same society a variety of procedures could be and were/are used in the course of a single dispute when it is realized that no single procedure is good enough for that kind of problem. Moreover, apart from traditional rulers whose offices were herditary, all other officers of the court are elected. Despite the herditary nature of the office of traditional rulers, they could not be arbitrary because that could constitute grounds for their destoolment. Furthermore, some of these societies, especially, acephalous societies, recognize other institutionlized forms of dispute settlement. For instance, the Ifugao resort to a person of acknowledged prestige as go-between; the Bavarians use *burgermeister*, the Lebanese resort to the services of the *mukhtaar*, the Zapotecs look to the *presidente*, while the Nuer recognize an institutionalized neutral - the leopard skin chief - to mediate in disputes (see Barton 1919; Todd 1972,1978; Rothenberger 1970, Witty 1975; Nader 1964a,1969b; and Evans-Pritchard 1940 cf Nader and Todd 1978).

Vast cross-cultural anthropological literature confirms the use of traditional/informal forms of dispute settlement in several societies across the continents (see Nader *et. al.* 1966; Pritchard 1956; Maine 1906; Redfield 1936; Malinowski 1926; Hoebel 1954, 1961; Snyder 1982; Diamond 1978; Pritt 1966; Driberg 1928; Gluckman 1955; Bohannan 1955; Gulliver 1963; Barton 1919; Todd 1972; Dundas 1921; Gibbons 1936; Ng'maryo 1981). Literature on judges, councils, go-betweens, crossers, duelers, negotiations, mediation, arbitration, and adjudication techniques gives us a fair idea about the range of variations in patterns of formally recognized rules or institutions that relate to the settlement of disputes in specific societies (Nader and Todd 1978:2).

Among the Nuer, an acephalous society of southern Sudan, for instance, disputes are resolved through negotiations and bargaining relationships. The Nuer society has been described as an 'ordered anarchy'. Anarchy, because nobody exercises central political authority to hold the several highly organized major, minor, and minimal kinship groups

together. It is also ordered, because despite the absence of a centralized political system, the people still hold together. According to Pritchard (1940,1956), law and order are achieved by a settled system of compromise through bargaining. Bargaining is not aimed at determining who is at fault or the norm breaker, rather, it is to discover a compromise solution that leaves neither party so strongly aggrieved as to prevent future amicable relationships. The Nuer accept the mediation of an institutionalized neutral, the 'leopard skin chief', who at best is a religious rather than a political leader. The leopard skin chief helps settle all disputes amicably and acceptable to all parties. Similarly, the Tellensi, also an acephalous society of the savannah region of northern Ghana, settles their disputes through the Tendana, the land and religious leader (see Fortes 1967). In these two societies the mode of settlement and compensation ranges from rendering of apology to the presentation of a cow - depending on the nature and severity or gravity of the offence - to the aggrieved victim or the victim's family where a death results from the conflict.

The Akans and other ethnic groups of southern Ghana have similar approaches and mechanisms of resolving disputes among litigants. The only difference here, though, is that, unlike the acephalous societies who settle their disputes through a non-political leader these societies have formalized, hierarchical, institutionalized means and methods of resolving disputes. Chiefs and traditional rulers and councils settle disputes depending on the gravity of the offence. Among the Akans, offences could be divided into two - *afisem*, lesser delicts; and *oman akyiwade,* offences against the state. *Afisem* are generally resolved by either the clan or lineage head if it involves disputants from the same lineage or the heads of the various lineages whose members are disputing. *Oman akyiwade*, on the other hand, is investigated by the whole community through the traditional court. Reparations for the lesser delicts include *mpata,* or *musuyi,* appeasement of the aggrieved or injured party(s) and the gods and restoration of peace and harmony between the disputants or the deviant and the community, while the *oman akyiwade* include *musuyi,* and compensation (see Danquah 1928; Busia 1968; Seidman 1969; Lowy 1977; Adu Boahen 1975).

In the United Arab Republic, Griffiths et al. (1989:10) have noted that "the ethic of community of shared responsibility dominates over the ethic of individual accountability which operates in the more formal, urbanized structures of social control in metropolitan Cairo". Among the Chinese also, there is practically no reliance on formal written laws and attorneys in resolving conflicts and disputes between and among litigants. The Chinese are guided by the Confucian ethic and tradition that enjoins disputants to settle disputes cordially and amicably in the community. Pepinsky (1979:236) suggests that the degree of reliance on formal written law is related to the freedom of citizens' actions and ultimately to the socio-political nature of the Chinese society. The Chinese believe that, reconciliation through mediation and persuasion in resolving conflict is the responsibility of the citizenry, rather than the state. In this society, knowing ones' neighbour is essential in interpersonal relations and community cohesion. Thus, one knows one's neighbors and neighborhood and intervenes to resolve conflicts rather than calling upon an agent of the state (Pepisnki 1979).

Tanzania too offers an incredible example of how informal mechanisms are used in resolving conflicts. In this society, disputants are the major participants in resolving conflicts. The objective of settling disputes is to reunite litigants to ensure peace and harmony in the community. This is considered essential to the community's development. Apart from the traditional courts, various interest groups such as the clan and lineage heads also serve as mediators in disputes. However, the structural re-arrangement of society brought about by cultural imposition has led to the marginalization of these informal mechanisms and an increasing reliance on former written law and legal professionals. Christie (1977) alleges that professionals have 'stolen' conflicts from participants and establish them as their property, especially, in the urban, industrial, and complex society. He calls for de-professionalization of the administration of justice, and proposes a model of neighborhood courts that are victim and lay-oriented to resolve disputes and conflicts.

Among Canadian aborigines, and indeed all aborigines across the world, ample evidence suggests the use of informal mechanisms in resolving disputes. The First Nations (aborigines) of Canada are composed of several distinct and diversified groups with each group holding their own unique concept of justice. However, the basic philosophical assumption underlying all of them appears to be the same: the notion that the offender has hurt the entire society, not just the individual victim, and so steps must be taken to reconcile him/her to the society. The consensus is that justice should be kept 'local' among the people who know and understand themselves better. The aim of resolving disputes among aboriginals is restoration of peace and harmony in the community through reconciliation rather than deterrent and retributive punishment. Hence, in aboriginal societies, several mechanisms, such as, arbitration or the use of elders to settle disputes, abound. The introduction of the European system of administration of justice has overshadowed aboriginal justice. The problem of foreign justice becomes even more acute when justice delivery 'floats' rather than, remains 'stationary': when all the players in the administration of justice - judges, prosecutors, defenders, and police - arrive in the same airplane and leave just after the court sitting. First Nation people may be baffled and feel intimidated by the Canadian criminal justice system. Therefore, they prefer 'aboriginal justice' to the dominant foreign or common law practices that are insensitive to their socio-cultural history and needs. Several studies and reports support the recognition of an aboriginal judicial system. The report commissioned by the Minister of Justice (1991; see also LaPrairie 1992; York 1991), for example, recommended *inter alia,* that government should recognize and encourage the establishment of aboriginal justice systems in communities that are identified to be capable of doing so.

Consequently, the Interlake Tribal Council in central Manitoba has established Native Harmony and Restoration Center to replace the 'alien' courts and jails for the native people in the Interlake region. Under this system disputes are resolved by a mediator who arranges restitution for the victim and counselling for the offender. Contracts are then

signed between the victim and the offender to ensure compliance. Even in serious cases the band wants the RCMP to delay laying charges to enable the Council to arrange reconciliation through arbitration. The methods applied to resolve disputes among the natives are less pervasive, less intimidating, less expensive, and less formalized but, very effective in crime control. The system gives equal opportunity for disputants to state their case and be heard without recourse to attorneys and mediators. The objective of dispute settlement is to bring peace to the community without which there can be no survival given the harsh environment in which they live. Mediation, conciliation, and restitution are therefore objectives achieved in practice by the natives in the various reserves across the world. Studies among aborigines in Australia, Greenland and the United States also reveal profound similarities in the process of resolving disputes (see York 1991; Jensen; Blurton and Christesen; cf Curt-Griffiths 1992).

In Greenland, for instance, the Criminal Code is a fusion of traditional methods of resolving disputes and penal ideas imposed by Denmark. Under this system, lay judges and lay-assessors are used in dispensing justice. The lay people are elected from among members of the community. Sanctions imposed by the courts include placing an offender in the custody of hunters and shepherds for "compulsory training." Fines are the most frequently used sanction. Offenders who commit serious infractions are sometimes warned and admonished instead of being incarcerated. Freedom taking or incarceration in Greenland forms only a minute part of the system of sanctions (Jensen in Griffiths 1992). In summary then, it can be seen that the building-up of colonial institutions has had a displacing effect on traditional institutions in colonial Africa as elsewhere.

3.1.3. Informal judicial dispensation in non-simple societies

The Committee appointed by the Canadian government to explore the possibility of establishing an aboriginal justice system also recommended the incorporation of appropriate aboriginal methods of administration of justice into the mainstream Canadian judicial system. Consequently, the South Island Tribal Council on Vancouver Island wants an Elders Council to assist in various stages in the criminal process: diversion, bail supervision, preparing pre-sentence reports and participating in sentencing. The Council also supervises open custody and probation, and act as advisers and healers in correctional facilities. The Kahnawake have also established volunteer police to keep peace and order in their community. The band has also appointed justices to try summary offences under the Indian Act. Similarly, among the Mohawks of Quebec and the St, Theresa Point band of Manitoba, an offender could be remanded in the custody of his/her uncle rather than the jail and juveniles receive counselling from their elders and others in the community instead of formal or institutionalized therapists (Report No. 34 1991 see York 1991).

Canadian provinces and territories have 'informal' procedures for settling of some of their problems without recourse to criminal courts. These mechanisms largely supplement rather than supplant existing mechanisms of resolving conflicts. These informal mechanisms deal with adjudicating small claims of up to $3000, depending on the province or territory. Parties who avail themselves of these mechanisms are generally not represented by counsel. These informal courts resolve disputes involving tittle to land, libel or slander or malicious prosecution. There are Small Claims Division in several of the Provincial Courts. In Nova Scotia claims are heard by practising attorneys appointed by the provincial government. In New Brunswick and Manitoba, superior court registrars, and Prince Edward Island superior court judges appoint such officers. Where there is right of appeal, appeals normally lie to the next level of court, either an intermediate level, if one exists (County or District court), or to a superior court. The primary objectives of these informal courts are to relieve the courts from their load of work, and encourage

communities to settle their disputes without recourse to criminal courts. It is also to remove the guilty person from the prison milieu and stigmatization. Britain, the United States of America and other advanced societies have similar informal mechanisms of resolving conflicts among their citizenry.

It can be observed from the above discussions that even in former structures some degree of informalism could be contained or tolerated. The conclusion is that developed countries continue to explore every avenue to improve upon existing structures or make changes where feasible. Therefore, it is only logical for developing nations also to explore the posibility of infusing their traditional mechanisms into the imported legal systems.

Part Two

3.2. Processing of crime in Ghana

In Ghana, ideally, criminal charges are instituted by the Attorney-General's (A-G's) Department after police arrest and interrogation. However, the A-G's Department is understaffed and so is often unable to cope with the work load. Thus, the Department has delegated most of its responsibilities to the police. Therefore, the police arrest, interrogate, charge, and, prosecute offenders. Indeed, all summary offences are handled from the arrest to processing by the police. Hence, it is not uncommon to find in most courts in Ghana, one police officer prosecuting, and another, witnessing. As pointed out earlier, there are 15,000 police personnel in Ghana whose quality and quantity appears inadequate to effectively control and prevent crime in a population of 15.1 million. The police are ill-equipped and lack the will and motivation to work because of low wages and in-built authoritarianism and unpreparedness to adapt to changing conditions. Moreover, bribery and corruption as exemplified in tithing and extortion, are deeply entrenched within a Service that is under the firm grips of the central government. Police bosses owe their positions to the government of the day. Therefore, whether they qualify or not, they become faithful servants of their mentors at the detriment of the Police Service and society. Despite the shortcomings of the police, it must not be forgotten that "the lowest police

employee of the civilized state has more 'authority' than all the organs of gentilism combined" (Engels, in Diamond 1971; cf Reasons and Rich 1979: 239).

Most criminal complaints are reported by aggrieved persons and not through the police's own efforts and investigations. When complaints are lodged, the police sometimes delay in responding because of various reasons, but mostly due to logistics: transportation, communication, personnel, and tactical readiness. When an arrest is made, the suspect gives an oral statement to the police. Usually, the police constable writes down the statement in English after hearing the narration in a local dialect. Police personnel write in their own style. This can and does distort the facts of the case because some of the personnel may either not be good at the English language, or litigants' dialect, or may have their own hidden agenda. It is also common knowledge that police personnel have on occasions coaxed suspects into pleading guilty - with the promise of helping them get less severe punishment - to make their work easier. Others have threatened suspects with long periods of remand if they do not co-operate by pleading guilty. Some judges do not take pains to go through the hearing process because of the increasing work load. They rather rely on police reports and sentence accused persons when they plead guilty. Others do not understand the language or dialect of litigants and so rely on interpreters. Some interpreters may not be very conversant with both the English language and legal terminologies and so may mislead the court (see Lowy 1978: 189).

Like most other third world countries, the Westminster judicial process is urban centered in Ghana. Moreover, only a 'privileged' few can afford legal services in disputes. Majority of rural dwellers may not be conversant with and knowledgeable about the workings of the Westminster system. Sometimes the only information an ignorant person gets about a law is when he/she has to pay the penalty for its violation. Litigants may also be intimidated by the formalism and expensiveness of the Westminster legal system. Lowy (1978: 190) has aptly asserted that, court staff, usually younger, better educated, and more socially mobile than the parties in disputes, exhibit social characteristics that distinguish

them from their clients. Their language heterogeneity, formal dress, and manners set them apart. This has a psychological cost to litigants. The differences between lawyers, prosecutors, and magistrates, on the one hand, and the litigants, on the other, are also striking. The swift airing of cases, the magistrate's overt concern with efficiency, court restrictions limiting discussions to legally relevant issues, deference demanded by court personnel, intimidating arrangement of court room space, and written records of the proceedings combine to confuse litigants. The inability of the modern court to relate perfectly and effectively to the rural countryside has resulted in the persistence of the traditional conceptions of justice, although this is weakened by the modern court. It is not surprising therefore that in a survey, respondents ranked the modern court last in order of preference after traditional and even 'ecclesiastical' courts (Lowy 1978: 202-227).

According to Christie (1977), situating courts in urban administrative centers beyond the reach of ordinary people does not make them a central elements in the daily life of the traditional African, but rather peripheral. In his view, these courts are often centralized within one or two large buildings of considerable complexity. Added to these are the several codes - of conduct, of dressing, of talking, and relating to others that those in the court-room must observe. These no doubt are intimidating to litigants and could scare them off. It must also be pointed out that the mere existence of a competent judiciary and well-qualified attorneys are in themselves meaningless unless they are readily available, accessible, and affordable to the citizenry.

In contrast, traditional courts are less formal. The court milieu is less intimidating and coercive, and litigants appear hoping that they will be reconciled. Litigants appear without representation and in a relaxed manner. They appear with the hope that since they are meeting their own people, justice will be fair. Traditional courts deal mainly with facts and cases are not unnecessarily adjourned. Cases are only adjourned to allow negotiations to be concluded by appointed emissaries of the court. As a result, most people resort to traditional courts, family tribunals, and 'ecclesiastical' courts, not only to seek redress and

justice, but also, with the hope that amicable and acceptable solution to their disputes would be found without recourse to the Westminster courts where they will have to engage pleaders (see Harvey 1966 187-195; Lowy 1978).

Since informal justice is less pervasive and cost effective, most people continue to 'act in traditional ways' by resorting to the chiefs' court for redress (see Harvey 1966 187-195). Informal methods of resolving conflicts are justified in so far as they process the offender outside the existing criminal justice institutions and make the best out of community involvement in the administration of justice.

In Ghana and other traditional societies, there is the absence of documentation - statistics - on the cases adjudicated by the traditional courts. It is therefore uncertain how many cases traditional courts deal with each year, although it is generally recognized that these courts handle more offences than the Westminster system, albeit, minor cases. The cases range from pure *afisem*, and *oman akyiwade*, to others that may be classified as summary offences under the Criminal Code of Ghana. The *oman akyiwade* include desecration of rest days, fraughting of traditional norms, values, and beliefs, and swearing of oath without recourse, and the summary offences include assault, stealing, slandering, and the breach of public peace.

The introduction of the Westminster system of judicial administration worked well for the center nation and those at the center of the periphery, that is, the indigenous people they trained to continue from where they left off. However, it can not be said that the system has been in the interest of the masses who constantly suffer imprisonment at the hands of the power elites.

Mediation and conciliation are part of the socio-political life of Ghanaians. The chiefs' mediation role has been recognized by governments, opposition, interest groups, and even those who resent the chieftaincy institution. Ghanaian chiefs have never been confrontational on any public issue(s). Their unique positions as custodians of the national heritage clearly set them apart as mediators and arbiters of conflicts and disputes. There

have been several instances where chiefs have succeeded in weathering the storm of confrontation between conflicting parties, especially, between government and pressure groups. Their mediation has averted imminent break out of hostilities between government and the 'opposition' or pressure groups. They have also mediated to bring about peace and tranquillity between and among segments of the society whose acts and confrontations could have resulted in civil war or severe political and economic consequences. The chiefs' mediation role was paramount in bringing about peace and harmony in 1978 - during the regime of the National Redemption Council military government. During this period there were massive strikes by workers to demand the resignation of the military oligarchy. These strikes resulted in cuts in electricity supply, sit-ins and work-to-rule by doctors and nurses. Chiefs and traditional rulers also succeeded in mediating for the reopening of Ghana's Universities in the 1970s, 1980s and even 1990s, when government closed down these institutions because of student demonstrations.

Part Three

3.3.1. A traditional court sitting in Ghana

As mentioned in section 2.3. 1., I was privileged to observe the proceedings of three traditional courts during my data collection. These are the Okyehene court at Kyebi in the Eastern region, the Dormaahene court at Dorma Ahenkro in the Brong Ahafo region, and Maasehene's court at Maase, Akim Abuakwa, in the Eastern region. The first two are of paramount[14] status, but the third is not. These courts were selected for various reasons but chiefly because of the uniqueness of the chiefs. While the Okyehene, Osagyefo Kuntunkununku is a medical officer by profession, the Dormaahene, Nana Agyeman Badu has a doctorate degree in sociology and anthropology. The chief of Maase, Barima Antwi Bosompem is an agriculturalist. There are equally well-educated and highly placed chiefs in

[14] In Ghana chieftaincy positions are hierarchically arranged. The Asantehene is largely and generally recognized as King of the Ashanti nation. The occupant of the 'Golden Stool' of Ashanti is therefore recognized as the highest in both hierarchy and status of the chiefs in Ghana. Following the Asantehene are divisional and 'tribal' or 'kingdom' chiefs such as the Dormaahene, Okyehene, Ya Na of Yendi, Osie of Avatime, and other numerous persons of such status commanding and demanding obeisance from their subjects. These are called Paramount chiefs and their stools or skins called paramountcy. Although the Asantehene is the highest in terms of hierarchy, this by no means implies that he has power over the paramount chiefs of the other ethnic groups. For a complete discussion of chiefs in Ghana, see, Busia (1968); Arhin (1984); Assimeng (1973); Nukunya (1992) Danquah (1957).

the Ghanaian society. They include, the Government Statistician, Dr. Oti-Boateng; Dr. JK Fynn, the head of Department of History, University of Ghana, Legon, and Dr. AB Adda, the Navropio. Others include, Nana Wereko Ampim a former lecturer in economics at the University of Ghana, Legon, and former cabinet minister; Nana Oduro Numapau, a chartered accountant and the Asantehehene Otumfo Nana Opoku Ware, who is a lawyer by profession. The observations of the courts were made on February 20, March 13, and March 18, 1994. All the proceedings share profound similarities.

At the Dormahenes' court the case involved an *oman akyiwade.* A 55 year old man, Mensah Twene, was accused of visiting his farm on *adae*, a sacred day. At the Okyehenes' court a 45 year old man, Kwasi Kromo, was accused of breaking a communal taboo, that is, swearing an oath of the Okyeman. The Maasehene's court resolved a dispute between two women - Yaa Akyia and Amma Gyampo - who fought over a piece of land. In these hearings both the accused persons and the disputants' pleaded 'guilty with explanation' before they went on to narrate their defence. Pleading guilty with explanation is not recognized in common law tradition, but it is recognized in traditional courts. I was told this means offenders or disputants recognize that they should not have done what they did in the first place. When the accused persons and litigants finished with their 'defence', they were 'cross-examined' by the panel and the gathering before the panel retired to consider the verdict. In the case of those accused of doing acts contrary to *oman akyiwade* they were found guilty. However, their pleas and pleas by members of the audience were also considered before they were set free and strictly charged not to do that again. Token fine of c200 and c100, respectively, were imposed on them. Those who fought over a piece of land were reminded that they have broken the peace of the public and set a bad example in the town. They were charged to be of good behavior. Yaa Akyia who started the fight was however fined c50. Out of this amount, c10 *mpata,* was given to Amma Gyampo. The two litigants were asked to shake hands to indicate that they will not resort to

fighting anymore. They also agreed to the mediation of an appointed arbiter to mediate in the land dispute.

3.3.2. Status of chiefs and traditional courts after 1844

Every society, literate and pre-literate, develops its own methods, procedures, and mechanisms for dealing with infractions. Whether such methods, procedures, and mechanisms constitute law and social control or are mere 'customs and traditions' is a never-ending discourse between and among legal pundits, juridic anthropologists, and those interested in crime and social control. Pre-colonial Ghana, like all other pre-literate societies had several mechanisms for dealing with offenders. Offenders were deemed to have wronged the gods, the living, the dead, and the yet unborn. Consequently, steps were taken to reconcile offenders to society to ensure continuation of the life cycle. Peace-making through reconciliation and restitution were the primary objectives in dealing with offenders. Occasionally, however, dealing with offenders took the form of severe and inhumane punishment, such as, loss of rights, banishment, mutilation or physical dismemberment, or even death: burial alive. Trial was by a panel of chiefs, queen mothers, elders, and other interest groups. However, it was not uncommon for certain offences to be tried by ordeal or magic. Elias (1962); Rattray (1927); Diamond (1978); Shaidi (1992) believes that there was orderly social organization and administration of justice in traditional African societies, the occasional excesses notwithstanding.

Chiefs played an important role in politics, religion, and administration of justice. Traditional institutions, especially, the courts have been described as undemocratic, and shrouded in mysticism. However, Busia (1968); Danquah (1928); Elias (1962); Wight (1946); Ninsin (1986); Sarbah (1905); Rattray (1927); have described the nature and constitution of traditional courts as democratic. These scholars and statesmen believe that the traditional court symbolizes representative democracy because all segments of the society are represented. Rattray (1927:82) has commented on the position and role of the chief in the administration of justice thus:

> To all outward appearance ..., the chief was an autocrat. In reality every move and command which appeared to emanate from his mouth had been discussed in private and had been agreed upon by his councillors, to whom every tribe had access, ... serious departure from the custom would eventually lead to destoolment.

The Coussey Constitutional Committee report of 1947 also concluded *inter alia* that:

> Democratic principles in the main underlie the traditional institutions of this country. No chief, for example, speaks as the head of his state, except with the consent and approval of his councillors who are the acknowledged representatives of the people. To talk of democratic principles is therefore not to introduce a new idea ...

The Coussey report called for the best social spirit in stimulating rapid growth of native institutions by infusing it with modern methods of administration. However, the fusing of the ancient or indigenous and modern or intruding 'civilization', continue to be an illusive dream and a central political problem in Ghana (seeWight 1946).

The Bond and subsequent acts by the British profoundly affected traditional institutions, especially traditional courts. The diminishing power and prestige of traditional courts and chiefs took various forms and dimensions. Among them, illiteracy, migration, new status symbols acquired by people as a result of commerce, through the introduction cash crops, especially, cocoa, education, and white collar jobs can be cited. Perhaps, it was the various Acts and Ordinances that profoundly reduced the power and prestige of traditional courts.

The chief's right to judge and imprison was constantly questioned. Among the questions that arose, is the question, with the introduction of 'modern' bureaucratic institutions, how much power and authority remained for traditional courts? Do chiefs possess inherent jurisdiction or does their jurisdiction emanate from the Crown, and subsequently, post-colonial governments? A satisfactory answer is very difficult if not impossible to find. A discussion of further steps taken by the colonial and post-colonial regimes to subordinate traditional courts to the Westminster system suggests that the power of traditional rulers and courts waned considerably after the Bond of 1844, and the subsequent declaration of the Gold Coast as a colony in 1874.

Several measures were adopted by the British to subdue the powers of traditional courts and chiefs. Seidman (1969: 64) has revealed that the Bill of attainder that had been discarded in Britain since the Bill of Rights of 1668 was used extensively in Africa. In Ghana, for example, they were used against the Asantehene (King) of Ashanti, and the royal family. It was also used in 1860 against the chief of Cape Coast for challenging the British for overstepping their legal jurisdiction. King Aggrey wrote a letter to the Queen complaining about breaches of the Bond by the governor. The chief argued that the chiefs' power or authority was not derived from the British, and that, it was wrong to subordinate traditional authorities to the colonialists. The governor could also deport any person from one part of the country to another for conducting him or herself in a 'manner dangerous and prejudicial to peace and good order'. Exile, thus, became a weapon to intimidate challengers of British authority. Moreover, local lawyers, chiefly, Sarbah and Casley-Hayford, who also cautioned against sanctions and dismissal of chiefs, were threatened with withdrawal of recognition to practice (Kimble 1963; Sarbah 1905; Casely Hayford 1970; Benion 1962). These actions were deemed necessary so that "a few dominant civilized men" could "control the great multitude of the semi-barbarous" people, or "where in the case here, the trustee has to govern a large unsettled territory, peopled by lawless and warlike savages, who outnumber the European inhabitants by more than one hundred to one" (The King vrs. The Earl of Crewe, Ex parte Sekgome, 1910 cf Shaidi in Mushanga 1992:11 see also IGP versus Asare Panin{1927} in Ghana Law Reports 1969).

Furthermore, chiefs could be arrested, detained, indicted, or restrained for punishing their subjects for offending. Moreover, decisions of the traditional courts could be annulled by the governor or the Supreme Court. In 1880, for instance, an Akwapim traditional court presided over by the paramount chief, Kwame Fori, arrested one Bruce, a subject for forcibly raping a girl in the bush. Bruce had earlier refused the court's summons to appear before it to explain his behavior. Bruce resorted to the governor's court which ordered the chief (president of the court) to pay 30 pounds. However, the Supreme Court

reversed the governor's decision and pointed out that unless such power had been taken away by the governor, the chief acted within recognized limits and powers allowed native courts (see Kimble 1963; Metcalfe 1964; Sarbah 1905; Casely Hayford 1970). In a preface to the judgment of this case, the chief justice remarked that;

> no doubt there are some native customs which are more or less inflexible, ... native custom generally consists of the special circumstances of the case, ... but native customs are not inimical to society per se if it works in the best interest of the people.

Although a welcome judgment, a close study reveals that this judgment implies that a superior authority had allowed traditional courts to operate on a limited scale and that the powers of the traditional courts could be terminated at any time.

Similarly, in Oppon versus Ackinie (1897) the Supreme Court ruled that the power of arrest and incarceration by chiefs had been exercised by the "defendant and his predecessors as far back as the memory of living witnesses can carry us, as one of the royal prerogatives" (Kimble 1963; Metcalfe 1963; Sarbah 1905; Casely Hayford 1970). However, the court ruled that only customs that strengthened the doctrines of equity, good conscience, and natural justice should continue to operate. In this case, one Ghartey brought a charge of bribery against another person, Otchafoo in the court of Ackinie, chief of Aikunfie. Oppon stood surety for Otchafoo. Otchafoo was mulcted in costs and his surety called upon to pay. When Oppon refused and was jailed, he sued for wrongful arrest and imprisonment at the District Commissioners court at Saltpond which was upheld. Ackinie was fined 5 pounds and 11 shillings costs for wrongful imprisonment. The District Commissioners' court ruling was affirmed by a District Court. Ackinie appealed to the Supreme Court and his appeal was upheld. The decision of the Supreme Court seems a victory to the native courts. However, subsequent acts by the courts and the executive shows that this was not the case. Why chiefs resorted to an alien court and authority for affirmation of their actions is still unexplainable. However, such and similar acts imply that the chiefs themselves accepted the superiority of the colonial institutions.

In the case Mutchi versus Kobina Annan and Kobina Nketia (1907), Chief Justice, Sir William Brandford-Griffith, held that, chiefs exercised their jurisdiction only with the consent of the Crown. He explained that this had been implied in both the 1892 Supreme Court Ordinance and a 1901 Orders in Council. This statement was unchallenged and so became a policy and law. Sir Brandford's action was not surprising because he had opposed and discouraged native courts since his arrival in the Gold Coast. He described native courts as "remnants of barbarism" and looked forward to the day chiefs would lose their power and "we shall rule through the District Commissioners ... instead of depending on the tottering and uncertain power of the Chiefs" (Kimble 1963: 464 see Metcalfe 1964; Harvey 1966; Bennion 1962).

Legal enactments designed to curtail the power of traditional authorities include the Compulsary Labour Ordinance of 1895. The Act compelled chiefs to provide labor to the central government for public work: to maintain roads and telegraph lines (Kimble 1963; Metcalfe 1964; Bennion 1962). Chiefs who refused to release their subjects were liable to criminal prosecution. As a consequence for refusing or 'neglecting' to call out carriers for public purpose, the chief of Cape Coast, Kudjoe Imbra was convicted in 1896. In 1904, through the Chiefs Recognition Ordinance, chiefs were made agents of the central government. This Ordinance empowered the British to recognize and derecognize chiefs. It also made them beneficiaries of central government allowance. Thus, the power, prestige, and influence of traditional authorities were gradually eroded by the colonialists. Although conscious efforts were made to undermine the influence of traditional authority, the colonialists never made any attempt to adapt their legal system to suit the local milieu. Moreover, little or no attention was paid to peculiar local conditions that would have given the laws more African flavor and help in the process of fusing or integrating the traditional judicial system into it.

The official policy of the British was one of accommodation through a dual mandate, but the unofficial policy was to coax the natives away from allegiance to their

traditional rulers and institutions. This was done through various means, both covertly and overtly, such as, outright rejection of native institutions and the introduction of Christianity. Christian missionaries also proclaimed the 'gospel of redemption to savages, barbarians, and sinners'. Crooks (1923:280) has revealed that the Methodist and Anglican churches (from England, better known in Ghana as the Wesleyan and English Church Mission, ECM, respectively) were specifically instructed and encouraged by the British government to provide for "... chiefs ... to send their sons to receive an education which might fit them to be of benefit to their own people directly ... or indirectly ... to benefit British interests." Moreover, schools were established to teach Western liberal education, values, and ideas. Construction of social services such as hospitals to treat the sick for free were also encouraged. No wonder, Methodism and mission schools are predominant in the south-western coastal belts of present day Ghana. There are even speculations that the British distributed canned food such as sardines, milk, sugar, floor, gin and wine and tobacco products, to the coastal people for free. This made manipulation and assimilation much easier. The period also saw some chiefs accepting positions in government. For instance, Nana Sir Ofori Attah 1, Omanhene of Akim Abuakwa - who was knighted for upholding colonial interests and not for any significant contribution to his people - and Nene Azu Mate Korle, Konor of Manya Krobo, became ex-officio members of the legislative assembly in the 1940s. This broke up whatever shred of unity that remained for the traditional authorities and thereby compromised their fight against 'foreign' domination which they themselves initiated.

The Native Jurisdiction Ordinances, 1878 and 1883, and the Native Administration Ordinance of 1927 allowed traditional courts to coexist with the Westminster judicial system. The claim to inherent jurisdiction by chiefs was based on an ancient prerogative of hearing suits and complaints between and among subjects, and sub-chiefs. This was based on the chiefs' rights of suzerainty over their people under immemorial customary law. The government grasped the nettle for the first time in 1944 to pass the Native Courts

Ordinance. Under this Ordinance, traditional courts were graded A.B.C. and D. in descending order of importance. The Ordinance further defined precisely the nature and limits of the jurisdiction of the traditional courts. Section four of the Ordinance states that chiefs could not exercise any judicial functions unless they have duly been empowered so to do by a warrant under the hand of the Governor. This ordinance was based on recommendation of the Blackall Committee of 1943. The Blackall Committee had recommended, *inter alia,* that traditional courts be graded into categories A.B.C. and D., each with specific power and jurisdiction according to the status of the chief. Moreover, 'natives' or Africans from a particular locality or traditional area were binded by that areas' native laws. However, non-native Africans or 'strangers' from other traditional areas or 'settlers' were binded by English common law. Also, this ordinance finally disposed of chiefs' claim of inherent jurisdiction. In the Ashanti region for instance, litigants were persuaded and encouraged to take their disputes to the British courts (Harvey 1966; Casely Hayford 1970; Kimble 1963; Elias 1962; Apter 1966).

In 1948, the Watson Commission recommended the establishment of a committee to study the possibility of reforming and developing traditional laws and courts that could be assimilated into a general body of national law. The Coussey Committee of 1947 also offered suggestions to improve the traditional courts, including the appointment of non-members of state or chiefs' councils, reduction in the number of grades of courts, supervision of traditional courts by the chief justice and judicial officers working under him, and direct appeals to the Supreme Court (Harvey 1966:208-209). Born out of this recommendation was an entirely African commission, the K.A. Korsah (later Chief Justice) Commission of 1949. This Commissions' report was scathing. Nothing positive was found about traditional courts. The report was, however, not surprising because African lawyers had been excused from pleading at the traditional courts. Therefore, this offered them an opportunity to 'crucify' the traditional system of administration of justice. The findings included allegations of mismanagement, corruption, despotism, nepotism, and

incompetence. The Commission made sweeping and far-reaching recommendations including the replacement of traditional courts with a new system of courts, Local Courts, under the chief justice and where advocates would be permitted to represent clients. Local Courts could have unrestricted jurisdiction as to person, and stipendiary professional justices could be appointed. In the interim, however, stipendiary non-professionals could be appointed because it was recognized that there were not enough lawyers in Ghana. An interministerial committee was appointed to study the Korsah recommendations. This committee also lamented over the unavailability of qualified lawyers and absence of infrastructure as the basic hindrances to the establishment of the Local Courts. For several years, the establishment of the Local Courts remained on the drawing boards, largely due to the rush to independence, and also, the problems enumerated above, coupled with an anticipated opposition from traditional rulers.

In 1958, a Local Courts Act was enacted. Under this Act traditonal courts were to cease to operate on the establishment of local courts. Instead of making the new local courts function under the chief justice, the new nationalist government of the Covention Peoples' Party, led by Kwame Nkrumah, preferred to place it under the Interior Ministry, and the salaries of the officers of these courts paid by the Ministry of Local Government. Nkrumah's action was not surprising because two institutions he feared or suspected as opposition to his rule were the Judiciary and the Ghana Bar Association. Therefore, placing the local courts under the judiciary could offer them the opportunity to stifle his visions or 'development' initiatives. Suffice it to say also, that local courts were established to usurp the powers of the traditional courts because Nkrumah resented traditional chiefs, whom he accused of being stooges of imperialism. Nkrumah had persistently warned that chiefs will 'run and leave their sandals' or their authority behind them. Therefore, the whole concept of the local courts was meant to fulfil the whims and caprices of Kwame Nkrumah and not really meant to bring the administration of justice to the rural areas as Gyandoh (1989) has implied or asserted.

Local courts proved no better than the traditional courts. Appointment to this court was based on political considerations rather than qualifications. Moreover, illiterates or in the words of Harvey (1966: 230) 'noneducables', were appointed magistrates and officials of the local courts. Besides local courts, governments, especially, the Provisional National Defence Councils' (PNDC) flirtations with Public Tribunal in an attempt to bring justice to the doorsteps of the people of Ghana have not had any long lasting positive impact largely because of the impossibility of staffing a radically different system, and the abuses, excesses, and intimidation associated with these tribunals.

The coercive powers of English courts undermined the authority of traditional consensual forms of dispute settlement in Ghana. The imposition of British rule implied reduced status and prestige of traditional customs, institutions and rulers. Allegiance to paramount and divisional chiefs by their subordinates were undermined by some of these subordinates who preferred to deal directly with the central government. The British legal system appears unrelated to the worldview of the natives. While British common law emphasizes the protection of individuals and their rights, the traditional concept of justice tends to emphasize the good of the community (Brillon 1983; Amissah 1971; Daniels 1964; Rattray 1947). It is the emphasis on the good of the community that makes customs of the past continue to survive and influence the present. Rizkalla (1974) believes that, the present dualism between ancestral social structure and a new way of life can be fused together since the ultimate aims of both are social control. The colonialists and nationalist governments seem to have worked resolutely to discourage national spirit. What they seem not to have realized is that they were and are not dealing with savage people without a past, but people who would stick to their culture and heritage no matter the outcome. No wonder, therefore, that despite all the caricature, traditional courts still function in the length and breath of Ghana, even to the amazement of its opponents.

The above discussion, though non-exhaustive, shows the extent to which orchestrated attempts have been made to either curtail or abrogate the judicial functions,

power, and prestige of traditional authorities. In theory a dual mandate was recognized, in practice, however, the traditional courts were supervised in the form of restraining order, appeal to Wesminster courts and threats of imprisonment. Also, illiteracy, lack of codified judicial precedence, migration, new status symbols brought about by cash cropping and white collar jobs, and, sometimes arbitrariness of the traditional courts, all contributed to the demise of the influence of traditional authorities. Traditional authorities were, and are, by no means perfect. However, imperfection is a characteristic of every human agency.

There have been several instances where judges and officials of the adminsitration of justice have been found not only to be corrupt and inefficient but have displayed clear biases and travesty of justice[15]. Despite the shortcomings of the modern system, criminal justice institutions have not been scrapped simply because few people have been found wanting in the discharge of their duties. Therefore, however imperfect traditional institutions, it should not be made to die a natural death. Moreover, there are several positive attributes of these courts that could and can be incorporated into the Westminster system. In Ghana today, most people in both rural and urban areas continue to resort to the traditional courts for redress. Although, courts are not central elements in the daily life of the Ghanaian, the Akan saying, *Asem bone nti na ahenfie si ho. Enti se wohwe na se maye wobone a saman me. Saman me na meba.*, "it is because of deviation and litigation that there is a chiefs palace {court}. Therefore you can resort to it to seek redress and restitution if you think I have offended you. Summons me and I will respond so that there will be peace and tranquility between us", is valid today as it has always been. This reflects their desire to resort to the chief to intervene to resolve disputes without recourse to threats and intimidation or even harm and destruction.

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[15] Instances of travesty of justice, inefficiency and delays in court proceedings in the past led to 'instant justice' such as necklacing and lynching in Ghana. For example, in the 1970s and early 1980s because of mistrust of the Judiciary, people resorted to lynching and necklacing or burning suspects alive by tying tyres around their necks and setting them ablaze. In the 1980s also, the PNDC governemnt dismissed several judges and magistrates on grounds of inefficiency, corruption, gross dereliction of duty, drunkeness and travesty of justice.

Chapter IV

Criminal Justice And Penal Policies
Penal Policy In Ghana
Data On Incarceration Rates: Judicial And Prison Statistics

4.1.1. Part One Introduction

As established at the begining, the thesis attempts to analyze sentencing policies and practices of Ghanaian courts. Part one of this chapter therefore discusses penal and criminal justice policies. While part two gives an overview of Ghana's penal and criminal justice policies, part three reviews and evaluates sentencing practices of the courts with a view to determining their impact on the prisons and society. Also, an history of the prison and incarceration, and prison overcrowding, informed by prison statistics, are analyzed in an attempt to show the nature of overcrowding and its effects on offenders and society.

It has been argued that sentencing policies and practices are, largely, designed to reduce and prevent crime. However, such policies have constantly been criticised as having negative consequences on society (see Reiman 1990; Lea and Young 1986; Christie 1977; Levine *et. al.* 1980). Most crime policies assume that the masses will automatically get involved by participating in crime prevention once such policies are made. Indeed, this may have not been the case. Mass involvement and participation in crime prevention may have never been accomplished. The absence of constant and effective education may have also resulted in a situation whereby people have greatly misunderstood laws and the operations of criminal justice institutions. Current sentencing policies and practices may have given opportunity to a few people in enforcement positions to misuse the law. When this happens criminal justice institutions may seem to be thriving on the sense of direction of a few people. Moreover, bureaucratic formalities and red-tape, and the uncompromising attitude of criminal justice officials, may have conspired to erect barriers and prevent researchers from obtaining data to inform reform initiatives. A comprehensive crime policy that meets

the aspirations of society, frowns upon wrong doing, but removes the culprit from the negative effects of incarceration, and which recognizes victims' needs could be the ideal.

4.1.2. Criminal justice and penal policies

Accelerated crime rates, increasing cost of crime control, and uncertainties of the 'rehabilitation model' have led to calls for tougher penal policies and sanctions. Such calls have greatly influenced the United States and British penal policies over the past two decades, especially, during the 1970s and 1980s: the Republican and Conservative regimes. The trend has not changed in the 1990s, even with the coming into power of the Democrates in the United States led by President Clinton. Clinton has succeeded in getting the Brady Bill on hand gun control passed, and plans to increase police personnel by 100,000. He has expressed his belief in the death penalty as an effective mechanism to deter criminals, and, is working assiduously to widen the scope of Federal capitable offences.

Recent developments in Canada, especially, the early release on parole and subsequent re-offending of some 'ex-cons' has raised public outcry and discontentment with the criminal justice system. If newspaper reports are reliable, then one can aptly suggest that the majority of Canadians want tougher crime policies which may include the death penalty. Such 'popular' demand for stiffer penalties has already led to a review of the Young Offenders' Act that now prescribes stiffer punishment for young offenders (see Doobs and Roberts 1990). It must be pointed out that, 'law and order' policies are now very much in vogue and resonate with public insistence on increased protection from 'street crime'. Experience has, however, shown that, the tougher the laws of a society, the more people devise ways to circumvent such laws. Moreover, penal policies that respond to demands of public/political panics about street crimes may only tend to aggravate the situation. It must not be forgotten, also, that as the saying goes, 'violence begets violence,' therefore, if societal reaction to crime smacks of violence, offenders will definitely be more violent in executing their plans. The Canadian Church Council on Justice and Corrections

(1994: 28) has therefore cautioned the public that, "neither victims nor offenders are served by popular law-and-order decisions on crime and punishment."

Chambliss (1969); Quinney (1977) and Hudson (1993) believes that in England, U.S.A. and Canada, penal policies have changed to the direction of alternatives but criminal law operates in the same way it used to be: a middle-aged, middle-class suppressing and repressing crime of the underclass. Hudson (1987:chap. 4) also claims that, sentencing patterns reveal vast differences between serious crimes and crimes taken seriously. According to her, crimes taken seriously are street crimes of the fragile, such as, the poor, women, and the uneducated. It must be emphasized that, no amount of laws and police personnel will reduce crime if the structural and institutional defects of criminal justice systems are left unreformed. Therefore, crime control policies and strategies should be seen beyond severe penalties and increased police patrol. The purpose of analyzing penal policies is to distinguish between what government can or can not do about crime. In other words, analyzing penal policies is to determine how well government policies are designed to cope with and control crime.

Penal policy as an element of public and social policy has the ultimate justification and aim of contributing to the greater public interest, rather than contradicting it. Penal policy is a strategy, or set of strategies, that integrate values, and promote the general welfare of society, victims, and offenders alike (Barnard in Bottoms and Preston 1980: 151 see also Ekstedt and Griffiths 1988; Hudson 1993; Waller 1979). Thus, the general frame and principles of policy and policy making are relevant to the penal enterprise as well (Ekstedt and Griffiths 1988). Consequently, the appropriateness of a particular penal policy may be judged in the context of public and social policies, and to a particular standard of welfare (Hudson 1993; Dye 1986). Penal policies may sound plausible but if its ultimate goals are ineffective or unattainable it may be a terrible failure. Simple measures designed to crack down on criminals often go awry. Therefore, to be effective, crime policy must be multifaceted or multi-dimensional, and far-reaching in its impact (Levin *et. al.* 1980). A

crucial question for theoretical and empirical analysis is whether penal policy is merely the ultimate means to enforce a set of social policies, that is, the stick behind the carrot (Barnard *op cit*). If the whole business of penal policy is to serve social goals by redressing wrongs done to society, induce offenders to make restitution to society, and, reinstate victims to their former positions, then the excessive use of incarceration that results in pitiful inadequacies in the offender is in nobody's interest (see Hudson 1993: 159; Lea and Young 1986; Mathews 1990; Coyle 1993; Sumner 1982).

Snarr (1992:60) asserts that penal policy and thought continue to swing from one extreme view to another because decisions on basic issues, such as deterrence, are made largely on a belief rather than on logical and scientific grounds. Christie (1977) also sees penal policies as hanging on either classicist or positivist ideals. These authors believe that such entrenched ideological cleavages ignore other workable ideals, and thus, ensure the continued use of law to dominate the working class. Hart (1968) rather thinks that, penal policy must acknowledge a single justifying objective, that is, the control and prevention of crime through mixed strategies of punishment, such as, deterrence, incapacitation, reformation, and restitution through peacemaking.

There is seldom, if ever, a consensus over the directions and goals of criminal justice policies. There are always competing paradigms although there seems to be an overwhelming consensus and evidence to suggest the inadequacies of sentencing policies and incarceration in all societies. Conservatives tend to follow the rational, incremental and elitist approaches in resolving criminal justice problems. In their view, although it is the power elites who make policies, such policies invariably respond to demands of public opinion. Penal policies are, therefore, mediated by circumstances peculiar to the society. Thus, crime policies are made in the face of extant values, aspirations, ideology, resources, and constraints (Wilson 1975; Rein 1976).

Radical criminologists believe that, it is only socialist policies that can substantially reduce crime (Young 1986; Cohen 1982; Christie 1977; Reiman 1990; MacLean and

Milovanovic 1990). Such socialist policies, they argue, must involve those affected by crime, that is, the working-class people. These policies must also be constructed on, rather than against the familiar structures of social control (Cohen 1982; Hinch 1992; Christie 1977). Neo-Marxists, for instance, believe that there is, "a discernible socio-economic power structure that subtly but implacably determines policy outcomes" of capitalist societies. Such policies are largely designed to hold the masses in check. Reiman (1990:1-10) has described the failure of penal policies as *Pyrrhic defeat.* This is because the failure of penal policies yields such benefits to the power elites that, it amounts to success. Reiman (p1) asserts that any reduction in crime should not be attributed to criminal justice or penal policies, since criminal justice policies are examples of the use of law and threat of law to balkanise people on the margins (see Pal 1989; Erikson 1966; Hinch 1992). Cohen (1982) submits that criminal justice institutions/policies should be demystified in the interest of the working-class people. In his opinion, restitution, reparation, and peace-making between and among litigants and/or offenders and victims should be the major determinants of penal policy.

Part Two

4.2.1. Penal policy in Ghana

Most public policies have their reference in statutes. Every policy-making process may include the formulation of law and their implementation. However, the policy making activity that gets the most public attention is the creation and re-adjustment of Criminal Codes. These codes are legislative definitions of criminal behavior and perceptions of punishment for different categories of criminal behavior. Criminal justice and penal policies are concrete examples of public policies that are entrenched in laws and statutes. Therefore, in discussing and evaluating sentencing policies and prison overcrowding in Ghana, I discuss the statutes that crystallise these policies: the Criminal Code (CC) and the Criminal Procedure Code (CPC), Acts 29 and 30, 1960. Although, several portions of the Codes have been amended and re-amended to reflect current 'societal thinking', the various

sections still provide clear guidelines and basic principles to be followed by the courts (see NLCD 84 1966; NRCD 90,159, 1972; 1979; PNDCL 42, 1982; Criminal Code {amendment} Acts 1971 and 1993). It is ironic, however, to observe that the amendments have not touched on, or, fundamentally changed sections 294 of the CPC pertaining to sentencing. Where amendments have affected this section, it has rather widened the scope of the punishments than reduced it.

The various provisions in Act 30 provide clear guidelines and basic principles for the courts to follow. Clearly then, Act 30 as the sentencing policy of the courts, is the bulwark of the administration of justice in Ghana. The different kinds of punishments prescribed under section 294, of Act 30 of the CPC are, death; imprisonment; fine; detention; payment of compensation; and liability to police supervision. Even with its limited scope, only the first three sanctions have constantly been applied, with imprisonment being the most widely and excessively used. The courts have wide discretionary powers in determining appropriate and/or fitting sentences (CPC secs., 299; 300; 301; and 402). Such discretionary powers are generally within the confines of Act 30. For instance, section 300 states that, where an offender has been convicted previously of any felony, he/she is liable to suffer imprisonment for fourteen years, and police supervision for five years. The courts again use their discretion in determining whether sentences should be concurrent or consecutive. Section 301 of the CPC, provide that:

Where a person after conviction for a crime is convicted of a different crime, either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence which is passed upon him under the subsequent conviction, shall be executed after the expiration of the former sentence, unless the court directs that it shall be executed concurrently with the former sentence or any part thereof.

Under section 402 of the CPC, the High Court is enjoined to pass a sentence of preventive custody,

where an adult offender is convicted of an offence and has been previously convicted of, two or more offences, each of which is either a felony or misdemeanor and it appears to the High Court after inquiry into the circumstances of the case that by reason of criminal habits or tendencies of the offender, or of his association with persons of bad character, it is expedient for the protection of the public that he should be detained in custody for a

substantial term, the court may in lieu of any other sentence pass a sentence of preventive custody of not less than five years as it thinks fit.

A person convicted of a crime under sections 124; 128; 131; 138; 140; 145; 152; 154; 158; 160; 165; 239; 252; 253; and 260, of the CC (Act 29) shall be liable to imprisonment for a term not exceeding twenty-five years. These rules guide the courts in passing sentences on offenders. It can be submitted that the latent and manifest objectives of both the CC and the CPC are, harsher punishment to deter people from re-offending. These have been aptly stated by His Lordship Mr Justice ENP Sowah, former Chief Justice of Ghana, thus:

> That punishment must be retributive in the sense that the criminal merits his just punishment for a moral or social wrong which should relate to the harm done by him;that punishment must be such a nature as to deter criminals from repeating their offences as well as deter others from committing similar acts; that punishment should result in the reformation of the offender with ultimate aim of integrating him into society; and that punishment must appease public outrage and condemnation of the offence while at the same time aim at protecting the public from acts of criminality (1989).

Incarceration thus serves the purposes enumerated by the Chief Justice better than other methods of dealing with offenders. Several decisions of the Supreme Court attest to the allusion that deterrence, exemplified by incarceration is the single most important and 'effective' policy attained in practice by the courts.

In the Republic versus Adu Boahene (Ghana Law Reports {1 GLR} 1971:70-78) the Court of Appeal in dismissing the appeal of the defendant explained that;

> where a court finds an offence to be very grave, it must not only impose a punitive sentence, but also a deterrent or exemplary one so as to indicate the disapproval of society ... Once the court decides to impose a deterrent sentence, the good record of the accused is irrelevant.

What is more interesting or intriguing in this judgment is the assertion that the "trial judge must have taken into consideration the prevailing wave of robbery in the country before imposing such a deterrent sentence." This statement is both interesting and intriguing because the "prevailing wave" of robbery must have largely determined the fate of the accused person, and not the facts before the court per se.

Similar reasons were given by the Court of Appeal in dismissing the appeals of the Republic versus Kwashie (1 GLR 1971: 488-496), the Republic versus Apaloo (1 GLR

1975: 156-189), the Republic versus Bosompem (1GLR 1974: 43-165) and the Circuit court that sentenced Yaw Brenya to fifteen years for offering to sell his daughter (Republic versus Yaw Brenya, cf. West Africa 12-18 September 1994:1595). In the case of the Republic versus Kwashie, the Court of Appeal ruled further that a trial judge is not obliged to give reasons for the sentence he or she passes. In all these and similar cases, the courts in Ghana have demonstrated that sentencing a person to a term of imprisonment not only shows the disapproval of society, but also, it serves as a deterrence to the offender and would-be offenders. Therefore, where an offence is grave, the sentence must also be severe or punitive in the form of long term imprisonment to show the disapproval of society. From these and other verdicts of the courts it can be aptly concluded that the official sentencing policy of Ghanaian courts is deterrence through punitive sanctions of incarceration.

Ghana's penal policies and sentencing practices do not seem to be reflective of the totality of the basic values of the Ghanaian society. These policies are primarily made-for-export judicial dispensations introduced by the British and have not undergone any significant changes. The administration of justice is firmly knit within the general framework of colonial policy of taking total control of the people and safeguarding the interests of the elites. Hence, the colonial mentality that traditional courts are 'unfit to administer justice' still permeate in the thinking process of the power elites. The present sentencing policies are no doubt the outcome of governmental choice. The manifest aim of these policies is to attain social order but its latent implication is, the maintenance of the status quo. This system of administration of justice seems to be hopelessly inadequate. Therefore, an integration of the traditional and Westminster systems of justice is a felt need if lasting solutions could be found to the crime problem.

The type of policy to control or reduce crime, whether deterrence, rehabilitation, decriminalization, diversion, or 'traditional', depends upon the motivation of offenders, perception of the general public, and the object of the crime (Levin *et. al.* 1980:80). Under

the existing judicial arrangements or order, the influence and threat of incarceration may be described as very pervasive. Sentencing policies appear counter productive. There is a need for Ghana to make choices - choose between alternatives that takes into account its unique traditions and existing policies that have largely proved ineffective. Pragmatism and eclecticism should guide and inform the development of new criminal justice and penal policies and practices. Fresh penal policies may not correct all the depredations or deficiencies the present policies may have created. However, it could ameliorate the offenders' agony and plight in the short run, and, in the long run, benefit society (Hudson 1993; Gaylin et al 1978).

Merely passing laws and the development of machinery to institute and enforce these laws may not guarantee that changes will occur or that the laws' intentions or purposes could be realized, carried out or served. Merely putting laws in books often assures very little for realizing the goals of the law (Levin *et. al.* 1980). There appears to be the need for a well thought-out penal policy. The formulation of such policies could involve the people through their communities and accredited community leaders: District Assemblies, chiefs, town and village development councils, and opinion leaders.

4.2.2. Objectives of English criminal law and courts in colonial and post-colonial Ghana.

Formulation or discussion of penal policies does not take place in a vacuum. Usually, but not always, it takes place in a concrete historical and social setting. In what context then did English penal policies evolve in Ghana? Penal policies in Ghana were dictated by the 'dominant criminological tradition': the classical evangelical ideas of Bentham and Beccaria, informed by Judeo-Christian dogma of fall and redemption, and the civilizing mission of the British. Consequently, swift and exemplary punishment, embodied in English common law practices and procedure, were deemed ideal in fulfilling the missionary goals of the colonialists. Also, the inculcation of the 'fear of God' through

the teaching of the Bible, were enforced to suppress native customs and beliefs deemed barbarous and abomination to civilization, and contrary to the wishes of God. Thus, English criminal law of nineteenth century designed to meet the demands of 'sound' men to 'keep the multitude in order' by way of exemplary deterrence was implemented wholesale in the Gold Coast (Seidman and Eyison 1969: 83; Harvey 1966). Suffice it to point out that, English criminal law of the nineteenth century appears to have been archaic, dated, antiquated, and anachronistic - dating back to 1285 - at the time it was implemented in the Gold Coast/Ghana (see Amissah 1981).

The theory of criminal guilt embodied in the 1892 Criminal Code followed the common law in general. The Code favored general deterrence as its implicit object (Harvey 1966: 152). Seidman and Eyison (1969:67) have suggested that, general deterrence and harsh exemplary punishments are deemed natural corollaries. While general deterrence treats offenders as a means for guaranteeing the good order of society, special deterrence rather suggests that treatment of offenders ought to be directed at ensuring that they do not repeat their crime. This slides into the notions of reformation which the colonialists were eager to avoid.

English 'judges' in the Gold Coast generally applied the principle of general deterrence as the official sentencing policy because it was both in line with the prevailing British policy and the civilizing mission. The imposition of English penal system and procedure were deemed, "a triumph of enlightened humanism over barbarity and of rationality and scientific knowledge over irrationality and prejudice" (Cohen 1982: 90). The policy of harsh and exemplary punishment would be deeply appreciated when incarceration rates are analyzed.

Since independence in 1957, Ghanaian courts continue to rely on English education, legal tradition, norms, and values and to a large extent, membership of the English Bar to give an English orientated content to the criminal law (Harvey 1966: 214-215; Seidman 1969; Elias 1963; Amissah 1981). Areas such as *mens rea,* and specific

problems of intent, mistake, mental abnormality, provocation and absolute liability have been given common law interpretation, forcing it in the direction of objective *mens rea* and general deterrence. Indeed, the courts have become institutions through which governments, colonial or otherwise, have imposed their policies "behind the cloak of magisterial propriety ..." (Krobo Edusei 1957 cf Amissah 1981: 70). The same inclination reflects the sentencing practices of the courts (Seidman and Eyison 1969: 82; Amissah 1981; Gyandoh and Griffiths 1969; Gyandoh 1989).

Sentencing policies of the courts have largely reflected the penal philosophies of the colonialists. Ghanaian judges seem to be pre-occupied with upholding the law. Most lawyers, like priests in their sacerdotal attires - wigs and gowns- in the torturous tropical sun simply refuse to adapt to change. Traditionally, members of the Bar and the Bench are economically, and politically conservative. These are also neo-classical ideologues most of whom may and do resent and reject any consideration for alternatives to the existing conventional order of doing things. By clinging too much to English legal tradition, rules of flexibility could sometimes be overlooked as laws are stretched to their limits. Hence the harsh, negative, unpopular, and ineffective sentencing practices, exemplified by long periods of incarceration of first and repeat offenders, resulting in overcrowding in the prisons. Seidman and Eyison (1969: 82-83) have pointed out that sentences imposed by the courts admit of no systematic analysis. Indeed, they suggest that judges have no clearly defined policy. The inevitable result is that, retribution and general deterrence have emerged as the objectives attained in practice. A fundamental review of penal policy is required (see Gyandoh 1989; Griffiths 1989; Amissah 1981; Seidman 1969). The excessive use of incarceration appears to have rather contributed to the upsurge of crime in society instead of deterring offenders and would-be offenders from committing crime.

The attitude of post-independence governments, both civilian and military, towards offenders has been one of 'getting tough' through hasher sentences. The power elites[16]

[16] Power elites refers to both the civilian and the military regimes of Ghana since independence. There has been several discourses on the concept of power which I do recognize. This essay is not leaning on any one particular perspective of power as

believe that longer sentences and harsher prison conditions will deter offenders and reduce crime. The laws they enact show their crime control mentality and attitude towards offenders.

In 1960, for example, the Convention People's Party government enacted the Criminal Detention Act. Under this Act, offenders could be detained indefinitely without trial. There was also the Habitual Criminals Act of 1963. Under this Act, third offenders could be sentenced to indefinite terms of 'productive hard labor'. The parliamentary debates of the Criminal and Criminal Procedure Codes and the establishment of a Special Criminal Division of the Supreme Court to try specific offences (1960) was both interesting and intriguing. Mr. Tawia Adamafio, the then Minister of Information and Broadcasting submitted that, "in the courts we do not get justice, we get law. It is justice we want and that is what is going to be created" (see Amissah 1981). Another member of parliament, Mr Kweku Akwei similarly asserted that criminals should be treated with all the harshness one can think about. Kweku Akwei saw harsher court sentences and harsh prison conditions as sufficient deterrence for those who engage in criminal activities.

Similarly, in the debate on the 1962 Prisons Bill, members of parliament felt that the prison was too soft in treating offenders. Members suggested harsher treatment to make life unbearable for the regular visitors. It also came before the Asafu-Adjei Commission in 1967 that President Nkrumah himself instructed the Director of Prisons to make prison conditions very harsh for offenders by serving them with only gari[17] and water. Nkrumah's directive was described as irresponsible by the Commission. Such utterances and actions show government's belief that criminals had been softly treated in the past and so tougher measures are needed to deal with them.

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discussed by social scientists. However the Paretoan concept of power which circulates between what he called the foxes and the lions may be important in understanding power play and power players in Ghana.

[17] Gari is processed from cassava or yucca (Spanish) or manihot escalentum. The raw food is first grated and then roasted after seven or more days of fermentation during which the starch and the toxic matter is drained. Gari is a staple food of most West Africans. It contains a lot of carbohydrates and so it is not ate alone without beans, fish and or stew. It was also alleged at the Asafu-Adjei Commission that Nkrumah gave personal instructions to the then Director of Prisons, JW Abban to add sand to the gari for political detainees.

In their desire to 'stamp' out crime, all the military governments, the National Liberation Council (NLC), the National Redemption Council (NRC), the Armed Forces Revolutionary Council (AFRC), and the Provisional National Defence Council (PNDC) criminalized several activities and behaviors. For instance, NRCD 159 made several offences punishable by death. These include smuggling of cocoa, diamond, gold, motor vehicle, underground telephone cable, or any telephone wire attached to or connected with a telephone or telegraph pole, or any electricity cable or wire owned by the Government or a statutory corporation, and willfully damaging public property. Other offences attracted long terms of imprisonment (NRCD 159, 1973; see PNDCL 78, 1984).

4.2.3. Objective of the Criminal Codes, Criminal Procedure Code

Ghana's Criminal Codes have been implemented without any attempt to educate the citizenry. By applying provisions of these Codes which in themselves are provisions of the Criminal Code of 1892 introduced by the British, without any education whatsoever, the citizenry can not appreciate and participate in it fully. Hence British common law practices and provisions continue to be regarded as *"oburoni mmra"* 'the white mans law' or *"aban mmra"* 'government law'.

The 1874 Supreme Court Act continued to persist, direct, and influence the judiciary until 1960 when a new Courts Act was enacted. This Act created a new Supreme Court as the highest court of law in Ghana. The Act enjoined the Supreme Court to be guided by its own decisions. Lower courts followed the decisions of the Supreme Court. This raised questions of whether pre-independence Supreme Court decisions binded the new Courts. Subsequent Acts and Decrees also makes the Supreme Court binded by its own decisions. The question also arose as to whether Ghana was/is a common law country.

Ollenu (1964) believes that Ghana is a common law country not only because of its historical ties with Britain or statutory declarations but because of the nature of the system

of the customs and practices of the various ethnic groups. According to Ollenu, common law is a continuing process that began even before the coming of the colonialists. Therefore, efforts should be made to integrate the traditional native system of justice administration into the Westminster system. Similarly, Asante (1966) also believes that common law rules must be applied in so far as local circumstances determine (see also Daniels 1964).

However, such attempts have been minimal and sporadic. For instance, in Gray versus Gray (1971), the presiding Appeal Court judge, Mr Justice Hayfron-Benjamin pointed out that Ghana's Legislature is sovereign and so recommending the application of English laws means the legislature was subjecting itself to the English judiciary. The 1969 Second Republican Constitution had provided that in the absence of a matrimonial law in Ghana, modern English matrimonial laws should be applied. This the presiding judge found unacceptable since Ghana as an independent sovereign nation has her own unique matrimonial practices quite different from Britain. The judge wondered why Ghana continued to rely so much on English traditions rather than evolving procedures and practices based on her own unique culture and historical experiences.

Whether the administration of justice is colonial legacy or not, it is important to recognize that the forms, dimensions and sophistication of crime in Ghana pose a real danger and problem that basic criminal justice institutions are unable to cope with and solve. These institutions are ill-equiped in their dealings with offenders. Society believes in the efficacy of deterrence. This is exemplified in the manner offenders are treated. Moreover, prison buildings, judicial and police facilities and equipments appear obsolete and antiquated. While prison overcrowding is profound, courts continue to incarcerate people. Also, personnel involved in the administration of justice seem confused about their roles and goals. Therefore, community involvement in justice dispensation, based on Ghana's unique socio-cultural tradition could be a felt need.

Like all common law societies, Ghana's sentencing guidelines - penal policy and practice - are in the direction of making the punishment fit the crime. In other words, punishment is proportional to the gravity of the offence. Deterrence and retributive justice are the main penal aims of punishment. Incapacitation through incarceration rather than reconciliation and reintegration of the offender into society is the main method of disposal of offenders.

Every Courts Act in Ghana (see Courts Acts' 1935, 1951, 1960, 1971, 1993 and PNDCL 42) has recognized customary law and all constitutions (see the constitutions of 1954, 1957, 1960, 1969, 1979, and 1992) have also encouraged the fusion of traditional courts and the Westminster judicial system. The 1971 Courts Act for instance, encourages the courts to as much as possible, resolve disputes by reconciling disputants rather than always relying on accusatorial and committal norms and principles. Also, the 1993 Courts Act Part 111 section 54 (1) (see also the Courts Act 1971 Part 11 sec. 49) says:

Subject to the provisions of this Act and any other enactment, the Court when determining the law applicable to an issue arising out of any transaction or situation, shall be guided by the following rules in which references to the personal law of a person are references to the system of customary law to which he is subject or to the common law where he is not subject to any system of customary law:

Rule 1. An issue arising out of a transaction shall be determined according to the system of law intended by the parties to the transaction to govern the issue or the system of law intended by the parties to the transaction to govern the issue or the system of law which the parties may, from the nature or form of the transaction be taken to have intended to govern the issue.

Rule 2. In the absence of any intention to the contrary, the law applicable to any issue arising out of the devolution of a person's estate shall be the personal law of that person.

Rule 3. In the absence of any intention to the contrary, the law applicable to an issue as to tittle between persons who trace their claims from one person or group of persons or from different persons all having the same personal law, shall be the personal law of that person or those persons.

Rule 4. In applying Rules 2 and 3 to disputes relating to tittles to land, due regard shall be had to any overriding provisions of the law of the place in which the land is situated.

Rule 5. Subject to Rules 1 and 4, the law applicable to any issue arising between two or more persons shall, where they are subject to the same personal law, be that law; and where they are not subject to same personal law, the court shall apply the relevant rules of their different systems of personal law to achieve a result that conforms with natural justice, equity and good conscience.

Rule 6. In determining an issue to which the preceding Rules do not apply, the court shall apply such principles of the common law, or customary law, or both, as will do substantial justice between the parties, having regard to equity and good conscience.

Rule 7. Subject to any directions that the Supreme Court may give in exercise of its powers under article 132 of the Constitution in the determination of any issue arising from the common law or customary law, the court may adopt, develop and apply such remedies from any system of law (whether Ghanaian or non-Ghanaian) as appear to be efficacious and meet the requirements of justice, equity and good conscience.

Section 55 (1) makes the questioning of the existence of customary law a question of law and not fact. Moreover, section 55 (5) enjoins the courts to consult with appropriate traditional authorities, such as the House of Chiefs, Divisional or Traditional Councils or any other body with knowledge about customary law in settling disputes. Similarly, PNDCL 42{60} enjoins the courts not to be bogged down by "foreign laws and practices that are incompatible with national aspirations," but be guided by Ghana's own unique culture and traditional practices.

Part Three

4.3.1. Impact of sentencing practices on incarceration rates

A comprehensive evaluation of convictions and committals over the years is beyond the present work. Few instances are being cited at random to show the nature of sentencing practices of the courts from colonial period to present.

In 1920, with a population of nearly four million, there were 5,450 convictions. Of this figure, 3,946 or 72.4%, were committed to prison, 1,204 fined and the rest, cautioned. However, 621 of those fined could not pay their fines and so ended up in prison, raising the percentage of imprisonment to 83.8%. The trend remained unchanged throughout the colonial period. In 1960 (three years after independence), there were 30,477 convictions out of which 15,652, or 51.4%, were incarcerated, 29, condemned to death and the rest, either cautioned or fined. Committal rates have been increasing steadily each year since 1965. Ghanaian courts are arranged hierarchically. The Supreme Court is the highest court followed by the Court of Appeal and High Court respectively. Other courts of lower status are, the Circuit, and Magistrate Court grades one and two. The courts adhere strictly to the doctrine of *stare decisis* - the principle that judges are bound by precedent. Cases processed by the Supreme and Appeal Courts are not reported by the Statistics

Branch of the Judicial Service. Also, the figures cited do not include offences processed by Public Tribunals. Records of Public Tribunals could not be secured because they were not readily available. However, from prison records it was discovered that Public Tribunal cases constituted only four per cent of the total prison population in 1986 (Prisons Headquarters). Below are analyses of civil and criminal cases brought before the courts between 1989 and 1992.

Table 1 show cases pending before High Courts between 1989 and 1992.

Nature of cases	1989	1990	1991	1992
No. of civil cases	34372	34384	34224	33482
% of civil cases tried	2.8	7.9	3.2	2.4
No. of criminal cases	393	242	115	99
No. of cases tried	89	79	44	29
% of cases tried	24.6	22.6	38	29.8

Table 2 show cases pending before Circuit Courts from 1989 to 1992.

Nature of cases	1989	1990	1991	1992
No. of civil cases	34372	3438	8282	8967
No. of civil cases tried	946	2742	1143	1109
% of civil cases tried	2.8%	7.9%	12.8%	12.4%
No. of criminal cases	393	242	9270	9738
No. of cases tried	89	79	3999	3481
% of cases tried	22.6%	32.6%	43.1%	35.8%

Table 3 show cases at District Magistrates' Court Grade 1 from 1989 to 1992

Nature of cases	1989	1990	1991	1992
No. of civil cases	9579	4644	5244	6869
No. of cases tried	2017	3474	4210	4937
% of civil cases tried	21.5%	73.9%	80.3%	71.9%
No. of criminal cases	11372	8737	7720	8225
No. of cases tried	3928	7191	5388	5869
% of criminal cases tr.	4.5%	82.3%	69.8%	71.4%

Table 4 show cases pending at District Magistrate Gd 2 courts between 1989 and 1992.

Nature of cases.	1989	1990	1991	1992
No. of civil cases	5101	4409	4998	4055
No. of cases tried	4193	3558	4564	3448
% of civil cases tried	82.20	80.69	91.26	85.03
No. of criminal cases	12430	10310	9659	7418
Criminal cases tried	10828	9478	9058	6588
% criminal cases tried	90.68	91.93	96.78	88.81

District Courts 1 and 2 try summary offences. However, as the Coussey Committee (1990) observed and from prison records, some of the long sentenced inmates were jailed by these courts. This is a clear violation of District courts' jurisdiction. The appropriate response was to refer these offenders to the higher courts for sentencing but this did not happen. No reason has been given and from all indications neither the Chief Justice nor the Judicial Council seemed to be aware of this. The background antecedents taken from these offender's files show that they may either be ignorant of the judicial system or too poor to pay fines: illiterates, poor, and uneducated.

In Ghana, murder cases are first brought for hearing at the magistrates' court. The court then commits the accused person to stand trial at the High Court after the preliminary proceedings. Between a Magistrate and a High Court, an accused person can wait for two years or more. When the accused person is finally committed to stand trial at the High Court, proceedings could last for years. All these years, the suspect will be waiting in custody. For instance, in 1991 there were three accused persons who had waited for 20, 15, and 10 years respectively without trial at the Sekondi Central Prison. It could be possible that other prison establishments also faced similar problems. The three suspects were released after a representation to government by the Prison authorities. The plight of suspects who spend long periods in prison raises the whole question of having well-articulated bail mechanisms in place.

Table 5 is a summary of cases pending at the courts at the end of 1992

Courts	Civil	Criminal	Total
High Court	32686	570	33256
Circuit Courts	7930	6258	14188
DM's Gd 1	1931	2356	4287
DM's Gd 2	664	1749	2413
Grand Total	43211	10933	54144

There were 26,268 cases tried in 1992. Of these, 10492 (40%) and 15,776 (60%) were civil and criminal cases respectively. Three quarters, that is, 75% of the criminal cases were incarcerated. Most of the untried criminal cases were and are still remanded in custody[18].

The statistics above are not 'very reliable because 45% of the courts defaulted in reporting'. Where the courts reported the mode of reporting was found to be "incorrect and shoddy." Therefore, the compilers of the statistics have cautioned that "the facts and figures contained in this statistical report are by no means very perfect" (Judicial Statistics 1992: 2; 3). However, they give a fair picture of the present situation.

Over 90% of committals are from the lower courts. Since these courts deal with less serious offences it is hard to understand why the greater proportion of offenders end up in jail. The answer is not difficult to come by: courts are dealing with existing policy and practices that leaves no room for other methods. The volume of work is also more than the judges and magistrates can handle. The conclusion is that court sentencing policies in post-colonial Ghana have generally followed colonial policies of specific and general deterrence as exemplified by 'get tough' on offenders through harsh imprisonment. As would be shown, sentencing policies and practices have largely contributed to overcrowding in the prisons and recidivism, and could be the possible 'cause' for the surge in crime in society.

Table 6 below is the breakdown of courts in Ghana 1993:

Supreme Court	1
Court of Appeal	1
High Court	38
Circuit Court	37
District Magistrate Court Grade 1	54
District Magistrates Court grade 2	92
Total No. of Courts	223

Although the judiciary has expanded over the years, the number of courts and judges per 1,000 people is still inadequate. Most people living in the countryside do not

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[18] Source of figures quoted are: The Judicial Service of Ghana (1992 Annual Report)
The courts do not include Public Tribunals of the Provisional National Defence Council government 1982-1992.
The statistics do not include the offences processed by the Public Tribunals and offenders on remand awaiting trial.

have access to the administration of justice. Like other nations of the third world, courts in Ghana are urban centered. Litigants travel several miles to attend courts in the urban centers that are often adjourned. Most qualified personnel refuse to work in the rural areas because social amenities and facilities are lacking. The refusal of qualified personnel to work in the rural areas has resulted in a situation whereby non-lawyers are appointed lay magistrates. Where 'competent' courts are unavailable, traditional courts fill the 'vacuum' created and dispense justice.

4.3.2. Imprisonment

> The prison system is at the core of Ghana's penal organization. It stands as a monument to colonial rule, as a memorial to confused goals, conflicting objectives, policies evolved and abandoned, and sometimes no policy at all. Today, it searches for its true role, if indeed there is any single role for it to play. It is caught between the urgings of a preventive policy, which recognizes that preventive policy may work where cure cannot, the deterrent policy of the courts, whose judges remain convinced of the efficacy of punishment as a power in the hearts of men, and the rehabilitatory ideal of the western world of which Ghana is a part (Seidman 1969: 434).

Sentencing, a formal mechanism by which a modern society deals with offenders found guilty of crime is entrusted with the Judiciary. A sentence is an authorized judicial decision that places some degree of penalty on a guilty person. Sentencing involves choosing among various alternatives (Snarr 1992; Kirkpatrict and McGrath 1976). In some societies, sentencing decisions are made after a pre-sentence investigation report has been submitted and studied by the sentencing authority (see Bartollas 1985; Snarr 1992). In Ghana, this has not been the norm, and it may not be for a long time to come. The reason is that there are no trained personnel and logistics for such a task. Moreover, this may not be an immediate societal priority. The responsibility of administering judicial decisions of courts is placed on the Ghana Prisons Service. In this section, sentencing decisions are examined to illustrate how they may have negatively impacted on the prisons, resulting in overcrowding and recidivism.

Incarceration is the primary form of punishment in Ghana. As pointed out earlier, ninety-one persons had been incarcerated in the Cape Coast castle in 1841. Cape Coast castle and other forts dotted along the coast of Ghana used to be horrifying overcrowded places where unfortunate black men and women waited to be transported to the 'New World' as slaves. These facilities remained virtually in their original states when they were turned into prisons after slave trade and slavery were abolished in 1907.

By 1850, there were prison cells in four forts - James, Ussher, Cape Coast, and Anomabu - holding a maximum of 129 prisoners (Seidman 1969:435). These were largely caretaker institutions. The caretaker function was formalized in 1860 when the Prisons Ordinance was enacted. According to Seidman (1969) this Ordinance contained a series of rules for safe-keeping of prisoners. However, it embodied no discernible philosophy of punishment. For instance, prisoners were treated like slaves, they were ironed at labor and in the night, were not permitted to talk to fellow inmates at night, and were served with minimum diet required for health (see Kimble 1963; Metcalfe 1964).

In 1863, agitation started in England to transform prisons into institutions for the refined and systematic torture of prisoners without shedding of blood. The aim was to turn prisons into punitive institutions of great deterrence (Elkin 1957:116 cf. Seidman 1969). This was adopted in the Gold Coast in a twinkling of an eye. The colonialists supplied a dimensional drawing of a regulation 'cat of nine tails' for use in flogging prisoners. "After all, if one is to rule over savages, what better method than the lash, physical torture and diminished diet?" (Seidman 1969:435 see Shaidi 1992). It must be pointed out also, that, in 1859 the colonial governor had recommended 'the lash' as the only effective deterrent mechanism suitable for the natives (Gold Coast Blue Book of 1859 see Kimble 1963). Pritt (1971: 81) has observed that, "the role of the law and the lawyers in the government of the colonial territories ... is in truth just a crude reproduction of their role in the metropolitan countries." Building new prisons and removing prisoners from the castle cells were not the immediate policy of the colonialists. At the same time, they tried to avoid overcrowding.

Consequently, shorter and sharper punishments such as, whipping, shorter terms of imprisonment, and minimum diet required for health were resorted to (Seidman 1969).

The period to 1874 marked the development of prisons from custodial institutions to punitive instruments envisaged by the English Prisons Act of 1865. This Act inspired the Gold Coast Prisons Ordinance, Prisons Regulations, and Standing Orders of 1876. Since the adoption of these documents, the Prison Regulations have been revised twice (1958, 1963), and the Standing Orders, only once, (1960). Even with the revisions, a careful examination reveals that apart from substituting words like Governor with the President, and Prison Department with Prisons Service, nothing really has changed. The substance and philosophical directions of these documents remain the same as those that the colonialists bequeathed at independence. It is no surprising therefore that, Seidman (1969: 437) has concluded that, the dead hand of the 1876 Ordinance, and its subsequent Prison Regulations and Standing Orders continue to mould the Prisons Service. In 1963, the Prisons Department was re-organized and renamed the Ghana Prisons Service. The reorganization was meant to meet the 'new challenges of incarceration'. However, this reorganization did not affect prison conditions, which largely continues to remain in their sordid state.

That confusing goals and lack of effective policies have contributed to the failure of the penal system can not be denied. However, prison structures or buildings have equally contributed to the present state of affairs. As pointed out already, most of the prisons are located in forts formerly used for slave trade and slavery. These buildings are antiquated and unfit for use as prison. A look at the dates these forts were built makes this point clearer: James Fort, 1662; Cape Coast, 1664; Winneba, 1694; and Anomabu, 1753. All were built by the British and have since not, and can not, undergo any major renovation and expansion, given how they were constructed. The unsuitability of these forts as prisons was recognized by the colonialists. For instance, in 1899, Governor Low, described the Ussher Fort Prison as follows:

> The present place used as a prison in Accra is in every way unfitted for this purpose. It is an old Fort, formerly used by the Merchants for trade purposes. Within its walls prisoners are crammed into unsuitable rooms, sometimes as many as 15 in one *small* (italics mine), room. There is no accommodation for the various grades of prisoners. Debtors, political prisoners, prisoners awaiting trial, are all huddled into one room at night and penned like sheep during the day within small concreted yard under a galvanized iron roof (Despatch No. 408,1901 ADM1/50 cf Seidman 1969: 440).

The Ussher Fort prison was closed down in January 1993, nearly a century after the above remarks were made. Also closed down was Cape Coast prison, the oldest prison and perhaps, the most delapidated. Closing down the two oldest prisons without constructing any new facility has rather compounded the already acute and volatile overcrowding situation.

Inmates sleep in 11ft by 12ft by 7ft cells that have barred windows in one wall and a heavy door containing a peep hole for surveillance purposes. There are as many as 30 inmates in each cell. The cells have no fixed sanitation facilities such as piped-water and lavatory. These are provided at convenient sections of the cells. There are no dining facilities and meals are taken in cells or in the open yard. The Ghana Prisons Service knows no classification of prisoners. It is just not possible to classify and separate offenders given the nature and condition of the prison buildings and overcrowding. Apart from condemned prisoners and remands awaiting trial who are housed in separate parts of a prison, all categories of convicted offenders, political prisoners, debtors, and remands, are huddled together. Prison statistics may be meaningless until one enters these prisons and cells to see and smell the effect of people living together in such a horrible, oppressive, and dehumanizing environment. No wonder therefore that when conducted round the now abandoned Cape Coast prison during his musical tour of Ghana, the Jamaican reggae star, Shabba Ranks "could not hide his grief." Shabba Ranks said words could not describe what he saw and felt (West Africa 18-24 April 1994: 694-695). This was the place used as prison by 'civilized post-colonial' Ghana until 1993 when the facility was taken over by the Ghana Tourist Board.

Two major committees appointed by post-independence governments made startling revelations about the inhumane, degrading, horrible, and overcrowded nature of the prisons. Before these committees however, in 1920, a colonial government committee on prison conditions had recommended penal reforms. Then in 1951, the M'Carthy Committee also recommended that locking offenders at four o'clock should be stopped since Britain which introduced it had long shifted its lock up time to nine o'clock.

The Asafu Adjaye Commission appointed by the National Liberation Council military government that overthrew the first nationalist government in 1966 investigated circumstances leading to death in prison of some political detainees, conditions under which political detainees were held and treated, and general conditions of the Ghana Prisons Service. The Commission observed that the Prisons was in a "poverty-striken state as regards accommodation and clothing both for prisoners ...," because of long neglect. This "had given rise to serious overcrowding and deterioration of standards in prisons and in other places of confinement" (p 2). Governments' inaction to improve upon prison conditions was described by the Commission as short-sighted, unimaginative, and a complete lack of realization of the implications of such a policy. Government seem not to have appreciated the role of the Prisons Service as an integral part of the administration of justice and the forces of law and order. This had deprived the Service of effective policies to carry out its functions, the Commission concluded.

Twenty-four years later, in 1990, another military regime, the Provisional National Defence Council appointed the Coussey Committee to look into the conditions of prison and police cells, and, psychiatry hospital wards. The government is yet to publish the Coussey Committees' report. A careful study of the Coussey Committee report reveals, however, that no substantial changes or improvement has occurred since the Asafu Adjei report was published in 1967. The Committee identified overcrowding, antiquated, overused buildings, obsolete facilities, archaic regulations and policies, inadequate

funding, and neglect by government and society as the foremost problems facing the Prisons Service.

4.3.3. Prison overcrowding: an historical sketch

The official British policy of avoidance of overcrowding and building of new prisons could not be sustained any longer because of a rise in committals resulting in increased prison population. Consequently, large portions, and in most instances whole forts, were turned into prison cells at the turn of the twentieth century. Whenever possible, new prisons were constructed. The first prison built solely for that purpose is the Kumasi prison. Constructed in 1904, it is the second largest in inmate population. However, it is the third largest in land size. Sekondi prison, the second largest prison in land size but third largest in population was constructed in 1905. Sekondi prison was constructed on the marshy banks of the Gyandu river. Part of the building - European Yard- gets flooded when it rains. The perimeter wall is crumbling. This makes it possible for prisoners to jump over and escape. Between the wall and the main buildings - the cells, the workshops, part of the old kitchen, and the lavatory - are water logged. The lanes are rendered completely impassable during rainy season. Seidman (1969:448) has described Sekondi prison as " ...great cranelled walls, watchtower, all the apparatus of a dungeon keep." In the words of the architect of the Ghana Prisons Service, this "prison like most other prisons, is not habitable." There are 27 closed prisons in Ghana. Only two of these prisons, Nsawam Medium Security (1961), and Kete-Krachi (1963) were constructed after independence. All other prisons were built when Ghana's population was 4,691,000 (1954), or even less. In 1960, three years after independence, Ghana's population was estimated at 6.8 million (Statistical Service, Ghana).

Over the past three decades, the judiciary and the police have expanded, and more laws have been enacted. There are High Courts in all regional capitals and selected towns. Also, more magisterial districts have been created. Apart from these, new forms of judicial

dispensation - special courts, military, and public tribunals - have proliferated at one time or another to deal with special offences and also augment existing courts. There are 15,000 police personnel in Ghana as opposed to the less than 2,000 at independence. The expansion of the judiciary and the police have resulted in the apprehension of more offenders, most of whom end up in prison.

By 1949, there was a fearful overcrowding. From a population of 1,500 inmates before World War 11, this had reached 3,600 and was ever increasing. In 1961, the daily average population of inmates was 5,567.06, a 125% increase on the legally allowed capacity of 4,438 cubic feet - at 360 cu. ft. of living space per prisoner. In 1964 the overpopulation was 164%, that is, a daily average rate of 7,238.39, and in 1977 there was an average daily population of 13,461.41, an increase of 200%. In 1986, the average daily rate was 16,750.23, that is, 277% increase; 1989 the percentage increase was 203%. In 1990 the percentage over-population was 198.5%. The percentage overcrowding for subsequent years are 1991, 208.5%; and 1992, 201%. The percentage overpopulation from 1989 to 1992 may have improved over previous years because of frequent general amnesty granted by government to some categories of convicted prisoners. However, the fall did not alter the overcrowding to any appreciable level. Moreover, the figures for 1989-1992 were based on a capacity of 5032 cubic feet of allowed space. The increase in space is the result of the establishment of 'Settlement Farms' by the Ghana Prisons Service in the 1980s and 1990s.

Nsawam Medium Security Prison, the largest and most 'modern' prison was built in 1961 to accommodate 811 prisoners. However, it was overcrowded as soon as it was opened. In 1962 it held a daily average rate of 1,672.5. In 1984, it had risen to 2,415.6, and in 1990 it was 2,458.6. There were 2,592 inmates serving time at Nsawam in December 1992. Of this figure, 574 were serving between 10 and 66 years. Magistrate Grade 1 and 11 courts exceeded their jurisdiction by sentencing some of the offenders to between six and sixteen years (see Criminal Procedure Code Act 30 1960: sec 296). It

seems no one checks the excesses of the inferior courts. The same picture of inferior courts gaoling offenders above their legal limits may hold for all the other prisons (Prisons Headquarters; Coussey Report 1993)

Table 7 below shows the various prisons and their maximum capacities as required by law and the actual population for the first three weeks of January 1994.

PRISON	CAPACITY	WEEKS 1ST	2ND	3RD
Nsawam Male	811	2432	2438	2435
Nsawam Female	120	82	82	80
Kete-Krachi	180	98	88	86
Kpandu	48	164	167	162
Ho Male	70	261	264	273
Anomabu	11	128	136	130
Winneba	150	265	265	260
Ankaful	572	162	227	157
Akuse	62	168	162	164
James Fort Male	400	628	644	683
James Fort Female	17	36	37	46
Tamale Male	124	265	274	278
Tamale Female	4	8	8	8
Yendi	26	96	94	96
Salaga	3	23	23	25
Obuasi	48	160	158	178
Sekondi Male	340	990	1003	1030
Sekondi Female	9	32	34	34
Ekuasi	5	92	84	74
Manhyia	37	128	128	120
Gambaga	9	30	38	36
Koforidua	66	238	239	235
Navrongo	100	90	98	94
Wa	24	64	64	68
Bawku	45	110	120	124
Ho Female	18	31	36	38
Sunyani	52	421	387	412
Kumasi Male	600	1450	1452	1445
Kumasi Female	10	45	45	48
Tarkwa	68	275	274	285
James Camp	550	727	730	730

The table does not include the lock ups of the eight Settlement Farms in Ghana.

Except in a few cases, such as, economic sabotage and robbery, where the length of sentences have increased, the general trend of imprisonment has remained relatively consistent over the years. The overall average length of incarceration is one and half years. For long term offenders sentences range between ten years and life. Condemned prisoners are in a special category.

Table 8 shows % length of sentences of male offenders incarcerated between 1989-1993.

Less than 3 Yrs	1989	1990	1991	1992	1993
3-6Yrs	74	71	72	75	76
6-10Yrs	22	25	24	22	20
10+Yrs	3	3	3	2	3
Life	.5	.8	.8	.9	.8
Condemned	.5	.2	.2	.1	.2
Total	100	100	100	100	100

Table 9 shows the total monthly lock-up for selected years.

MONTH	YEAR	YEAR	YEAR				YEA R	
	1990		1991		1992			1993
	T.*	A.**	T.	A.	T	A	T.	A
January	52385	13096	52258	13064	50486	12622	48466	12117
February	52609	13152	52694	13174	52765	13191	48805	12201
March	52266	13066	52063	13016	52443	13111	49312	12328
April	51037	12759	51160	12790	51578	12895	50829	12707
May	52393	13098	52937	13234	50987	12747	52819	13206
June	49540	12385	52598	13150	50965	12741	52278	13070
July	50806	12701	52828	13206	49876	12469	51320	12830
August	52893	13223	53894	13474	51765	12941	52139	13035
Sept.	52968	13242	52998	13250	51876	12969	49874	13219
October	52180	13045	52329	13082	50604	12651	52765	13191
Nov.	52073	13018	51269	12817	50765	12691	52879	13220
Dec.	52063	13016	51542	12886	51865	12965	52944	13236

* Total Monthly Unlock
** Average Weekly Unlock

Table 10 shows increases in court convictions between 1984 and 1993.

Year	Population	Variance	% Increase
1984	7208	620	-
1985	7997	689	11
1986	8721	724	9
1987	9620	909	10
1988	10552	932	10
1989	11519	967	9
1990	12511	992	9
1991	13675	1164	9
1992	14921	1246	9
1993	16210	1289	9

The statistics above show that overcrowding has been both endemic and very profound. It may have certainly neutralized and negated any program envisaged to retrain or reform the offender. The latent effect of court sentencing policies is that it may have given rise to overcrowding that could be more destructive to the offender and society than the manifest aims for which offenders are punished.

4.3.4. Government amnesty

Government frequently exercises its prerogative powers of mercy and grant amnesty to inmates as a way of reducing overcrowding and probably, the negative effects of incarceration. However, such a gesture does not cover some categories of offenders such as armed robbers, drug related offences, constant repeaters, economic saboteurs, political prisoners, and murderers. Consequently, only a handful of offenders benefit from such amnesty. However, the majority of inmates return to prison within days because they can not integrate easily into society, or find jobs.

In 1991, 1,553 inmates benefited from government amnesty. Of this number, 479 were first and second offenders, and 397, sick prisoners. Nine students who took part in demonstrations against their school administration at Kanton Secondary School, Tumu, Upper East Region, were also pardoned. Furthermore, 52 prisoners brought from Nigeria in exchange of Nigerians in Ghanaian jails were also released. No reasons were assigned for the release of the remaining 633 inmates. The number of amnestees who have recidivated is unknown. However, speculations are rife in prison circles that the percentage may be high. In 1991, while 8,086 prisoners were released from prison after serving their sentences, the courts incarcerated 13,675 people for various terms of imprisonment (Prison Report 1991). At the time of collecting data, in January 1994, the government had granted amnesty to unspecified number of inmates. The 1994 amnesty appears to be a considerable improvement upon previous ones because attempts were made to involve the communities and District Assemblies through the Ministry of Local Government. How effective this will be is rather debatable since the Assemblies were not involved in the formulation of such a policy.

4.3.5. Settlement Farms to counter overcrowding?

Ghana Prisons Service has also responded to the problem posed by overcrowding by establishing 'Settlement Farms'. While the manifest objective for establishing these Farms is to make the Service self-sufficient in food production, the latent aim is to decongest existing facilities. Prison Settlement Farms may have been conceived on wrong, and inadequate practical, and theoretical assumptions. Of the eight such farms, four are abandoned state farms belonging to the former State Farms Corporation and the Workers Brigade put on divestiture by government. Three, Osamkrom, Frafraha, and Ewutu, were confiscated from former politicians, and one, Hiawa, a gold mine abandoned in 1936. All these farms lack the necessary infrastructure needed for a prison. In fact they are not prisons in the true sense of the word, except that lawyers would contend that "a prison is any place gazetted by government for that purpose". The Ghana Prisons Service has achieved a notoriety of turning abandoned structures into prisons. Apart from the forts and the Settlement Farms, the only training facility of the Ghana Prisons Service, the Prison Officers' Training School (POTS), and Ekuasi prison are abandoned army camp and reprosarium respectively. The statistics can be cited ad homenim.

Hiawa and Tafo Settlement Farms were visited on 23 February and 15 March respectively. Hiawa has two dormitories accommodating over 100 inmates. Living conditions on this farm for both officers and inmates are appalling. Like most prisons, Hiawa has no place of convenience in the dormitories. While latrine pans are pitched at one corner of the room, another pan, containing water, is also put at another corner. There is a makeshift pit latrine and bathroom overlooking the dormitories and the kitchen. Water is fetched from a running river some few meters away. Food is served and eaten in the open space. Feeding pans are not properly cleaned because of lack of soap or detergent.

Tafo had prison officers but no inmates on the Farm. Apparently the people of Tafo invaded the Farm on Christmas eve (1992) and threathened to kill both inmates and officers if the prison is not abandoned. As a result, the prisoners, crammed into an

abandoned, old delapidated office of the defunct 'Workers Brigade', were evacuated to Koforidua prison leaving the officers on the Farm being paid for doing nothing.

Living conditions on these Farms are in a clear violation of United Nations Standard Minimum Rules for the Treatment of Offenders (UN A/Conf.144/INF.2;1990:7-9). A statement attributed to the Director-General of the Prisons that Prison Settlement Farms are training grounds for inmates appears unacceptable (see The Statesman, Week ending March 27, 1994: 6-7). These Farms are not mechanized, they follow the traditional 'cutlass and hoe' farming of which some of the prisoners may have better knowledge than the officers. Moreover, apart from one Farm - Amanfrom Settlement Farm - which is headed by a trained agriculturalist, the officers-in-charge of these Farms know little about mechanized agriculture. The same thing goes for the junior officers on the Farms supervising the inmates. They are as lay people as the prisoners themselves. The sort of 'farming lessons' the Director-General is talking about is, therefore, not clear.

Solutions to overcrowding, and food self-sufficiency should be perceived beyond amnesty and settlement farms. It is imperative that long and lasting solutions emanating from well formulated and thought out penal policies that benefit offenders, victims, and society are considered.

4.3.6. Female offenders

In 1992, there were 302 female offenders serving time in the various female facilities for committing offences such as, stealing, assault, drug related offences, and murder. Sentences ranged from six months to death. Although four female offenders have been sentenced to death in Ghana's history, no female offender has ever been executed. Generally, conditions in female prisons are a bit better than the male prisons. However, there are no mother and baby units in any of the female prisons. It is therefore not uncommon to find nursing mothers and babies sharing a cell with eight or more other female convicts.

Table 11 shows the number of females incarcerated in 1992.

Prison	Number
James Fort Female	41
Nsawam Female	103
Kumasi	59
Ho Female	42
Tamale Female	5
Sekondi Female	52
Total	302

There were 160 females remanded in custody across the country at the same period. (Prisons Headquarters).

Fourteen of the convicted female offenders were nursing mothers, and five were pregnant women. The Prison Service admit pregnant and nursing female offenders with their babies because Prison Regulation 9 (1958), states that, "a child of a female prisoner may be received into a prison with its mother until it has, in the opinion of the Medical Officer, been weaned" (p 1). This colonial policy, a violation of the affected childs' civil liberties has been pursued vigorously by all post-independence governments. However, since the 1980's, government has exercised its prerogative power of mercy and granted pregnant women and mothers special bail to deliver and/or wean their children before returning to serve their sentences. Are there no better ways of treating these and other female offenders outside the prison milieu?

Statistics on female criminality in Ghana demonstrate how minor female criminality appears to be compared to males. This does not mean that women in Ghana have been treated fairly. On the contrary, females have suffered a great deal from law enforcing agencies and politicians. In the 1960s for instance, several women were arrested and prosecuted for engaging in prostitution. The arrest and prosecution were ordered by the then Minister of Social Welfare, Mrs Susana Alhassan, who believed that 'prostitutes are a disgrace to women'. During the 1970s, several women in retail trading were stripped naked and given lashes on their buttocks for either hoarding goods, selling above government stipulated prices, or engaging in certain types of retail trading. This mistreatment was again repeated in the 1980s. Moreover, a number of people were arrested at the Kotoka International Airport (KIA, Ghana's port of entry by air), for attempting to export

substances suspected to be illegal drugs in the 1980's. Of these people, only women were singled out for public scorn and ridicule. Most of these women were stripped naked, shown on Ghana television and front pages of national newspapers. Added to these mistreatment may be domestic violence and spouse battering. Female circumscision, largely perpetrated by men and endorsed by their female cronies is still prevalent among some ethnic groups in Ghana. Studies in female criminality, as well as human rights violations against women are still in their infancy and therefore need to be examined.

4.3.7. Classification of offenders

The incidence, prevalence, and dimensions of crime in Ghana give cause to worry. However, available statistics shows that except for a few murders, robberies, and those classified as economic saboteurs it can not really be said that Ghanaian criminals are dangerous,[19] or that the prisons are full of dangerous people compared to advanced nations, or other African countries, such as, Nigeria, Egypt, and La Cote d'Ivore. Indeed, as (Wight 1946) has astutely pointed out, Ghanaians are 'temperamentally law abiding'. Given the right atmosphere therefore, most people will stay clear from trouble. In 1987 for instance, there were 60,106 reports made to the police. Out of this figure, 37.4% were classified as assault. Overall, minor offences constituted 75.8%. In 1988, there were 62,532 cases reported to the police out of which 76% were classified as minor offences. The figures for 1989 were 63,200 of which 72% were minor offences; 1990, 61,890 of which 73.5% were classified as minor offences; 1991, 60,567, 74% minor offences; 1992, 60,865, of which 75% were minor offences; and 1993, 62790, of which 76.3% were minor offences. Percentage of minor offences has remained almost constant over the years.

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[19] The concept of dangerousness as explained by Rennie(1979), is neither legal nor clinical. It is rather based on an offender's status. It is more about sterner measures than statement of condition of offenders ascertained on the basis of reliable predictors. The idea of dangerousness is usually but not always, based on the following criteria: gravity of offence, number of prior crimes and convictions, mental state of offender, and the probability that the offender will continue to be a threat to the public. Most definitions of dangerousness tend to dwell on the emotional and psychological status of the criminal. From the earliest statements of dagerousness, manic sans delire, through atavism, abnormality, endocrinological defficiencies, psychopathy, sociopathy, chronically anti-social personality, criminal mind, XXY sydrome, the search for the dangerous and potentially violent personality has been fruitless(Y. Rennie 1979. The Search for the Criminal Man: A Conceptual History of the Dangerous Offender. Lexington, Mass Lexinton Books).

The over 24% of offences classified as major offences include serious bodily harm, threatening, embezzlement, economic sabotage, burglary, murder, and subversion.

There have not been serious crimes such as hijacking and terrorism, bizarre killings, assassinations, and even serious rioting in Ghana's history. In fact, Ghanaian criminals and criminality may not portray a society gone berserk. Rather, there have been several occasions where inmates on outdoor labour instead of escaping because their guard was either sick, or very intoxicated, carried them back to the prison. There has never been any occasion where inmates have kidnaped, molested, or inflicted severe bodily harm on a prison officer. In the entire history of the Ghana Prisons, there had been only three 'major' prison riots: in 1948[20], 1972, and 1992. Apart from the 1948 riots which was a spill-over of the 1948 general riots in Ghana, inmates' grievances were primarily the quality and quantity of food and amnesty rather than other motives. Ghanaian prison officers escort prisoners to and fro outdoor labor several kilometers without any serious threat to their personal security, and threats of escape. The ratio of prisoners escorted by one prison officer is six to one and even more. The percentage of offenders classified as dangerous by Ghanaian standards may therefore be very negligible if they exist at all.

There are no 'big time' or highly organized crime syndicates in Ghana. Criminal gang names like the mafia, the Chinese triads, and others are not familiar in the Ghanaian crime environment. However, it will not be surprising to find highly organized crime in the not too far distant future. This is because of the economic malaise, unemployment, and the massive divestiture or mortgaging of Ghana's wealth to foreign multi-nationals since 1982. The crime situation may therefore have been blown out of proportion by the courts, media and government. Surely, media reports and government action may not be based on any empirical evidence but on mere speculation and few isolated cases.

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[20] In February 1948 there were widespread rioting and boycott of European goods by Ghanaians to back demands for self goverment. As "part" of this riots a group of people stormed the Ussher Fort Prison and released inmates in this prison. However, several inmates refused to escape for fear that they may be apprehended and given further jail terms. The second major riot was in 1972 at the Sekondi Prison. In this riot the official casualty figure was put at 20 deaths - all inmates. The 1992 riots at the Nsawam Medium Security Prison, Ghana's largest prison is believed to be more "brutal" according to eye-witness accounts. However no official casualty figure or statement has been made public.

Added to these, the police is more often concerned about street crimes or crimes of the poor than tangling with white collar, environmental, and organized crimes. Therefore the police are apt in arresting petty criminals to 'show' society that they are doing their work than 'meddling' in the affairs of people of higher social class only to be queried by their bosses that 'who sent you.'

Table 12 shows classification of offenders in Prison for specified years[21].

OFFENCES	% 1990	% 1991	% 1992
Murder	.2	.2	.2
Manslaughter	.1	.2	.2
Causing Harm	3.0	2.5	2.5
Stealing	75.2	77.8	79.4
Robbery	2.0	1.2	1.5
Assault	3.5	3.6	3.2
Unlawful Entry	4.5	3.7	3.9
Economic Sabotage	6.0	6.8	6.2
Rape	.3	.2	-
Abetment of Crime	.7	.5	.3
Nacortic Offence	.5	.8	.5
Fraud	3.0	2.6	2.5
Dishonest Receiving	1.0	.8	.5
Total	100	100	100

The statistics shows that as a civilized nation, Ghana makes the most uncivilized use of its prisons. This is because the prisons are full of petty criminals, small time drug offenders, and offenders too poor to pay fines, but whose crimes may not be too harmful to society when they are let loose in the streets. Most of the offences that are prosecuted involve no substantial loss of property or harm to individuals. These crimes could effectively be handled through other alternative policies.

The bulk of murders occur in the countryside where land and chieftaincy litigation are rife. The most prevalent crimes in Ghana are stealing and others classified as economic crimes. Robbery is not so alarming as one would imagine although, there have been occasions when robbers have robbed at gun-point. The history and statistics on armed

[21] The above trend can be generalized to cover previous years.The classification does not include offenders tried by the Public Tribunals for offences related to state security such as treason and preparing to overthrow the government. (Source: Prison Annual Reports: Prison Headquartes).

robbery shows that no more than ten persons have been killed by armed robbers. The first occurred in 1968 when robbers shot and killed one Agyarkwa, Managing Proprietor of Ekamac Hotel at Akim Tafo, and a purchasing clerk of the Cocoa Purchasing Company. The latest occurred in the early 1980s, when robbers shot and killed the German Area Manager of Luthansa Airlines in Accra. Moreover, in 1985, the managing director of Commercial Associates, an Accra printing firm was shot and wounded by armed robbers. Unfortunately, since 1982, more armed robbers have been executed than any other offenders in Ghana.

The conclusion is that, Ghanaian laws, especially, the sentencing policies are only creating criminals out of people who may not pose much danger to society. The only justifiable reason for incarcerating people in Ghana may be that there are no alternatives available to the courts other than depriving people of their liberty. There is therefore the need to find a better means of controlling crime through viable alternatives to incarceration.

4.3.8. Rehabilitation and recidivism

The experience of imprisonment and post-prison social stigma attached to ex-convicts by society makes it impossible for most former prisoners to re-adjust to society and lead normal productive lives. Also, society is intolerant and unprepared to receive ex-cons on discharge. These are further compounded by state policies that deny convicted persons employment in public services and corporations, and the right to vote or seek political office. Consequently, a substantial proportion of them become frustrated, and thus, recidivate. The increasing rate of recidivism shows how futile sentencing policies and practices may have been. A random analysis of recidivism rates provides evidence for a fresh look at current sentencing policies and practices. In 1948-49, 33% of all persons committed were second or subsequent offenders; in 1962, 42% were recidivists (Seidman and Eyison 1969: 65). In 1974, 44% of all offenders had had one previous conviction before. The figure for 1983 was 42%. In 1986 a staggering 56% of convicted offenders

were recidivists. Figures for subsequent years are, 1989, 51%; 1990, 50%; 1991, 50%, and 1992, 51% (Prisons Headquarters).

Third offenders have also increased. In 1948-49, 15% of committals had been committed twice before; in 1962, 21% were of such persons (Seidman and Eyison 1969: 65). In 1974, 24% were third offenders and in 1983, 30% had been convicted more than twice previously. Figures for other years are: 1984, 33%; 1986, 33%; 1989, 32%; 1990, 33%; 1991, 34%; and 1992, 33% (Prisons Headquarters).

Although the issue of deterrence as a penal philosophy is not the main focus of this work, there is compelling evidence to doubt its efficacy in Ghana. The simple reason being that if over 50% of incarcerated offenders are repeaters then, commonsensically, one might doubt the potency in deterrence as a philosophical argument for incarcerating offenders. It is true that, a full assessment of the potency of deterrence goes beyond recidivism rates. It is also true that there is a lack of concordance among Ghanaians, especially, judges and administrators about the utility of deterrence. But, one would have expected that the 'harsh, horrible, inhuman, and insanitary' prison conditions would in itself deter offenders. Ironically however, this has not been the case. Rather, more people recidivate as more people are gaoled and prison conditions become harsher. It must be emphasized that imposing harsher or severe punishmnent may not deter a particular type of criminal if h/she is totally and irrationally unconcerned about the risks of being caught and the consequences or penalty that crime carries. Alternatives may help correct some of the negative effects created by excessive incarceration.

The number of people remanded in custody has also increased. For instance, 23,168 people were remanded in custody in 1962 (Seidman and Eyison 1969:78). In 1984, there were 56,580, it was 57,920 in 1985, and in 1990, the figure was 59,105. Other figures are, 61,390 in 1991; 60,789 in 1992; and in 1993, the figure was 63,590. It is interesting to observe that except in few cases, the rate of people remanded each year keep

increasing. Most remands had been in custody for a long period of time. Stealing is the most prevalent crime among the suspects.

James Fort is the largest pre-trial detention facility in Ghana. As stated earlier, this prison was built by the British in 1662 as a transit for slaves awaiting shipment to the Americas. Although this prison has been renovated over the years, any visitor will readily conclude that it is nothing but a horrifying dungeon reminiscent of the slave trade era. This prison was visited on 1 March 1994. An ablution facility constructed in 1992 was found during the visit. This suggests that efforts are being made to improve upon conditions in this prison. However, conditions are no better than they were twenty years ago when the present author was a staff of this facility. There were 620 inmates - instead of the legally allowed 300 - awaiting trial at various courts in Accra and Tema. Prisoners spend an average of two years on remand. While overcrowding is profound, feeding, sanitation and health are appalling.

From the data above, it may not be wrong to conclude that the harsher the measures a society directs against an offender, the greater the probability that he/she will recidivate. Recidivism and suspects on remand are problems that may have escaped the attention of law makers and politicians. It is time to address these problems as society moves into the twenty-first century.

4.3.9. Overcrowding and health hazards

In Ghana, the cellular system of accommodation has never been tried because of 'fearful overcrowding'. Although most of the cells are small they are rather used as dormitories. These dormitories accommodate between three and 30 inmates. Very small cells house either one, three or more inmates. Except in very rare cases where inmates are isolated because of an infectious disease or punishment for breach of prison discipline, no cell accommodates only one inmate. No matter how small a cell, it accommodates three or more inmates. The conditions of prison buildings have been described already. Suffice it to

add that, these prisons, built with thick walls are damp and humid. Moreover, ventilation is poor, and, "the stench from these cells is their most outstanding feature" (Coussey Report 1992:9). Stench, diarrhoea, flu, cough, cold, rashes, fever, headaches and other diseases which could have been prevented have rather become the companion of most inmates. The damp and airless nature of the cells was recognized by the colonialists also. However, nothing was done about it because the chief medical officer had "repeated over and over again ... that air rendered impure by his repository impurities does not injure the lower class of native" (Dispatch No. 385 September 13th 1898, Governor to Secretary of State, ADM 1/498 cf Seidman 1969: 440). There are no recreational facilities in all the prisons except Nsawam which has a soccer field, but no footballs, jerseys, and other kits. Prisoners are not encouraged to exercise. 'Rigorous' exercise raises suspicion and so is either blunted or discouraged. There is a clear violation of National Redemption Council Decree 46 Part vii (1972) which speaks against inadequate food, exercise, cleanliness, medicines, drugs, soap, clothing, bedding or other necessities needed in prison.

Prisoners are not screened by medical officers on admission. Also, they are not examined periodically except when one is very sick, or there is an epidemic in a facility. The reason is that there are not enough medical officers. The Service depends on government hospitals for services. Government medical officers are few - there are less than five hundred medical officers in Ghana. As a result of the unavailability of sufficient medical officers, visits to the prisons are done weekly, bi-weekly, or monthly. When they visit, they do not spend much time examining the inmates because of the work load. The Prisons Service has only one medical officer stationed at Nsawam but, who works at the Police Hospital in Accra - 50 kilometers away - most of the week because the Nsawam prison has no adequate medical equipments and facilities.

One other issue or policy that has aggravated inmates' health problem is the system of 'cash and carry' introduced by government. This means that public hospitals no longer administer drugs free of charge on patients. Instead, hospitals buy their drugs from a

central medical store and sell to patients including prisoners. However, the majority of the inmates are too poor to buy the drugs, and the Prisons Service can not meet the ever increasing demand for drugs. The result is that, most of the inmates are left to their fate. Where feasible, relatives of inmates, and voluntary organizations are encouraged to assist in purchasing the drugs. Worse of all, the Prisons Service has no vehicles to convey sick prisoners to hospital. There have been instances where inmates had to carry fellow inmates to hospital on their back. Also, inmates have been carried on *'I drive myself'*, a form of 'cart' to hospital. Prisoners who can afford arrange with their families to provide vehicle and money to convey them to hospital. There have been serious cases like *prolapse ani and strangulated hernia* requiring immediate medical attention but lack of transportation left these patients unattended (see the Coussey Committee Report).

Most of the inmates are not supplied with beds, blankets and 'cover cloth' and so they sleep on the bare floor. The Nsawam Medium Security Prison condemned block officially accommodates 70 inmates, but there were 200 condemned prisoners in February 1994. Over two-thirds of them have no blankets, pillows, and beds. Linens are not used in the prisons. It is unknown what the theory behind this is and no one could explain it. Perhaps the government is simply unable to supply this item. The use of pillows belong to history. Inmates who can afford use their own clothing and bedding. Also, government no longer gives inmates soap, sponge and towels. Inmates provide these themselves. Their relatives or charitable organizations and the churches assist. However, if one has no relations or money, and if charitable societies have not visited the prison, one can imagine the stench, and the possibility for an epidemic. The inability of government to provide inmates with these essential services has led to increased trafficking and breaches of prison discipline. One openly sees soap and other 'essential' commodities being trafficked. There is also trafficking in illegal drugs involving both officers and inmates.

Over 99% of the prisons use pit latrines. In all the prisons, inmates carry head-loads of night-soil or faeces from their cells to a main pit latrine each morning, afternoon,

and evening. Fumigation and spraying are not features of the prisons. Most cells are infested with lice and bedbugs. Tubercolosis (TB) and scabies patients, and those with other infectious diseases are unbeknowingly lumped together with healthy inmates. Several prisoners and prison officers may be suffering from TB. In 1991, over 43% of the inmates examined at Tarkwa prison had the TB virus. Some of the officers were also infested with the TB virus. The number of inmates suffering from AIDS or infested with the AIDS virus is not known due to the absence of a thorough and periodic medical examination.

In 1978, 89 inmates died of cholera related epidemic at the James Fort prison. In 1983, 105 prisoners were killed by cholera and diarrhoea related epidemics at the Koforidua prison. During that same year 65 inmates and one prison officer succumbed to cholera at the Ankaful Prison Camp. There have been outbreak of other epidemics which have claimed the life of prisoners. Most inmates show signs of paleness, look dehydrated and anemic (Prisons Headquarters).

Government budget cuts may have further affected the quantity and quality of prison food. Food provided in all the prisons is high in carbohydrate. There is hardly any meat, fish, vegetables, and fruits among the diet of the Ghanaian prisoner. Prison soup is commonly called "manpower" because of the rush manner with which it is prepared and its tastelessness. To put it bluntly, soup prepared in Ghanaian prisons is just boiled water colored with palm oil. Prisoners are undernourished and underfed. Cooking is not done in any hygienic manner. Nutritionists and health officials are not involved in determining the quality and quantity of food necessary for health to the prisoner. As a result, most inmates constantly suffer from dysentery, diarrhoea, and other stomach related diseases. Prisoners have been left to their fate, to say the least. In theory, the Prison Service adheres to the quality and quality of food contained in the 1960 Standing Orders and NRCD 46, 1972 (Part vii sec. 1, 2). In practice however, the Service has adopted the position of 'anything goes' or 'give them as is when is and never bother about weight and quality'. In terms of calorific intake, statistics are not available and no prison official could tell how much

calories an inmate takes daily. The situation is, however, not encouraging given that the overall intake of calories in sub-Saharan Africa is less than 68% of the minimum recommended by the Food and Agriculture Organization (see Okigbo 1993; Rimmer 1994). Overcrowding has affected prisoners' health and feeding. Reducing overcrowding may improve sanitary, health, and feeding services in the prisons considerably. The negative consequences of imprisonment may be more profound than can be fathomed.

CHAPTER V

Summary Of Interviews

> Somebody pushed us down, yes; we can blame
> colonialism ... but the responsibility to get up
> is ours. The longer we refuse to take responsibility
> for getting up, the longer shall our ... *problems persist* (italics mine).
> Kofi Amoah (The New African July/August 1994:11).

5.1. Introduction

This chapter summarizes interviews conducted in Ghana between January and March 1994. The respondents were drawn from various academic and professional fields that have a bearing on human behavior and administration of justice. The 65 interviewees are sixteen members of the Bench - 3 Magistrates; 3 Circuit; 3 High; 1 Appeal; 3 Supreme, and one retired Supreme Court judges, the Chief Justice, His Lordship Mr. Justice PENK Archer, and the Judicial Secretary. Also interviewed were, three barristers of the Ghana Bar Association, two State Attorneys - the Director of Public Prosecutions, the head of Crime Division, Attorney-General's Department of the Ministry of Justice, one law professor of the University of Ghana, Legon, and the Director of Ghana Law School. Others are, one sociologist, one psychologist, two police personnel, three prison officers, two ex-convicts, thirteen convicts, four traditional rulers, four ordinary citizens, two priests - Roman Catholic and Protestant, and one retired social worker. The rest are, the Speaker of Ghana's Parliament, Honorable Mr. Justice DF Annan, a retired Supreme Court judge, and member of the last military government, the Provisional National Defence Council, the Parliamentary chairs for national security, and legal and drafting committees, the Deputy Human Rights' Commissioner of Ghana, and six politicians - two from the ruling National Democratic Congress, and four from opposition parties.

The three-tier, related but differing, questionnaire was tailored to suit the area(s) covered by the thesis and also the specialty or interest of respondents. However, all respondents were asked certain questions considered basic to this research. These include

objectives of punishment, sentencing policies and practices, perceptions of administration of justice and the criminal justice system, prison conditions and overcrowding, alternatives to imprisonment, reintroduction of traditional courts, and fusing traditional methods of dispute settlement into the administration of justice. It is interesting to observe that all respondents believe that sentencing policies and practices have failed to redeem offenders from their negative acts, and reduce crime in Ghanaian society.

5.2. Objectives of punishment and whether punishment deters

Reacting to the question of what constitutes the objectives of punishment, except two chiefs, who believe that it should be founded on conciliation and peace-making, opinions do not differ much among respondents. Respondents rank retribution, deterrence and incapacitation as the main reasons why people are sanctioned in society. Reformation was only mentioned after further probing. The reason for not mentioning reformation, according to most respondents, is that, there is no concrete evidence to support the proposition that the prison reforms people. Rather, "there is a lot of evidence to suggest that imprisonment could worsen the attitude of some criminals and expose them to further criminal misconduct" (Justice Annan). Respondents see an urgent need to re-examine the current ways of dealing with offenders with the view to introducing other viable alternatives to incarceration.

With the exception of the inmates and ex-inmates, respondents are not sure whether the present sentencing policies and practices of courts have been an effective deterrence mechanism. The inmates were quick in pointing to the current prison overcrowding and recidivism rates to show that imprisonment does not deter. Although, the principle of deterrence is debated all over the world, some respondents, notably, the Chief Justice, the retired and an Appeal Court judges, the Speaker of Parliament, and the chiefs, the priests, the social worker, the sociologist, and the psychologist, indirectly admited that, deterrence has failed because, despite the tough sanctions imposed on offenders, especially, since

1982, crime may still be on the increase. It was the general consensus that new sentencing policies that makes room for other responses to crime should be considered.

Respondents agree that the executive arm of government has the onerous responsibility of initiating new criminal justice and penal policies. However, both the legislature and the judiciary could and should contribute to and participate in the initiation and formulation of penal policies. It was also agreed that in the absence of government action or inaction, judges could play a leading role in getting new policies introduced while old ones are either reviewed or discontinued. For instance, judges do exercise a policy function when they decide within a broad range of options in sanctioning offenders. The factors that influence such decisions, and the level of punishment imposed are policy decisions that become precedence for subsequent judgment. It was further agreed that policy decisions by judges are, largely influenced by their own perception, ideological, and philosophical persuasion. So that, if a judge is conservative, then there is every indication that the law will be stretched to its limit when dealing with offenders. Respondents further concurred that Ghana's sentencing policies and practices are found in the Criminal Code and Criminal Procedure Code Acts 29 and 30, of 1960. No respondent, however, remembers the last time these Codes were meticulously reviewed, although, they recognize that there had been some amount of "knee jerk, patch work, over the years".

The majority, that is, 90% of respondents believe that, it is the strict application of the Criminal Code and the Criminal Procedure Code, deemed the sentencing policies of the courts, that has given rise to prison overcrowding, recidivism and increased crime. They agree that a lot of offences do not warrant incarceration. For example, the Appeal Court judge who also trains new judges and magistrates, believes that ignorance on the part of sentencing officers largely contributes to overcrowding. According to him, most of the new judges, and even some old ones, believe that their efficiency, and as such, promotion, is measured by how frequently they jail people, and also, how harshly they apply the law. Therefore, judges often overlook other extraneous factors and considerations, as well as,

the general welfare of both the inmate and society, when dealing with offenders. Moreover, most of the judges are just not prepared to adapt or be flexible but stretch the law to its limit. Furthermore, cases that could be dealt with through arbitration, rather end up in court. The Chief Justice asserted that, unless a radical review of the sentencing policies is undertaken, the prisons will continue to be overcrowded for a long time to come. His position is shared by the Speaker of Parliament, members of the academia, the Directors of Public Prosecutions, and Law School, the priests, the politicians, and the sociologist.

It is sad to note that the majority of respondents including judges, defence and prosecuting attorneys, and politicians have never visited any prison before. Thirty out of the 65 respondents had visited at least one of the various prisons - in fact some visited there as either political or common prisoners. Their accounts of prison conditions are not only very insightful and far-reaching, but also, very sad, and, shows how insensitive society has been towards offenders. Among the adjectives used to describe the prison conditions are, 'appalling, horrible, very bad, inhumane, demeaning, poor, terrible and disgraceful to a civilized nation like Ghana'. The Prisons Service architect for instance, put the state of the prisons bluntly, but succinctly as, "no prison is habitable". According to the architect, prison buildings are the most old fashioned, antiquated, and delapidated among government buildings in Ghana. He recommends the immediate closure of almost ninety-five per cent of the prisons because they are dangerous for habitation. Ironically, one prison officer, the police officers, the psychologist, one defence attorney, and a Supreme Court judge believe that prison conditions should be harsh enough to deter criminals from committing crimes. Asked to comment on the massive recidivism despite the horrible, harsh, and torturous prison conditions these respondents only begged the question. Respondents' description of prison conditions have been incorporated into the discussion of the history of imprisonment and overcrowding and health hazards (see 4.3.2; 4.3.3; and 4.3.9). Suffice to add that, the general consensus is that, most of the prisons should be abandoned because they are not safe. Politicians, both in government and opposition, agree

that constructing new prisons will raise international outcry. No respondent could tell whether there is any long term policy on prison overcrowding or attempt to reduce incarceration rates besides the occasional amnesty granted by government. The Speaker of Parliament advocated that owing to the precarious exogenous factors of imprisonment offenders should not be sent there, "even if they deserve to be there".

The present economic situation makes it unfeasible to construct any new prison soon. There was consensus among respondents that improving prison conditions may not be feasible for a long time to come because it is not a priority of government. Since government alone can not carry out prison reforms owing to the difficult economic burden and constraints Ghana is facing, non-governmental and voluntary organizations, churches, and traditional rulers could be called upon to assist in rehabilitating offenders. The Chief Justice, the Speaker of Parliament, the retired judge, the politicians, and the social worker, called for a radical departure from incarceration by finding viable and workable alternatives that will benefit both the offender and society. The Chief Justice for instance recommended arbitration as a way of relieving the courts of their heavy workload. Consequently, he called for an association of arbiters to, "dispose of disputes outside the normal judicial system." Stressing the need for disputants to resort to arbitration rather than the courts, Mr. Archer urged lawyers to "educate their clients on the need to adopt arbitration and compromise to resolve disputes." Laudable as this suggestion may be, the Chief Justices' call on lawyers to advise clients is not feasible, because that will either deprive them of their income or put most of them out of business.

Respondents agreed that the present system of administration of justice is urban centered. They were reacting to the view that the over 70% of Ghanaians who live in the rural countryside may not have access to the Westminster system. This, respondents believe is because there is a greater disposition of criminal misconduct in the urban areas than the rural areas. Others, however, believe that officers of the Westminster system simply refuse to work in the rural areas. The Speaker of Parliament pointed out that a few

miles away from an urban area take one deep into a rural area. In this area's custom, tradition, and traditional methods of conflict resolution are prevalent, encouraged, and are meaningful to the people. He explained that in the rural countryside, the people prefer to avail themselves of the traditional methods to resolve their disputes because they do not trust the modern system which is "costly, very intimidating and time consuming." According to him, it was/is the mistrust and inadequacy of the Westminster system that influenced the PNDC to introduce Public Tribunals so that the administration of justice could reach the broad masses of the people in the rural areas. However, the Tribunals were also urban centered and both accusatorial and adversarial, rather than inquisatorial and conciliatory.

The response of the Appeal Court judge is also insightful. According to him, a lot of factors militate against the smooth operation of courts in the rural areas. These include, lack of court buildings, accommodation for both judges and supporting staff, good service conditions, and lack of enthusiasm on the part of lawyers to work in the rural areas which lack every conceivable social amenity. Added to this are the millions of the rural people who may be too poor to engage attorneys. In the mist of the interview with the Honorable Judge, a Circuit Court judge from Sogakope in the Volta Region called. The judge told this researcher that for two months the court had dealt with only two cases. In one in one of them the litigants withdrew the case because they preferred to settle it out of court. The picture gathered from this and other conversation is that most judges in the newly created courts are virtually doing nothing. This may be the reason why some of them resign their posts to go into private practice.

The problems facing the judiciary in the discharge of its duties were catalogued by one respondent after the other. It interesting to observe that even inmates recognize and appreciate some of these problems. Among the numerous problems, lack of personnel, equipment, poor remuneration, poor living and office accommodation, mistrust by both public and government, were cited. One Circuit court judge spoke vehemently against how

offenders are treated by both the police prosecutors and some judges. She blamed the injustices to offenders on the activities of the Ju-Pol. According to the judge, if an accused person is unable to give bribe, his/her case is sent to a judge who will be 'merciless' with him/her. However, if he/she gives bribe he/she is sent to a "softer judge ... this gives the impression that the Ju-pol can and do influence judges through bribery and corruption." A High Court judge also spoke about corruption by some judges and court registrars. These judges believe that such malpractices do not only hamper the smooth and effective administration of justice, but also, lead to mistrust and lack of confidence in the Courts.

Ghanaian judges write down proceedings 'long hand'. Court proceedings are not tape recorded, and there are no stenographers attached to the courts. There are ten High Courts in Accra alone. However, there is only one typing pool. Most of the typewriters are either old, unserviced, or beyond servicing. The Supreme Court Building has two photocopiers. For fear of its being overused, the Chief Justice has 'hijacked' one in his office. The other is firmly controlled by the Judicial Secretary. Secretarial and logistical problems make it difficult to process cases quickly. It is not hard to understand why cases are adjourned or takes long to be disposed off. There is a complete slow down of justice delivery in Ghana. Those who are unfortunate to be remanded can be there for months and even years. Land and civil cases take long years and even decades to process. But, perhaps it is the allegations of impropriety that should be examined.

On allegations of corruption in the judiciary and the fact that government has on occasion dismissed judges and magistrates on charges of corruption, ineptitude and gross miscarriage of justice, almost all the judges and magistrates were quick in pointing out that such acts are politically motivated. Pressed to comment on what possible political motive a government may have in dismissing a magistrate or judge whose dismissal had been recommended by the Judicial Council, most of the judges simply said they reserve their comments. Those who responded only avoided the main thrust of the question. The Chief Justice seemed unaware of corruption of some judges and registrars, although he did not

rule out such a misconduct because 'judges and registrars are also human beings subject to temptations'. Delay in arrests, investigations, prosecution and the expensiveness of engaging attorneys, corruption of criminal justice personnel all may and does combine to raise suspicion and doubt about the future of the Westminster system.

On allegations of impropriety within the Ju-Pol, especially, the tithing system and extortion, some respondents said these are unfortunate side effects of modern bureaucracy. The acronym, Ju-Pol, appears very familiar with every member of the Police Service. The researcher was told that, "every policeman wants to work there ... people pay to be there". The Ju-Pol prosecutes over 90% of all cases in Ghana. The police play a dual role - apprehension of offenders and prosecuting - and as such, policemen and women seem to have taken undue advantage of it to do what they like. Moreover, the police have taken advantage of the ignorance and the mass illiteracy in the Ghanaian society to wield unlimited power which seem to violate the liberties of the citizenry. A circuit court judge suggested that the Legal Directorate of the Police Service should be tasked to prefer charges against offenders, and also, prosecute. However, it does not seem appropriete that one individual or institution can serve properly, the dual roles of policing or law enforcement and prosecution at the same time, in any society. One respondent alleged that, by prosecuting, a lot of injustices are perpetrated on innocent citizens by the police. Such allegations of impropriety appear very serious and could cast doubt on both the police and the judiciary. The Human Rights' Commission and other human rights' organizations could be encouraged to investigate these and other cases of fragrant violation of the right's of offenders'.

5.3. Perceptions of the actors of the criminal justice system

On perceptions of the criminal justice system the Chief Justice gave a grim picture when he conceded that, "the present chaos in the courts would, by the end of the century, deteriorate further with no possible solution in sight." According to him, the present number of judges and magistrates can not cope with the cases pending before the various courts. New writs and summonses are being issued daily; but "ironically, judgment of old cases are not delivered everyday." The Chief Justice further conceded that, the present criminal justice system, is "dilatory, time-consuming and expensive." Surprisingly, however, all the serving Judges and lawyers and attorneys interviewed view the legal system as perfect, at least better than Public Tribunals.

In 1966 Harvey asked first year law students of the University of Ghana, Legon, to relate their perceptions of law and lawyers in Ghana. To his chagrin and amazement the students said lawyers are too affluent, arrogant, proud, insensitive to the plight of offenders and the poor, exploitative, and upholders of the law rather than justice. Moreover, the students were of the view that, most socio-political and economic instability in Ghana may have largely been brought about by lawyers. The judiciary was specifically accused of travesty of justice and members of the judiciary, proud and inhumane. The present research about the legal profession and administration of justice confirms that these perceptions may still persist among Ghanaians. The four ordinary citizens were unanimous in viewing criminal justice institutions as far removed, and out of touch with the people. They think most people do not trust the police, the courts and attorneys whose primary objective may be the extortion of money and perversion of justice.

Inmates also see judges as tin gods, omnipotent, all-powerful, corrupt, self-centered and inhumane. They do not trust the police and the prison personnel either. They think no reformation takes place in the prison and prison officers are only ensuring that at the end of the day "the number is correct," meaning, all inmates are in safe-custody.

Ironically most judges, prison and police officers and the prosecutors see prisoners as "a bunch of criminals who deserve their punishment from the society they wronged."

As to what factors are considered in sentencing an offender, the judges were quick in pointing out to the seriousness of an act as the main ingredient they look for when dealing with law breakers. A follow-up question as to whether the case of everyone in prison was/is serious, 95% of the judges responded in the negative. Asked why then do they send them to jail, the judges said they are only interpreting the law as they obtain now. Throughout the interview the judges were quick in referring to the provisions of the statutes. Penalties indicated in the Criminal Code and Criminal Procedure Code seems to form the basis of their thoughts in terms of appropriate sanctions and sentences. There seems to be a universal trend among judges and magistrates that their role is to prevent crime through sentencing (see Hogarth 1971: 70; Roberts and Doobs 1989; Doobs and Roberts 1982, 1983; Broadhurst 1981, 1990, 1990b; Indemaur 1990: 54; Doob 1990). Most respondents agree that some sentences are unduely harsh, but conceded that must be what the law may be demanding. Moreover, all the inmates believe that sentences are not fair, to say the least. One ex-convict asked, "if a person is jailed ten years for stealing a fowl, and another five years for embezzling five million cedis belonging to his employers, wherein lies justice and fairness?" It must be considered, however, that whereas judges interprete fairness in relation to the actual process of sentencing rather than the fairness of the law and sentencing together, the public may consider or is likely to relate it to both the law and court practice.

The ordinary citizens, convicts and ex-cons, policemen and the prison officers think that it is government alone that should fight crime. One respondent said 'since laws are made by government without consulting anyone, it's government alone that can and should change obnoxious laws'. Responses from the ordinary citizens, including the inmates show that in matters concerning the administration of justice, the public seems fragile, pliable, and subservient and therefore could easily be manipulated by politicians.

Responses as to whether traditional methods of resolving disputes be encouraged on a larger scale in Ghana in view of the general consensus that the Westminster system has not reached majority of the populace, and also met their aspirations, was interesting and amusing. Only 40% of respondents agreed that traditional courts and traditional methods of administration of justice should be fused with the Westminster system. The majority of the judges and attorneys, save the Chief Justice, the retired, and the Appeal Court judges, disdain traditional courts. Their common argument, is that, traditional courts are corrupt, shrouded in mystery, and also, most chiefs are illiterates. What is worse, most of the decisions of the traditional courts are constantly overturned by the Westminster courts. Among those who favor integration is the Speaker of Parliament. According to him, society seems uneasy when sentencing policies move away from capital punishment and imprisonment. However, a better result may be achieved through other methods of conflict resolution than incarceration. In his view, it is not in every case that an offender should either be executed or incarcerated. The Speaker dwelt extensively on people's unwillingness to adapt to realities, or changing situations. He said, the legal professionals are not impressed about fusing traditional ideas into the administration of justice because they want to maintain the status quo. According to him, judges are unwilling to change. "... I do not blame them; this is the way they have been trained ... so long as they keep the wig and the gown they have a problem ..." (It is interesting to note that, Mr. Annan also kept the wig and the gown for over 25 years). He called for the democratization of the judiciary so that judges could be elected at a certain stage of their career and not merely appointed by the Judicial Council as obtained currently. Mr. Annan believes that it is of crucial importance that custom, tradition, and culture are incorporated into modern governance. Others who accept integration point out that the colonial origins of modern government ensured a break with the past, which was very important to the colonialists.

However, according to these respondents, it is of great value of judgment to formulate principles of government in line with the unique custom, tradition and culture of

the society since modern government is not inconsistent with most of such practices. The Appeal Court judge was at a loss why everybody, including lawyers and judges, talk about appropriate technology in housing, industry and agriculture, and fusing of traditional and modern medicine, but they are skeptical and resentful when it comes to fusing tradition and modern in the administration of justice. According to him, such people are hypocrites who are only trying to play on the ignorance of majority of the people to enhance their own political agenda. He believes that, the idea of *sankofa*, "go back to your roots or origins", being preached in Ghana by everybody, will forever remain an illusive dream if it is not demonstrated in practice. He however, cautions that, indepth studies be undertaken to ferret out the advantages that could be derived from both systems.

The traditional rulers dismissed allegations that traditional courts are shrouded in myths, composed largely of illiterates, are autocratic, inept, and corrupt. The chiefs pointed out that this trend has changed considerably over the last fifty years. "... today, some chiefs are lawyers, lecturers in Universities both in and outside Ghana, medical officers, business executives, and politicians. The trend is ever changing and traditional rulers have constantly realized the need to understand modern governance and administration of justice. ... they are also, development oriented" (*Nananom* 'the chiefs' pointed out). It must not be forgotten that the Westminster system has also demonstrated most of the same defects the traditional system has been accused of: bereft with nepotism, ineptitude, bribery, delays, high-handedness and travesty of justice. The battle of words, accusations and counter accustions is in nobody's interest. Instead, it will rather be better to direct attention to how best the two systems can co-exist in the interest and well-being of the ordinary citizen. Notwithstanding the accusations, rhetorics, and fuss, however, the general consensus is that other sanctions may work better than incarceration. Therefore, Coyle and Rawlings's calls to look for traditional methods of dispute resolution that is consistent with the cultural values and aspirations of the people could be considered.

Most of the respondents agree that some acts such as bigamy, prostitution or soliciting, drug offences are flouted with impunity. Moreover, laws such as attempted suicide are dated. However, they prefer non-enforcement to delegalization. For instance the Director of Public Prosecutions argued at length on the need to retain laws on abortion, drugs, rumor mongering, and guilty but insane. However, non-enforcement appears hypocritical and is evidence of a double standard, and it may well be the case, in any event, that some of these laws are unenforceable.

5.4. Conclusion

The conclusion that follows from the evidence and analysis of interviews presented is that, sentencing policies and practices as presently obtained in both the Criminal Code and the Criminal Procedure Code Acts 29 and 30, 1960 have failed to return offenders into society reformed. Strict and indiscriminate application of criminal justice and penal policies appears to have rather led to increased crime, overcrowding of the prisons, and recidivism. It is clear from the discussions to this point that penological thinking in Ghana is one of enforcing strict sanctions to deter people from offending. Rehabilitation has not emerged as a dominant theme, though its ideals are held by most interviewees. It must be submitted that sentencing could always be affected by the prevailing philosophical views of criminal justice personnel and political pressures. This may in turn carry implications for corrections and correctional administration. Hence a proposal for new sentencing policies based on the fusing of old and new, ancient and modern, traditional and colonial, derived systems of administration of justice, has been articulated in the next two chapters.

CHAPTER VI

Consequences Of Imprisonment And The Need For Alternatives

6.1. Introduction

Calls for alternatives to incarceration, and more humane use of imprisonment, are generally rationalized on the basis of the broad requisites for humanity, justice and tolerance; objective and rational interpretation of crime data and findings of criminological research (Strouchkov 1978; Sagarin and Karmen 1978; Mushanga 1977; Baxi 1980; Mathiesen 1976; Zaid 1980). It can be summed from both theoretical and practical perspectives that there is lack of concordance between incarceration as a 'means' and reformation as a 'goal' of sentencing. Moreover, the efficacy of deterrence as a goal of punishment or sentencing is highly debatable.

In instances of strict adherence to legal technicalities to resolve conflicts and recourse to the established legal tradition, other methods such as negotiations, reconciliation, and peacemaking seem to have been overshadowed.

6.2. Consequences of imprisonment

Imprisonment desocializes offenders, deprives them of whatever desirable social values they bring into the prison, and further criminalizes most offenders (see Bartollas 1985; Fogel 1979; National Advisory Commission on Criminal Justice Standards and Goals 1973; Keve 1974; Michalowski 1985; Pepinski 1985; Friday 1988 and Messerschmidt 1986). The prison's role in making offenders more hardened criminals than when they first entered becomes very alarming and disheartening when first offenders, hardened repeaters, and petty and professional criminals, are clustered together. When this happens, hardened repeaters transmit the values of a criminal society to the newcomers. Long periods of incarceration make possible 'comparing of notes' that aids techniques of further crime commission. During the long periods of incapacitation and inactivity, hardened criminals relate their experiences to one another and plan their strategies for the

future. On release, they plunge into 'serious action' to recoup whatever they may have 'lost'. Incarceration provides little protection to the community if offenders leave the prison worse than they entered. For the short-term prisoners housed in overcrowded prisons, usually there is only custodial caretaking, unaccompanied by rehabilitative efforts. Seidman (1969: 454) has aptly observed that there is no realistic system of reformatory training for short-sentenced offenders in Ghana. Many of them are only 'doing time'. It is not uncommon to hear inmates in Ghanaian prisons saying *yeretwa ako*, meaning "we are doing it fast and leave." Reducing prison populations therefore may require a substantial review of sentencing policies and practices and a change in society's attitude towards the treatment of offenders.

In terms of cost and benefit analysis, imprisonment is costly and wasteful, especially, of human and material resources. Government expenditure on feeding prisoners alone run into millions of Cedis (Ghanaian currency[22]). For instance, at a feeding rate of 123 cedis per prisoner per day an amount of c457,929,000.00 is required every year to feed an average daily population of 10,200 inmates (that is, 10,200 x c123 x 365 days).

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[22] Before independence in 1957 Ghana, Nigeria, Sierra Leone and the Gambia belonged to the West African Currency Board with the West African pound as the official currecy. This pound was convertible into the British pound sterling at par and had a dollar value in the 1950s of $2.80. However this was replaced on a one-to-one basis with the Ghana pound after Ghana's independence. The Bank of Ghana became the sole issuer of the Ghana pound. This new arrangement did not affect the official parity of the British and USA currencies.

The Ghana pound was replaced with the Cedi, a decimal currency unit on the basis of C2.40 to the pound sterling on 19 July 1965. This did not affect the official exchange rate which stood at $1.17. A new cedi was introduced on 23 February 1967 at the rate of one new cedi for 1.20 old cedis (i.e. the decimalized unit became 0.50 pound instead of 100 pence sterling). A *pro rata* adjustment of the official exchage rate of NC1 was pegged at $1.40. The new cedi was devalued by 30% to %0.98 on July 1967. On December 1971 it was devalued again by 44% to $0.55, but on 7 February 1972 it was revalued to $0.78 and the term "new cedi" was dropped to make simply, the cedi. With the dollar devaluation of 1973, the official exchange rated rose to $0.87 and was maintained until 1978, when the cedi was allowed to depreciate to $0.36, that is, 58%.

"On 22 April 1983 import surcharges and export bonuses effectively introduced a dual exchange rate system, wherby the implicit average value of the cedi became $0.04. The devaluation became explicit when the two rates were unified at $0.033 to the cedi on 10 October 1983. There had thus been a devaluation of 92% during this year.

A policy of keeping the exchange rate flexible was then adopted, and a succession of adjustments between March 1984 and January 1986 lowered the official rate to $0.011, that is, by a further 67%."

Since September 1986, through a weekly auction of foreign exchange the cedi has been allowed to find its own value in most transactions. For a time, the official rate of $0.011 to the cedi was retained for imports of crude oil and medical drugs, government debt service payments, and earnings from cocoa exports, but from February 1987 official pricing of foreign exchange was abandoned entirely. The cedi has since then continued to depreciate without any intervention in sight. For instance, C700 was exchanged for $1 in 1988. Today, C1,100 is exchanged for the same $1. Unfortunately, the rapid depreciation which has led to increases in goods and services has not been matched by increases in wages and salaries. The daily minimum wage in Ghana in 1994 was C790, less than $1.

To convert these estimates into either Canadian or USA or any other major currency may therefore not be realistic given the fact that in the Ghanaian context these estimates still mean a lot, especially to people who do not depend on wages or salaries. (figures have been quoted from Douglas Rimmer's 1992 Staying Poor. Ghana's Political Economy 1950-1990. Oxford: Pergamon Press. see also Boateng *et al.*, 1990 A Poverty Profile of Ghana. Washington, DC. World Bank)

Table 14 Estimates on inmates feeding

Year	Amnt rqted.	Amnt. app.	Balance	Outstanding bal. paid after
1989	293,888,507	190,160,000	103,728,507	paid in bits over seven months
1990	449,905,561	260,000,000	189,905,561	ten months
1991	457,929,561	195,000,000	335,860,465	fourteen months
1992	645,765,877	224,860,000	420,905,877	six months
1993	674,143,335	250,000,000	424,143,335	not available
1994	886,996,345	730,000,000	156,996,345	not available

In January 1994 government announced the approval of a daily feeding rate of c200 per inmate per day. Consequently, government approved an amount of c730,000,000 for inmates' feeding for 1994. The approval was made against the background of c886,996,345 estimates submitted by the Prisons Service for approval.

Government was making these 'peanuts' available against the background of a representation made to it in 1990 by the Prisons Service and confirmed by the Coussey Committee in 1992 that the feeding rate of c123 should be increased to no less than c200 per inmate per day. Government turned deaf ears to these submissions until January 1994 when the feeding rate of c200 per inmate per day was approved. However, the increase was negated as soon as it was announced because of rising high cost of living brought about by a galloping inflation. It is unlikely government will increase or adjust the feeding rate in the foreseeable future.The figures quoted above are expenditures on inmates in custody of the Prisons Service. The Police Service and the Department of Social Welfare also require money to feed their suspects and inmates respectively. Government's attitude in providing funds to feed inmates has not been encouraging, to say the least. It is clear that government is highly reluctant to improve upon the feeding conditions in the jails.

Besides feeding, inmates are also clothed and sheltered. In 1991, the total expenditure on inmates' basic needs was estimated at c2,230,776,000, in 1992, it was c3,716,411,000. It has already been pointed out that government no longer gives inmates toiletries. There are also expenditures on maintenance of prison facilities and structures, clothing, accommodation, transportation, hospital expenses, and salaries and allowances of the criminal justice personnel, stationary and books, equipment, training facilities, and other emergencies.

Table 15 Salaries for Police and Prisons Personnel

Year	1990	1991	1992	1993	1994
Police	6,433,141,000	8,702,344,000	12,950,518,000	16,849,925,000	n/a
Prisons	984,927,000	1,200,012,000	4,969,519,415	6,571,229,000	n/a

These amounts exclude duty and ration expenses, medical bills, leave and travel allowances. During the interviews, a police officer suggested that it may require no less than C350,000 to adequately cloth and equip one police officer. Almost the same amount may be needed to cloth a prison officer. A government official also revealed that over ten per cent of Ghana's gross domestic product is spent on criminal justice institutions. A complete assessment of the cost of crime is complicated because reported crime may represent only an insignificant percentage of the total volume. This means therefore, that, in addition to anything calculable, there could be other hidden costs due to unreported crime which may also constitute a debilitating drain on the economy.

The claim that imprisonment protects the public from criminals ignores the temporary nature of this protection and the heightened danger to society emanating from discharged convicts. There is, above all, the illusion that by locking up a proportion of the population, public security is assured. Such an illusion ignores the fact that at any point in time a majority of actual and potential criminals remain in society. Moreover, such an illusion fails to recognize that many offenders return to society not only to 'recoup', but also more determined to wreck vengeance on innocent and unsuspecting citizens.

Added to these, in Ghana, are the physical defects of antiquated prison buildings, increasing burden imposed by the rise in committals, resulting in an unprecedented overcrowding, and, colonial Prison Regulations and Standing Orders backed by NRCD 46 whose mission is 'safe custody' rather than rehabilitation (see NRCD 46 Part I 1.{1}: 1972). Moreover, lack of rehabilitative tools and the large influx of illiterate offenders makes the objective of reclaiming the criminal highly unfeasible. A statement by a former

Chief Justice of Ghana, Mr. Justice E.N.P. Sowah aptly sums up the situation within the criminal justice system:

> Prison officers have persistently complained about overcrowding; social workers have reported that inmates in the prisons have been there for years, not convicted and yet apparently forgotten by whoever sent them there; accused persons have complained that their cases take too long to decide; and there are reports that if you have a disagreement with your neighbour and he tells you, "I will show" you, all he has to do is to walk into a police charge office and before you realize what is happening, the police have taken off all your clothes except your pants and pushed you into a cell (1989).

What the Honorable Chief Justice failed to remark upon are the seeming miscarriage or travesty of justice and or mistrials by the judiciary; the confusing goals displayed by judges about incarceration; and, the prominent role played by the judiciary in aggravating the problem of overcrowding and the crime situation. Perhaps, putting most of the blame on the judiciary would have exposed the judiciary's own impotence and inefficiency in the administration of justice in Ghana.

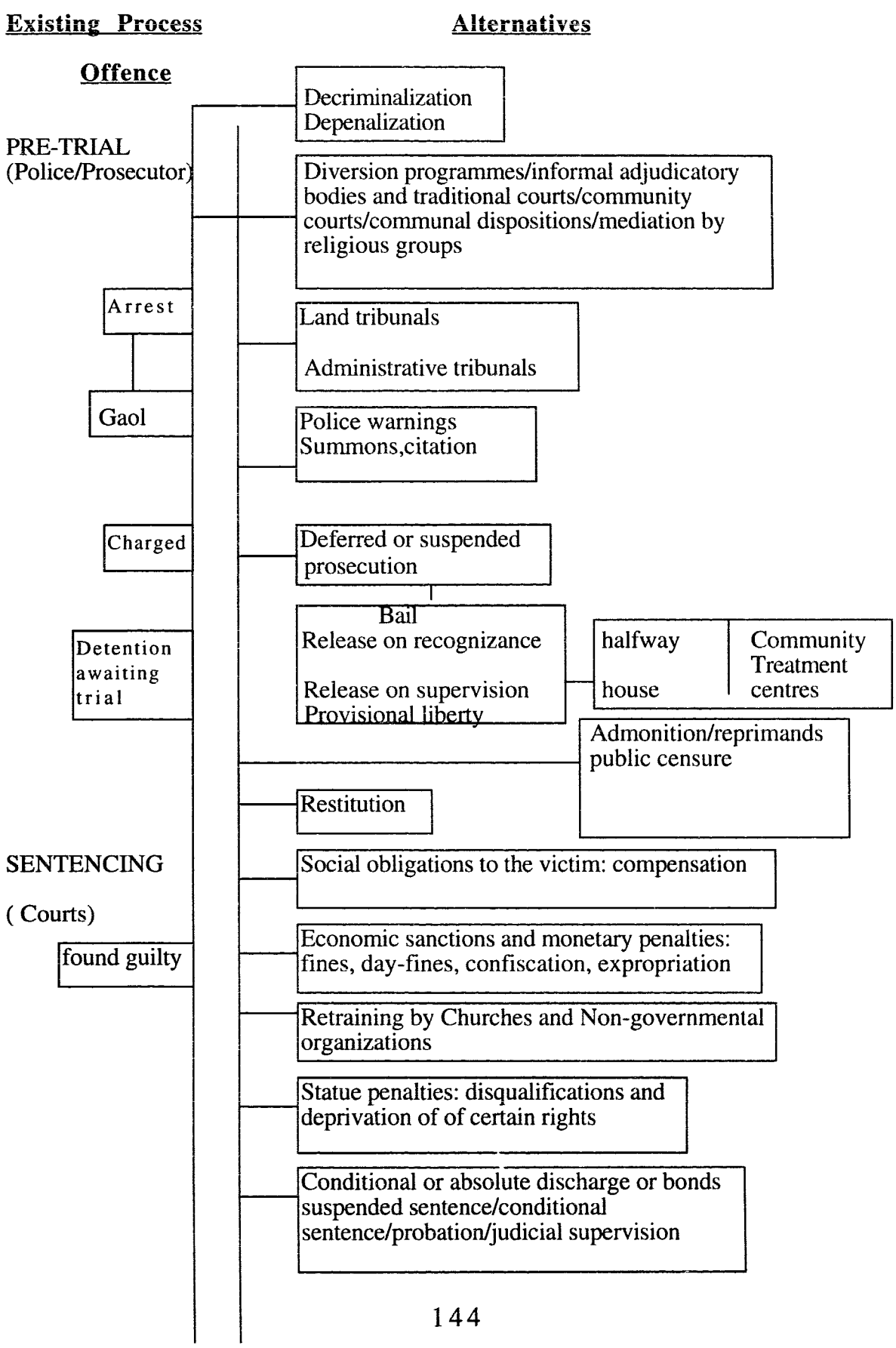
6.3.1. Non-custodial alternatives

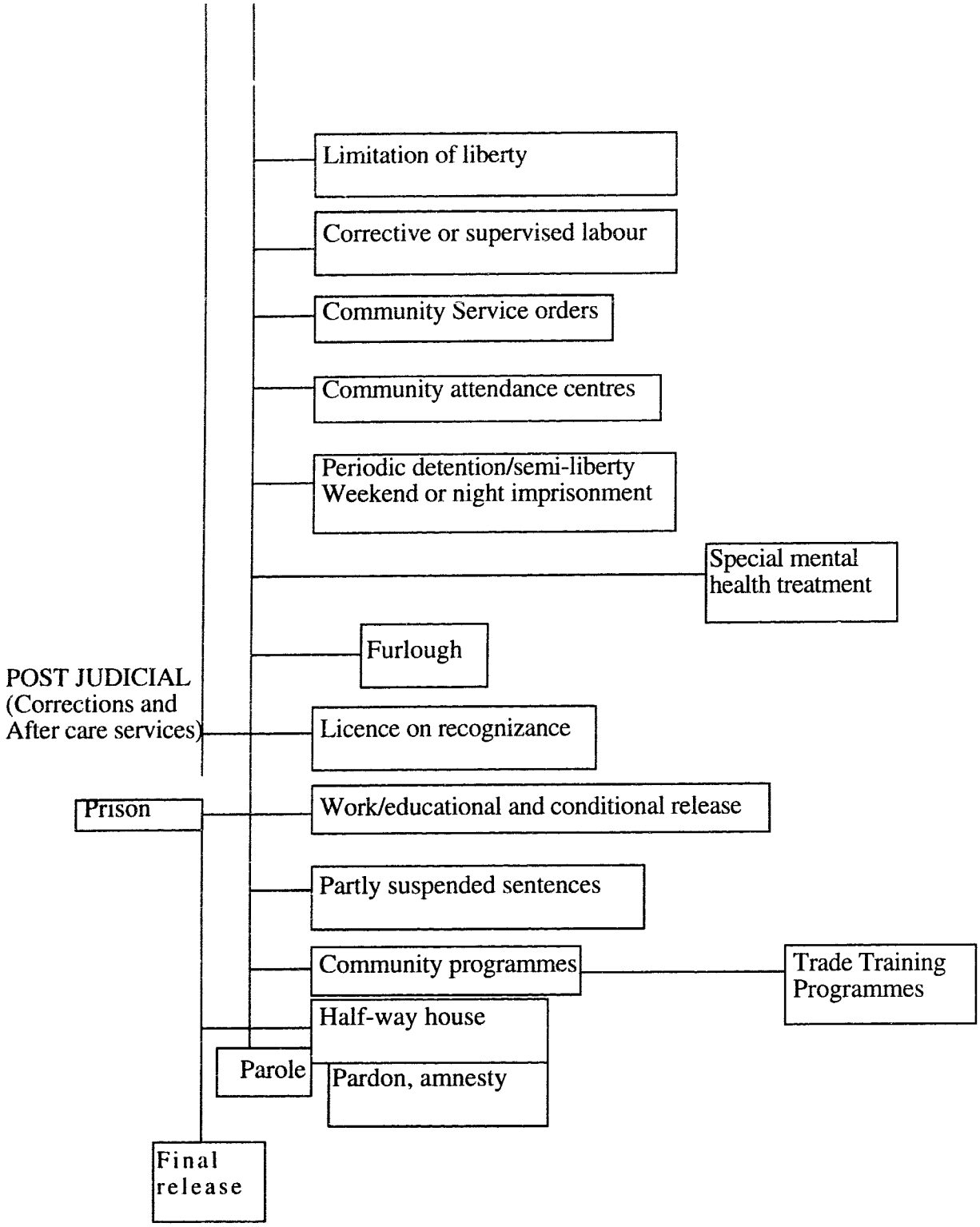
Bantley and Kravits (1979) believe that deinstitutionalization is feasible at all levels of the criminal justice system: at the pre-trial stage, that is, the police and prosecutorial level; upon conviction as a judicial disposition; and, after the imposition of a prison sentence, as a result of an evaluation by correctional authorities. Table 16 illustrates Ghana's present correctional process, on the left-hand side, under "Existing Process" and the suggested community programs on the right-hand side, under "Alternatives", offering an example of a wide range of available community programs from which new penal policies could develop. The construction of this table has been influenced by the experiences of advanced nations such as Canada, United States of America, Britain, Sweden, Finland and Japan. It has also been informed by the experiences of Papua New Guinea and other simple or traditional societies which continue to rely on dual legal systems in their attempts to control crime. It must be recognized, however, that institutional

treatment and alternative measures vary greatly from one society to another, in accordance with the socio-cultural and legal setting, the level of public tolerance and awareness, the availability of human and material resources and a broad range of the use of the criminal law to deal with crime. Therefore, these alternatives may be adopted and adapted to suit Ghanaian conditions. The assessment of how these alternatives are being implemented in practice would provide a useful guide for Ghana. A discussion follows on how existing alternative programs in other jurisdictions could be considered in the Ghanaian context. These are briefly sketched as concepts for the reform of the current penal policies in operation. On the basis of this review, as well as the interviews, historical background and the presentation of Ghana's current penal operations, and policies, a proposed penal policy will be outlined.

Table 16.

PROCESSING CRIME IN GHANA: COMMUNITY PARTICIPATION




Limitation of liberty
Corrective or supervised labour
Community Service orders
Community attendance centres
Periodic detention/semi-liberty
Weekend or night imprisonment
Special mental health treatment
Furlough
POST JUDICIAL
(Corrections and
After care services)
Licence on recognizance
Prison
Work/educational and conditional release
Partly suspended sentences
Community programmes
Trade Training Programmes
Half-way house
Parole
Pardon, amnesty
Final release

6.3.2. Pre-trial stage

Pre-trial alternatives, diversion programs or diversionary devices, are procedures and facilities for suspending criminal proceedings on the understanding that the offender accepts guidance or treatment from agencies outside the criminal justice system. These agencies include various arbitration tribunals and informal community courts (see Nimmer 1974; Satsumae 1978; Feltiner and Bartherlmess-Drew 1978). Some of these alternatives necessitate great flexibility in the exercise of police, prosecutorial and judicial powers or may be dependent on the availability of detoxification and drug treatment centers. They may also have access to different adjudicatory bodies such as traditional courts, ecclesiastical, land, and administrative tribunals. Although Ghanaian society is largely heterogeneous, and the traditional rulers' influence and power may have diminished considerably, there seems to be a uniform procedure of dealing with offenders among the various ethnic groups.

6.3.3. Administrative tribunals

Most of the embezzlement offences may be better dealt with by an administrative tribunal. The objective of an administrative tribunal is not to incarcerate people as such but to make an offender continue to work in a less sensitive position so that the money embezzled could be deducted from his/her salary. Administrative tribunals could also resolve disputes between and among workers and management, and also, between one organization and another. The aim is to resolve industrial and administrative problems amicably without recourse to court of law where the 'winner takes all and the loser might be punished or gaoled'.

6.3.4. The traditional courts

Also to be considered alongside these repertoire of 'made-for-export' alternatives are traditional methods of conflict resolution or peace-making. Wight (1947: 34) has pointed out that, "there is no intrinsic disharmony between the indigenous institutions ...

and the imported Western ... system ... for the purposes and methods of the indigenous and the imported are the same ..." Danquah (1957:28) sees Ghana's independence as releasing her from the restrictions under which some chiefs placed "certain of our rights and liberties under bondage to the British sovereign." According to Danquah, colonization gave Ghana an opportunity to:

> study under the British; losing much by the way-side, but gaining a profitable experience of how independence in the modern form may be enjoyed by an intelligent people, possessed of an ancient freedom and tradition of which they are proud.

Traditional authorities continue to wield significant power and influence in the rural countryside and even the urban areas. They are the first point of contact by 'strangers' to any town or village, they are supposed to be interpreters of government policy to their people, they have mediated in volatile national issues, they have served the country in various endeavors. Besides, they may be more educated, more well-informed, more mature than most of their predecessors. If they possess all these attributes, it is a logical question to ask why they cannot participate in the administration of justice in Ghana.

Long ago, a Colonial Administrator in the Gold Coast, C.S. Salmon wrote that ;

> the country should be ruled and governed by a native element, and Great Britain can easily assist and guide it by laws and regulations - the fruit of ages of experience - engrafted on to and merged with such existing native systems and methods the people may desire to keep and to follow (cf Hayford 1970:216).

Salmon was re-echoeing the assertion by Governor Nathan in 1901 that the British penal system as adopted in West Africa had failed and so new penal policies, informed by the unique traditions and practices of the people should be conceived (Nathan's letter to the Secretary of State Joseph Chamberlain, cf. Seidman 1969: 441).

6.3.5. Mediation by religious bodies

Although officially Ghana is a secular state, religion permeates the lives of majority of the people. The advent of Christianity has brought about a new 'power source' and 'power broker' in Ghanaian society. Church leaders - priests, catechists and elders alike -

have developed mechanisms to settle disputes among their members, between their members and non-members and, between and among non-members. Some of the infractions religious bodies settle could be described as summary offences under the Criminal Code. Thus, religious leaders, especially Christians and Islam, have succeeded on various occasions to mediate in conflicts between and among people, and also between and among government and opposition and pressure groups. Preston (in Bottoms and Preston 1980: 109) has asserted that religious bodies "have a duty as citizens to share in the communal responsibility for criminal policies". Other methods of knowing, such as can be found in religion, could also be employed to assist in the search for the control of crime. After all, penal philosophy of conciliation and restitution is not contrary to the key biblical teaching of forgiveness.

Although there is the continuing debate over separation of church and state, religious groups could play a more informal role in the administration of justice in Ghana. They could especially resolve marital disputes and disputes involving their members without the members resorting to the courts. They could also settle administrative and quasi-administrative disputes refered to it by either government or the courts.

6.4.1. Pre-sentencing alternatives

Pre-sentencing alternatives include fines, suspended sentences and probation, community service orders and corrective labour and periodic detention. Pre-sentencing alternatives are largely obtained in most advanced countries. Even though pre-sentencing alternatives have constantly come under criticism, when infused with local traditional values and norms, they may work well in Ghana. Besides, some of these may already be in existence in Ghana and need only be improved.

6.4.2. Fines

Fines are imposed as a penalty only where an offence is committed under section 296 of Act 29, 1960. This section pertains only to summary offences such as throwing rubbish in a prohibited place, defacing public notices, loitering, refusal to undertake communal work and other offences that may be described as insignificant. When imposing fines under any of these offences, section 299 of Act 30 of 1960 enjoins the courts to order that:

> in lieu of or in addition to any other punishment, for example, imprisonment or fine an offender should enter into his own recognizance, with or without sureties, for keeping the peace and being of good behaviour and that in default of such recognizances or sureties, he shall be imprisoned, in addition to the term if any, of imprisonment to which he is sentenced for any term not exceeding six months, or exceeding the term to which he is liable to be imprisoned for the offence to which he is convicted, or if no term of imprisonment is specified for the offence of which he is convicted for a term not exceeding two months.

Fines are economical, both in terms of money and manpower; practical in terms of management and administration, and humane, because they may inflict a minimum damage on the offender. Moreover, they may be clearly defined, easy to comprehend and predictable. Though these be the merits of fines, there are also short-comings: fines may not be personal, not always exemplary, and could create inequalities discriminating against the poor, for whom they are usually converted into imprisonment because of non-payment, thus equating justice with money.

Some of these short-comings, however, may be solved with the establishment of a flexible system of fines, that is, by adjusting the amount of a fine not only to the gravity of the offence but also to the socio-economic situation of the offender. For example, a day or monthly fine system under which the amount paid is a proportion of the offender's net income, allowing for coverage of basic expenses, so that the gravity of the offence is reflected in the number of days for which earnings have to be paid can be introduced. Part of the payment may be given as restitution or compensation to the victim; payments may be made in installments and in the case of default of payments, before committing offenders to

prison, supervision or community work orders may be applied with the view to helping the offenders manage their financial affairs or to deduct payments from their wages.

In this connection, government policy or law which disqualifies persons convicted from working in public institutions must be seriously re-examined. Those who embezzle or break financial trust may be assigned responsibilities that do not involve handling of money without necessarily losing their jobs. For a fine system to work better than it operates presently, a humane and equitable approach could be developed, including reliable and effective mechanisms of recording and collection and periodic legislative adjustments of fine levels to take into account the rate of inflation. Moreover, sections 294 of the CPC could be amended to give judges more flexibility in imposing fines, especially, where the crime borders on financial mismanagement and a break of financial trust.

Where the courts are satisfied that an accused person can not pay a fine, but the offence does not merit imprisonment, the court can release him or her to the traditional rulers or the district or town/village council for community services. The objective here would be to minimise the use of imprisonment as much as possible.

6.4.3. Cost, compensation, disposal and restitution

Sections 139-151 of Act 30 deal with cost and compensation as well as disposal and restitution of articles and property. It enjoins the courts to encourage the use of these mechanisms especially compensation and restitution for a variety of infractions, including criminal offences. For instance, section 148 (1) states that "any person who is convicted of felony or misdemeanour may be ordered by the Court to make compensation to any person injured by his offence," and 148 (3) also says that "any such compensation may be either in addition or in substitution for any other punishment." However, apart from civil offences and cases that could be deemed to be political in nature or borders on legal or constitutional interpretation, where costs and compensation are awarded, these mechanisms are generally

not used in most criminal offences. An expansion of their use on more serious offences, such as, break and enter, could further reduce the need for incarceration.

6.4.4. Suspended sentences and probation

Discharge, absolute and conditional, may be a reasonable way of coping with offenders whose crimes may not be too serious and who may not present risks of re-offending and re-conviction. The suspended sentence has a wider application. Under this mechanism, offenders may be sentenced to a prison term, varying from a few months to say, five years, thus permitting formal disapproval, sanctioned by the pronouncement of a sentence commensurate with the offence. However, the execution of the sentence is suspended for a certain period and eventually vacated, if the offender does not reoffend in the prescribed period.

The court may impose certain obligations to be fulfilled on the part of the offender. These include restitution or victim compensation, apologies to the injured person, abstention from alcohol and other drugs, residence in a certain place and others. In addition, the offender may be placed under supervision for a trial period tantamount to prosecution. Supervision should be exercised by the community or by work enterprises and charitable organizations. With regard to community supervision, the local councils, town councils and District Assemblies may be entrusted with such a responsibility.

6.4.5. Probation

Technically, the boundaries between suspended sentences with supervision and probation, also called "judicial supervision", are not always clear and may vary from country to country. In some countries, the court, instead of sentencing, issues a probation order; in other countries, the court, in imposing the sentence, suspends its execution. In both cases, however, the offender, whose consent may be essential, is placed under professional supervision in the community. Such supervision is usually carried out by social workers and after-care agents.

Sections 352-369 of Act 30 deals with probation in Ghana. These sections, especially, section 353 enjoins the courts to apply probation to all manner of offenders who in the view of the courts deserve it. However, only young offenders seem to be benefiting from probation in Ghana. There was no record found on adult probatees in Ghana. It does not appear to have ever been used on adults. No satisfactory explanation could be given for the judiciary's inaction on adult probation during my interviews. One conclusion could be that there is lack of political will to introduce probation in Ghana. The introduction of adult probation in Ghana thus appears long overdue. Probation in Ghana could be supervised by the Judicial Service in concert with the District Assemblies and town and village councils. This scheme could be fused with community service orders.

6.4.6. Community service orders

A community service order involves a commitment on the part of an offender to perform unpaid work for a number of hours a week, usually on week-ends, for one year or more. In Ghana, community service orders could be entrusted with the traditional leaders, District Assemblies, town and village councils and the churches and other non-governmental organizations. The work or tasks assignment could appropriately be organized by a probation service in consultations with the local communities and the courts. It could be organized in an offender's local area of residence not necessarily his or her hometown. Community service may be seen as a constructive, inexpensive alternative to short term prison sentences and a new means of diversion, designed to bring the offender into closer touch with fellow citizens in need of help and support (Pease *et al.*, 1975).

6.4.7. Periodic detention

Periodic detention (Missen 1975), week-end detention (Lea and Young 1985), semi-liberty and semi-detention are used in various countries: they do not imply a complete deprivation of liberty, as does imprisonment, but some restrictions on it, placing offenders under conditions of security but permitting greater freedom and limited contact with the

outside world. Periodic detention could entail an offender performing a supervised restitutive work within the community in conjunction with a limited deprivation of liberty on week-ends or on week-day nights. It has, therefore, many similarities with restitution schemes and community service orders.

Semi-liberty and semi-detention, as well as week-end detention, are sentencing alternatives which may permit the offender to remain in the community during the day for educational and employment purposes. They could be used as a substitute to short-term imprisonment in Ghana.

6.5. Post-judicial alternatives

Post-judicial alternatives include conditional release and parole, work or educational release, half-way houses and types of release on license or recognizance or leaves on furlough, pardons and amnesty. Apart from amnesty which has been used periodically in Ghana, none of the above, like those already discussed, has ever been tried, although some acknowledgement has always been given to them. Halfway houses may, for instance, be used to alleviate overcrowding, and serve as direct sentencing alternatives, and provide therapeutic services for those afflicted with addiction or mental disability. In the United States of America, for example, some halfway houses provide vocational training and assist in arranging for employment in the months prior to the end of a sentence. Other halfway houses cater for special high-risk groups, such as alcoholics and drug addicts (see Johnson and Kravitz 1978).

The development of policies on half-way houses and leaves on furlough could involve input from various private organizations from their formulation to implemention. If half-way houses can not be supported by the economy at this time, parole, which is less expensive, could be considered. Temporary release programs, aimed at helping an offender to smoothly return to the society after long isolation could be granted to prisoners who demonstrate receptiveness to the 'treatment process.'

Post-judicial alternatives must not be conceived as alternatives to incarceration. However, they may help to offset some of the damaging and dependency producing effects of imprisonment, and reduce the prison population.

6.7. Privatization of Corrections

As a long term policy, serious consideration could be given to privatization of corrections. In Ghana, the focus could be upon trade training. Institutions that may have adequate facilities could be encouraged to assist. Religious bodies, charitable organizations, NGO's - OIC, World Vision International - and other social groups could be used in this regard. First offenders could be encouraged to avail themselves of such an opportunity. Benefits to be derived from privatization could be enormous when non-criminal justice agencies are involved in the treatment of offenders. It may also reduce government expenditure. Furthermore, involving the private sector in the treatment of non-dangerous offenders could lead to the improvement of existing facilities since the prison population may be drastically reduced.

Privatization of penal services, as with many other alternative methods in dealing with offenders have been criticized. Some critics argue that privatized corrections may not be a panacea to overcrowding. Critics contend further that privatization may not be able to offer any long-term savings to the taxpayer (see Lea *et.al.*, Undated). Moreover, monitoring may pose a problem because of inadequate resources and personnel. Nevertheless, it is an alternative worth considering.

6.8. Decriminalization

Decriminalization is the legislative process that renders lawful acts previously prohibited by criminal law. Depenalization implies a legislative process by which certain criminal offences are converted into matters to be dealt with administratively or by civil agencies. Essentially, these are public policies designed to reduce the scope of criminal statutes. Policies on decriminalization may be desired for 'victimless crimes' where the

individual does not view him/herself as a criminal. Moreover, where there may not be public consensus as to the seriousness of the crime decriminalization or depenalization could be considered (Levine *et. al.*, 1980: 82). These methods would help eradicate the stigmatizing effects inherent in the criminal law and ease the burden of the criminal courts (Suzuki 1978).

Specifically, the laws on attempted suicide, abortion, prostitution, the production and cultivation of marijuana and other drugs could be considered. The guilty but insanity law could also be examined for repeal or revision. The continued existence of the guilty but insanity law in the Criminal Code, Act 29 section 27 or 28 and Criminal Procedure Code, Act 30, sections 133-138, especially, sections 136, 137 and 138 aptly demonstrates how Ghanaians may be unprepared to change even long after those who introduced such a legislation have themselves changed.These sections state that:

136. When the accused appears to be of sound mind at the time of preliminary proceedings, the Court, notwithstanding that it is alleged that at the time when the act was committed, in respect of which the accused person is charged, he was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, shall proceed with the case, and, if the accused ought to be committed for trial on indictment the Court shall so commit him.

137 (1).Where any act is charged against any person as an offence and it is given in evidence on the trial of such person for that offence that he was insane so as not to be responsible according to section 27 or 28 of the Criminal Code for his action, then, if it appears to the Court before which he is tried or, in the case of a trial by jury if it appears to the jury that he did the act charged but was insane at the time when he did it, the Court or jury as the case may be shall return a special verdict to the effect that the accused was guilty of the act charged but was insane as aforesaid when he did the act.

(2). When the special verdict is found the Court shall forward the Court record or a certified copy thereof to the Minister and shall order the accused to be kept in custody as criminal lunatic, in such a place and in such manner as the Court shall direct till the President's pleasure shall be known, and it shall be lawful for the Minister to signify the President's pleasure by warrant under his hand and for the Minister therein and from time to time to give such order for the safe custody of the said person during pleasure, in such place of detention, prison, or other suitable place of safe custody and in such manner as the Minister may deem fit.

138. If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the preliminary proceedings or trial; and in the case of a Court other than the High Court, if the investigation results in a committal for trial, or if the trial results in conviction, the proceedings shall be forwarded to the High Court with a report of the circustances, and the High Court shall pass thereon such order as it thinks fit.

The guilty but insanity plea appears both dated and in no one's interest. Moreover, prosecuting and or incarcerating a person for attempting to commit suicide may serve no useful purpose but may rather compound the extreme mental, psychological and social problems the person may be going through. Even so, the Director of Public Prosecutions and the chair of the Parliamentary Committee on Legal Drafting believe that, though this and many other laws may be dated, they should still be retained to deter people.

6.9. Discussion

The main thrust of this study has been the examination of the administration of justice, especially the sentencing policies and practices in Ghana. Of especial importance are the sentencing policies contained in the Criminal Procedure Code, Act 30, 1960. This Act has been interpreted by the judiciary in such a manner that appears to have largely contributed to overcrowding, recidivism in the prisons, and increased crime.

Evidence has been presented to show that the present sentencing policies address, albeit unsuccessfully, the problems of crime, criminality and prison overcrowding in Ghanaian society. These policies, a colonial heritage, do not now appear to benefit Ghana. Indeed, they may have contributed to the present high incidence and volume of criminality in the society. While the courts have been conservative in their sentencing practices, the prisons have only succeeded in incapacitating offenders. Reformation and rehabilitation through trade training is currently unthinkable in Ghanaian prisons, especially, given the present state of the prisons. On the basis of the findings of the present research it is suggested that sentencing policies should be reviewed to reflect changing societal values. Judges could have a wide range of options in dealing with offenders. Where imprisonment does not exceed three years and also where an offender is not a repeater, other alternatives could be applied. In this regard, calls, especially by the Chief Justice, for a review of the CC and the CPC appear consistent with this study.

6.10. Recommendations for the implementation of alternatives to incarceration programing

1. Research has amply demonstrated that the process of stigmatization and marginalization starts at the very earliest stage of the criminal process (see e. g. Sykes 1971; Hulsman 1986; Snarr 1993; Hogarth 1971; Roberts and Doobs 1989; Doobs and Roberts 1982, 1983; Broadhurst 1981, 1990, 1990b; Indemaur 1990: 54; Doob 1990; Christie 1977, 1981; Mathiesen 1974, 1980; Steinert 1984). Therefore, every conceivable effort should be made to reduce the number of people remanded in custody. 'Remand' could be reserved for those whose crimes are very serious and whose presence is a threat to the public. Those remanded should be separated from convicted offenders. As much as practicable, adherence to the number of inmates in every prison as set out by law should be strictly enforced.

2. As Christie (1977, 1981); Mathiesen (1974, 1980); Steinert (1984); Hulsman (1986); and Snarr (1993); Bartollas and Miller (1978); Bartollas (1985) have demonstrated, the attitudes of the criminal justice personnel are very important in evolving alternatives to imprisonment, and their role is crucial in maximizing their impact. Conflict sometimes exists in the priorities and objectives of the different components of the criminal justice system, even when they are directed towards a common purpose. The degree to which policies of diversion and other alternative devices may be pursued could be influenced, to a large extent, by the goals to which the various sectors are committed. For example, when the police view their role as law-enforcement only, the implementation of measures to reintegrate offenders could be seriously hampered and jeopardized. However, if they see rehabilitation of offenders as part of their task, it could enhance the effectiveness of policies on non-institutional dispositions. Clarification of these goals is therefore recommended.

3. The judiciary is a key element in implementing any reforms. Therefore, the support of the Judicial Service could be indispensable in any policy on alternatives. It has been pointed out already that, the judiciary implements the goals enunciated in the Criminal Code and the Criminal Procedure Code. As a reactive institution, the judiciary may not have an

independent role in either defining, initiating or even implementing policies. However, in reaching decisions or verdicts and opinions the courts could interpret laws in such a way that it may assist in selecting, rejecting, initiating or implementing new policies.

Since the judiciary exert considerable impact on penal policies, a serious consideration could also be given to the re-organization and updating of the Judicial Service to reflect changing societal needs and goals.

4. Above all, correctional officers' function and role could gradually change from that of "safe custody, security and control," to that of humane treatment, reformation through vocational training and informal education and functional literacy programs.

5. Consequently, the function of the Prisons Service could be reviewed to reflect any new sentencing policy envisaged. The Service's Mission Statement, "to ensure the safe custody and welfare of prisoners and whenever practicable to undertake the reformation and rehabilitation of prisoners" (NRCD 46:1), obviously subordinates reformation to safe custody.

A call for humane training programs for correctional officers could be conceived in the context of the development of new penal policies and practices. Moreover better and humane housing facilities for inmates could be considered. As a long term policy therefore, castles and forts being used as prisons could be reconsidered or be discontinued and modern prisons constructed.

6. A policy review of the Ghana Prisons Service with a focus on determining the most appropriate model to guide the implementation of desired reforms - goal model, functional model, and systems model - is further recommended. The main aim is to attract more qualified personnel and specialists.

7. Further research could be undertaken to determine the efficacy of and areas where traditional courts could be infused into the Westminster system in Ghana. Such a research may ensure that the constitution of the traditional court is more broadly based than it is currently. However, the traditional courts may not have powers of committal. They may

arbitrate only. They could refer cases that are beyond their mandate or jurisdiction to the Westminster courts. In the same vein, Westminster courts could also reciprocate this by referring cases deemed 'trivial' to the traditional courts. In that way, the traditional courts and the existing courts could be used to complement each other and not work against one another.

8. Public opinion plays an important role in determining the seriousness of crimes. The law and order policy of the USA and Britain during the 1970s and 1980s and persisting even up to today may largely be reflective of the public's fear of crime. Public participation and support for crime prevention and treatment of offenders are vital if success is to be achieved. The attitude of the public is central in shaping criminal justice and penal policies, especially policies on alternatives to incarceration. Indeed, the degree of public tolerance for offenders and of confidence in the manner of dealing with them may be described as controlling variables. On the negative side, two aspects may be borne in mind. First, the public may tend to over-react to particular crimes on the basis of emotional and irrational beliefs. Second, the widespread use of imprisonment may encourage the public to believe in its efficiency, to the point that a low rate of crime detection is often accompanied by considerable severity of sanctions against those who are apprehended, as a kind of trade-off. Thus, a highly punitive rationale, emphasizing imprisonment as an appropriate measure, could easily exist when the crime situation appears to be one of mounting seriousness, and such a process can be self-reinforcing.

Public opinion may swing strongly against alternative policies apparently because the public may consider the shift in emphasis as leniency towards criminals. This may be true when certain sectors of the mass media sensationalize and attempt to distort facts about the issues at stake or the crime situation. Under such circumstances, effective, rational and humane policy-making could be much more difficult. What the public may really wish for and need is certainty about the policies being implemented, knowledge of their functioning and of the reasoning upon which these policies are based. In short, a well-informed public

could be a supportive element in rationalizing and diversifying the approach to crime prevention and correctional treatment. Public opinion could therefore be guided and molded by concerted government action.

The fact that public opinion could be molded and fashioned by governmental action means that the problem, that is finding alternatives to imprisonment, is one of political will and social presentation. In this context, the law could be used as a vehicle of social change, provided there is a political commitment to take initiatives and educate the public to understand clearly that imprisonment can be self-defeating and that a positive attitude is needed for the development of effective community programs.

Although most, if not all public policies are initiated by articulate and powerful interest groups, such policies must be embraced and supported by the masses, otherwise it will be difficult to implement. Moreover, there is no sense in enthusiastically advocating for fresh policies and reforms if there is no mechanism for finding out whether such policies will work or are working.

9. The establishment of a center for the study of criminology at the University of Ghana, Legon, is further recommended. Such a center could undertake teaching and research in the fields of law, crime and social control, and policy issues and directions of the criminal justice institutions with the view to determining their effectiveness in responding to the expectations of society. It is also recommended on the basis of the present research, that progress in making rational policy choices could be hastened or enhanced with the development of better tools for securing criminal justice information.

CHAPTER VII

Conclusion And Recommendations

Law and justice are distant relatives. And in this country (South Africa), they are not even on speaking terms. Marlon Brando in a film entitled A Dry White Season in WS DeKeseredy/Brian D. MacLean cf MacLean and Milovanovic; Racism, Empiricism and Criminal Justice 1990. Chap 10.

7.1. Conclusion

The study has traced the administration of justice and sentencing policies and practices in Ghana from its inception by the British colonialists to the present. On the basis of the historical review; the interviews; evidence of the contemporary description of the failure of Ghana's penal operations and policies; the perceived inadequacy and failure of the Westminster system, especially, the sentencing policies and practices to reduce crime, prison overcrowding, and the negative effects of imprisonment; certain conclusions have been made. It was noted that an increasing 'robust' policing, prosecution and sentencing seem to have resulted in an unprecedented incarceration of offenders, and prison overcrowding.

Ghanaian prisons may resemble the infamous Alcatraz prison of the United States of America in both structure and ideology - absolute silence, filth, squalor, and overcrowding. There is virtually no treatment staff, because government policy emphasizes safe custody. Incarceration, with its physical and psychological deprivations, symbolizes one of two most stringent sanctions practiced in Ghana. However there is no conclusive evidence that more incarceration reduces crime. Moreover, experience from other jurisdictions has shown that the excessive use of the prison may be self-defeating. It has been suggested that excessive incarceration may be a way of appeasing the public's demand for punishing offenders.

On the basis of the findings of this study, it is being recommended that new policies on the administration of justice be considered. Fresh policies, particularly those supportive

of alternatives to imprisonment based on Ghana's unique customs and traditions, as well as its socio-economic and political experiences, have been proposed.

7.2. Specific policy recommendations

Rawls (1972) has argued that justice is the first virtue of social institutions. On the basis of the discussion in the thesis, it is being recommended that justice could become the basis of penal policy and correctional reform in Ghana. In other words, it is being recommended that penal policy and correctional reform in Ghana be based on clearly defined principles of justice. Justice requires the restoration to prisoners of a sense of dignity of which the physical reality of incarceration deprives them. Increased efforts are therefore required to reduce the number of prisoners, by finding viable non-custodial options to incarceration.

A commission of experts to formulate national criminal justice policies, standards, and goals for crime prevention and treatment of offenders in Ghana could be considered. Such a commission could work out the modalities for all the alternatives feasible, and also, set standards and goals for probation and parole officers. Consequently, the establishment of a Probation and Parole Service in Ghana is recommended. This would require a review of the current Probation Act. The idea of volunteer probation officers could also be given a serious consideration.

The commission may also seek to limit the processing time between a defendant's arrest and final disposition in criminal trials. Such an injunction may ensure prompt processing of criminal cases with the objectives of law enforcement, fairness to accused persons, efficient judicial administration, and increased knowledge concerning the proper functioning of the criminal law (see Speedy Trial Act of USA, 1974).

Given the current conservative nature of the Ghanaian judiciary, it may be appropriate for the legislature to consider alternatives in the general context of their legislative powers. Government could also work with both the legislature, opposition and interest groups in finding lasting solutions to the country's crime problem. A non-partisan

approach in finding solutions to the crime problem could enhance and accelerate the development of viable penal policies. Consequently, an inter-parliamentary committee on crime prevention with the view to evaluating the impact of penal and criminal justice policies and prison conditions and overcrowding, is recommended.

Moreover, government could spend time, effort and money to update the equipment, knowledge, efficiency and skills of those engaged in the administration of justice in Ghana. Local and overseas courses, as well as researches and studies could be encouraged and supported by government. Also, periodic review and evaluation of crime policies to determine their cost/benefit, and or effectiveness, could be made "part and parcel" of the overall administration of justice in Ghana. To enhance reliable criminal justice data collection and ensure up-to-date data on crime trends, a bureau of justice statistics, similar to the National Criminal Justice Reference Service of the USA could be created to prepare regular bi-annual and annual reports and publications for both government, academia, and those interested in criminal justice research. As a long term objective, computerization of criminal justice information could also be considered. This may offer Ghana a wealth of information on crime and treatment of offenders that could be shared with other nations.

Public awareness and confidence in the CJS could be raised through the development of a concerted public education. There is the need for a positive public attitude towards finding alternatives to imprisonment. The Ghanaian press has a vital role to play in 'preparing and winning' public sympathy and support for any 'new' policy option and or direction.

Alternative sanctions may not have a reductionist impact if it does not take the offender away from the criminal justice system. Therefore, alternatives such as non-prosecution, because of the triviality of the act or because it may not help the offender and society, and discharge, because of extreme improbability of re-offending could be considered. Thus, a system outside the existing system could be encouraged. Traditional

courts could fulfill such a mission. Ghana's unique cultural practices are exemplified in the fusion of modern and traditional medicine, appropriate technology in housing, agriculture, and industry, chieftaincy, respect for authority and traditional institutions. This could also be extended to the administration of justice.

Ghana has always encouraged the blending of her rich cultural traditions and values and modernism at official functions. One often sees libation being poured to the gods and ancestors, and prayers being said by Christians and Moslems to God at state functions: national parades, anniversaries and official meetings involving foreign dignitaries. Ghana has also encouraged the use of traditional medicine to supplement western medicine. Even where there is a clear evidence that a scientific solution should be sought, tradition is invoked and the gods are first appeased. The blending of ancient or traditional ways of doing things and modern, shows how Ghanaians tolerate their past while at the same time looking for 'modern, scientific' solutions to their problems.

A Ghanaian radio/television commentator rightly asserted during the celebration of the 37th anniversary of Ghana's independence on 6 March 1994 that, "the vital role played by traditional leaders in Ghanaian society can not be ignored." Traditional leaders have helped in various aspects of nation building and have mediated to resolve 'controversial' national issues involving government and pressure groups. Of course, certain traditional practices change with times. It is a verity that certain traditional practices are changing or can not be allowed to persist. However, some traditional practices such as, traditional courts that emphasize reconciliation and peace-making could be encouraged. As Lea *et al.*, (undated: 57) have rightly asserted, "if we want a picture of our future we will find in our past." Therefore, as Ghana 'confidently moves into the future,' she could look into her past, or be guided by it. This she could do by encouraging the use of traditional courts to resolve a large variety of issues. Traditional courts could focus on victim and offender reconciliation, and serve as a more effective way of protecting the public while at same time attending to offenders' needs.

The reduction of crime and the minimum use of incarceration may require a great degree of political imagination and policy initiative. A 'social network' of creative well-trained scholars with a policy oriented approach to enhance the process of making rational policy choices could be developed by government. Such a network may be capable of moving in and between the worlds of praxes, politics, and technology, and bring policy makers, politicians, researchers, and those involved in the administration of justice constantly together to interact.

7.3. Role of District Assemblies and communities

It is also recommended that District Assemblies, town and village councils be involved in the formulation of criminal justice and penal policies, and treatment of offenders. Any policy implementation involves the coming together of a vast chain of new actors: bureaucrats, courts, regulatory agencies and institutions, and even private and non-governmental organizations. District Assemblies could be an effective institution in implementing new policies of government if they are properly developed at the grassroots. Invariably, it may be the District Assemblies that will execute alternative policies in Ghana. Therefore it will be unwise to leave out these Assemblies in the formulation, discussion and implementation of penal policies.

Crime and criminal justice policies could be seen in the wider context of societal development. This is because a climate of fear and insecurity pervading the lives of people may not be a healthy and fruitful setting for national development. Consequently, crime prevention strategies may be formulated as part of the Directive Principles of State Policy: the society's developmental stage via its unique traditions and customs (see Chapter Six of the 1992 Fourth Republican Constitution Art. 34-40). It may be very difficult to control or eradicate crime without pursuing policies that could check the widespread idleness, unemployment, underemployment, corruption, nepotism, and the growing frustration among the youth. If these remain unchecked, they could certainly contribute to the crime

rates. Therefore, policies that create jobs, enhance productivity, and assure confidence in the economy could be initiated by government. It is also imperative that a right political atmosphere that promotes tolerance, accommodation of dissenting views, and respect for the rights of the citizenry is created by politicians and interest groups in Ghana. Such an atmosphere may enhance and reinforce strategies for national development.

Respecting and safeguarding the rights of offenders could also imbue a sense of dignity and confidence that may facilitate their easy reintegration into the wider community on release. In this regard, the Directive Principles of State Policy (1992 Constitution op cit.; and PNDCL 42) which enjoins Ghanaians to 'nurture' and respect fundamental human rights and the dignity of the human person, "are to be cultivated among all sections of society and established as part of the basic social justice." Also, Chapter Five, Art. 15{1} of the 1992 Constitution which ensures that "the dignity of all persons shall be inviolable," should guide in the formulation and implementation of crime prevention strategies and the treatment of offenders. Formation of social movements that seeks the welfare of offenders, improved carceral conditions, and that help educates the public about the negative effects and conditions of imprisonment could be encouraged. Laws and or policies on inmates' rights and enhanced channels for inmates' grievances could be created, and special agencies tasked to oversee their implementation.

It is further recommended that new correctional laws and regulations (Prison Standing Orders and Regulations) be initiated and correctional management improved. A Commission on Sentencing (Ghana Sentencing Commission) might be established to periodically evaluate sentencing practices of the courts. Its report could be made public periodically.

As a short and medium term policy, government could seriously consider introducing suspended sentences, probation and parole in Ghana. These may be cheaper to administer and also, easy to monitor. Moreover, weekend and night imprisonment could be considered in the short term. Weekend and night imprisonment may permit offenders to

maintain their jobs and social relationships that is vital in the reintegration process (Lea and Young 1984: 267). Alternatives to incarceration, as a general policy supported world-wide, could always be considered first in dealing with offenders in Ghana. Imprisonment could be used only as a last resort under a new penal policy advocated in this thesis. In fact, incarceration could be reserved mostly for the residual offender or only when there is a compelling reason to do so. Also to be considered as a short term policy are automatic and mandatory conditional release for short-sentenced, non-violent offenders. Offenders sentenced to less than three years could be released to the District Assemblies for community work and supervision.

The bringing together of all criminal justice institutions under one ministry for efficiency and effective formulation, co-ordination and implementation of crime policies is also recommended. In other words, as a long term objective, all the agencies within the administration of justice could be brought together under one ministry. There seems to be a lack of effective co-ordination and complementation between and among the various criminal justice organs as they exist presently. Therefore, bringing all the criminal justice institutions together under a single Ministry as obtained in Canada and the United States, may help offset or seal off some of the loopholes and communication gaps that may currently be existing among these institutions.

Legal aid may be expanded to cover all offenders who are incapable of engaging attorneys. Such an aid could make it feasible for offenders to select attorneys of their choice - both senior and junior lawyers - to represent them in court. Moreover, the development of an association of civil libertarians could be considered by persons interested in upholding human right's and civil liberties. Formation of non-governmental organizations, such as the John Howard and Elizabeth Fry Societies, is also being advocated.

7.4. Community policing

Community policing could be encouraged. 'Community' policing is not new in traditional Ghana where the *"asafo companies,"* or "community police and army" featured prominently in the politics of the past and which continues to persist in most traditional areas today. Therefore, returning to community policing may not be difficult. However, adequate policy or constitutional guidelines should be provided so that government does not manipulate it or use it for political gains. Ghanaians may perceive criminal justice institutions, especially the police, as oppressive and a tool of government to intimidate the people. The police have been used by governments on occasions to oppress university students and other citizenry. Consequently most people may not trust the police or may be apathetic to what goes on within the Police Service. People may simply refuse to co-operate with them. Public education may not have succeeded in arresting this negative public perception about the police. The image of the police could be enhanced through community involvement - community policing, and participation. Consequently, the restructuring of the Police Service to make it more responsive and accountable to the people through the District Assemblies and communities is being advocated.

It is imperative that the administration of justice - policing, sentencing and treatment of offenders - be demystified. This could be achieved through the creation of an atmosphere that encourages Ghanaians to participate in national and legal issues from their formulation to their implementation. Public participation in the formulation and implementation of penal policies may ensure that such policies are humane, reflect a broad spectrum of opinions, and also supported by majority of the people.

There is a need for community-based courses and in-service training programs to educate the citizenry about the techniques and mechanisms in arbitration, and in principles of the administration of justice. Government could work in concert with the Judicial Service, the Ghana Law School, the University of Ghana, the Information Services Department and NGO's to achieve such a goal.

The Ghana Law Reform Commission and the Council on Law Report could review existing laws with the view to recommending the repealing of vexatious ones. The updating of existing laws to make them more responsive to changing societal needs may also be recommended.

The whole idea of sanctions could be restorative rather than punitive (see Knoebel 1978; Snarr 1992; Salmond 1946). Therefore, Ghanaian judges could be persuaded to move away from the present punitive sanctions that may not have yielded any positive benefit to the victim, offender, and society at large. Furthermore, the need for judges to have constant training and educational programs is reflected in the varying roles they assume:

> As interpreters of the law, judges need precedent; as lawmakers, their task is to establish policy; as adjudicators, they must balance and weigh opposing principles, evaluate societal conditions and decide what is in the best interests of society. As administrators, they must place high priority on managing individual cases (Knoebel 1978: 7).

Therefore, constant and periodic conferences, seminars and educational tours, publication of bulletins for judges with the view to updating their knowledge and upgrading their skills and techniques is recommended. Promotion of judges could be made contingent upon the number of educational programs to which they have been exposed. Moreover, the citizenry who are subjected to judicial decisions and on whose behalf the administration of justice is being enforced could have a "say" in the selection of judges. Consequently, it is being advocated that the present policy of appointing judges on the recommendations of the Judicial Council be reconsidered. The democratization of the appointment of certain categories of judges in Ghana could be considered.

7.5. Police prosecution

Police prosecution raises questions not only of due process and crime control, but also of preservation of fundamental human rights and basic freedoms. If given unchecked powers the police could become high-handed in wanting to enforce crime control. Their role as prosecutors strengthens this possibility. Moreover, there is the increased possibility of corruption when police arrest, investigate, and prosecute at the same time. It also raises fundamental questions about fairness and due process. The destiny of people left in the hands of an institution whose personnel are high-handed, unchecked and unaccountable to any body, save the 'political elites' is a worrying unknown. Also, members of the police appear poorly trained and equipped to even perform their traditional role properly, let alone prosecute. The scrapping of Ju-Pol and the discontinuation of police prosecution would be a step in the right direction.

In this connection, it is recommended that the Attorney-General's Department be upgraded and well staffed to prosecute offenders. Consequently, the AG's Department should establish offices at the district centers and regional offices should be re-organized to handle criminal cases. Does it not sound odd for a trained attorney to appear before a court whose prosecutor is a police constable with a minimum qualification of an elementary school certificate and only six months' police training? The notion that young lawyers detest working in the rural areas must not hamper the implementation of this recommendation. Moreover, working in these areas could be made a little more attractive in terms of remuneration and other service conditions. Even so, now that the governments' rural electrification policy is opening up the countryside, it should be possible for the 'young lawyers' to work in rural areas soon. Alternatives to police prosecution seem essential and so must be vigorously pursued in the best interest of the ordinary citizen.

7.6. Female offenders

One area of the penal system that needs serious re-examination is the area of female offenders and female incarceration. The female population of 302 is too small to warrant the continued existence and operation of female prisons in Ghana. Moreover their crimes may not be so serious to 'cause public panic' if they are let out of prison. It appears, therefore, to be a waste of human and societal resources to keep these people in jail. It is not likely that the hiring of over 500 female prison officers to look after 302 inmates can be justified. Further research could be encouraged to consider the possibility of finding an alternative to female incarceration in Ghana. The continued existence of female facilities may not be in anyone's interest. The cost of maintaining the existing facilities and employing the over 500 female prison officers is extremely difficult to justify. (Advocating for the abolition of female incarceration is not to suggest that female prison officers be laid off. They could either be used in the male prisons or re-deployed to community alternatives.) Female offenders could be released to organizations such as the Young Women's Christian Association for re-training. Also, non-governmental organizations, such as the World Vision International, the National Catholic Secretariat and the Christian Council, and the National Council on Women and Development could lead a crusade for the abolition of female prisons and introduce functional literacy programs for female offenders.

7.7. Concluding comment

The study has shown that criminal justice and penal policies and strategies in Ghana have failed to reduce crime and recidivism. While the prisons are shockingly overcrowded, both the government, criminal justice actors and players, and the society at large, seem confused about their roles and goals. Deterrence seems to be the sentencing policy emphasized in practice, although available statistics do not support the deterrence argument. While the Police Service and the Judiciary appear high-handed in dealing with offenders,

the Prisons Service continues to adhere to its policy of 'safe custody.' These practices seem to be politically expedient. However, socially, morally, psychologically, physically, and economically, they appear to be disastrous.

Reducing prison overcrowding and the negative effects of incarceration may involve one of three strategies. These are: increasing capacity through prison building programs; reducing bureaucracy through sentencing policies and practices - the development of alternatives to prosecution, incarceration and treatment of offenders; and, extension of good time remission, early release, emergency release, and amnesty.

According to Levin *et. al.,* (1980) it is not enough merely to understand what governments do and what accounts for their actions. It is also necessary to be sensitive to the consequences of such actions. The emphasis in this thesis has been not just on the inputs of decision-making but also on its outcomes - the impact of policies on people, groups, and the values they hold and/or cherish most. It is acknowledged that the recommendations contained within this thesis are broad in scope, given its articulated focus on Ghanaian corrections. However, it is argued that it may be impossible to institute the reforms needed as derived from the policy analysis exercise without considering the other components of the justice system. As well, it is recognized that many of these reforms can not feasibly be implemented in the current Ghanaian environment. That does not make the proposed reforms any less legitimate, given the results of the present study, but they will require careful planning. Some holistic goals need to be established which will provide viable visions for those working with offenders - visions resulting from a considered examination of existing policy, its history and its current consequences.

There is the need for Ghana to stop and reflect. Comprehensive policies aimed at reducing crime, recognizing victims' needs, and treating offenders with some sense of dignity need to be developed. Continued reliance on Euro-American 'made-for-export' justice models without considering Ghana's peculiar socio-cultural and historical practices

could be disastrous. Legal pluralism could provide the base for resolving most societal conflicts in Ghana.

Given that over 70% of Ghanaians live in the rural countryside, and given that the Westminster system is urban centered and expensive, further research aimed at infusing traditional mechanisms of resolving disputes into the present system requires an encouragement and carefully planned implementation strategies. The emphasis of traditional courts on victim and offender reconciliation constitutes a more efficient way of protecting the public and at the same time catering for the needs of offenders.

Ghana could either act now to consider the development of criminal justice and penal policies that may be implemented, evaluated and reformed, and which more appropriately may reflect Ghanaian social values, or wait to adopt made-for-export second-hand theories at a *Pyrrhic* cost.

Bibliography

Adeyemi, A. 1984 "Sentences of Imprisonment" in T. O. Elias, ed. The Prison System in Nigeria. Bainsley: Univ of Lagos.

---------- ed. 1977. Nigerian Criminal Justice Process. Lagos: Univ. Of Lagos Press.

Ackoff RL 1974 Redesigning the Future: A Systems Approach to Social Problems. New York: John Wiley and Sons.

Ackoff RL and Fred E Emery 1972 On Purposeful Systems. Chicago: Aldine - Atherton.

Amissah, A. N. E. 1981 The Contribution of The Courts to Government A West African View: Oxford: Clarendon Press .

Apter David 1966 Ghana In Transition. London: F Cass

Attafuah, Kenneth A. 1993. Criminal Justice Policy and Public Tribunals in Ghana: A Study in Criminal Law and Social Change. Ph. D. Dissertation. Unpub.

Austin, J. and B. Krisberg. 1981 'Wider, Stronger and Different Nets: The Dialectics of Criminal Justice Reform', Journal of Research in Crime and Delinquency_18: 132-196.

---------- 1982. 'The Unment Promise of Alternatives to Incarceration', Crime and Delinquency. 28: 374-409.

Asante SKB 1966 Property Law and Social Class in Ghana 1844-1966. Accra: Ghana Univ. Press. 4-11.

Asuni T. 1990 "University Education in Criminology in Africa". Eguzkilore-Extra. 3, pp311-317.

Bantley J., M. Kravitz 1979 Alternative to Institutionalization. Washington, DC, National Institute of Law Enforcement and Criminal Justice of the United States Department of Justice.

Barnard Elizabeth E. 1980 "Some Social considerstions concerning crime and social policy" in The Coming Penal Crisis ed by AE Bottoms and RH Preston. Edinburgh: Scotish Academic Press.

Bartollas Clemens 1985 Correctional Treatment. Theory and Practice. Englewood Cliffs, NJ: Prentice-Hall.

Bartollas Clemens, Stuart Miller 1978 Correctional Administration. Theory and Practice. NY: McGraw Hill Bk Comp.

Baxi U 1980 The Penal Crisis of the Indian Legal System Delhi: Allied.

Bennion, F.A.R. 1962 The Constitutional Law of Ghana. London: Buttreworths.

Bepala MSW 1987 "The People's Courts in a Customary Law perspective", Paper presented at workshop 2 on New Approaches in respect of the administration of justice. Inst. of Foreign and Comparative Law. UNISA.

Berrien KF 1968 General and Social Systems. New Brunswick, NJ.: Rutgers Univ. Press.

Bierne, P. and R. Quinney eds. 1982 Marxism and the Law. NY:Wiley.

Birkbeck, Christopher H. 1985. "Understanding Crime and Social Control Elsewhere: A geographic perspective on theory in criminology". Research in Law, Deviance and Social Control, Vol. 7. pp 215-246.

Borgatta, E. F. and Marie F. Borgatta eds 1992. Encyclopaedia of Sociology. Vol. 2 Toronto: Macmillan. 588-594.

Bottoms, A. E. 1993 'Neglected Features of Contemporary Penal Systems'. In D. Garland and P. Young, eds. The Power to Punish. London: Heinemann.

---------- 1981 'The Suspended Sentence in England, 1967-1978', British Journal of Criminology 21: 1-26.

Bottoms AE and RH Preston 1980 The Coming Penal Crisis. A criminological and theological exploration. Edinburgh: Scotish Academic Press

Brickey, Stephen and Elizabeth Comack. 1986. The Social Basis of Law: Critical Readings in the Sociology of Law. Toronto: Garamond Press.

Brillon Yves 1985. Crime, Justice and Culture in Black Africa. tr. by Dorothey Universite de Montreal: Crelinsten Centre International De Criminlolgie Comparee.

Broadhurst, R. 1990 The Evaluation of Imprisonment and Parole: Survival or Failure Rates? Paper Presented at Australian Institute of Criminology Conference "Keeping People Out of Prison" .

-------1990b Preliminary Research Note: Sentencing Patterns in the W.A. Higher Criminal Courts, 1983-88. Crime Research Centre. Univ. of Western Australia

------1981 Public Attitudes to Criminal Justice, Univ. of Western Australia.

Brooks Stephen 1989 Public Policy in Canada: An Introduction. Toronto: McClleland and Steward.

Burman S., W. Scharf 1990 Creating People's Justice. Street Committees and People's Courts in a South African city. Law and Society Review 24 (3) 693-744.

Busia Kofi Abrefa 1968 The Position of the Chief in modern political system of Ashanti. London: F. Cass

Chambliss W. & Robert B. Seidman 1982 Law Order and Power. 2nd ed. Reading, Mass: Addison-Wesley Pub. Comp.

Chan, J. and G. Zdenkowski 1986a 'Just Alternatives - Part 1: Trends and Issues in the Deinstitutionalization of Punishment', Australian and New Zealand Journal of Criminology 19/2: 67-90.

---------- 1986b 'Just Alternatives - Part 11', Australian and New Zealand Journal of Criminology 19/3: 131-154.

Christie, N. 1977 Limits to Pain Oxford: Martin Robertson.

---------- 1982 'Conflict as Property'. British Journal of Criminology, vol. 17, pp1-15

Cicorel, A. V. 1986 The Social Organization of Juvenile Justice. N.Y. Wiley.

Clark, Robert S. 1984. Planning for Justice, The Problems of Justice with Specific Approaches to Issues. Springfield, III: Charles C. Thomas Pub.

Clarridge W. Walton 1964 .A History of the Gold Coast and Ashanti. From the Earliest times to the commencement of the twentieth century. London: Barnes and Noble Inc;

Clinard, M. B., and D. J. Abbott. 1973. Crime in Developing Countries. NY: Wiley.

Clifford, W. 1974. An Introduction of African Criminology. New York: Oxford Univ. Press.

--------- 1965. "Problems of Crimonological Research in Africa South of the Sahara". International Review of Criminal Policy. United Nations Pub. No. 23. 11-17.

--------- 1963. The Evaluation of MethodsUsed for the Prevention and Treatment of Juvenile Delinquency in Africa South of the Sahara. International Review of Crimal Policy. No. 21. pp 17-31.

--------- 1964. "The African View of Crime". The British Journal of Criminology. Vol iv. pp 483-490

Cohen, Stanley. 1985. Visions of Social Control: Crime, Punishment and Classification. Cambridge: Polity.

---------- 1982. "Western crime control models in the Third World: Benign or Malignant? in S. Spitzer and R. Simon (eds), Research in Law, Deviance and Social Control._Vol 4. Greenwich, CT: JAI Press. pp 85-119.

---------- 1988. Against Criminology. New Brunswick NJ: Transaction.

Cohn, A. W. 1976 Crime and Justice Administration. NY: J. B. Lippincott Comp.

Connidis I A 1982 Rethinking Criminal Justice Research: ASystems Perspective. Toronto: Holt Reinhart and Winston.

Crooks J. J. 1923, 1973. Records Relating to the Gold Coast Settlements from 1750-1874. Dublin: Brown and Nolan.

Cruickshank Brodie 1966 Eighteen Years on the Gold Coast of Africa. Vol 1 2nd ed. London: Frank Cass Co Ltd.

Daniels Ekow WC 1964 The Common Law in West Africa: London: F Cass.

Danquah J. B. 1957 "The Historical Significance of the Bond of 1844" in Transactions of the Historical Society of Ghana. Vol 111 Part 1. Achimota: Ghana. 1-29.

---------- 1928 Gold coast: Akan Laws and Customs. London: George Routledge & Sons, Ltd.

DeGeorge, R. and F. DeGeorge. 1972. The Structuralists from Marx to Levi-Strauss. NY.: Anchor Books.

Dershowitz, A. 1976 Fair and Certain Punisment. NY: MaGraw-Hill.

de Haan, W. 1986 'Fuzzy Morals and Flukey Politics: The Coming Out of Critical Criminology'. Journal of Law and Society.14/3: 321.

——— 1990 The Politics of Redress: Crime, Punishment and Penal Abolishing. London: Unwin Hyman.

Diamond S. 1978. "The Rule of Law Versus the Order of Custom". In E.C.Reasons, R.M. Rich eds.The Sociology of Law: A Conflict Perspective. Toronto: Butterworths.

Doob, A. 1990 "Community Sanctions and Imprisonment: Hoping for a miracle but not bothering even to pray for it". Canadian Journal of Criminology 32, 3, 415-428.

Doob, A. and Roberts, I. 1983 "An Analysis of the Public's View of Sentencing". Dept of Justice, Ottawa.

-------- 1982 "Crime and the Official Response to Crime: The Views of the Canadian Public". Dept. of Justice, Ottawa.

---------1989 Sentencing and Public Opinion: Taking False Shadows for True Substances, Osgoode Hall Law Journal 27, 3, 491-515.

Drisberg J.H. 1928. Primitive Law in Eastern Africa. Africa. 1, pp.61-72.

Durkheim Emile 1964 The Division of Labour in Society. Tr. by George Simpson. NY: The Free Press.

Dye Thomas 1986 Understanding Public Policy. Englewood-Cliffs, NJ.: Prentice-Hall

Ekstedt, John W. and Curt T. Griffiths 1988 Corrections in Canada: Policy and Practice. 2nd. ed. Toronto: Butterworth.

Elias T. O. 1962 Ghana and Sierra Leone: The Development of their Laws and Constitutions. London: Stevens and Sons Ltd.

Erikson Kai T. 1966. Wayward Puritans: A Study in the Sociology of Deviance. NY:John Wiley &Co.

Eulau Heinz and Kenneth Prewitt. 1973 Labyrinths of Democracy. Indianapolis: Bobbs-Merill.

Feltiner W., and A Bartherlmess-Drew 1978 European Alternatives to Crminal Trials and their Applicabililty in the USA. Washington: National Inst. of Law Enforcement and Criminal Justice of the US Dept of Justice.

Fogel David 1975 We Are the Living Proof: The Justice Model for Corrections. Ohio: Anderson.

Fortes M. 1967 The Web of Kinship Among the Tallensi. London: Oxford Univ. Press.

--------- 1927 Tallensi Law London: Oxford Univ. Press

Foucault, M. 1979. Discipline and Punish: The Birth of the Prison. NY: Vintage.

Fitzpatrick Peter 1982 "The Political Economy of Dispute Settlement in Papua New Guinea" in Crime, Justice and Underdevelopment. ed. Colin Sumner London: Heinmann Crime.

Friday PC. 1988 "The Scandinavian Effort To Balance Societal Responses to Offenses and Offenders: Crime Prevention and Social Control." International Journal of Comparative and Applied Criminal Justice. 12, 1.

Garfinkel, H. 1967a Studies in Ethnomethodology. Englewood Cliffs. NJ: Prentice-Hall.

Gaylin et al 1978 Doing Good: The Limits of Benevolence. NY: Pantheon Books.

Gibbons R.M. 1936. African Good Manners. Tanganyika Notes and Records. 1, pp.81-83.

Gigch van JP 1978 Applied General Systems Theory. 2ed. NY.: Harper and Row, Pub.

Goffman, Erving. 1966. Asylums: Essays on the Social Situation of Men Chicago: Aldine Pub. Co.

Gold, D., C.Y.H. Lo and E. O. Wright 1975 "Recent Developments in Marxist Theories of the Capitalist State, Parts 1 and 11" Monthly Review. 27, 5: 29-43 and 6: 36-51 respectively.

Gottfredson, D. 1979 "Sentencing Trends in the U.S.A.: Implications for Clinical Criminology". Rassegna di Criminologia. Vol. X, No. 1 p.151.

Greenberg, D. F. 1981. Crime and Capitalism. Palo Alto, Cal.: Mayfield

Griffiths CT. ed. 1992 Self-Suficiency in Northern Justice Issues. A Publication of The Northern Justice Society and Simon Fraser Univ. Burnaby.

Gyandoh, Samuel O.Jr. 1989 "Tinkering with the Criminal Justice System in Common Law Africa". Temple Law Review vol. 62 pp. 1131-1174.

Hammond, B. 1986. "Formal Organizations". in James T. Teevan ed. Introduction to Sociology: A Canadian Focus. Toronto: Prentice-Hall Inc.

Harvey, William B. 1966 Law and Social Change in Ghana. Princeton: Princeton Univ.

Harvey, Lee. 1990 Critical Social Research. Contemporary Social Research 21 ed Martin Bulmer. London: Unwin Hyman.

Hayford, J.E.Casely. 1903, 1970 Gold Coast Native Institutions London:Sweet and Maxwell, Ltd.

Hart HLA 1961 The Concept of Law. Oxford: Clarendon Press.

Heritage, J. 1984. Garfinkel and Ethnomethodology. NY: Polity.

Hill M. and Glen Bramley 1986. Analysing Social Policy. Oxford: Basil Blackwell Inc.

Hirschi, von A. 1976 Doing Justice. NY: Hill and Wang.

Hinch, Ronald 1992. "Conflict and Marxist Theories in Criminology" in Rick Linden (gen. editor), Criminology: A Canadian Perspective. 2nd ed. Toronto: Harcourt Brace and Comp.

Hoebel E.A. 1961. The Law of Primitive Man. Cambridge (MA). Havard Univ. Press.

Hogarth John 1971 Sentencing as a Human Process. Toronto: Univ. of Toronto.

Horwitz Danielle 1992 Images of People's Justice in a Changing South Africa. MA Dissertation, SFU: Unp.

Hudson B. 1993 Penal Policy and Social Justice. Toronto. Univ. of Toronto

Huggins, M. K. 1985. "Approaches To Crime and Social Development". Comparative Social Research. 8.

———— 1985 Crime and Social Control in the Third World: From Slavery to Vagrancy in Brazil. New Brunswick, NJ.: Rutgers Univ. Press.

Hulsman, Louk. 1986 "Critical Criminology and the Concept of Crime" Contemporary Crises 10: 63-80.

Indermaur, David 1990 Perceptions of Crime Seriousness and Sentencing.Western Australian College of Advanced Education. eds. 1980 Why Politicies Succeed or Fail. Vol 8 Beverly Hills: Sage Pub.

Ingram Helen M., Dean E. Mann eds. 1980 Why Policies Succeed or Fail. Beverly Hills: Sage Pub.

Jay, M. 1973. The Dialectic Imagination. Boston: Little, Brown and Comp.

Jarry, David and Julia Jarry 1991 Colins Dictionary of Sociology. London: Harper Colins Pub.

Jobson, K. 1977 "Dismantling the System". Canadian Journal Criminology. pp 254-82.

Katz D and R Kahn 1969 "Common Characteristics of Open Systems" in F E Emery, ed Systems Thinking Selected Readings. England: Penguin Bks: 86-104.

Kayode O. 1978 Some Notes on Research into Crime and Punishment in Nigeria. Australia and New Zealand Journal of Criminology. Dec. pp241-254.

Kassebaum, G., D. A.Ward and D. M. Wilner 1971 Prison Treatment and Parole Survival. NY.: John Wiley and Sons.

Keat, R. and J. Urry. 1975. Social Theory as Science. London: Kegan and Paul.

Kibuka, E. P. 1979 "Crime Trends in Africa." in UN Review of Criminal Policy. No. 35 NY. 13-23.

Kimble David 1963 A Political History of Ghana. The Rise of Gold Coast Nationalism 1850-1928. Oxford: Oxford Univ. Press/Clarendon Press.

Kirkpatrict AM, WT McGrath 1976 Crime and You. Toronto: The Macmillan Comp.

Knoebel Dixie K. 178. "Bridging the Gap: Judicial Education in the United States". Washington. DC.:American Univ. Inst. for Advanced Studies in Justice.

Knuttila, M. 1987. State Theories: From Liberalism to the Challenge of Feminism. Toronto: Garamond Press.

Korn, R. and L. W. McCkorkle 1959 Criminology and Penology. NY.: Holt, Reinhart and Winston.

Kuhn A 1971 "Types of Social Systems and Systems Controls" in MD Rubin, ed Man in Systems. NY: Gordon & Breach Science Pubs.

--------- 1974 The Logic of Social Systems. San Francisco: Jossey-Bass Pubs.

Kuhlhorn, E. 1979 "Non-institutional Treatment and Rehabilitation" The National Swedish Council for Crime Prevention, No. 7. Stockholm.

--------- "A New Penal System". 1978, The National Swedish Council for Crime Prevention, No. 5 Stockholm.

LaPrairie Carol 1992 Exploring the Boundaries of Aboriginal Justice in the Yukon. Report to the Dept. of Justice, Yukon Territorial Government First Nations, Yukon Teritory. Government of Canada.

Lane Jan-Erik 1990 Institutional Reform. A Public Policy Perspective. Worchester: Billings and Sons Ltd.

Laver Michael 1986 Social Choice and Public Policy. Oxford: Basil Blackwell Inc.

Lea, J. and Jock Young, 1984 What Is To Be Done About Law and Order. Harmondsworth, Penguin.

Lea J. Roger Matlıews Jock Young undated. Law and Order: Five Years On.Middlesex Polytechnic.

Leung Hok Lin 1985 Policy Planning and Evaluation: Common-Sense Structured. Winnepeg: Ronald P. Frye Comp., Pub.

Levine JP, Michael C. Musheno, Dennis J. Palumbo 1980 Criminal Justice A Public Policy Approach. NY Harcourt Brace Jovanovich Inc.

Lipton, D., R. Martinson and J. Wilks 1975 The Effectiveness of Correctional Treatment. NY.: Praeger.

Lofland, John and Lyn H. Lofland 1984 Analyzing Social Settings.A Guide To Qualitative Observation and Analysis. 2nd. ed. Belmont: Wadsworth Pub. Comp.

Lowy Micheal J. 1978 "A Good Name is Worth More Than Money: Strategies of Court Use in Urban Ghana" in Laura Nader and Harry F. Todd Jr. The Disputing Procesas Law in Ten Societies. NY: Columbia Univ. Press.

Lukacs, G. 1985. Class Consciousness and History. Cambridge, Mass: MIT Press

Macuse, Herbert. 1992. One-Dimensional Man. with intro by Douglass Kellner Toronto: Beacon Press.

MacLean Brian D. and Dragan Milovanovic eds 1990 Racism, Empiricism and Criminal Justice. Vancouver: Collective Press.

MacLean Brian D. and Harold Pepinski 1993 We who will take no prisoners. 1 COPA No. 7.

Mann, Michael. ed. 1984 The International Encyclopaedia of Sociology.NY.:The Continuum Pub. Comp.

Maine H.S. 1906. Ancient Law. London: John Muray.

Malinowski B. 1926. Crime and Custom in Savage Society. London: Routledge & Kegan Paul.

Matthews Roger 1988 "Reassessing Informal Justice" in R. Matthew ed Informal Justice London: Sage Pub. pp 1-24.

Martinson, R. 1974 'What Works? Questions and Answers About Prison Reform'. The Public Interest 35: 22-54.

————1976 California Research at the Crossroads'. Crime and Delinquency 22: 180-91.

———— 1979 New Findings, New Views: A Note of Caution Regarding Sentencing Reform'. Hofstra Law Review 7/2: 243-58.

Mathiesen, T. 1976 The Politics of Abolition. London. Martin Robertson.

McMahon, M. W. 'Review of Stanley Cohen's Visions of Social Control, Crime, Punishment and Control:Classification'. Canadian Journal of Sociology. 12/1-2: 175-178.

————1992 The Persistent Prison? Rethinking Decarceration and Penal Reform. Toronto: Univ. of Toronto Press.

Metcalfe GE. 1964 Great Britain and Ghana Documents of Ghana History 1807-1957. Suffolk: Thomas Nelson & Sons Ltd.

Messerchmidt J. 1986 Capitalism, Patriarchy and Crime. Totowa, NJ.: Rowman and Littlefied.

Michalowski RJ 1985 Order, Law, and Crime: An Introduction to Criminology. NY.: Random House.

Missen E 1975 "Periodic Detention in New Zealand" in United Nations Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders. Resource Material Series No. 11

Mood AM 1983 Introduction to Policy Analysis. NY: Elsevier.

Mushanga, T. M. 1977 Crime and Deviance: An Introduction to Criminology Nairobi: EALB

---------- 1992. ed. Crimonology in Africa. United Nations Interregional Crime and Justice Research Institute. Rome: Pub. No. 47.

Nader Laura, Harry F. Todd Jr. 1978 "The Disputing Process" in Nader Laura, Harry F. Todd Jr eds The Disputing Process. Law in Ten Societies. NY: Columbia Univ Press.

---------- 19768 eds The Disputing Process. Law in Ten Societies. NY: Columbia Univ. Press. Passim.

Nagel Stuart S. 1977 "Introduction: Types and Purposes of Criminla Justice Modelling" in Stuart S, Nagel ed. Modelling the Criminal Justice System. Beverly-Hills: sage Pub. pp 7-11.

Nimmer R. 1974 Diversion - the Search for Alternate Forms of Prosecution. Chicago: American Bar Foundation.

Ninsin K. 1986 "Land, Chieftaincy, and Political Stability" in Research Review. New Series Vol. 2 No. 2 July 1986. Institute of African Studies, Legon:Univ. of Ghana.

Nortey, D. N. A. 1977 "Crime Trends in Ghana" Ghana Social Science Journal 5 Vol. 4 No. 1. pp102-116.

O'Connor, A. M. 1976. " 'Third World' or one world? Area 8.

Okigbo, Paul 1993. "The Future Haunted by the Past". in Africa within the World: Beyond Dispossession and Dependence. ed by Adebayo Adedeji. London: Zed Books.

Ollenu Nii A. 1971 "The Changing Law and Law Reform in Ghana" 15 JAL 155.

Ollman, B. 1978. Alienation. NY: Cambridge Univ. Press.

Padmore George 1963 The Gold Coast Revolution. London: Dennis Dobson Ltd.

Pal Leslie 1987 Public Policy Analysis. Scarborough: Nelso Canada.

Palfrey Colin, Ceri Phillips, Paul Thomas and David Edwards 1992 Policy Evaluation in the Public Sector: Approaches and Methods. Newcastle upon Tyne: Athenaeum Press Ltd.

Paliwala Abdul 1982 "law and Order in the Village: Papua New Guinea's Village Courts" in Crime, Justice and Underdevelopment. ed. Colin Sumner London: Heinmann Crime

Parsons T. 1951 The Social System. Glencoe, Ill: The Free Press.

-------- 1967a "The Social System: A General Theory of Action" in RR Grinker, ed. Toward a Unified Theory of Human Behavior 2nd ed. New York: Basic Bks.

Palys, Ted 1992 Research Decisions. Qualitative and Quantitative Perspectives. Toronto: HBJ.

Paul K. 1974 Prison Life and Human Worth. Minneapolis: Univ. of Minnesota.

Pease K., P. Durkin, I. Earnshaw, D. Payne & J. Thorpe 1975 Community Service Orders. Home Office Research Unit. Report No. 29 London: HMSO.

Pepinski Harold E. 1979 "Reliance on Formal Written Law and Freedom and Social Control in the United States and the People's Republic of China" in The Sociology of Law. A Conflict Perspective. eds. Charles E. Reasons and Robert M. Rich Toronto: Butterworth. 281-294

---------- 1991 "Peacemaking in Criminology and Criminal Justice" in Criminology as Peacemaking. eds. Harold H. Pepinski and Richard Quinney Bloomington: Indiana Univ. Press.

Pope Alexander (1163) The Council of Tours: A study of ecclesiastical politics and institutinos in the 12th century. by Robert Somerville. 1977. Berkerly Univ. of Calif. Press.

Preston R. H. 1980. "Social theology and penal theory and practice: the collapse of the rehabilitative ideal and the search for an alternative". in The Coming Penal Crisis: A Criminological and Theological Exploration 1980 ed. by A.E. Bottoms and R. H. Preston. Edinburgh: Scotish Academic Press.

Quade Edward 1976 "Models and their Use" in J. Chaiken *et al.*, Criminal Justice Models: An Overview. Washington: US Govt. Printing Office: 3-19

Quinney Richard 1970 "The Social Reality of Crime" in Theories of Deviance 3rd ed. ed by Stuart H. Traub and Craig B. Little 1985 Itasca: Peacock Pub.

---------- 1977 Class, State and Crime: On the Theory and Practice of Criminal Justice. New York: David McKay.

Ratner, R. S., J. L. McMullan, and B. E. Burtch. 1987 "The Problem of Relative Autonomy and Criminal Justice in the Canadian State". In R.S. Ratner and John L. McMullan eds. State Control: Criminal Justice Politics in Canada. Vancouver: Univ. of B.C.

Rattray R. S. 1927 Ashanti Law and Constitution. London: Allen and Unwin.

Rawls J 1972 A Theory of Justice London: Clarendon Press.

Ray, Donald. 1986. Ghana Politics, Economy and Society. London: Frances Pinter.

Reiman Jeffrey 1990 The Rich Get Richer and the Poor Get Prison. Ideology, Class, and Crimianl Justice. 3rd Ed. New York: Macmillan Pub. Co.

Rimmer D. 1992 Staying Poor: Ghana's Political Economy 1950-1990. Oxford: Pergamon Press.

Rein Martin 1979 Social Science. Public Policy. Hammondsworth, Middlesex: Penguin Bks. Ltd.

Robinson, J. and Gerald Smith 1971 "The Effectiveness of Correctional Programs". Crime and Delinquency 17 January: 67-80.

Rotimi A. and Olufunmilayo Oloruntimehin 1992 "Teaching and Research Network in Africa in The field of Criminology" in Criminology in Africa ed.Tibamanya mwene Mushanga Rome: UNICRI.

Rizkalla S. 1974 Crime and Justice in the Developing Countries. Acta Criminologica. January.

Sagarin E., A. Karmen 1978 "Criminology and the re-affirmation of Humanist Ideals", Criminology. August 1978.

Satsumae T.1978 "Suspension of prosecution: A Japanese long-standing practice designed to screen out offenders from penal process", in The United Nations Asia and far East Institute for the prevention of Crime and the Treatment of Offenders, Resource Material Series No. 15. Fuchu.

Sarbah John Mensah 1909 (1968 2nd ed with intro. by Hollis R. Lynch) Fanti Constitution. London: Frank Cass.

----------1906 (1968 3rd ed with intro. by hollis R Lynch) Fanti Customary Laws. London: F. Cass

Schreerer, Sebastian 1986 "Towards Abolitionism" Contemporary Crises 10: 85-20.

Scull, A. T. 1984 Decarceration: Community Treatment and the Deviant - A Radical View. 2nd ed. Cambridge: Polity Press.

---------- 1987 'Decarceration Reconsidered'. In J. Lowman, R.J. Menzies, and T. S. Palys, eds. Transcarceration: Essays in the Sociology of Social Control. Adershot: Gower.

---------- 1991 'A Critical Analysis of the Decarceration Movement'. In L. Samuelson and B. Schissel, eds., Criminal Justice: Sentencing Issues and Reforms. Toronto: Garamond.

Schrag Clarence 1971 Crime and Justice: American Style. Rockville, Maryland: National Institute of Mental Health, Center for Studies of Crime and Delinquency.

Seekings J. 1989 "People's Courts and Popular Politics", in G. Moss & I. Obery eds. Johannesburg, South African Review 5 pp. 119-133.

Seers, D. 1975. "A new look at the three world classification". IDS Bulletin 7 (4).

Seidman Robert B. and J. D. Abaka Eyison 1969 "Ghana". in Alan Milner ed. African Penal Systems. New York. F. A. Praeger.

Seidman Robert B. 1969, "Ghana Prison System: an Historical Perspective" in Alan Milner ed. African Penal Systems. New York. F. A. Praeger.

---------- 1968. "Law and Economic Development in independent, English-speaking, sub- Saharan Africa". in T.W. Hutchison (ed) African and Law. Madison: The Univ. of Wisconsin Press. pp 3-75.

Shaidi L. P. 1992 "Traditional, Colonial and Present-Day Administration of Criminal Justice" in Mushanga ed. Criminology in Africa. UNICRI. Rome: Pub. No. 47.

Shelley, L. I. 1981. Crime and Modernization: The impact of industrialization and urbanization on crime. Carbondale and Edwardsvile: Southern Illinois Univ. Press.

Snarr Richard W. 1992 Introduction to Corrections 2nd ed. Dubuque: Wm. C Brown Pub.

Sowah ENP 1989 Opening Address; Seminar on the Treatment of Offenders. Accra: Judicial Service of Ghana.

Spitzer, S. 1982. "The dialectics of formal and informal control." in R. Abel (ed). The Politics of Informal Justice: The American Experience. New York: Academic Press.

Steinert, Heinz 1986 "Beyond Crime and Punishment" Contemporary Crises 10:21-38.

Struss, A. and Juliet Corbin 1990 Basic Qualitative Research Grounded Theory: Procedures and Techniques. Newbury Park: Sage Pub.

Strouchkov NA 1978 "New Confirmation of Humanism of Soviet Legislation" Soviet State and Law. in Revue Internationale de Droit Penal No. 1, 1978.

Sumner, Colin 1982 "Crime, Justice and Underdevelopment: Beyond the Modernisation Theory" in Crime, Justice and Underdevelopment. ed. Colin Sumner London: Heinmann.

Sutherland E. and Donald Cressey 1970 Criminology 8th ed. Philadelphia: JB Lippincolt Co.

Sutherland John W. 1973 Systems Philosophy for the Social and Behavioral Sciences. New York: George Braziller.

Suzuki Y. 1979 "Correction in Japan", In R. Wicks & H. Cooper eds. International Corrections Lexington: Lexington Bks.

Sykes, G. 1971. Society of Captives: A Study of A Maximum Security Prison. Princeton, NJ: Princeton Univ.

Trubeck, D. M., and M. Galanter. 1975. "Scholars in self-estragement: some reflections on the crisis in law and development studies in the United States". Wisconsin Law Review, pp 1062-1102.

Waller I. 1974. Men Released from Prison. Toronto: Univ. of Toronto Press.

Ward WEB 1963 A History of the Gold Coast London: Bradford & Dickens.

Weimer D.L. and Aidan R. Vinning 1992 Policy Analysis: Concepts and Practice.Englewood Cliffs, NJ: Prentice-Hall, Inc.

Wight Martin 1946. The Gold Coast Legislative Council. Vol 11. London: Faber and Faber.

Wilson, J. Q. 1975 Thinking About Crime. New York, Basic Books.

Wildavsky A. 1979 Speaking Truth to Power. New York: Little Brown.

---------- 1979 The Art and Craft of Policy Analysis. London: Oxford Univ. Press

York Geoffrey 1991 The Dispossessed. Life and Death in Native Canada. Boston: Little Brown & Co Ltd.

Young J. 1986 "The failure of criminology: The need for a radical realism" in R. Matthews and J. Young eds. Confronting Crime. London: Sage.

Zaid M. 1980 "The Social Consequences of Deprivation of Liberty", National Review of Criminal Sciences. Cairo.

Report of the Law Reform Commisssion of Canada. 1991. Aboriginal Peoples and Criminal Justice. No. 34.

Law Reform Commission of Canada 1976 Dispositions and Sentences in the Criminal Process. Ottawa.

"Rethinking Criminal Justice in Canada" in Canada Lutheran. Vol. 9 No. 10 November 1994 British Columbia Edition. p28.

The Report of Roral Commission into New South Wales Prisons April 1978 NSW: Govt Printer

The Constitution of the Republic of Ghana. 1992 Tema: Ghana Pub. Corp.

The UN Commission on Prevention of Crime and Treatment of Offenders. Newsletter No. 87/7 1980 New York.

---------- Newsletter No. 121/PM. 1 1983.

------- A/Conf. 144 /Inf. 2 11 May 1990.

UN Norms and Guidlines in Crime Prevention and Criminal Justice: Inplementation and Priorities for Further Standard Setting.

BCTV Crime News 1/9/93.

CNN Moneyline 21/9/93.

West Africa Magazine. No. 3954. 5-11 Jul. 1993. p. 1169.

West Africa Magazine No. 3960. 16-22 Aug. 1993. p. 1457.

West Africa Magazine No3972. 1-7 November 1993. p 1977

The West Africa Magazine is Printed by Headly brothers, and published by West African Pub. Comp. Ltd. 43-45 Coldharbour Lane Camberwell, London.

The New African Jul/August 1994.

The Newsweek Nov. 14, 1994.

The Home Front Vol. 12 no. 2 Accra: Information Services Dept.

PNDC Proclamation Decree, PNDC Law 42. Tema: Ghana Pub. Corp.

The Republican Constitution 1993. Accra: Ghana Pubublishing Corporation.

The Criminal Code and Criminal Procedure Code of Ghana, Acts 29 nad 30, 1960. Accra: Ghana Pub.

The Asafu-Adjei Commission Report on Prison Conditions (1967) Tema: Ghana Pub. Corp.

The Coussey Committe Report on condition of Prison, Police and Mental Hospital cells and dormitories. 1993 Upublished.

Public Tribunals Law, PNDC Laws 24 and 78. Tema: Ghana Pub. Corp.

Inferior Courts Order 1972 LI 730 Tema: Ghana Pub Corp.

Ghana: Courts (amendment) Act 1971 Act 372. Tema: Ghana Pub. Corp.

Ghana: Courts (amendment) Act 1993 Act 459. Tema: Ghana Pub. Corp.

Ghana Government's Declaration on the Courts. 12 Sept. 1966 (see Ghana Today 5 Oct. 1966)

Oppon vrs Ackinie !887 in 1 Ghana Law Reports (GLR) 1971 see also Casely Hayford 1970.

Kwashie vrs Republic 1971 1GLR 1974. Accra: Ghana Law Reports.

Gray Vrs Gray 1971 1GLR Accra.

Adu Boahene vrs the Republic 1972 in 1GLR 1974 Accra: Ghana Law Reports. pp70-78.

Yirenkyi vrs Akuffo and others in Casesly Hayford 1970

Home Front: Ghanaian News and Views- Incorporating Ghana Today June 1993. Accra: Information Services Dept.

Prison Service Reports: 1970; 1989; 1990; 1991; 1992; 1993.

The Judicial System of Canada. Prepared by QL Systems Ltd. Ottawa: West Pub. Comp. St Paul.

Judicial Service of Ghana Reports 1920, 1960, 1965, cf R. B. Seidman op. cit;.

GhanaJudicial Service Reports 1990; 1991; 1992; and 1993. Accra. Statistics Department of the Judicial Service.

Appendix A

UNSTRUCTURED INTERVIEW GUIDE

Section A

Judges, lawyers, politicians, priests, academicians, police and prison officers and selected chiefs.

1. What do you consider as the most important purpose of punishment and sentencing /incarceration in Ghana? What are other purposes to be served?

2. Have sentencing policies served as effective deterrent mechanism? Needs changing? More specific. Which policy.

3. What do you consider effective strategies/methods to check increasing crime rates in Ghanaian society?

4. What do you suggest as effective objectives for dealing with offenders apart from retribution and deterrence?

5. a) Who is responsible for sentencing policies in Ghana?
   b) What do you suggest should be done to reduce incarceration rates?
   c) Do you think sentencing practices contribute to prison overcrowding? If so, how?

6. It is estimated that over 70% of Ghanaians live in the rural areas. Does this fact influence policies related to the administration of justice in Ghana? If so, how?

7. a) Should traditional methods of resolving disputes be encouraged (on a larger scale) in Ghana?
   b) Would you favor the integration of informal and/or traditional mechanisms of justice and the Westminster judicial system?

8. What do you consider as the most important problem facing the judiciary in Ghana?

9. In your opinion what are the most important factors for a judge to consider when sentencing an offender?

10. What do you consider as the most important purpose in incarcerating an offender?

11. a) How would you assess the conditions of the prisons in Ghana?
    b) What do you think accounts for the increased recidivism in the prisons/society?
    c) What are your suggestions to reduce recidivism and crime?

Section B

All Respondents

1. Addressing Parliament (May,1993), President Rawlings charged the legislative body to be guided by the 'ordinary' Ghanaians' sense of justice and enact lawsthat would involve chiefs, community leaders, and heads of families in the administration of justice. In your opinion, how can this be most effectively accomplished?

2. In his contribution to the Accra conference of the African Society of International and Comparative Law in 1993, Dr Coyle, Governor of Brixton Prison, England, urged African nations to "examine their heritage and to look to traditional forms of community justice". Do you consider this a worthwhile goal and, if so, why?

3. How is Dr Coyle's call feasible in view of the fact that administration of justice is deeply embeded in the British common law tradition and also legal 'experts' and officers are trained along this line?

4. Would you consider non-custodial methods as alternatives for some categories of offences? What are some of these offences?

5. Would you agree that District Assemblies, chiefs, town and community committees, should be involved in crime prevention and/or control and treatment of offenders such as community policing, community services, probation, parole, etc.?

6. Should there be a minimum length of imprisonment for first offenders whose cases are not serious?

If yes, What should that minimum be?

OR

Under what circumstances would you consider a prison term for first offenders?

7. Should there be maximum lengths of incarceration for very serious crimes such as murder, arson, aggravated assault etc.?

If yes, What should that maximum be?

8. Should the number of persons held in any prison be a fixed by law? - to control prison overcrowding in Ghana?

9. Would you like to see churches and non-governmental organizations involved in the rehabilitation of offenders in Ghana?

10. Should correctional programs be administered by NGO's? Would it be possible for all correctional programs to be administered this way? If not, why not?

Section C

Chiefs, judges, academicians, politicians, priests, and ordinary citizens,

1. Can traditional judicial administration regain their organic connections with the communities after they have either been destroyed or caricutured by the colonialists and post-colonial governments?

2. a) Which would you advocate: traditional forms of conflict-resolution, the Westminster judicial system, or an integration of the two?
b) Which of these systems do you think is more accessible, more effective, more humane and less expensive?

3. Should traditional courts incarcerate offenders or should they concentrate only on arbitrations, 'peace-making', restitution, and perhaps, community work?

Section D

Convicts, ex-convicts, selected chiefs, priests, selected lawyers, ordinary citizens

1. In which areas would you like government to spend your taxes:
   a) building more prisons?
   b) improving existing facilities?
   c) developing alternatives to imprisonment, such as restitution, peace-making, probation, community service orders, and more humane and improved system of fines?

2. What is your main source of information on law, court proceedings, and/or prison sentences?

3. What do you think is the objective of criminal justice in Ghana?
Do you think the current CJS meets this objective?

4. What suggestions do you have for the improvement of justice delivery?

5. Do you think that the courts should consider public opinion when sentencing offenders?

6. How would you describe media reporting of court proceedings and/or legal issues?

7. Do you think current sentencing practices are consistent with (reflects)the harm done by the offence?

OR

How do the sentences handed down by the courts appear to you generally?

Too hard?
Too soft?
Too light?