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Individual Treatment of the Offender, The

Amos W. Butler

THE INDIVIDUAL TREATMENT OF THE OFFENDER[1]

AMOS W. BUTLER[2]

I assume that I am expected to speak on this subject from our experience in the United States. It is suggested that we are to bear in mind that in Europe the separate, and in the United States the congregate, system of prisons generally prevails.

You understand, I am sure, that in no two states of the forty-eight in the Union are the laws or the institutions created by them the same. The federal laws and institutions are still different.

In the United States the county jails were our primary penal institutions. Out of them have come all of our prisons and reformatories. Through them pass all the prisoners who go to those institutions. We may properly regard the treatment of the offender as beginning with his apprehension, as including his trial, and ending with his discharge from prison.

What the court can do is generally limited by statute law. Consequently the progress of criminal law and of prison regulations have gone along together. Often changes in the criminal law have been necessitated by institutional changes or requirements. Prisons, children's institutions, reformatories, parole departments, probation departments, have been authorized and created by law. So have the statutes that authorized the changing of a sentence, or those changing the commitment of a child from a prison to a children's institution, and later the creation of a children's court which assumed charge of all unprotected children under a certain age. Such children in most states are not allowed by law to be kept in the jail. The establishment of a woman's prison is accompanied by legislation relating to the action of the court in committing women felons thereto and prohibiting its sentencing them to confinement elsewhere. Similar statements may be made with regard to young men and the commitment of such persons to a reformatory and not to another institution.

Perhaps I may be permitted to recall some of the steps of progress in our institutions as a background for the consideration of the subject. An illustration of the tendency to get away from the con-

[1]Abridged from paper prepared for the International Prison Congress, London, England, August, 1925.

[2]Delegate, representing U. S. at International Prison Congress, London, 1925.

gregation of prisoners, first to their classification, and next to their individualization.

We probably owe to William Penn, the founder of Pennsylvania, and a Friend, the sentiment that between 1680 and 1700 influenced the Pennsylvania colony to more humane methods replacing the harsh and cruel practices in the prisons and out of them. The outstanding fact in Pennsylvania in the treatment of prisoners was clemency and if possible rehabilitation. He knew prisons abroad, both in England, where he served time, and on the Continent. He was deeply impressed with the Dutch workhouses. When he came to America he brought with him the purpose of substituting the prison for the gallows, labor for bloody punishments and workhouses for the idleness and debauchery of the jail yard.[3]

This is manifested in what is known as the Great Law of Pennsylvania in 1682.[4]

After Penn's death, in 1718, the Pennsylvania laws were replaced by the sanguinary laws restored that year, and continued in force until the time of the American Revolution.[5]

Accompanying that war was the revival of the spirit of humanity, manifested in an increasing interest for humane prison methods. In 1776, the first year of American independence, was organized the first prison reform society of America, the Philadelphia Society for Assisting Distressed Prisoners, which under the name, Pennsylvania Prison Society, still exists and continues its valuable work.

At about the same time, Thomas Eddy, also a Friend, was coming to exert an influence among the people of New York for more humane methods in prisons.

About that time the laws of Virginia covered all of her territory and Kentucky. The penitentiary system of Virginia was introduced in 1796; that of Kentucky in 1798. Previous to that time there were 27 crimes known as capital offenses in those states. The Virginia statutes further provide that all felonies were punishable by hanging without the benefit of clergy.[6]

One of the unique contributions of this period was an address by Dr. Benjamin Rush, delivered at the home of Benjamin Franklin, in Philadelphia in 1787. In it he undertook to suggest the prin-

[3]Krohne, *"Geschicte des Gefangniswesens,"* vol. 1, p. 92; and *"History of American Prisons,"* O. F. Lewis, p. 10.

[4]Charter of William Penn and Laws of the Province of Pennsylvania, p. 100.

[5]R. Vaux; Roberts' Notices, p. 7.

[6]Va. Sts., 1803; *"A Report of the History and Mode of Management of the Kentucky Penitentiary from Its Origin in 1798 to March 1, 1860,"* by William C. Sneed, M. D., p. 16.

ciples of scientific medicine for the physically sick be applied to those morally sick. The purposes of punishment are three, he says: Reformation, deterrence of others from crime, the protection of society from crime.

He suggests that a prison should include classification of prisoners, a rational system of prison labor, a productivity that would meet the expenses of the prison, the outdoor employment of prisoners, and be a reformative institution. Dr. Rush was opposed to a uniform or wholesale treatment of criminals. Punishments he believed should be adapted to the conditions and tempers of prisoners. This physician urged as a general principle of penal treatment, the individualization of punishment.[7]

It was almost a hundred years from Dr. Rush to the first meeting of the American Prison Association at Cincinnati, in 1870. The same ideas are embraced in the notable principles enunciated by that Prison Congress.[8] Briefly these were:

I. Punishment with a special view to secure the individual's reformation.

II. The supreme aim of prison discipline is the reformation of criminals.

III. The establishment of progressive classification of prisoners based on character and worked on some well adjusted mark system.

IV. Hope of reward an ever present force in the minds of prisoners, by a well-devised and skillfully applied system of rewards for good conduct, industry and attention to learning.

Following 1800 there was a reaction in prison work. Discipline relaxed and there was a backward movement. Then came an awakened interest in neglected and delinquent children. The New York House of Refuge, the first of its kind in America, was opened January 1, 1825. Edward Livingston, in his penal code, pointed out the importance of such institutions for child offenders. Such humane activity progressed for a time and then halted.

The movement, stayed during the second quarter of the nineteenth century, followed by reaction, was only renewed after the Civil War. (1865.)

The "good time," or commutation law, in the middle of the last century, was the first movement toward conditional release of adult prisoners. It was also a step in improving prisons. It is probable

[7]Lewis, *"History of American Prisons,"* pp. 19, 22 and 24.

[8]Transactions of the National Congress on Penitentiary and Reformatory Discipline, 1870, p. 541.

that such laws were primarily designed to assist the officials of an institution in maintaining order by reducing so much sentence of a prisoner for good conduct. It nevertheless has one element of the parole system in making the length of sentence depend upon good conduct, by which, under proper parole methods, the length of sentence is determined.[9]

The legislature of Indiana in 1860 passed a "good time" law which had been recommended by the State Prison Board a few years before. It was later strongly approved by the prison administration.

The American Prison Association from its beginning, in 1870, has been the greatest single factor in my country in the improvement of prisons and the more rational treatment of offenders.[10]

This first meeting made possible the first International Prison Congress in London.[11]

With the establishment of the New York State Reformatory in 1876, began the American reformatory movement which has spread over our nation.

While Indiana in her constitution of 1816 declared her penal code shall be "founded on the principles of reformation and not of vindictive justice," it was not until 1897 that she established her reformatory and adopted the so-called "indeterminate sentence" law.[12] Indefinite sentence is probably a better term. Of it, our late friend, the distinguished lawyer, Charlton T. Lewis, said:[13]

"It is destined radically to change man's habits of thought concerning crime and the attitude of society towards criminals, to rewrite from end to end every penal code in Christendom and modify and ennoble the fundamental law of every state."

The sentence is indefinite, generally between a minimum and maximum expressed in the statute. There is authority for conditional release on parole. In this are involved two essentials:

(1) As complete knowledge as possible of the individual prisoner.

(2) The elimination of politics from the management of the institution. Where only merit counts with the convict, nothing else should be considered in the selection of institution officers.

No one better than Mr. Brockway, himself, has stated the principles underlying conditions in the granting of release upon parole:

[9]Robinson, *"Penology in the United States,"* pp. 218-222.
[10]Amos W. Butler, *"Proceedings American Prison Association, 1915,"* p. 162.
[11]Proceedings First International Prison Congress, p. 5.
[12]Const., 1816, art. 9, sec. 4.
[13]Brockway, *"Fifty Years of Prison Service,"* p. 132.

(1) He shall have kept the rules of the institution.
(2) He shall have satisfied the management that he will probably lead a law-abiding life.
(3) That his release will not be contrary to the public sense in the community from which he was sentenced.

By reason of these reformatories the courts and prisons have been brought into closer relation. In the effort to deal properly with those sent to them it is necessary for the court to have all possible knowledge of the individual. Consequently the fullest possible co-operation of the courts is essential to the best results.

The institutional treatment of convicts then becomes a part of the administration of the criminal law. It would be helpful to have judges visit and study institutions to which they make commitments. In some states legislation has been recommended that would require such visits.

In a number of states the reformatory idea has been applied to the state prisons and laws have been adopted accordingly. Among these may be mentioned California, Indiana, Massachusetts, Minnesota, New York.

Thoughtful men came to believe that some offenders could be reclaimed without being confined in prison at all. So a system of probation came into being. In many states it applied to children first, and after it had proved its merit, it was extended to adults. In its application the court needs as full knowledge of the individual prisoner as is possible. Massachusetts, which has the credit of inaugurating this system in 1878, can speak more authoritatively than any other state. According to a resolve of the General Court of Massachusetts of 1923,[14] an inquiry was made as to the results of probation in that state. It covered a period from 1915 to 1923. The conclusions are:[15]

It is demonstrated in actual operation to be
First—An effective method of correction.
Second—It is employed by the courts with discrimination.
Third—The probation officers perform their duty with a sense of the responsibility that rests upon them.

The number of persons on probation in Massachusetts in 1923 was 29,763, or 26.3 per cent of those convicted, and the prison population has gradually declined.[16]

[14]P. 55.
[15]Commonwealth of Massachusetts, *"Report of the Committee on Probation, March 15, 1924,"* p. 29.
[16]Commonwealth of Massachusetts, *"Report of the Committee on Probation, March 15, 1924,"* p. 9.

With two exceptions, every state, also the District of Columbia, the Territory of Hawaii, and Canada, now have probation laws. Oklahoma and Wyoming report no paid probation officers. In thirteen states probation laws apply only to juvenile cases. In the other states and Canada, with one exception, probation laws apply to both adults and children.[17]

Several states lack the necessary equipment and organization for proper probation work. In many more there is much omitted that is essential. To secure satisfactory results trained probation officers are recommended.

Will the plan of the best juvenile courts and their probation system follow into other courts:

First—Before trial the thorough investigation of the case by a trained probation officer.

Second—At the trial the presentation to the court of all the facts learned in the course of the above investigation.

Third—After trial the careful supervision of the person placed on probation.

Who can attend a children's clinic or hear a juvenile court case and not be impressed with the importance of as complete and thorough knowledge of each individual as it is possible to obtain? Have we not obtained hints and pointers in the treatment of adults from our experience with children—indefinite sentences, cottage institutions, educational ideas, all possible knowledge of the person, individual treatment, parole under supervision, readjustment to free life? Men are but children older grown. In certain particulars the methods that work with children with necessary adaptations appeal to and bring results from those who are grown up. The results shown in the work with probation in Massachusetts and New York are notable. How could they have done so well without a knowledge of the individual?

The Department of Research at the Indiana Reformatory was planned during 1912. On the evening of August 12, 1913, the opening of that department was announced at a dinner in Indianapolis, attended by a notable group of persons from several states.[18]

In a number of states now, in reformatories and prisons, there are physical and mental examinations of all prisoners. We notice

[17]Directory of Probation Officers of the United States and Canada, National Probation Association, January, 1923.

[18]Annual Report, Indiana Reformatory, 1912-13, p. 7.

that as one of the many advances that have been taken in prison progress.

We have long looked upon the insane as irresponsible for their acts. We have now come to a wider view of irresponsibility. Therefore many, in some states, are sent to the hospital for criminal insane or for insane criminals—using the different terms. Among those medical and scientific agencies dealing with human behavior, we have come to accept hospital clinics, out-patient clinics, city clinics, school clinics, children's clinics, and now court clinics. These have been established in a number of our larger cities—Chicago, New York, Boston, Detroit, Los Angeles, among others. The idea was spreading and becoming accepted in many cities. Along came the Great War. What was learned from the mental examination of a million seven hundred thousand service men has left a profound impression upon our people. It has spread—likely in some respects carried to the extreme. Our scientific friends would probably not be willing to follow the enthusiasts all the way. At any rate our courts in a number of places want to know what the trained scientific man can tell them of the accused individual about whom any question is raised.

Another need that is felt by our courts is that of institutions for defective delinquents.

May I repeat something of what I had to say at the time of the meeting of the Congress in 1910.

While modern ideas are rapidly gaining ground, the old system of imprisonment and release is still in vogue in many parts of the country. Under it little thought is given to the convict. It is the satisfaction of the law that is all important. All offenders are treated alike with no special study of the causes which underlie their individual history, condition or needs.

There was a time when the sick were treated in much the same way. The modern idea is, however, far different both in regard to the sick and to the offender. We are coming to believe that society is best protected by reforming the criminal. The day is near when every apprehended law-breaker will be considered individually to ascertain his condition and the cause of his trouble. With that knowledge we shall be able to proceed to an intelligent treatment of his case in order to secure his betterment.[19]

[19]Amos W. Butler, *"Correction and Prevention,"* Russell Sage Foundation, 1910, vol. II, pp. 301-302.

A century ago our prisons received all classes of convicted law violators, the young and old, men and women, different races, first offenders and recidivists. With the beginning of the New York House of Refuge, one hundred years ago this year, started the movement for the separation of the young from the older offenders. It was but a half century from the establishment of that House of Refuge to the beginning of the New York State Reformatory at Elmira. Within that time, in many of our states, young offenders were separated from the older ones and placed in institutions for juvenile delinquents. At this time every state in the Union, and the District of Columbia, has such an institution and some states two or more of them. As early as 1870 a beginning had been made in the establishment of separate prisons for women, the first being the Indiana Woman's Prison at Indianapolis, authorized in 1869 and opened in 1873. The next, in Massachusetts, by an act passed in 1874, opened in 1879. It was not until 1901 that another woman's prison was opened in the United States, the New York State Reformatory for Women at Bedford, in May of that year. Now there are sixteen reformatories for women in fifteen states, and the Federal Government is planning to build one. With the establishment of these institutions women are taken out of the state prisons and many out of the county jails. The movement for reformatories for men has now spread and 21 states, including the District of Columbia, have reformatories. Twenty of them have men's reformatories. (1923.)

Thirty-eight states have some form of indeterminate sentence in the state reformatory or state prison, or both.[20]

Conditions are very different in commonwealths in different sections of the United States. Many states have not the laws, institutions or agencies to enable them to effectively make use of the best available experience. Consequently the courts cannot have the help they have in those states that possess all these agencies.

The southern states, after five years of civil war, drained, devastated, impoverished, could not build prisons. They had to devise some method of caring for offenders at the least cost. They have tried different experiments. Some have been disastrous, others we regret. But they have also made important contributions to our system, most notable of which may be mentioned the agricultural prisons which seem to best suit their conditions. The most recent of these is the Florida State Prison Farm, at Raiford, consisting of some 18,000 acres. It was visited and its good work seen by the

[20]Journal of Criminal Law and Criminology, 1915, pp. 274-275.

entire American Prison Association some four years ago at the time of its meeting at Jacksonville.

Recently through the co-operation of the Indiana Board of State Charities, I had inquiries sent to prisons and reformatories in each of our forty-eight states, to learn the extent of the individual treatment of prisoners and the co-operation of courts in their work. That involved particularly the prisoner's biographical record; his own statement as to his life and his offense; the statement received from the court; the use made of physical and mental examinations.

Replies were received from penal institutions in all the states except Delaware, Missouri, Nevada, North Carolina and South Carolina. These replies came from forty-three states from every part of the Union. They included 18 state reformatories, 50 state prisons and 4 federal prisons, a total of 72.

From the reports the information obtained varies from nothing more than the legal commitment to very creditable forms well filled. Generally there is little uniformity except as to a few states that are studying each other's work and in a sense are co-operating.

The records obtained in a number of states are used in giving the prisoner medical treatment; in sending him to school; in assigning him to work and in general in ordering his life.

More and more the judges are co-operating with the institutions. The reports received indicate the judges in seventeen states regularly make reports and recommendations to the prisons. Some are used for all the purposes of the prison and some for the parole board. These are the states:

California
Connecticut
Idaho
Illinois
Indiana
Kansas
Massachusetts
Michigan
Minnesota
Mississippi
New Mexico
New York
Ohio
Oregon
Pennsylvania
Utah
Washington

Such reports are required by law in seven states, as follows:

California
Idaho
Minnesota
Ohio
Oregon
Pennsylvania
Utah

In other states the court sends information upon request.

On the occasion of a recent visit to the State Prison in Indiana, I was assured the courts submitted statements in about 80 per cent of the cases.

The commonwealth of Massachusetts has a unique measure that constitutes the most radical step yet taken to provide for the mental examination of accused persons awaiting trial..

"The original Massachusetts law went into effect September, 1921. Since then it has been slightly amended. The original act was as follows:

" 'Whenever a person is indicted by a grand jury for a capital offense or whenever a person, who is known to have been indicted for any other offense more than once or to have been previously convicted of a felony is indicted by a grand jury or bound over for trial in the superior court, the clerk of the court in which the indictment is returned, or the clerk of the district court, or the trial justice, as the case may be, shall give notice to the Department of Mental Diseases, and the Department shall cause such person to be examined with a view to determine his mental condition and the existence of any mental disease or defect, which would affect his criminal responsibility. The Department shall file a report of its investigation with the clerk of the court in which the trial is to be held, and the report shall be accessible to the court, the district attorney, and to the attorney for the accused, and shall be admissible as evidence of the mental condition of the accused.'[21]

"Notice, in the first place, that this act eliminates the bad features present in all other state legislation on the subject; that is, as has already been pointed out, it makes a *routine procedure* of the examination of the classes of offenders mentioned. Further, the examinations are made by a *neutral, unbiased* agency and by experts trained and experienced in mental medicine; and the examinations are made before trial and before it is decided whether or not to resort to the defense of insanity."

For several years a committee, of which I happen to be a member, of the American Institute of Criminal Law and Criminology, has been engaged in a study of criminal records and statistics in co-operation with a committee from the American Prison Association. One report entitled "Information which should be published concerning adult male criminals by Reformatories, Penitentiaries and State Prisons" has been made (1923). That committee at its last meeting decided to devote its attention next to uniform court records in criminal cases. In that connection there appeared in the Journal of Criminal Law and Criminology, August, 1924 (p. 185), an abridged classification of crimes to be employed as the provisional basis in developing such court records.

[21] *"State Legislation Providing for the Mental Examination of Persons Accused of Crime,"* by S. Sheldon Glueck, LL. M., Reprint No. 189, The National Committee for Mental Hygiene, 1924, pp. 4 and 6.

These efforts to systematize and make more scientific the great work in which we are engaged are entitled to our approbation.

Summarizing the changes indicated herein we observe the following:

1. More human methods employed.
2. Gradual grouping of prisoners in special institutions.
    a. Juveniles.
    b. Women.
    c. Young men, generally first offenders—more properly first convictions.
    d. Hospitals for insane criminals.
    e. Institutions for defective delinquents.
3. Alternate progress and recession of the movement.
4. Indeterminate or indefinite sentences.
5. Juvenile courts established.
6. Probation.
    a. For juveniles.
    b. For adults.
7. Physical and mental examinations.
    a. In juvenile courts.
    b. In reformatories and prisons.
    c. In courts for adults.
8. Routine mental examinations under Massachusetts law.
9. Movement for uniform criminal records in courts.