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WHAT SHOULD CONSTITUTE A VIOLATION OF PAROLE?

F. EMORY LYON¹

The question, "What constitutes a violation of parole?" is fundamental to the proper administration of the parole law, and admits of but one answer. Before attempting to give that answer, however, it may be well to ask, What as a matter of fact and of practice does constitute a violation of parole?

The answers to this question are as numerous as the states that have a parole law, or as there are separate paroling authorities, since some states have a separate Parole Board for each institution. One might say, indeed, that there are as many answers as there are parole officers, as in some jurisdictions the parole officers virtually have the power to determine whether certain conduct short of crime constitutes a parole violation.

The various parole laws, as a matter of course, state that the commission of another crime or misdemeanor shall constitute a violation of parole. In many states, as formerly in Illinois, crossing the state line in which the parole is granted is described in the statute as a violation of parole. In most states, even where the prisoner may be paroled outside the state, nevertheless, if he leaves the county or vicinity of his parole, without the consent of the paroling authorities, and without the knowledge of his employer or First Friend, is declared a violator. Beyond the statutory provisions of the law, however, certain rules are adopted by most Parole Boards specifying certain misconduct as forbidden, even though not in itself a crime or misdemeanor. Since these boards are authorized to establish rules governing their procedure, they have the effect of law. I refer to such provisions as the following, now in force in Illinois, and a fair example of similar rules in other states.

RULES GOVERNING PRISONERS ON PAROLE

First.—The prisoner shall proceed at once to his place of employment, and report to his employer, whose name is given below.

Second.—Upon reporting to his employer, he shall immediately make out a written report and send it by mail to the Warden announcing his arrival at destination, and this written report must be endorsed by his employer.

¹Superintendent Central Howard Association, Chicago.

Third.—He must make a written report to the Warden on the first day of each month for the month previous. This report must state how much money he had at the beginning of the month; how much he has earned during the month; how much he has expended and for what, and how much he has on hand at the end of the month. If the prisoner has been idle during the month he must state the reason. He must also give any other information that will throw light upon his conduct and success during the month. These monthly reports must be endorsed by his employer.

Fourth.—He must not change his employment, or leave employment, unless by order of or upon permission from the Parole Agent first obtained in writing.

Fifth.—He must abstain from the use of intoxicating liquor IN ANY FORM. He must avoid evil associations and improper places of amusement.

Sixth.—He must respect and obey the laws cheerfully and conduct himself in all respects as a good citizen.

Seventh.—In the event of sickness or the loss of his position through any misfortune whatever, he must immediately report the fact in writing to the Warden, or have this report made for him.

Eighth.—A violation of any of the above rules forfeits the Parole Contract on the part of the party paroled and renders him liable to be returned at once to the penitentiary to serve out the maximum sentence.

And nothing contained in any of these rules shall be construed as in any manner modifying the provisions of the statute relating to the legal custody of the prisoner, or the retaking and the reimprisoning him by the Warden of the proper Penitentiary and it shall be the duty of such Warden to enforce these rules in harmony with the provisions of the statute.

It will be seen that these rules, doubtless essential and wholesome, are independent of the provisions of the parole statute, while in harmony with its purpose. They are, as a matter of fact, extra-judicial in the sense that their validity has not, I think, generally been passed upon by a higher court as a part of the parole law. It will also be apparent that such rules of social behavior are capable of varying interpretation and easily capable of abuse. For this reason they should be most wisely administered and not be subject to divided authority. On this point I shall have more to say later.

In some instances these rules lay down specifications that are impractical, such as forbidding the use of cigarettes by young men from the reformatory, or requiring church attendance, or naming an hour at which the parolee must be in at night. Such rules are harmful rather than helpful, since their constant and well known breach affords excuse for the overstepping of other and more important regulations.

In speaking of widely different policies in connection with violation of parole, I would like to call attention to the practice in some

states, which it seems to me is out of harmony with the real purpose of the indeterminate sentence law. I refer to the policy of making a violation of parole the basis and occasion for securing a new and additional conviction and sentence for the prisoner.

My attention was recently called to one state in which the matter of violation is not determined either by the parole officer or the Parole Board, but the question is brought into court and if a man is pronounced guilty, a new sentence is added to the old unexpired term. If acquitted, he is allowed to go on with his parole, no matter how unsatisfactory his conduct in minor matters may have been.

Now, it is the object of the indeterminate sentence to deal with the offender, rather than with the offense merely. To this end it aims to get away from the snap judgment of judge or jury as to what penalty will fit the crime, and to determine what treatment will fit the criminal or benefit the offender and safeguard society.

If you have a real indeterminate sentence, of from one year or less to life, properly constituted paroling authorities can determine the facts deliberately and realize the objects wisely in most instances. In other words, it should be evident from what I have said thus far that the question of whether a man has violated his parole or not should not be left to the chance mood of a judge on a given day, or to the prejudice or favoritism in a given instance of the parole officer; much less to the whim of a warden.

The question can best be determined by a fully authorized, properly constituted, centralized, standardized Board of Parole. The one big purpose of a parole law is to secure the rehabilitation of men to good citizenship under supervision. The one big question to determine therefore is as to whether they are maintaining good citizenship.

But although this is the one question to answer in deciding what should constitute the violation of parole, the task is not so simple as it may appear. For instance, there may be room for interpretation as to what constitutes good citizenship. It may be doubtful as to whether the state can demand the same moral standard as would the church, for example, or whether it can fairly apply the same rigid criteria of conduct to one lacking in ethical perception by reason of poor birth and training.

Then there is the matter of employment, a vital part of any successful parole. But it is not so easy to decide in time of scarce work whether a man has tried the best he could to get a job, or whether he is simply lazy and shiftless and therefore not a "good citizen."

For example, a man of very limited mentality paroled to me last winter seemed to be doing the best he could. He appeared to follow directions to the best of his ability in going to prospective employers. He never could seem to land the job, even where they were putting on men and co-operating with us. My association tided him over in the meantime, until about \$50.00 was expended in his relief.

This man had not committed an offense, or violated any of the rules of parole, except that he had not worked and seemed indifferent as to whether he ever did work. The question is, had he, under these circumstances, defaulted on his parole, and should he be returned for failure to work, or exercise any ambition in that direction?

Similarly in the matter of failure to report, it is found that many men have failed to keep up their reports through sheer ignorance of its importance. They have been found very often after several months or years doing well in some other community or state and with evidence of good conduct during the intervening time.

A peculiar case in point was that of a colored man who came to me on parole August 1st. Because of his need of some special service, he was first of all sent to the Urban League. They discovered he had tuberculosis and secured his entrance into the County Sanitarium. The man told them of his parole and wanted first to report to me. They urged him to go at once and promised to advise me. This they overlooked and the man only recently wrote me of his whereabouts in the sanitarium. Technically he has, of course, violated his parole by failing to report. But would a wise Parole Board return him to prison, or allow him to make up his back reports and continue?

Thus multiplied instances might be cited where the centralized, experienced board is called upon to decide the one question of good citizenship in as many ways as there are individuals and circumstances and motives. The proceeding indeed calls for "A case of good judgment" in the conserving of good citizenship and the protection of society.

The question of "What should constitute the violation of Parole?" is then, I should say, not purely or primarily a legal question. It is even more fundamentally a question of human behavior and intent. It must take into account the response of the individual to supervision and responsibility and have constant regard to the possibilities for good or ill in the future.