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PROBATION AND PAROLE IN THEIR RELATION TO CRIME.¹

THOMAS M. KILBRIDE²

In his message to the Legislature Governor Altgeld recommended the adoption of a parole law to be applied to the penitentiaries. At that session nothing was done to carry out the recommendations of the Executive. At the next session, that of 1895, he again called the attention of the Legislature to the necessity of reform in the criminal law in the following language:

"The present system of having a fixed, or iron-clad sentence for each offense, without regard to the age or character of the offender, or to the degree of his criminality, is a relic of barbarism. Under this system, it frequently happens that the young are sentenced for a long term of imprisonment because they happen to be poorly defended or there is a vigorous prosecution, while the hardened criminal, tried in another county, receives a short term of imprisonment for the same offense, because he happens to be well defended or there is a weak prosecution. As each case is tried by a different jury it is impossible to have system or regularity about it. My attention has been repeatedly called to cases where boys not yet twenty years old were sentenced to the penitentiary for fifteen years, while scores of hardened and very dangerous criminals were sentenced for two or three years for the same offense and were then turned loose upon society. At present all are turned out of the prison without reference to their ability to maintain themselves. The entire system should be changed. The court and jury should do nothing except ascertain the guilt of the defendant and simply sentence him to prison, and the release of the prisoner should then depend upon circumstances. The young and those who are not yet hardened, who sinned in a moment of temptation or excitement, or in a moment of weakness, should be detained the minimum length of time and then released, but not until after employment and a home had been found for them. The hardened criminal and those who are natural enemies of society should be detained the maximum length of time."

At that session the first indeterminate sentence, or parole law, was passed as applicable to the Joliet and Chester Prisons. The administration of the law was placed in the hands of the Commissioners of the Prisons. In 1897 the Legislature took the administration

¹Read before the Illinois Society of Criminal Law and Criminology, May, 1916.

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of the law out of the hands of the Penitentiary Commissioners and placed it in the hands of the Board of Pardons. In 1899, an entire new law was passed and the former enactments repealed.

Several foreign countries had enacted laws providing for paroles before any State in the United States. The parole law in this State is copied very largely from the Elmira Act. The essence of this law is in this clause: "The Commissioners shall adopt such rules concerning all prisoners committed to their custody as shall prevent them from returning to criminal courses, best secure their self-support, and accomplish their reformation."

Not many States had enacted an indeterminate sentence and parole law before Illinois, but up to the present time more than thirty States have such laws, while the United States allows paroles after prisoners have served one-third of the time for which commitment has been made by the courts. Every year some State joins the ranks and I think no State has ever abolished the act after even a short trial.

The parole law grows in popularity every year, but to say that it has no enemies would not be stating the whole truth. Dean Swift said in his caustic way, "That when a great man is born into the world you can tell it by this invariable rule; all the fools are in league against him." Paraphrasing the above statement it may be said that when a good law is enacted you can know it by the same rule: all the blockheads and criminals are opposed to it. The above is not an exclusive major premise and there may be a few others who are sane on ordinary matters who oppose the parole law.

There is a reason why the criminal should oppose it, and with your permission I shall show you the workings of the parole law as it has affected the criminals at Joliet, the institution which this city somewhat generously assists in populating.

The critic says that the parole law does but one thing effectively, viz., turn criminals loose to prey on the public. In 1895, under definite sentence, prisoners served on an average 1 yr. 1 mo. and 11 days. Under the indeterminate sentence, they serve on an average, 2 yrs., 8 mos. and 7 days, or 1 yr., 6 mos. 26 days longer in prison, on the average, with an extra year on parole under the supervision of the State's duly appointed officers.

Perchance, I hear some one say that the parole law is inhuman if it retains the prisoners longer in prison. Not at all, for it discriminates between prisoners and it punishes the professional criminal more severely than formerly.

The records show this: Burglary, larceny and robbery are the

crimes most frequently committed and for that reason they are the most serious ones. For the five years 1890-1894 inclusive, before the parole law was enacted, the records show that Joliet discharged 1,483 who had been convicted of burglary, 776 of larceny and 286 of robbery. From 1910 to 1914, inclusive, the latest five years of record under the parole law, there were 535 who had been convicted of burglary, 403 of larcenies and 267 of robberies, or 848 more burglaries under definite sentence than under paroles, or a total of 2,545 released under definite sentence as compared with 1,225 released in five years under the parole law, a difference of 108 per cent. Remember the population of the State is nearly double now what it was in 1894, yet the serious crimes are not one-half of what they were in the way of final discharges. In 1894 the 2,545 prisoners released had served on an average 1 yr., 6 mo. and 28 days. In 1914, the 1,225 prisoners had served 3 yrs., 4 mos. and 1 day, more than double the time served by those under definite sentence.

In the 1894 period 17 were received with maximum sentences. In 1910-1914, 328 cases were passed for the maximum, by the Board of Pardons.

TABLE I.

SHOWING THE NUMBER OF COMMITMENTS TO PRISON DURING THE TWO PERIODS RESPECTIVELY.

	1891	1892	1893	1894	1895	Total	Per cent
1st Term.	596	708	637	766	703	3,499	85.65
2nd "	85	63	74	106	113	439	10.74
3rd "	18	13	19	18	36	106	2.59
4th "	9	2	3	12	13	30	.72
5th "	1	1	1	4	5	12	.30
6th "	1	...	...	1	2	4	.10
7th "	...	1	...	...	...	1	.02
	710	789	734	897	961	4,091	100.00
	1910	1911	1912	1913	1914	Total	Per cent
1st Term.	366	347	334	464	608	2,119	88.18
2nd "	49	53	36	46	35	219	9.11
3rd "	13	11	9	7	7	47	1.96
4th "	5	3	1	2	...	11	.60
5th "	1	4	...	1	...	6	.25
6th "	...	...	...	1	...	1	.04
	434	418	380	521	650	2,403	100.00

Notice that there were 4,091 commitments under definite sentence against 2,403 under the parole law. The critic will say that fewer persons reach the prison now on account of so many persons being put on probation by the courts, so that the prison population is made up of recidivists or confirmed criminals. Again he is wrong. Under definite sentence 85.52 per cent of the commitments were for the first term. Under parole law 88.18 per cent were for the first term. The parole law shows that it is superior to the definite sentence act in three respects: (1) Recidivists and dangerous criminals serve a longer time. (2) Only 44 per cent as many criminals are turned loose on the public, and (3) 60 per cent as many are committed to the prison now as compared with the old regime. Best of all, more of these 60 per cent are first termers than formerly, hence they are not such dangerous criminals.

Evidently the parole law is reforming criminals, because they are not coming back to the prisons as recidivists.

Again I submit the record to show another phase of the parole law.

Paroled up to September 30, 1912, 6,132.

Returned for violation of parole, 1,022, or 16.67 per cent.

Sent to other states for imprisonment, 28, or .44 per cent.

Returned under new sentence, 183, or 2.98 per cent.

It will be noticed that not quite $3\frac{1}{2}$ per cent of the prisoners are returned under a new sentence. The ones who are returned for parole violation generally have been guilty of a misdemeanor, or have merely left their place of employment or perhaps have left the State.

Let me call attention to two parole violators. One left the State and learned the laundry business; he moved into a city of southern Illinois and started into business for himself, got married and had two charming children. He was living as a law-abiding citizen and was succeeding in business. An ex-convict came along who knew him and reported the case to the authorities; the parole agent brought him back to prison. It took but a short time to see that Illinois needs just such citizens as this man on the outside of prison, consequently he was promptly given a final discharge and yet he is marked as a parole violator.

The other case was somewhat similar. The prisoner went to another State, and for a dozen years was first violinist in a first class orchestra in the largest city in the State, was a law-abiding citizen and bringing up a respectable family in comfortable surroundings. He was reported and returned to Joliet, but the Board of Pardons at

once ordered his final discharge. The parole law has accomplished its purpose when it keeps persons from returning to criminal courses, makes them self-respecting and supporting, and accomplishes their reformation.

I speak of the working of the parole law and what it has accomplished because it is customary in some places to hold parolemen responsible for all the misdemeanors and crimes committed in the State. Over a year ago, a grand jury in this city in the regular course of business voted some three hundred indictments and ended its labors by passing a series of resolutions utterly condemning the parole law.

The late Prof. Henderson of the Chicago University, sent me a list of the persons indicted, and asked me to see if any of those on the list had been in Joliet or Chester in two years. I think the Professor wanted to let the parole law off easily. I considered the matter so important that I went back not only two years; I looked back to 1895 when the parole law was enacted, and out of the three hundred indictments, not a single one had ever been in Chester or Joliet. I did recognize one who had asked for a commutation of sentence from the House of Correction, but his petition had been denied by the Governor on the recommendation of the Board of Pardons. He is now in Joliet. This Grand Jury spoke as intelligently as many others which make definite statements about the workings of the parole law. It is always dangerous to make definite statements upon a subject, especially when one knows nothing about the facts.

All agree that punishment must be meted out to violators of the law, but the purpose of punishment is still a mooted question. These purposes have been given:

1. To satisfy justice.
2. To deter others.
3. To reform the offender.
4. For public utility.

The first goes back to the Mosaic Law and meant an "eye for an eye and a tooth for a tooth." Formerly laws were based on this reason, and we still practice this when a person is executed for murder. At the same time the punishment was so severe that it was expected to deter others from committing crimes.

Curiously enough severe punishment has signally failed in deterring others from criminal careers. In the time of King Edward III, there were 16 murders in England to our one, and laws then were strictly enforced. As late as Blackstone, 160 crimes were punishable with death. In the Quaker State, as late as 1783, there were 18

crimes punishable with death, yet this severe treatment did not deter others from committing similar crimes.

In the Chicago Tribune of April 1, the report of a grand jury was given in which it recommends that a hanging be held every Friday, based on the fact that there were 155 indictments for murder in 1914, and 163 indictments for the same crime in 1915, and that there has been but one execution in four years. The report adds that the impression is abroad that capital punishment has been eliminated, but that if it were used by juries murders would be greatly reduced. At any rate, with an execution each Friday, the murderers would be greatly reduced. Murder is not a parolable crime, nor can a murderer be put on probation, hence these crimes cannot be laid against the parole and probation laws.

It has been found that severity in punishment does not lessen crime, but that certainty of punishment does. A paper April 13, reported State's Attorney Hoyne *in re* robbery of St. Luke's Hospital as follows: "In view of the evidence presented by the State and the action of the jurors in acquitting the bandits, it is my opinion that the jurors themselves should be in either Joliet penitentiary or the Chester Asylum for the Criminal Insane."

I may add, in my humble opinion, that our whole criminal procedure is wrong. Grand juries and petit juries should both be abolished. Criminal trials should be on information by the State's Attorney. Why have over a score of persons put their O. K. on what the State's Attorneys would do without their aid. The petit jury may have been useful in prehistoric times before society was protected by law, but it has long since outlived its usefulness.

My definition of a jury is "An aggregation of incompetence, inspired through ignorance, to measure out injustice." If a venireman shows any signs of intelligence in a criminal trial, such an act subjects him to a peremptory challenge by the defense. It is supposed that experience teaches perfection, but the jury work is done by persons who sit on one case, perhaps, in their lives, or if not that, we have the other horn of the dilemma, the professional juror, who is worse than the inexperienced one.

Who has not known a whole week to be consumed in getting a jury for some noted criminal cases, and after one is secured that cannot weigh the evidence nor judge the law properly, the trial proceeds under rules of evidence that excludes nearly all material facts. Is it any wonder that persons commit crimes, because they always have a gambler's chance that they will not be found guilty.

The accused person should be brought into court on information by the State's Attorney, he should be tried by a judge expert in criminology as well as law, the rules of evidence should be so simple that the guilt or innocence of a person could be ascertained in a few hours. Then let the prisoner plead not guilty if he wishes, but if the facts are against him, the court should differ with him, and then give such treatment as the case warrants such as probation, or penal servitude, but all sentences should be subject to revision in the future. Any one can tell the condition of a person's mind today, but who can say what any person will be one, five, or ten years in the future, hence the logic of an indeterminate sentence. Every reformed person should be outside making an honest living, every person of criminal tendencies should be restrained.

I have shown some things accomplished by the parole law; now I purpose to show some things that it does that may not be so obvious to the casual observer.

It equalizes justice. Two persons may commit almost the same crime in different jurisdictions, but the juries will give very different sentences, because no two juries are alike. Two cases of statutory rape were tried here in Cook County, under different judges, the parties were of the same nationality, the circumstances of the crimes were the same, but one was given three years by the jury and the other fifteen years. The Board of Pardons and Parole equalizes the punishments.

Not only do juries differ, but the lawyers as well. There are 102 counties and as many State's Attorneys. Some are better trial lawyers than the bar of the county, and under definite sentence, a person tried in that county always gets a stiff sentence. In other counties, the bar is stronger than the State's Attorney, and a person gets an acquittal or he may take a plea if his guilt is absolutely certain, on a compromise with a recommendation for the minimum sentence. The Board of Pardons can equalize the punishments in such cases.

Under the rules of evidence it is almost impossible to find out the prisoner's past life. Under the parole law that is what the Board of Pardons insists on knowing. He must tell where he has been for years and what he was doing. If he is reluctant to talk, the Board can let him stay in prison until the spirit moves him, and when he does talk it takes pains to verify his statements.

A forger was sent to Joliet recently with a recommendation from the State's Attorney and trial judge that the prisoner be paroled in

eleven months. They were honest but did not know their man. The Board of Pardons found him to be one of the worst forgers in the country—he had operated from ocean to ocean, under more than forty aliases, and had been guilty of other crimes besides. He is doing his maximum, and when he gets through at Joliet, he is a very much wanted man in many other places.

Does that mean that the statements furnished by the court and State's Attorney have no value? Just the opposite. Nearly all first term men are local characters, and are well known to the officers of the court, and in such cases, the information is reliable, and assists the Board of Pardons and Parole very materially in fixing the sentence of the prisoners and as far as possible the Board will follow the recommendations given. In fact if the trial judge and State's Attorney do not send a statement concerning the facts and circumstances surrounding the crime of which the defendant has been convicted they are not doing their duty under the law. On behalf of the Board of Pardons I wish to thank the State's Attorneys for their co-operation, for of the 102 State's Attorneys in the State, there is but one who is not furnishing the statements, and when over 99 per cent of the State's Attorneys are complying with the law, we certainly have cause for being jubilant over.

The record of the judges is nearly as good. The worst specimen that the Board had to contend with, was a gentleman who put in all of his time expatiating on the absolute failure of the parole law, instead of converting some of his wise observations into statements about cases tried in his court. Many times a docket would be heard at Joliet with more missing statements from this great criminologist-judge than from all the other judges in Cook County and the other 38 counties combined that comprise the Joliet district. What did it matter to this sapient judge that the prisoner's case could not be acted on because the information was lacking? Is a man a competent judge or even a good citizen if he himself will not obey the law? The Honorable Gentleman is now bearing the title of ex-judge and he richly merits the honor of that title. His vacation should not be disturbed.

In the beginning of this paper, I showed that the parole law is turning out about 44 per cent as many prisoners as under definite sentence with a double population, or per capita it is releasing only 22 per cent as many as under definite sentence; also that there are 60 per cent as many commitments or per capita only 30 per cent as many as under definite sentence; also that 85.52 per cent of the prisoners

were first termers under definite sentence, and 88.18 per cent were first termers under the parole law; in fact the parole law gets hold of the professional criminal and keeps him, while as for the first termers, who falls through chance, it gives him another opportunity. It gets these persons, of whom 100 per cent are bad, all convicted of crime, and it reforms 84 per cent of them. But we never hear a word about the 84 per cent that have made good. All the talk and newspaper notoriety are about the poor unfortunates who go wrong. Of the 6,132 who were paroled from Joliet, 183 have been returned in 20 years under a new sentence or on the average 9 each year of the 20 years, and yet there are rational persons who say that all the crimes are committed by parolemen. Are these people fair or honest when they make such statements?

The parole law, or any other law cannot prevent crimes that a community fosters and makes possible. Some say that no individual should be punished for a crime, because the community is to blame for every violation of law, which occurs, and it should suffer, not the individual. You are not prepared to accept this doctrine in toto, but there is a great deal of truth in this radical statement. A person is almost compelled to steal when he cannot get food in any other way. A person almost has to be dishonest if he cannot make an honest living. What does the community do to encourage crime?

If a city sells cigarettes to its boys, to dwarf their minds and bodies and moral fibre, can it blame these misfits in business if they get a living any way they can. Did you ever see a boy—a confirmed cigarette smoker—that was truthful? Cigarette smoking is the child of deception.

A community that allows boys to loaf around pool rooms, may expect to reap a harvest of criminals. Competition becomes keener every year and pool rooms do not rear upright, diligent, manly citizens. A community that has many more saloons than schools and churches combined may expect a harvest of criminals. Understand that I am not making a temperance nor a prohibition talk. I am merely stating a few facts and one of them is that over 50 per cent of the crimes can be traced to the saloons. In every large city there are many dives which are the resorts of thugs and crooks and if any community wishes to tolerate such resorts, it can expect a rich harvest of crime. The junk shops and pawn shops in many places are as bad as they can be, and aid thieves to dispose of their stolen wares. It is not uncommon for the proprietors of junkshops to be regular Fagins who secure boys to steal and give them a pittance for the stolen property.

The American city may expect crime as long as it fosters the crime-producing agencies. Lax enforcement of law is peculiarly an American trait. When the people get tired of a wrong, a new law is enacted, but not enforced, everybody is happy, and crime goes on unmolested. There has been a law compelling saloons to close their doors on Sunday since the memory of man runneth not to the contrary, yet the law is scarcely ever enforced excepting in a perfunctory way.

We should not have one set of laws to be enforced and another to be disregarded. Every law should be enforced. If it is oppressive, enforce it and that will secure its repeal. The weak will have courage to violate the law, when the officers in high places disregard their oaths and set an example in law violation. The crimes of the lower classes are always copied from the upper classes. Everybody knows that a majority of the serious crimes in a city are committed from Saturday night to Monday morning when saloons are allowed to remain open all day Sunday.

I am not finding fault with any city nor with any set of officers, but when we hear that the parole law is responsible for all the crimes on the earth and a few on the moon and the neighboring planets, it is well for us to stop for a moment and see what really causes crime, and then ask ourselves if the community has not made the crimes possible. In fact the community is a hotbed to generate crimes and then when the boys become full-fledged criminals, they are turned over to the parole law 100 per cent bad to reform; the parole has been saving 84 out of every 100 that the community has ruined, and then the commonwealth says you are a failure because you have not reformed the other 14 that it ruined. Are you fair when you give the parole law that kind of deal?

The crimes of every community could be materially lessened if all the officers engaged in correction work would co-operate. There should be a complete working understanding between the State's Attorney on the one hand with the sheriff and police force on the other.

In how many cities do these forces work together? It is a more common sight to see each working for itself and many times the work of one department blocks and hinders another. Criminals have an easy time when such conditions obtain. The work of the probation and parole officers should be interchangeable and the police should assist both. When probation and parole officers, police, Sheriff, State's Attorney, Board of Pardons and courts work together to sup-

press crime, instead of finding fault with one another, crime is going to get a rigid checking up. It is certain that 75 per cent of the crimes committed could be avoided if the State and its duly constituted officers worked together with that object in view. Crime like the poor is always with us, and some method will have to be devised to reduce its evil effects to a minimum.

The definite sentence has been tried and it has been found wanting. It accomplishes but one end, it does punish the malefactor, with a bare possibility that it may deter others from indulging in criminal courses. When the convict under definite sentence has completed his time he is turned loose at the prison door with no friendly hand to assist him, and as his debt has been paid to the State, the law has no power to control him until he commits another crime; such treatment never did reform persons and from its very nature it was not intended to reform any one. That law was made for the purpose of punishing culprits and not to assist them in establishing themselves in society.

The parole law is far superior in its workings. It does punish a culprit, for the isolation and the eternal monotony is a fearful punishment. Have you ever asked a prisoner serving less than a life sentence how much time he has yet? I have asked dozens, and every one without a moment's hesitation will give the exact years, months and days yet to be served. It deters others because no one wants to forfeit his liberty and be branded a felon.

But the real purpose of the law is to effect the reformation of the prisoner, and when this is done, the prisoner should not be kept behind the prison bars. Are mistakes made? Certainly, but the parole law gives the prisoner only conditional liberty for the law, still has control of his body and if his conduct is not exemplary he can be returned to the prison. Under definite sentence, people avoided a convict because he was one; under parole law, the prisoner cannot get out until some one agrees to look after him and furnish him remunerative employment, besides the parole agents take a friendly interest in the parolemen, and assist them in every possible way, or the parole law offers every inducement to make good; however, the person has been branded a felon and that stigma will persist during life.

In 1911 a law was passed called the probation act which accomplishes the same result as the parole law, only probation begins before penal servitude, while the parole commences after the prisoner has been released from prison. The probation act applies to only a few

minor crimes, and only first termers may have its benefits. Probation has been worked out better in this county than in any other part of the State; in fact, parts of the State scarcely know that there is such a law. I sat with the Board of Pardons in the Chester Penitentiary recently, and after nearly 100 prisoners came before the Board I made up my mind that 25 per cent ought never to have reached the prison. I asked a man who was connected with the Board sixteen years, if my per cent was too high. He said that it was not high enough. Is it not a crime against society to send one out of every four wrongfully to prison to be branded a felon? Is not the probation act the right remedy for this terrible wrong?

Probation has another common sense idea that commends it. The old plan of fining misdemeanants and throwing them into jail to serve out the fine in idleness among undesirable companions, a system inherited from prehistoric times with the juries, is done away with by the skillful operation of this law.

If we were not so serious-minded, we certainly would be convulsed by the comedy or travesty or whatever it is that is perpetrated under the old regime. The lord of the house is haled into court and it is shown that he neglects to support his family; he is convicted and duly fined for said neglect in supporting his wife and children. It was lack of funds that got him into trouble, but behold he is punished by a fine to be paid in big dollars, the very commodity that he lacks. Therefore he goes to jail for a good, long period, to be fed by the county and the wife and children may starve. Or if they are industrious they support themselves, and frequently they pay the fine imposed on the head of the family. Who is punished by this system? This system has been in operation for centuries in so-called courts of justice. Is it possible occasionally to give the wrong name to a system?

The day is not far distant when jail sentences will be abolished for misdemeanants. Wisconsin has taken a step in that direction already. Under the law recently enacted there, misdemeanants are allowed to work just as other persons may; their earnings go to their families; the prisoners support themselves and their families, too. The jail with its attendants is unnecessary. In fact, one Sheriff reports that all he needs is a clerk to keep track of the prisoners and to make a record of the earnings.

I should like to show how the probation work in this county is accomplishing the same result. Probationers in 1915 earned a grand total of \$976,289.41, or almost one million dollars, besides they were

hardening their muscles, and using their brains instead of lying in jail in idleness. Can you teach a person to be industrious if he is compelled to be idle? I have already taken up my allotted time and I yield to one who has made probation the success that it is in this county. It would be presumptuous for me to talk probation when he is present.

My topic is consideration of parole and probation laws, I purposely transgressed the limits. These laws or any others will be nullified in their beneficent effects unless we have a civic life that is adverse to criminal tendencies, and unless there is co-operative work on the part of courts and all officers engaged in corrective work. We who are engaged in the parole and probation work offer you our assistance, and we cordially invite all to co-operate with us in making our boys law-abiding and self-supporting citizens.