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WHAT PRISONERS SHOULD BE ELIGIBLE TO PAROLE AND WHAT CONSIDERATIONS SHOULD GOVERN THE GRANTING OF IT?¹

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The answer to the question, "What prisoners should be eligible to parole and what considerations should govern the granting of it?" depends upon when and where and of whom the question is asked. In a backward state, one would not agree to what is accepted in a more progressive commonwealth. If asked now, the answer would be very different from the reply of a generation ago. It would not receive the same answer in England, or Italy, or Mexico as in most states of the Union.

There has been a great change in public thought in recent years regarding crime and the treatment of criminals. One sees it reflected in legislation, in the work of courts and institutions, in the attitude of the public press, in expressions from the public platform. Our conception of the purpose of imprisonment is no longer that of *retribution*, or of *retaliation*. Nor do we now believe with Sir William Blackstone that *punishment* will prevent others from committing a like offense. We believe, rather, in those notable principles adopted at the first meeting of the American Prison Association, in Cincinnati, in 1870, one of which reads: "The treatment of criminals by society is for the protection of society. But since such treatment is directed to the criminal rather than to the crime, its great object should be his moral regeneration. Hence, the supreme aim of prison discipline is the *reformation* of criminals, not the infliction of vindictive suffering."

When this first Prison Congress was held, half a century ago, there was no reformatory, no so-called "indeterminate sentence" law. The American Reformatory System had not then come into being. Yet the principles there enunciated, crystallizing, as they did, the thought of the best minds on the subject, contained in them the promise of all that is now and probably ever need be included in the system.

When the International Prison Congress of 1910 met in Washington, it was declared that the great contributions of the United States

¹Read at the thirteenth annual meeting of the Institute, in Cincinnati, Ohio, November 19, 1921.

²Secretary Board of State Charities, Indianapolis, Ind.; former president American Prison Assn.

to penology were the American Reformatory system and the indeterminate sentence and parole laws, the juvenile court and the laws for the protection of children. At that congress, where forty nations were assembled by their representatives, resolutions were adopted which recommended to the governments of the world these same points that had been adopted at Cincinnati precisely forty years before.

In other ways penology is changing. It is becoming more scientific. It is going back of the symptoms to find the cause. It is treating the individual offender instead of his crime. Clinics that have been established, and their number is growing, have taught us that a large number of persons tried and sentenced for offenses are mental defectives or have a psychosis. Of course, the reformatory or the state prison conducted under the indeterminate sentence law is not the place to which such persons should be sentenced. They are not reformable material. But the fact is that in all our states they are sent to penal and correctional institutions instead of to hospitals and asylums. Obviously they form the residuum of our prison population.

The conception of Joseph F. Scott, former President of the American Prison Association, of a receiving prison where all convicted persons should be received, examined, studied, classified, and then assigned and treated according to their needs, has not spread very rapidly. Florida has adopted the principle at its new state prison at Raiford which many of us had the privilege of visiting two weeks ago. New York is proposing to make its new prison at Wingdale an institution for the reception and classification of prisoners.

Some states have no reformatories for adults. Some have not adopted what is popularly known as "the indeterminate sentence." Some have it in crude form. No state has it in its full sense, i. e., without either maximum or minimum. Few states have established clinics for thorough physical and mental examination of their grown delinquents.

Would not a different answer to the question come from states working under these modern methods? I assume the question is intended to apply to those states which have adopted the reformatory plan for their reformatories or state prisons, or both. Some states which have not done so attempt to reach the same end through executive action, either by parole, commutation of sentence or conditional pardon.

What is a reformatory? A place for the classification, and education, and training of offenders; where under strict discipline they may progress by merit toward release; their release to be conditional

and under the careful supervision of competent parole officers. A state prison may be conducted under the reformatory system, but there must be some adaptation of methods to suit conditions. The board of managers of the institution should establish rules under which the inmates may be allowed to go upon parole outside the institution, while remaining in the legal custody of the board and returnable at its order within the institution.

It goes without saying that the system calls for good follow-up work. Paroled prisoners who have shown their ability to live law-abiding lives in a free world are entitled to discharge. Those who fail so to live should be returned to the institution. The decision rests largely with the quality of supervision rendered. It should be of the highest possible character. The principle involved in the parole law is identical with that which has governed release from institutions for delinquent children as far back as 1824 when the New York House of Refuge was established. When first applied to adults, it was restricted to first offenders, but it has since been used with others with good results.

It has been demonstrated that the parole system is valuable not only for releasing the deserving prisoner, but also for detaining the repeated offender or confirmed criminal longer than was possible under the old system of definite sentences. We have found from a study of State Prison records in my own state that 304 men committed beginning in 1890, for a definite time, served an average of two years and two months each. The average time served by the first 304 men committed after January 1, 1900, under the indeterminate sentence, for the same crimes, was 6 months, 23 days longer. The average time served by 304 men committed for the same crimes after January 1, 1906, was 1 year, 2 months, 5 days longer. A similar study of three groups of commitments to the Indiana Reformatory was made—the last 300 under the definite sentence and the first and second groups of 300 each under the indeterminate sentence. Compared with the first group, the second group served an average of 7 months, 14 days longer; the third group, 1 year, 2 months and 14 days longer.

The history of the indeterminate sentence and parole law has been told in notable papers and discussions at the annual congress of the American Prison Association and, more recently, the American Institute of Criminal Law and Criminology. It is evident to anyone who undertakes to study the operations of this law that there is nothing more confusing. One is greatly impressed with the fact that each state has its own method of paroling its convicts. Some parole under

some form of indeterminate sentence, some without it. The confusion is made worse by the frequent use of the term "parole" when "probation" is meant. We should distinguish between the two. In penology, "probation" means the conditional release of a prisoner before confinement; "parole," the conditional release of a prisoner after he is sentenced and incarcerated.

The Prison Association of New York published this year a study of parole laws and methods in the United States, which points out differences in the laws in different states.³ Some have no minimum term. This is true at the Reformatory at Elmira, N. Y. No minimum is prescribed and the prisoner may be detained for the maximum period specified for the offense committed. In some states, as in Colorado and Pennsylvania, the court imposing the sentence fixes a minimum and a maximum. In Arkansas this power is conferred upon both juries and courts. In Maine the court may fix the minimum provided it is not more than half the maximum. In Minnesota the judge may fix the maximum, but at the end of one year one who has kept the rules is eligible for parole.

The law applies in some states to first offenders, in others to those who have been sentenced two or more times. Life prisoners may be paroled after fifteen years in Utah and after thirty-five years, minus good time, in Minnesota. Paroles may be granted by the governor, or with his approval, in Texas, Tennessee and New Mexico. In Massachusetts, Kansas and Louisiana prisoners may be paroled at the expiration of their minimum term. Even in the same state the law differs. In New York, for instance, there are at least four forms of parole under different indeterminate sentence acts, one each for the reform schools, the reformatory, the state prison and the New York City prisons.

In my own state, Indiana, the law applies to men over sixteen and women over eighteen years of age, unless found guilty of treason, of murder in the first or second degree, or of rape upon a child under twelve years of age, or if adjudged a habitual criminal, i. e., convicted of felony for the third time. Such person, if found guilty, is sentenced according to the minimum and maximum sentence prescribed by the statutes. Neither judge nor jury fixes either minimum or maximum sentence. If under 30 years of age he goes to the Indiana Reformatory. If over 30 years old he goes to the Indiana State Prison and if a woman to the Indiana Woman's Prison. Paroles are granted by the

³Compiled 1921 by E. R. Cass, Assistant General Secretary, New York Prison Assn., New York City.

institutional board of trustees acting as a parole board. A prisoner who has served the minimum term of his sentence may apply for parole. It will be granted if that is deemed best for him and for society. Agents of the institution find employment for him, if necessary, and visit and supervise him during the period of his parole.

The conditions of his parole are that he shall obey the law faithfully, shall not associate with bad company or frequent questionable or disreputable places and that he shall report regularly each month the amount of work he has performed, his earnings and expenditures, what reading he has done, and any other facts that will serve to indicate the manner in which he has spent his time and money, all of which must be certified by his employer. Failure to make this report or violation of any of the conditions of parole will result in his immediate return to the institution. If one has faithfully fulfilled his agreement of parole for one year, he may be unconditionally discharged, by the parole board, or, if its members are not fully satisfied of his ability to live right on the outside, his parole may be continued from year to year, until such time, within the limit of his maximum sentence, as it sees fit to release him.

Truly, as Mr. Brockway has said, nowhere yet has the principle of the indeterminate sentence, pure and simple, been enacted into law. It is one of the things for which we can work, convinced, as he was, that it is the true principle under which offenders should be committed for institutional treatment. As to the conditions granting a parole, what better rule than his: that a prisoner shall have kept the rules of the institution, that he shall have gained the confidence of the management as to his ability to live a law-abiding life and that his release shall be in accordance with the public sense in the community from which he was committed. Are not these the principles upon which any parole board may rely in making its decisions?