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A NEW PENAL SYSTEM

G. R. MURSELL¹

Slowly, but surely, society is evolving a new penal system, a new manner of dealing with those who violate its laws. This evolutionary process, however, is not an even one and progresses by sometimes retracing its steps. It assumes different forms in different countries and changes at varying rates of speed under various governments. Certain major trends seem common to all the newer penal systems, however, and though not all elements are held in common, enough are so held to show the direction in which penology is evolving.

Much criticism has been and will yet be directed against these innovations, and it must be pointed out that only the more courageous and progressive states are attempting to bring their penal systems into line with modern scientific data. Eventually, however, whether twenty, fifty or a hundred years no one knows, these things will be commonplace, and, as was said before, some of these ideas are already in practice.

For the sake of clarity, as well as brevity, the following suggestions for a new penal system have been enumerated separately. Some of them are original with the writer, others are already in effect in some states or countries, and a very few are well established generally.

1. The present laws should be changed to allow the sentencing judge to omit time and place from the sentence; i. e., "I hereby sentence you to the care of the Department of Public Welfare of the State of," without mentioning any particular institution, penalty or time limit. This would mean that there would be no minimum or maximum penalties set by statute for any felony and no penal institution designated for any particular offenses, ages, or degree of penalty. This would simplify the task of the court to that of a fact-finding body and its sole function that of establishing the innocence or guilt of the subject.

2. Trial by jury would not be necessary and in fact should be abolished since such prevents an unbiased and impersonal view of the case and usually eventuates in a decision on the basis of emo-

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tional appeal only. With trial by jury removed, and impassioned and emotional appeals by the opposing attorneys rendered unnecessary before a trained judge, any case could be decided on its own merits without any personal or emotional bias entering into it.

3. The Boys and Girls Industrial or Training Schools should be placed under the Department of Education and considered as special schools for behavior training and character education, and not as penal or pre-penal institutions at all.

4. A Central Clearing Station should be set aside, such as the State Penitentiary, to which all sentenced adult individuals (say above the age of eighteen years) should be committed for a period of quarantine, examination, observation and classification. At that institution individual cells only should be provided.

5. A Bureau of Examination and Classification should be established at, and have charge of, this Central Clearing Station, whose duty it shall be to examine and classify all individuals committed to the care of the Department of Public Welfare, and outline the necessary physical, social and mental therapeutic procedures to be followed in each case.

6. A thorough physical examination should first be given, with all necessary operative, medicinal and therapeutic procedures indicated by the medical staff; these procedures to be carried out by the State, as soon as possible during the period of the prisoner's incarceration, so that physically he would be brought up to his maximum.

7. A thorough sociological examination should be started immediately after the physical examination, so that a complete picture of the individual's past life, environment, antecedents and influences be built up in order to determine not only the causes of his anti-social acts but what social changes would have to be made in the man himself, and in his environment so as to give the best social adjustment. This would call for trained field social investigators who in some cases might be the parole officers.

8. A thorough psychological examination should be given to determine the individual's intellectual capacity, his educational attainment, his occupational aptitudes, his social attitudes, and any special defects, abilities, or disabilities. Correctional measures and training program should be outlined for each prisoner examined.

9. A thorough psychiatric examination should be given to determine whether or not the individual has any mental illness and to

outline any necessary mental hygiene program for him during his incarceration.

10. Following the examination and classification of each prisoner he shall be sent to that institution into which he most properly belongs according to the recommendation of the Bureau.

11. Small Bureau units of three (one each of psychiatrist, psychologist and sociologist) shall be placed at each institution to carry out the therapeutic suggestions of the Bureau, act with the institution officials in assigning each inmate to the proper work, trade school, etc., and periodically observe, interview or examine each prisoner to denote progress, transfer or parolability.

12. There should be established three types of institutions for the *mentally normal* individual, as follows:

(a) Maximum security type (walled institution) for the definitely anti-social, the incorrigible, the chronic recidivist, and the professional criminal. In most cases incarceration will be for life, although some will eventually improve socially to the extent of transfer to other institutions and perhaps finally be paroled.

(b) Medium security type (partially walled but with outside activities such as farm, etc.) for those with favorable social prognosis but who have had previous commitments, and whose social history indicates the need for protracted social training.

(c) Minimum security type (colony plan, camps, cottage type, boarding-home, etc., with no walls and minimum restrictions) for first offenders, circumstantial criminals and others with good social histories whose prognosis is favorable. This institution would be the final step to parole.

13. Promotion and demotion from one type of institution to the next would be made only upon the recommendation of the Bureau unit at that particular institution. Parole would be made only from institution (12c), the others being promotion and demotion institutions only. No individual should be paroled without first being made as physically and mentally well as possible, and unless he is economically self-sustaining he should be taught a trade, etc., while at the institution. No *separate* Board of Parole would be necessary as the Bureau would act as such, the parole officers being under the direct control of the Chief Sociologist of the Bureau. If there were a distinct Board of Parole then it should operate at institution (12c) only.

14. The heads of these three types of institutions, (12a), (12b), and (12c) should be competent sociologists.

15. An Institution for Feeble-minded Criminals should be provided, the head of which should be a psychologist.

16. An Institution for Defective Delinquents should be provided, to care for the so-called psychopathic personality and potentially psychotic. This should be essentially a trade school and would require as head either a psychologist or psychiatrist. In any case both these two professions should be well represented at this institution.

17. An Institution for Insane Criminals should be provided to care for those criminals who are either insane at the time of their commitment to the Department of Public Welfare, or later become so. The head of this institution should be a psychiatrist.

18. Admissions to, returns, or transfers from institutions 15, 16 and 17 should be made only upon the recommendation of the Bureau.

19. Tubercular camps should be provided at all institutions.

20. The few criminals found to be epileptic could probably be transferred to the regular State Hospital for Epileptics and be discharged from the penal system altogether. If this were not feasible, provision for their treatment could be made at either the Institution for Defective Delinquents, Feeble-minded Criminals, or Insane Criminals depending upon the mental condition of the individual.

21. Sexual sterilization of all individuals at institutions 15, 16, and certain classes at institution 17 should be a recognized procedure.

22. A training school for Prison Guards should be established at the Central Clearing Station, the course of training to be decided upon and given by the Bureau.

23. Capital punishment should be abolished not only because it does not deter, but it merely carries out the old Mosaic Law of "an eye for an eye," etc., and is not scientific social planning. Many murders are circumstantial and would in all probability never be repeated. If capital punishment were restricted only to that group who could never possibly (by reason of mental deficiency, insanity, etc.) make any worth-while contribution to society and who would be a burden so long as they lived, then there would be no objection to it, but it frequently takes those who have yet some social potentialities.

The foregoing is offered not only to clarify our thinking on the subject of penal systems, but also to bring into focus the newer trends in this particular field. No prolonged discussion of parole is here offered excepting to point out that the aim of this system is to

re-introduce the prisoner to society-at-large by slow degrees instead of suddenly thrusting him out on his own responsibility as is now the custom. Under this plan the final step before independent parole proper might be one wherein the prisoner merely lodged at the institution cottages at night (as pointed out in (12c) above) and worked in privately-owned factory, farm or home, etc., during the day as any non-prisoner.

It seems a pity that with so much scientific data at hand so little is being applied to this whole problem. In any case it needs to be handled without fear of prejudice or politics.