

## CHAPTER I

### INTRODUCTION

The loudest and most common complaints against the sentences passed in the Subordinate Courts are with regard to the existence of apparent inconsistencies in the sentences. Most complaints tend to be directed against the way in which a court exercises its discretion in fixing penalties, than against the legal limitations placed on its discretion. To the layman, it seems common sense that like cases should be treated in like manner. It is the purpose of this paper to see whether the complaints and accusations are true, or whether they are completely unfounded.

Hence, it is proposed to make a study of and an examination into the sentencing practices of the Subordinate Courts of West Malaysia. The writer limited the study to particular offences against property. They are: housebreaking and theft,<sup>1</sup> criminal breach of trust and criminal misappropriation,<sup>2</sup> robbery and gang robbery,<sup>3</sup> cheating,<sup>4</sup> theft<sup>5</sup> and offences involving the receipt and handling of stolen property<sup>6</sup>.

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<sup>1</sup>Penal Code (FMS Cap 45) s.441-462.

<sup>2</sup>Ibid. s.403-409.

<sup>3</sup>Ibid. s.390-402.

<sup>4</sup>Ibid. s.415-420.

<sup>5</sup>Ibid. s.379-382.

<sup>6</sup>Ibid. s.410-414.

The opinion of the writer is that the selected offences are the offences that most affect the average, ordinary man on the street. More people are robbed, or have their property stolen than people are murdered, raped or hurt. More people feel the need to steal, cheat, or rob than to hurt, or kill, or rape another person. Property offences therefore tend to affect a wider circle of society and are more relevant to society from the view-point of both the offender and the victim. On the other hand, offences against the person tend to occur in isolation, arising out of personal grievances more often than not?<sup>7</sup> This is not to say that society is not interested in the prevention of offences against the person. It has to be accepted that while society wants to prevent all crimes in general, and to ensure justice for all offenders, not everyman stands in fear of being murdered or hurt. Since a choice had to be made,<sup>8</sup> due preference was given to offences against property.

Table I<sup>9</sup> shows that offences against property form the bulk of cases reported to the police. This is even more clear from Figure 1 (page 4). It can be seen that while the number of offences against the person have remained fairly constant

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<sup>7</sup> Nigel Walker, Crime and Punishment in England, Revised Edition, Edinburgh University Press, p.21.

<sup>8</sup> Due to lack of time.

<sup>9</sup> See Post. p.3.

over the years 1970-1973, offences against property are on the rise at the rate of about 12% per annum. It is thus of greater relevance to society to concentrate on the sentencing of such offenders.

Year	Offences against the Person.	Offences against Property <sup>a</sup> .	Others <sup>b</sup> .	Total.
1970	2,060	23,886	2,508	28,454
1971	2,042	26,865	2,172	31,079
1972	1,979	30,384	2,525	34,888
1973	1,946	35,454	2,125	39,525
1974	n.a. <sup>c</sup>	n.a.	n.a.	n.a.

Table I: Crimes Reported to Police<sup>d</sup> - West Malaysia.  
Source: Statistics Department, Kuala Lumpur.

Notes to Table I.

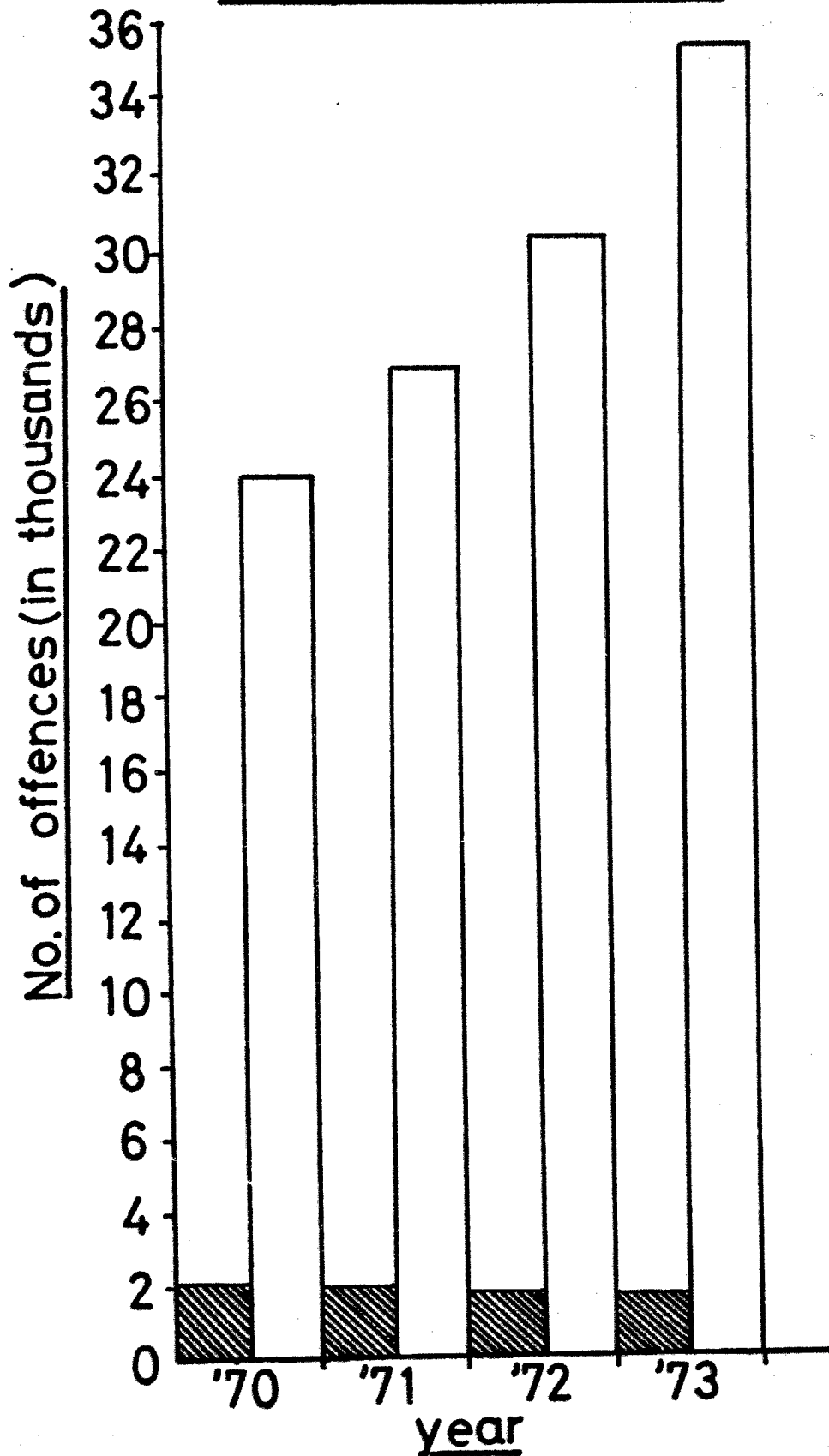
<sup>a</sup>This does not include receiving stolen property.



<sup>b</sup>Includes offences against public order, perjury, escape and rescue, receiving stolen property, arson and other similar offences, forgery, coinage and other similar offences, and other offences in the Penal Code.

<sup>c</sup>Not available.

<sup>d</sup>From Table I and Table III(Post. p.11), it would appear that the total number of offences in the Federal Territory is more than the total number of offences in the whole of West Malaysia. There seems to be an inconsistency in the records. It is submitted that the figures in Table I do not in fact represent all the cases reported to the police, but only cases in which papers have been opened, ie. where investigations have been started.

Fig.1: Graph of offences against property and offences against person in West Malaysia (1970-1973).



key:  offences against property  
 offences against person

The Subordinate Courts handle the majority of the criminal cases in Malaysia. This can be seen in Table II. The Sessions Courts and the Magistrates' Courts of West Malaysia convict more persons in a year than the Upper Courts. More persons appear before the Subordinate Courts than in the Upper Courts. Hence the bulk of the cases are heard in the Subordinate Courts.

Court.	1970	1971	1972	1973	1974
<u>Federal Court:</u>					
Appeals heard.	31	19	27	30	28
<u>High Court:</u>					
No. of persons.	204	160	135	102	105
Convictions.	201	159	132	104 <sup>a</sup>	125 <sup>b</sup>
<u>Sessions Court:</u>					
No. of persons.	3916	3688	3778	3622	3665
Convictions.	2994	3665	2768	2611	2312
<u>Magistrates' Court:</u>					
No. of persons.	114,459	106,831	108,533	104,910	73,493
Convictions.	81,487	77,059	76,348	77,754	95,725

Table II: Court Statistics (Criminal Cases) - West Malaysia.

Source: Statistics Department,  
Kuala Lumpur.

Notes to Table II.

a, b & c It is possible to have more convictions than the number of persons involved, as one person can have more than one charge brought against him.

The Subordinate Courts are also the most criticised courts. One often hears the Subordinate Courts accused of miscarriages of justice. This spurred the writer's interest in them further since in sentencing, a miscarriage of justice often results in the loss of some accused's liberty.

It is the aim of this paper to see if there are any discrepancies in the sentencing policy of the Subordinate Courts, and if there are, whether they are based on valid grounds and factors. Do the types of sentences passed reflect any great difference in penal philosophy, or is it merely the chance factor of which Court the offender happens to appear before that determines why one man is sent to prison, and another is bound over or fined?

It is essential that the courts should avoid the appearance of arbitrariness. Sentences should be fair and equitable and one should be able to observe a general approach which the Court will follow in sentencing an offender, thereby leading to a consistent pattern of sentencing. The question arises whether there should be rules and considerations laid down which the Court must take into account in passing sentences<sup>10</sup>. It is not

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<sup>10</sup>It is interesting to note that on hearing of the writer's topic of study, a senior Court Official looked dismayed and said, "Please don't suggest uniformity!"

the object of this paper to suggest uniformity but surely there should be a uniformity or consistency in the approach of Courts to sentencing. Equality of Magisterial policy can only exist if different Courts consider same factors the same way, under the same circumstances. It is merely the aim of the writer to describe the sentencing practices of Magistrates, and the role of particular factors in the sentencing process.

#### Division of Chapters:

Chapter II lays down the research methods adopted by the writer. This includes the sources of data and the way the writer proposes to use the data, and the limitations and problems involved.

Chapter III gives the reader an insight into the system of Subordinate Courts in West Malaysia.

Chapter IV states very briefly the general aims and principles of sentencing and introduces the concepts of the tariff system and individualisation.

Chapter V deals with the primary decision a magistrate must make in determining whether to apply a custodial or non-custodial measure to an offender. The main factors that affect this decision are stated, and attempts are made to gauge the weight attached to these factors in the making of the primary decision. The writer goes on to deal with the secondary decision of a magistrate.

Chapter VI deals with the use of non-custodial sentences, and their effects. The issues of the young offender and the first offender are also discussed as categories of offenders who are usually dealt with by the use of individualised measures such as binding over, fines, probations and discharges.

Chapter VII evaluates the role of particular factors, and the effect counsel has on mitigation. The writer goes into the various factors that the layman and the offenders seem to think are mitigating factors.

In Chapter VIII, the writer sets out to analyse and comment on the magisterial policy and the factors that affect the sentencing process, be they legally valid or not.

In the concluding Chapter IX, changes in the sentencing process are recommended as the writer summarises the present practices of the Subordinate Courts in sentencing offenders.

