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ON THE USES OF PAROLE RESTRICTIONS

Sanford Bates¹

Dr. Hans von Hentig has achieved an excellent reputation as a criminologist abroad and more currently in this country. His recent article on "Degrees of Parole Violation and Graded Remedial Measures"² was undoubtedly intended to be helpful, but was accepted by the press as critical, and in one of the New York dailies produced the following headline—"Parole System Attacked as Utopian in Demands."

There is a whimsical anecdote of a kindly gentleman who gave a lump of sugar to a horse tethered at the curb. The horse thanked him and engaged him in a conversation, claiming to be the son of Man o' War. Shortly afterwards, the gentleman offered a fabulous price for the horse, but the owner said: "That horse has been talking to you; you mustn't believe him." It is no doubt wise for Dr. von Hentig to gather the opinions that the inmates of our penal institutions entertain of parole, and it does those of us who are engaged in the rough and tumble business of parole supervision no harm to be reminded of the prisoner's reactions. However, we certainly should not render any final judgment which will be based too largely upon how the inmates regard parole. One of the important points that all advocates of parole have been attempting to make in recent years is that it is a *protective* process, and that the people most interested in its successful administration are the public at large. It is perhaps too much to hope that the prisoners remaining in the institution should express a high regard for the Parole Board, and it is not to be wondered at that those who are returned for violation believe that "our return methods spoil everything."

Accustomed as parole administrators are to fending off attacks alleging super-sensitiveness towards the prisoner, it is frankly a novel experience to be charged with harshness in their supervision methods. Nevertheless, not all parolees prefer the prison.

Because parolees are released under conditions which seek to bring about a closer approach to right living on their part, and because in many cases these conditions are idealistic, or "Utopian" in character, should we therefore not attempt to enforce them? I can hardly share the author's belief that on this account "the institution of parole laboriously built up through decades shows symptoms of decay." I doubt if *decay* is the word to use. Looking at it from the point of view of the public we might say that the parole system is

¹ New York State Parole Commissioner; President of the American Parole Association; Member of the Advisory Editorial Council of This JOURNAL. 80 Center St., New York City.

² See the preceding number of this JOURNAL, pages 363-371.

beginning to show symptoms of vigor and is becoming a controlling influence in the ever-increasing number of men who have had their terms in prison shortened by this new correctional device.

I believe there are other points in the article with respect to which the reader may be left in doubt. Dr. von Hentig asks: "What is the legal aspect of parole violation?" He is somewhat critical on the ground that parolees may be returned to prison in a manner which he hints is not consistent with the true administration of justice. This viewpoint overlooks the fact that the outstanding value in parole as a socio-penological device is that it is not curtailed or hampered in its operation by legal technicalities. Our courts have repeatedly held that parole is a matter of grace and not of right. The prisoner has had his day in court, at which time his legal rights have been scrupulously protected. He has received a sentence from which he might have appealed if he so desired, and he has embarked upon the serving of that sentence. His only *right* is to be discharged when he has completed that sentence, but most parole statutes provide that in the discretion of the Board of Parole he may serve a portion of the sentence outside of the prison under such conditions as may be imposed. If he violates these conditions he is returned, not as punishment for the violation, but by the authority of the original sentence because he has not yet established his fitness to serve a part of his sentence among his fellow citizens. To judge the fact of return for parole violation or the amount of time served thereafter solely by the seriousness of the violation, is to misinterpret the cardinal feature of parole.

Laws like the New York statute emphasize the function of parole as *preventive*. "If the parole officer having charge of a paroled prisoner shall have reasonable cause to believe that such prisoner has lapsed, or *is probably about to lapse*, into criminal ways or company," he may return him. All of us engaged in the work of administration can recall dozens of cases where the violation of itself was insignificant but the threat of danger to the public was a real one. In this view of parole it is much easier to recognize the importance of restrictions and conditions which Dr. von Hentig ridicules as being Utopian. In an appendix appear the standard conditions currently imposed upon parolees in New York.

I do not say that these are a typical set of parole conditions, and I certainly would not differ from the author when he says that some states have conditions which should be revised or modified. What I do contend is that it is no excuse for not establishing such conditions to say that very few people, whether on parole or off, live up to them. If we could have complete and total confidence in every released prisoner; if we are not to undertake that control and surveillance of him which good law enforcement relations demand; if we are going to rely only upon the educational or case

work approach to him, we might get on without restrictions. But when we seek to bring about a safe and uniform administration of our law, restrictions are the order of the day. The rules in many a college dormitory are probably more strict and less obeyed.

It may be that the Doctor was indulging in a flight of rhetoric when he stated that a released man is expected to lead a childlike and pastoral life for a series of years." There is a vast gap between that kind of existence and a normal law-abiding existence which is consistent with the average parole regulations, and in conformity with them. We have said repeatedly, and the author himself points out, that parole is and should be a transition process between prison and freedom. Certainly life, subject even to the most rigid conditions, on the outside is preferable for the normal man at least, to life in prison. By the same token the daily existence of those who have not committed crimes and are not on parole is more pleasant and agreeable than the life of a parolee subject to restrictions. Does not the author beg the question in his closing paragraph when he speaks about the "mischievousness of freedom"? If life under restrictions cannot be successfully lived by a parolee, is there any guarantee that total freedom immediately conferred upon him will bring about any greater conformity to the social amenities of life?

One would derive a wholly exaggerated impression of the life of a parolee from Dr. von Hentig's article. There are a great many satisfying and enjoyable activities that are open to parolees, as there are to citizens generally, even though most regulations seek to deny the privilege of cohabiting, intoxication and living with other men's wives. He can come and go with little hindrance, except an occasional report; he can attend the movies; he can play cards with his friends; he can go to ball games and indulge in sports, both indoor and outdoor. He can earn his living; he can join the armed forces of his country on an equality with those who have never committed a crime. He can travel the highways and ride the subways shoulder to shoulder with his neighbors. He can enjoy the society of his loved ones, which includes the same amount and character of emotional outlets that are afforded to all law-abiding folk. He can visit the great museums, exhibitions and zoological gardens that are open to every citizen of an American commonwealth. The mountains and the sky, the green fields and the sea are as open to him as to any of his brethren. The restriction against owning or driving a motor vehicle may seem to be unrelated to the task of parole rehabilitation, but experience has demonstrated that in many cases it is a preventive. Properly and discriminatingly applied this restriction can hardly be called an intolerable hardship. None of us had a car a generation or two ago, and none of us is getting any *fun* out of automobiling today. To say that conditions like those to which we have referred are impossible of performance

is to say that living a normal, healthy, decent life is impossible.

The author believes that we are relying too much upon an "antiquated mechanism of deterrence." But are we alone in that, and is it a safe process to ignore the power of deterrence with men who have already been found guilty of a crime when society certainly does not ignore it in our handling of the crime problem generally?

He questions whether absconding is a symptom of anti-social behavior. I grant that in some cases it may not be, and I haven't yet heard of conscientious parole officials who would hesitate to condone absconding where the evidence is unmistakable that a parolee has lived a helpful and law-abiding life, but here again experience has repeatedly demonstrated that a man who absconds, who changes his name, and who leaves the jurisdiction is many times planning his next crime; and good parole administration requires that such a recurrence be prevented if possible. The men in the prison whom the author interviewed were those who had not lived up to the regulations, but there are hundreds of thousands of others who not only have had little difficulty in complying with the conditions of parole but have been very definitely helped thereby. We should find some way more definitely to honor these men who, "humble and nameless the straight hard pathway plod," and who under difficulties have made the grade. Many a wife or mother and needy children are in better circumstances today because of the compulsions of parole, and in thousands of cases they look to the parole officer as their friend, counselor and guide. Would a parole system command any more respect if it winked at violations, small in themselves, but symptomatic of recurring criminal activities?

The author makes the assumption that parole boards use no discretion in these matters. This is hardly a justifiable conclusion. If we are to administer parole as a protective, preventive, law-enforcing device, we must have the tools at our command to operate it. There likewise are thousands of laws on the statute books which the district attorney does not invoke but they are there in readiness if he needs them. There are parole regulations which come in extremely handy under many circumstances.

The other day two parolees were picked up in the New York jurisdiction for associating with other men who have criminal records. That was the technical violation with which they were charged. If these men had met at mass on Sunday or if they had visited a museum together, or if they were members of the same air warden's unit, there is no parole agency in the country that would have sent them back. But here is what happened in this case. These men, and five or six others, had met in a vacant house. In one room on the premises were found half a dozen mattresses strewn on the floor, and seven or eight teen-age girls were in attendance; and hidden in the basement were four 32-calibre revolvers, each one

wrapped in newspapers, and every package contained the bullets for the revolver. If these men are sent back to prison, at least the two who were on parole, it will not be because they associated with other human beings but because they were about to lapse into crime. Somebody may be alive today who might otherwise be dead, some honest tradesman or shop keeper may still have the results of his day's business tucked away in his safe because parole officers acted promptly and in the public interest in this case. The District Attorney apparently did not have evidence enough to convict these men anew, but parole does not wait for the crime to occur.

I grant you that the large majority of parolees would be just as well off with fewer restrictions. Possibly some of them would make a splendid comeback without any regulations or supervision at all. But to say these regulations should not exist is to be unrealistic. We wish we could feel that we were dealing only with sincere, earnest, well intentioned people in whom the prison has worked a miracle of transformation. There are always some who need control.

There is a case on my desk today which indicates the type of "childlike and pastoral life" that some of our parolees enjoy:

"He stopped in the bar and grill and asked the woman for two pork chop sandwiches. The woman immediately started cursing him . . . the cook came out of the kitchen and told the parolee not to pay the woman any attention as she 'had her habits on.' He started out the door where he encountered a man, J., with a dog. J. told him not to play with the dog as he would bark and the manager didn't want the dog to bark in the bar. Parolee stated that he started out the door when a sailor, G., walked up and punched him in the chin. At the same time G. asked the parolee why he was arguing with his girl friend. Immediately after the woman behind the counter threw a bottle at the parolee, striking him in the forehead. The sailor then pulled a knife and started cutting the parolee and they wrestled about the floor. The woman then came from behind the counter with a butcher knife and started cutting the parolee, cutting him on the cheek and in the back of the neck. Parolee stated that he then pushed the sailor into the girl and made for the door, but the dog jumped on him and he fell with the dog and the dog's owner on top of him. The sailor then started throwing some of the stools which hit the parolee and J. indiscriminately. By that time the woman was again stabbing at the parolee . . . and parolee attempted to catch the knife in his hands, as a result of which both hands were severely cut. Parolee stated that he then kicked J. and the dog off him and broke out of the door . . . Parolee asserted that in the melee the sailor and J. were also cut either by the knife wielded by the woman or by bottles that he believed were thrown by other patrons of the bar and grill."

Perhaps the moral of this is that there is nothing pastoral about life in Harlem, but I cite it merely to show that parole supervision administration, however much it may insist upon case work and education, must nevertheless be realistic. It is quite true that it is not a very serious offense to take a glass of beer, or even a cocktail, but it is, however, incumbent upon the parole system to protect innocent people from men whose assaultive natures are aroused by even a small amount of intoxicating liquor. The fact that millions of people can drink without danger to their neighbors does not mean

that all parolees can do so. I gather from the author's reference that "turning over the pages of obscene literature" or "annoying" young girls is in his opinion not a form of pastime that is common only to parolees, but this does not alter the fact that there are parolees with whom doing just these things has been and still may be a prelude to a revolting crime. In some of our communities, the marriage tie is lightly regarded. But we are a monogamous civilization, and even the formerly recognized status of "common law wife" has been abolished by statute in New York State for ten years.

To say that "the imperfection of the present state of things is veiled by the insight of many parole officers who refrain from reporting futilities" is to state what in a proportion of cases is undoubtedly true, but there is nevertheless also the fact that these triangular love affairs and illicit relationships with certain types of people lead to altercations, arguments and sometimes stabbings. In fact, it is surprising how many of these regulations which to the outsider may seem to be Utopian are prompted of long and bitter experience rather than by any desire to be prudish.

I believe we can admit with the author that we have not yet attained that degree of perfection which we hope for, but it is a very different thing to say that in the administration of parole and in the control of men who have already broken the law, we should relax our insistence upon standards. There is not one of us who does not wish we could inject more of case work and the educational process in parole. The parole system must, however, have for its first object the protection of the law-abiding sections of our communities. It would not be tolerated as a means of releasing from prison if it had no other purpose than to please the prisoner.

Dr. von Hentig has, I opine, magnified the irritations and technicalities of supervision. Month after month in the New York State Board of Parole I have had men come before me who have been brought back to prison. I would say that in nine out of ten cases they freely admit the violation, and that a majority are penitent and prepared to accept the penalty. If occasionally a man is returned with bitterness and rancor in his heart, that is greatly compensated for by the fact that thousands have been restored by parole and that many crimes by former convicts have been prevented.

Statistics gathered by the New York State Parole Board show that of men who have been out for five years or more, only about seven per cent in that period have committed felonies, about eight per cent have committed misdemeanors, which is a less grade of crime than that for which they were originally committed, but that about nineteen per cent have been returned to prison as a preventive or disciplinary measure. Their return is not a punishment for their violation, but a frank recognition that in their case parole was

premature and that the public welfare demands their return.

Parole even with all these restrictions and conditions is infinitely to be preferred to continuous residence in the prison. The fact that a certain number of District of Columbia prisoners prefer to stay in prison rather than be paroled is likely to be misunderstood because they are all undergoing very short sentences. But even so it could still be contended that the community is probably safer than if they were forced to be released possibly without a home or suitable program. It is a rare occasion in my own experience, which now extends over nearly a quarter of a century, to find a man who will decline parole even though he has had a sample of it before and contends that it is a rigorous discipline to which he has to be subjected. No amount of conditions and restrictions can over balance the fact that while on parole a man is at liberty. Liberty is the greatest boon that can be conferred upon a human being.

One would be naive to contend that there is not unlimited opportunity for improvement in our parole administration, in fact in our understanding of the criminal at all points in his career. Thoughtful men like Dr. von Hentig who do not fear to express their opinions are needed in our field. Our thanks are due him for pointing out certain dangers to us. I have long contended that modern penology to be truly effective in protecting society must depend on something beside threats and force and punishment. Parole in essence does and should temper justice with mercy, and the extent to which it operates understandingly and considerately of the individual parolee and his needs, but with due regard for the "facts of life," to that extent will its value to society be measured.

There is nothing in our experience that would make us differ from President Roosevelt when he said: "We know from experience that parole when it is honestly and expertly managed provides better protection for society than does any other method of release from prison." Within the last few years many states have adopted parole systems, improved them and increased their efficiency. Parole is not showing symptoms of decay. On the other hand, it is showing unmistakable evidence that it is becoming a real factor in protecting the public from the menace of crime and recidivism.

New York Parole Conditions

I,.....in accepting parole, promise, on my honor and with full knowledge that failure to keep such promise may result in the revocation of my parole by the Board of Parole, that I will faithfully keep all the conditions specified on this sheet and all other conditions and instructions given to me by the Board of Parole or any of its representatives.

1. I will proceed directly to, the place to which I have been paroled and within twenty-four hours, I will make my arrival report toWhen I make my arrival report, I will have in my possession the money I received at the time of my release, except necessary expenditures

of funds for travel, food and shelter.

2. I will not leave the State of New York or the community to which I have been paroled without the written permission of my parole officer.

3. I will carry out the instructions of my parole officer, report as directed and permit him to visit me at my residence and place of employment. I will not change my residence or employment without first securing the permission of my parole officer. If for any reason, I lose my position, I will immediately report this fact to my parole officer. I will make every effort to secure gainful employment and I will cooperate with my parole officer in his efforts to obtain employment for me.

4. I will conduct myself as a good citizen. I understand that this means that I must not associate with evil companions or any individuals having a criminal record; that I must avoid questionable resorts, abstain from wrong-doing, lead an honest, upright and industrious life, support my dependents, if any, and assume towards them all my moral and legal obligations and that my behavior must not be a menace to the safety of my family or to any individual or group of individuals.

5. I will not indulge in the use or the sale of narcotics in any form and will abstain from the use of intoxicating liquors.

6. I will not marry without consulting with and obtaining the written permission of my parole officer, nor will I live with any woman, not my lawful wife.

7. I will surrender to my parole officer immediately after release any motor vehicle license which I had in my possession at the time of my conviction and sentence. I will not make application for a motor vehicle license at any time or for any license which would permit me to carry firearms of any nature without the permission of my parole officer. If while on parole I carry firearms of any nature or drive a motor vehicle without a valid license it will be considered a violation.

8. I will not correspond with inmates of the State prisons or the Elmira Reformatory without the written permission of my parole officer. I will not carry from the institution from which I am released, or send to any penal institution, whether in New York State or elsewhere, any written or verbal message, or any object or property of any kind whatsoever, unless I have obtained specific permission to do so from the Warden, Superintendent, or other duly authorized officers of both the institution from which I am released and the institution to which the message, object or property is to be delivered.

9. I will reply promptly to any communication from a member of the Board of Parole, a parole officer, or an authorized representative of the Board of Parole.

10. I understand that any reports, either verbal or written, made to or submitted by me to my parole officer, which are subsequently found to be false, will be rejected by the Board of Parole, and will not be used in crediting parole time served, and in addition, may be considered a violation of parole.

11. During the period which I am on parole, should I commit a felony, either in New York State or any other State, I understand that in addition to serving the sentence pronounced upon me for this offense, I shall be compelled to serve in a State penal institution, the portion remaining of the maximum term of the sentence on which I was released on parole, from the time of such release on parole to the expiration of such maximum.

12. If I should be arrested in another State during the period of my parole, I will waive extradition and will not resist being returned by the Board of Parole to the State of New York.

13. I will not register as a voter and I will not vote in any primary, special or general election as I understand that my right of franchise was revoked when I was sentenced to a State Prison.

14. I will report to my parole officer each and every time I am arrested or questioned by officers of any law enforcement agency and will give all of the facts and circumstances which brought about the arrest or questioning.

15. Special Conditions.