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Annual Address of the President of the Institute of Criminal Law and Criminology

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ANNUAL ADDRESS OF THE PRESIDENT OF THE
INSTITUTE OF CRIMINAL LAW
AND CRIMINOLOGY¹

HUGO PAM²

Last year saw the ending of the war. From England, from France, and in our own country, statistics have been gathered which show that serious crime which had been on the decrease during the period of the war was again stalking in the foreground. No longer did the activity of the war serve as a release of those elementary passions and pent-up energies which in the case of many men, unless directed into proper channels, lead to the commission of acts either criminal or of such violence and force that unless curbed and restrained lead to acts of crime.

In many sections of our country the form of violence was in the nature of race riots; in others, industrial disturbances. All engaged therein were not criminals, but these occasions were taken advantage of by the worst elements of society to give vent to its inclination to lawlessness and disregard of the rights of the community.

The newspapers are filled with accounts of crimes of such daring and boldness as to make the average citizen stand aghast at the manner in which the security of life and rights of property are ruthlessly disregarded and imperiled.

A forceful element in the character of crime has been the advent of the automobile. Formerly, in the days following the Civil War, and up to the nineties, the horse was the quickest means of getting to and away from the scene of a crime. Today, the automobile changes this—makes possible a quick advance and a quick getaway. Before an alarm can be sounded, all trace of the culprits usually has disappeared and their escape practically assured. While in many instances criminals have been apprehended, there are many others where no capture was effected. The boldness of the crime and the apparent helplessness of the law to apprehend the perpetrators have embittered the public to the extent that any advance in the treatment of the criminal or any suggestion save one of punishment of the criminal is looked upon with disfavor. In addition, those having charge of prosecutions, namely, the state's attorneys and the officers, have re-

¹Delivered at the Eleventh Annual Meeting of the Institute in Boston, September 2, 1919.

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peatedly charged that in the main these serious crimes have been committed by persons either on parole or probation, and have often, without justification, declared that these humane provisions of the law had been abused and should be either curtailed in their application or entirely repealed.

Such opinion has also received support by our daily press, both in its news columns and in its editorials, all of which inflames the public mind and arouses a feeling of resentment against any legislation which has for its purpose anything else but the physical punishment of the criminal.

The average individual feels that he is law-abiding and that his rights have been invaded. He does not stop to ask himself whether he or society is in any way responsible, but goes upon the presumption that the individual alone is at fault, and therefore has entirely forfeited his rights to the protection of society. The community does not realize that often these crimes but evidence the condition which itself has helped bring about, and therefore does not sympathize with an institution or group of men or women who attempt to bring this fact home.

At the present time this feeling in the community is in ascendancy, and therefore members of our Institute should work the harder, not only to prevent enactment of reactionary legislation, but to bring about a better understanding in the community of the real causes that lie at the root of present-day criminal conditions.

While it is not possible within the limited space of time that I have to address you to cover this entire subject matter, I do wish to present my views upon two phases of this question.

First, the juvenile in relation to crime, which subject can be divided into two heads,

(a) Those who are subject to the jurisdiction of the Juvenile Court, namely, children up to the age of seventeen;

(b) Those between the ages of seventeen and twenty-five.

As to the juvenile offender: The juvenile offender has been the beneficiary in recent years of special legislation throughout nearly all the states of our country. The purpose of the laws is salutary, and the object is to provide the child with an environment such as will save him to the state and society as a useful and law-abiding citizen, and to give him the educational requirements necessary to attain that end. This purpose, however, has not always been accomplished. Especially is this true of the rural communities in our various states.

This difficulty has been appreciated by the Children's Department

at Washington and, as a consequence, a survey has been made under the direction of Miss Julia Lathrop, in charge of the department, with reference to the Juvenile Court acts in the various states and the manner in which it has been enforced.

In the course of this survey, inquiries were addressed to nearly 2,500 courts, or agencies, to which 2,343 responded.

In the year, 1918, 140,252 cases were tried in the various children's courts of the United States, and of that number 79,946, more than half, were cases of delinquency. The fact that more than one-half of these children were actually charged with the commission of crime is in itself a serious indictment against the conditions that prevail in many parts of our country. I, therefore, wish to digress for a moment and present to you the situation that in many instances confronts these children who in such appalling numbers have passed through our courts.

In nearly all of our large cities there are congested sections where housing conditions are deplorable. Often families of five, six or seven live in either one or two rooms. In many instances to meet the economic stringency of the family life, strangers are brought into these congested quarters and occupy a bed when not in use by a member of the family, thus making for lack of privacy and hence, lack of modesty. The husband is often engaged in work that requires no skill, and deadly monotonous in its character; it constitutes and is considered merely a daily grind. There is nothing uplifting or exhilarating about it, and when he returns to his squalid, ill-kept home, he brings no cheer to it, and its desolateness adds dullness to the family life.

The situation in which the mother finds herself, adds but despair to it; she is either confined to an all-day drudgery of the care of her family and household, or she is compelled by the exigencies of economic conditions surrounding the home to also become a wage earner. Often this father and mother bring to their married life but little education and no experience in the world, and the development of their married life is narrow in the extreme, and the horizon of their outlook very limited. In an environment of this kind the children must necessarily be severely handicapped. Unrestrained in their movements, with no supervision over the impulses of their infantile mind, often deprived of the neighborhood settlement house or small playground, the children have no opportunity for sane development of mind, or a proper outlet for their energy.

Where some religious instruction is given the child, it is limited

usually to but one day a week; and only in the schoolhouse is the child afforded the first consistent contact with opportunities for his or her welfare, and in these congested districts the attendance of the child is uncertain and very irregular. The child enters at a late year and leaves at the earliest opportunity, and often in the interim the child is kept home by the parents either to meet cases of illness in the family or to take care of a younger child. In fact, the welfare of the child is the last consideration in the struggle of the family for its economic existence.

There has been no purpose in presenting this background of many of our children, save to place before the public the necessity to have the Juvenile Court and its every agency developed to its highest efficiency.

Not only have these 79,946 delinquent cases shown evidence of actual crime on the part of the children, the remainder of the 140,000 children were either dependents, or in some way a charge to the public, and therefore a potential factor in the development of crime.

It is only in our larger cities, such as New York, Philadelphia, Boston, Chicago, Cleveland, Detroit, and cities of more than 250,000 inhabitants, where the Juvenile Court functions properly. In all the states but one there is provision for separate procedure for the juvenile offender, but in many states the provisions are inadequate, and in many others, while the legislation if carried out efficiently would secure an effective juvenile court, yet the means have not been provided for an adequate system, save in the larger cities; the reason for that being that the application of the laws and the enforcement thereof are left to the various counties in the state, and the financial budget of such counties for the work is entirely inadequate.

The survey heretofore spoken of also shows that while every state but one has legislation for the juvenile delinquent, less than half, namely, 45 per cent, have a separate judge or probation service connected with the Juvenile Court, and of this 45 per cent, less than half have paid probation officers, and the rest are entirely dependent upon volunteer service.

Our full responsibility will not be met towards the children who are subject to the jurisdiction of our children's court unless provision is made so that the benefits of the Juvenile Court and its agencies be distributed impartially to one and all throughout every state and throughout the nation. As it is, the rural communities suffer very much because through lack of funds they are deprived of the benefits of the legislation enacted.

A further study of the survey shows that in the larger cities where we have a highly specialized Juvenile Court, as in Chicago, with proper facilities for examination and probation, that a much larger proportion of delinquent children are placed on probation, and a much smaller proportion sent to institutions. We further read from this report that in many of the states there are no separate correctionary institutions for the care of children, and when punishment is incarceration, the confinement is either in the ordinary jail or prison.

In one of such rural districts in one of our states, the disposition of children's cases was as follows:

- 65 were sent to jail;
- 40 placed in the chain gang;
- 12 sent to reformatories;
- 1 to an orphanage;
- 156 fined;
- 156 dismissed;
- 25 in which judgments were suspended, and only 51 placed on probation.

It is our duty to prevent such discrimination being made against some of the children of our land. The delinquent child must be treated the same as the dependent, namely, the neglected or homeless child. Legislation to that effect has been enacted. The court has the power to grant this protection to the delinquent child, and the community must see to it that such protection is bestowed.

The highest development in the treatment of the juvenile delinquent and dependent, as set forth in this survey, is found in the Judge Baker Foundation in Boston, through which all the children before the Juvenile Court are given a thorough physical examination, their mental condition is carefully studied, and especially qualified investigators attached to the staff of the Foundation gather the social data. All the information in a given case is then assembled and studied at a staff conference, and a diagnosis of the child's condition, and a recommendation as to the kind of treatment needed, is made by one person qualified to determine it and evaluate all the facts. Child welfare work will make its best progress and reach its highest efficiency when every state strives to attain the highly specialized development afforded by the Judge Baker Foundation. It should not depend upon the private fortune of an individual to bring about this standard, but the state should meet its responsibilities and duties towards its children and citizens.

Every dependent or delinquent child should either be under the

control of a parent who shall meet his or her responsibilities and give that child a proper environment, or be under the control of some branch of the Juvenile Court, properly equipped to afford the child a fair chance as far as nature has endowed it to meet the problems of life. The stain that attaches to imprisonment leaves its indelible mark upon the character of the child and creates prejudice in the minds of the public; therefore, the last place in the world for the child delinquent is an institution which is of a correctionary character.

It is a question of education and discipline, a question of proper environment, and if we could establish throughout our land institutions of as high a character as that of the Baker Foundation, we would create a potential agency in the unmaking of the criminal and the prevention of making one.

Let us take up the case of the youthful offender between the ages of seventeen and twenty-five. It must be apparent to many of you who have come in contact with men of these ages, either in your prison investigation or psychopathic and psychiatric examination, that a great proportion of crime is committed by young men between the ages of seventeen and twenty-five. The public and the community is made aware of that fact by the news columns of the daily papers. In fact, they constitute forty to fifty per cent of the criminal offenders. In the eyes of the law under the enactment of juvenile legislation these men are considered adults. It must be apparent, also, to all of you that the determination that one boy one day less than seventeen, and another boy one day over seventeen, committing the same offense, are subject to different laws, different examination, different care and different punishment is arbitrary and unjust in the extreme. It may well be said that such arbitrary differentiation must be made at some time in fixing responsibility; but in my mind the justice and unfairness that often result from such arbitrary delimitation would be obviated if the principle that motivated the development of the Juvenile Court were applied to criminal offenders between these ages.

Just as we have in our Juvenile Courts provisions made for an investigation of the mental antecedents of an offender, we should also have provided for this young adult offender an investigation of his antecedents and the social conditions surrounding him; also an examination to determine his mental capacity. As a result of such examination we would often find the same environment as surrounds our dependent and delinquent, and by modern and scientific methods it would be found that very frequently a young man between the ages of seventeen and twenty-five has but the mentality of a boy of eight

or twelve years; the only difference being that his experience in life, by reason of greater years, may have grafted upon his deficient mental makeup more fixed habits dangerous to society. If, however, the crime does not show an abandoned heart, there is no reason why the same humane provisions should not be made for this class of offender as for the juvenile delinquent.

Again, it should become not merely a question of punishment, but education and discipline. In some of the states of our Union, and in some of our cities, this principle has been recognized, especially in the city of Boston, where a psychopathic institute is at the service not only of the Boys' Court or the Juvenile Court, but at the service of every agency in the state, in order that there may be a proper and intelligent physical and mental examination made by trained psychologists and psychiatrists. Some of the other larger cities have made similar provisions, but in the main such legislation has not been looked on with favor in many of our states. While all the states of our Union have made provisions for probation for the juvenile offender, quite a number of states have no provisions for adult probation, even for first offenders, and where such provisions have been made they are often entirely inadequate and fail to provide a proper staff of probation officers to give effect to such provisions. Just as probation is an efficient force for the juvenile delinquent and dependent, so probation can be a great factor for reformation and restoration of the young adult offender, and any legislation which endeavors to curtail probation, or rather fails to extend its application, is reactionary.

There are some crimes of a character (even outside of capital offenses) for which probation could not be allowed, but in the vast number of offenses in the category of crime the first offender should receive the benefit of probation.

It might be said that most of the states have such provisions for probation, but my investigation of the subject leads me to make this statement: That with the exception of two or three states, notably that of Massachusetts and New York, the use of probation is very limited.

Very little discretion is left to the judge. The law usually provides exactly the character of the offense for which probation may be given, makes the value of the property the determining factor, and limits the application of the provision of probation to the first offender. To my mind there should be but one limitation upon the judge's discretion to grant probation, and that is not to act in any way as to endanger society. Save for certain grave offenses, if a judge after having before him reports as to the physical and mental exam-

ination of the offender, and also from the investigation of his antecedents and environment is convinced that the offender should have the opportunity to again take his place in society without suffering physical punishment, then probation should follow. I am just as firmly of the opinion that in the case of the first offender, if reports and examination satisfy the court that such person released on probation would be a danger to society, and that society would be better protected by having him removed from contact with it, then, whether he be a first offender or not, that person should be excluded from contact with the community.

Just as in the case of the juvenile offender, the thought that should actuate the public mind is the saving of this youthful criminal between the ages of seventeen and twenty-five to society. Physical restraint merely, should not be for the purpose of punishment, even though physical restraint is provided for under conditions which make for the improvement of the offender. (Of that I will have something to say later on.) The confinement of prison and the possibility of being known as an ex-convict may tend forever to taint a man's career and check every impulse to seek redemption in the eyes of the world. Where there is a chance to salvage a human soul, and education and discipline without imprisonment will advance it, then the interest of society will be served better without prison confinement.

I had intended to speak somewhat at length with reference to the question of the character of our prisons and prison management, because, to my mind, if there must be confinement for the protection of society, the prisons must be of such a character and the management of the offender such as to have the offender returned to society with a recognition of his responsibilities, and a determination to resume his place as a law-abiding citizen.

Any prison system which allows a man to stagnate, that limits his vision merely to the life within its walls, and does not impress him with the belief that while there he can prepare to meet the responsibilities of good citizenship, fails to accomplish the essential purpose for which the offender was imprisoned, namely, reformation.

But in the limited time I have left I can only present to you two phases of this subject.

First let me call your attention to the fact that in most of the prisons throughout our country today the labor of the prisoner is confiscated by the state. That practice has come down to us from time immemorial, and less advance has been made in this regard than in any other branch of prison management.

Restraint of one's liberty—that is, the right to come and go at will—proves, as time goes on, a severe strain upon every normal impulse within us. Let anyone in this audience be limited to his home, and that home a comfortable one surrounded by spacious grounds, and yet if his movements be confined to that area even for but a week, such restraint would prove most irksome.

While there have been improvements in some of our prisons with reference to the buildings and their equipment, yet we do know that there is some form of cell-house and a very limited opportunity for the release of physical energy. The education of the prisoner is a negligible factor in the routine of prison life. By employment of persons in various occupations, either within the prison walls or within certain limits outside of them, the time of the prisoner is consumed, but his entire life is one determined for him, and it is his province to obey the prescribed rules and regulations subject to the orders of those in charge of the prison. In other words, there is a complete subjection of the will of the prisoner. That is the essence of physical restraint, and that is why it proves so burdensome. The state has the undoubted right to deprive an offender of his liberty, but I am strongly of the opinion that it has no right to appropriate the right and ability of the men to labor. Of course, work must be provided, otherwise life in prison would be unbearable, and all efforts for the reformation of the prisoner unavailing. It is only in the sane occupation of his time, with due allowance made for recreation and education, that a correctional institution can restore the man better equipped to resume his responsibilities once he has regained his freedom. While the offender may reconcile himself to a restraint of his liberty and also welcome the opportunity to work, yet I am of the opinion that he resents the appropriation of the proceeds of his labor without a return of the equivalent of its value; a fair wage over and above the expense of his confinement to the state.

Where a prisoner's time is used in labor, which either brings a profit to the state from the articles manufactured by him or saves to the state the employment of another individual whose work the prisoner does, the prisoner should be entitled to have placed to his credit either the profit or the wage saved to the state by his labor. Against this should be charged the expense of his maintenance. Everything over and above should be either given to the family depending on him, or it should be given him upon his release from the prison, when he again assumes his place in society.

There is no more degrading influence upon the man who still

has some character left than the knowledge that by his criminal act he has not only forfeited his right to freedom, but has also brought misery and a state of helplessness to those who had been dependent upon him; and there is no greater force for uplifting a criminal and making him look to the future than the knowledge that while he is paying the price of his offense against society by being deprived of his liberty, he is contributing to the welfare of his family.

There may be difficulties in making provision for such employment of prisoners so as to return a profit, but they can be overcome easily. There is no question that, to begin with, that the labor of prisoners can be employed for articles and materials for use in public institutions. This is being done in Massachusetts, and a report of the Bureau of Prisons in that state shows that the sale of articles manufactured in the state prison amounted to \$571,356; sales in the Women's Reformatory at Schermerhorn amounted to \$132,867; at the Men's Reformatory at Concord, the sales amounted to \$220,016, making a total of \$924,239; the net profit of such sales was \$218,817.31. Among some of the articles manufactured were aluminum ware, bedding, blankets, boys' clothing, men's clothing, flags, furniture, hosiery, shoes, and so forth.

In Chicago, in an institution where the average sentence of a prisoner was three months, namely, the House of Correction, to which persons convicted of misdemeanors were sent, an experiment was made by Mr. John Whitman (the present Director of Prisons in Illinois). While he was in charge of that institution, without provision of law but with the consent of the trustees, prisoners were employed in doing work for the city. They manufactured all the street brooms and ash receptacles, used by the city of Chicago in its cleaning department. They baked all the bread for all the public institutions of Chicago, save the hospitals; they also junked all old and discarded machinery used by the city; and while I have not the detailed figures before me, such work resulted in a profit, and by arrangement of the trustees, the men having families, who worked in the prison, were given the profits.

In meeting this situation we need not fear the position of union labor, because I am convinced that union labor will take an advanced position on this, as it has on all vital questions of the day. Union labor will co-operate with every other agency in having such a prison management as will not only protect society, but also make for the reformation of the prisoner and his ability to resume his place in society.

Therefore, if a man as he enters prison knows that his labor will be used for the comfort of his family while he is in prison, or that it will be turned over to him when he come out to reinstate himself in the community, he begins with an objective which will carry him through the trying period of imprisonment and will make him look forward to the day of his release with confidence in his ability to assume responsibility, and with no resentment against society.

The other question I wish to touch upon is that of parole. When we speak of parole we have in mind also the indeterminate sentence, which in its accepted sense means that for a particular crime there is a minimum and maximum term a prisoner may be called upon to serve, the period of time depending on that agency in each state charged with the control of prisoners and granting parole.

In the beginning of my talk, I spoke of the distrust and disfavor that has been engendered in the community with reference to the paroling of a criminal. To my mind it is important that this attitude should be dispelled, and that the agency that has made for part of this feeling of suspicion, namely, the press, be the medium through which the confidence of the community in the system of prison parole be firmly established. To that end the American Institute of Criminal Law and Criminology should bend its every energy, and by its research and investigation place before the community, through the medium of the press, the real facts on the question of parole. The principal information placed before the community today, and that mostly in the form of headlines, is that a crime has been committed, that a paroled man has committed it, and then follows either a direct or veiled attack on the agency granting parole, and a stinging criticism on the abuse of the parole system. We must recognize there have been men who, as events showed, did not justify the confidence reposed in them to make good, and also that at times men have been paroled through improper influences. Such a situation, however, should not militate against the principle of parole, because every remedial welfare measure for the benefit of the weaker part of our community has often failed to reach its objective, not, however, because of the inherent defect in the measure, but because of the manner in which it was administered, or because of a mistaken judgment as to the beneficiary. What I am most concerned about is the hasty and ill-considered criticism made upon the general principle without the necessary reservations upholding the principle. The first requisite to overcome the prejudice against parole is to have the welfare board or the agency having in charge the release of prisoners on parole

made up of men and women who are familiar with the subject of criminology, who are above suspicion of being influenced by either political or personal consideration, and who can be held directly responsible for their acts. If the public knows that such a board is acting, then all question of favoritism or incompetency will be dispelled. The next step is to acquaint the public with the workings of the parole system. Statistics should be gathered, which show not merely the number of crimes but the character of crimes committed; for often there are certain periods of unrest and certain general conditions which result in trivial criminal acts, and these outbreaks are but temporary and sporadic. The public should not only be made familiar with the failures of parole, but with its successes.

Just as in probation, the great difficulty with the proper working of parole is the failure in most of the states to provide for sufficient officers to supervise and care for the paroled man, and to encourage his contact with society. But the great factor that the community must consider is the effect parole has upon the convicted man who is serving his sentence in prison. It is conceded that no system of prison management is progressive unless there is an objective towards which the prisoner is constantly working. While in places of confinement he may show advancement, such as from a cell-house to a cottage prison, and from an enclosure to comparative freedom, restricted only by the limits of prison territory and extending even to work in places entirely apart from prison surveillance, the real goal that is ever before the prisoner is his ultimate release. If that can be hastened by proper observance of prison regulations, by understanding service in the various branches of work assigned to him, by earnest application to educational advantages offered, all of which is a preparation for the resumption of the responsibilities of good citizenship; if the reward for this effort within the prison will secure for him the earlier opportunity to demonstrate his right to meet the responsibilities of good citizenship out of prison, such objective will prove the great urge in his prison life.

The consciousness on the part of a convicted man that he has been released on parole before the expiration of the maximum sentence is a tremendous factor in his reformation and in the rebuilding of his character.

Paroles, like probation, can in my opinion be far more effective instrumentalities in the protection of society against crime than hard, drastic punishment.

Lack of sympathy in the public mind with probation and parole

is due first, to the lack of information that the public has of their effectiveness even while operating under adverse conditions, and second, to the lack of funds to properly equip and maintain an efficient and capable probation and parole system.

If the information could be brought home to the community it would be found that the sum of the experience of the states and courts in which the probation and parole system had been given its longest and most thorough trial is that it is an essential part of the judicial and correctional system of the state. One of the difficulties has been that where the probation service has been established there has been such an overloading of its officers so as to not only threaten, but actually to impair, the quality of its work.

In New York, where the number of paid officers was 197, the number of persons in their care at one time in the year 1918 was 14,552; an average of 73 charges for each officer. In Massachusetts, with 154 officers and the number of cases at one time 14,990, the average per year was almost 100. The figures are at hand in these two states because they have a State Probation Commission. The report of the Probation Officer for Cook County indicates a like situation, but even these figures do not indicate the load carried by a single officer because the figures given are the average. Sometimes during the period of a year an officer has nearly 300 persons in his charge. His service must not only be one of restraint to a probationer, but also one of helpfulness and therefore such overloading results in a lack of that thorough attention which is the most obvious requisite in accomplishing the purpose of probation. It is remarkable, in my opinion, that any results have been obtained from the probation service, handicapped as it has been by lack of funds, no matter where it has been placed in operation. That even partial success has been attained is a strong tribute to the essential goodness in human nature, which can be appealed to and can become the real formative factor in the dependable restoration of an offender to society.

What I have said here in reference to probation applies with equal force to the question of parole, save that there is a still greater necessity for securing an adequate and competent staff of parole officers, because the man once in prison, even though he has earned an early release because of advancement made by him in prison, starts out with the great handicap of having been in prison, a handicap in his loss of confidence in himself and a still greater handicap because of the prevailing lack of confidence in him by the average individual in the community.

Any danger threatening the physical and moral welfare of our people strikes at the very source of our strength and at the very heart of the nation. Their physical and moral strength must be protected at any cost, so that if ever the principles of our government which guarantee the liberty and freedom of our people are threatened, the people themselves—in their own strength of character and sanity of mind—will overcome the danger through their devotion, loyalty, and patriotism to the institutions of our land.

Therefore, if we bring home to the public through the medium of the press (the greatest agency for progress that this country has), the problems underlying the criminal conditions of the present day, effecting the bone and sinew of our government,—namely, the welfare of its citizens, their young sons and daughters—the people will realize the wisdom of dealing with the juvenile offender and the young adult offender, not only as a wrong-doer, but as one in special need of care and protection. As a consequence the people will not only grant, but demand the expenditure of sufficient moneys—first, to maintain a juvenile court with its every agency fully developed, not only in one state or part of a state, but for the benefit of the people in every state any every part of each state; second, to obtain the full benefit of a properly maintained and equipped parole and probation system; to the end that there may be conserved for the continued welfare of our people their virility, energy, and morality.