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## THE PRISON'S ROLE IN CRIME PREVENTION

Austin MacCormick

A paper delivered at the Columbia University Forum for the Study and Prevention of Crime. Mr. MacCormick was formerly Commissioner of Correction of New York City (1934-39) and Assistant Director of the U. S. Bureau of Prisons (1929-33). During the war he was the Army's chief consultant on correctional problems, and received the Presidential Medal for Merit for his work in that capacity. He became executive director of the Osborne Association in 1940. During the past thirty years he has surveyed every prison system in the country, some of them several times.—EDITOR.

A definition of the term "prison" is necessary in any discussion of the prison's role, for during the past eighty years our correctional institutions have been adapted to a changing role in a changing society.

While the word "prison" is a convenient over-all designation for institutions for convicted male offenders above the level of the county jail and city workhouse, it is no longer an accurate term as commonly used in the United States. State institutions for persons convicted of felonies and serving sentences, generally speaking, of more than a year are of various types nowadays: prisons (called penitentiaries in some states, although in others this term is applied only to the larger county jails), reformatories for men and for women, road and forestry camps, farms, and such special institutions as those for insane and mentally defective criminals. The type of prisoner who would have been confined fifty years ago in a maximum security walled prison may be found now in any one of several kinds of minimum or medium security institutions or units. We speak today of *correctional* rather than *penal* institutions, but still use the general term "prison" for convenience.

It is misleading to give an exact figure for the total number of state correctional institutions, for some states have prison systems that would more properly be termed constellations. Texas, for example, has one walled prison and eleven widely scattered farm units to which prisoners of the type usually found in prisons or adult reformatories are sent. Virginia has a walled industrial penitentiary, an industrial farm for women, three farm institutions for men and a series of road camps in which nearly 2,000 men are working. North Carolina has a central prison, but 80 per cent of the state's prisoners are in eighty-eight road camps or farm units. California, in addition to two maximum and four minimum or medium security institutions for adults, operates a dozen road and forestry camps.

In the forty-eight states and the District of Columbia, not counting small farm or road camp units but counting such large prison farms as those in Texas and Virginia, there are 152 correctional institutions for

adults: sixty-eight prisons or penitentiaries; twenty-six reformatories for men in twenty-two states and the District of Columbia; twenty-five reformatories or similar institutions for women; twenty-two farm institutions or large farm units, including state farms designed primarily for misdemeanants; eleven special institutions, including three hospitals for insane criminals and four institutions for defective delinquents.

The federal prison system consists of six penitentiaries, three reformatories for men and one for women, nine co-called correctional institutions, three prison camps, a medical center, and a detention institution or jail in New York City. The United States Bureau of Prisons, which administers this system, also operates a training school and a forestry camp for boys.

The diversification of institutions is only one of the manifestations of the progress that our prisons have been making quite steadily for the past thirty-five years, in spite of the fact that there have been four periods during that span which affected prisons greatly: the prohibition era, the depression and the two world wars. This progress has not consisted merely of the improvement of conditions and practices that militated against the rehabilitation of prisoners but has also included the development of programs that affirmatively promote rehabilitation, utilizing scientific techniques and personnel with professional and technical training.<sup>1</sup>

It is this progress and the philosophy that activates it that makes it appropriate to discuss the prison's role as part of a program on *Crime in Today's Society*. Moreover, it is appropriate that persons representing a wide variety of interests should participate in this discussion, as a commissioner of mental hygiene, the head of the country's largest prison system, law school professors, a university professor distinguished for his research work on sex offenders, psychiatrists who have specialized in criminology, an outstanding layman, a university dean, and a former judge who is now dean of the country's leading school of social work. The prison is thus by inference placed in its proper setting as one of the wide variety of instruments that Society uses to prevent and control crime, and penology in its proper setting as a sector of the general field of criminology and the broader field of the social sciences.

It is high time it were more generally recognized that the prison is more than an instrument of society's retributive vengeance, that its basic philosophy is a correctional rather than a punitive philosophy, that we penologists are not zoo-keepers but men and women engaged in a

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1. See article by the author on *Progress in American State Prisons* in the April, 1949, issue of *State Government*.

delicate and difficult salvage operation. The prison is not merely a scrap-heap where we dump the slag that is left after science has extracted everything possible from even the lowest-grade ore. It is an important step in the total process of extracting, converting and refining the potentially valuable material that passes on a never empty belt-line through our clinics and our courts.

There is special significance in the title of this paper: *The Prison's Role in Crime Prevention*; not repression, but *prevention*. It is true that crime is prevented not alone by the varied agencies and programs that seek to keep boys and girls from becoming delinquent, not alone by the police forces that try to stop the criminal before he commits his crime, but also by the three services that together constitute what we call the correctional process: probation, institutions and parole.

The public ordinarily does not think of these functions as preventive, for all three services deal with convicted offenders. If it thinks of the prison as a preventive agency, the public means that it is expected to deter potential offenders through fear of punishment. But, as a matter of fact, the primary function of the prison, as of probation and parole, is to reduce crime by preventing its repetition. The more than 60,000 men and women convicted of felonies who enter our prisons every year present possibilities of a very substantial saving in future crime, with all its calculable and incalculable costs. Repeated crime—crime committed by people who have been caught, convicted, sent to prison, and turned out later no better or even worse than when they went in—is one of the most foolish and expensive American luxuries.

How can the prison best prevent the repetition of crime by its charges? By locking them up and throwing away the keys? By subjecting them to such deprivation and cruelty that they will tremble with fear at the thought of ever coming back to prison again? I do not need to say that the answer to both these questions is an emphatic "No."

About a year ago, as a member of a committee set up by a division of the United Nations, I had to write a paper on *The Function of the Prison*. Since the paper would go to European countries where our American correctional philosophy is far from being generally accepted, I could not avoid spelling out again the old arguments on whether or not the prison can best protect society by serving as an instrument of custodial segregation, or of punishment, or of rehabilitation. While writing much of that article I had a feeling I should have been sitting in some medieval cubicle scratching out my ideas by the light of a flickering taper. The inclusion of some of those ideas here is occasioned by the knowledge that even in this country there are many people dealing with

crime and criminals, or formulating and administering the criminal laws, who are still reading their penology by the taper's light.

It is obvious that the prison provides society some protection from crime by merely keeping offenders in custodial segregation for varying periods up to life imprisonment. It is equally obvious that this may solve the problem caused by specific criminals without solving the problem of crime in general, just as the segregation of lepers may or may not promote the prevention and cure of leprosy. Even with specific offenders, imprisonment has limited value as a protective device unless they are confined for life.

If, on the other hand, modern society sought to protect itself against those who are a menace to the persons or the purses of their fellow-citizens by life imprisonment or other inordinately long sentences for all sorts of crimes, it would find itself eventually with an ever-increasing burden of crime. It would deserve to, moreover, as a penalty for its abandonment of a defensible social philosophy with respect to crime. The history of Elizabethan England, of Colonial America and, indeed, all history sounds a clear warning that society does not reduce crime but increases it by imposing penalties that those who make up society cannot accept as necessary and just.

In the United States penologists have been working in the opposite direction for the past eighty years, at least. They have sought by indeterminate sentence and parole laws to make it possible for an offender to be released when it is in the best interest of society and to help paroling authorities to determine when the time is ripe for release. They attempt to accomplish this by means of classification, and by medical, psychiatric, psychological and other services in correctional institutions. Progress toward the day when offenders will be imprisoned only as long as is clearly necessary has been retarded by existing legal provisions prescribing heavy mandatory penalties for certain types of crime and for repeated crimes. The trend since the turn of the 20th century, however, in spite of the retrogressive wave of legislation during the "crime wave" of the 1920's, has been increasingly toward greater flexibility in dealing with convicted offenders. The Youth Correction Authority Plan, sponsored by the American Law Institute, and the Federal Corrections Act introduced in Congress with the backing of a committee of federal judges, are examples of current proposals providing for a high degree of flexibility.

Under our present procedures, fully 95 percent of all those now in state and federal prisons and adult reformatories will eventually be released. While many offenders in the United States are held in prison

for long terms, the median time served by those released in any given year is less than two years. It is possible that many prisoners are released before they should be; it is not and cannot be claimed that we have achieved a scientifically sound system of sentencing and release procedures. Generally speaking, American penologists would prefer to err in the direction of too short rather than too long sentences. It is contrary to progressive correctional philosophy and is becoming increasingly repugnant to the social conscience of our people to imprison an offender for a long period, without regard for his personal characteristics, merely because his custodial segregation affords society protection for the time being. There is a growing awareness among thoughtful people that society can never be truly protected by any procedure that does not deal justly and wisely with its individual members.

The theory that the prison can most effectively reduce crime and thus promote the protection of society by serving as an instrument of punishment cannot be discussed without reference to the theory of rehabilitation, for in practice the two theories run counter to each other at so many points. The debate on the punitive versus the rehabilitative theory has filled the pages of penological literature for generations. It is a debate that has not been conclusively ended on the world stage. So far as the United States is concerned, however, it is ended. It would be virtually impossible in America today to find a penologist of recognized standing who is willing to write or speak on the relative validity of the two theories except as a literary or oratorical exercise or as a task of restating what he considers self-evident truths.

The position he and his colleagues would take is that whatever validity the punitive philosophy may have in this country and century is so far out-weighted by the merits of the philosophy of rehabilitation that the latter should take unquestioned precedence in current penal thought. They would insist, moreover, that if punishment is to be considered an aim of imprisonment, it must be what the Germans termed *Zweckstrafe*, or punishment for a purpose, rather than *Vergeltungsstrafe*, or punishment as retribution.<sup>2</sup>

Punishment as retribution belongs to a penal philosophy that is archaic and discredited by history. Our leading penologists, if prisons were to be operated as instruments of retributive punishment, would refuse to accept appointments to administer them. They recognize that even if the idea of retribution by legal penalties is entirely sound today from the ethical standpoint, which they question in view of the known

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2. Salleilles, Raymond: *The Individualization of Punishment*. Little, Brown & Co. 1911. (In the Modern Criminal Science Series.)

inaccuracies and inequities of our legal processes, it is not sound from the practical standpoint. It is impossible to determine what penalties provide the varying but exact amounts of retribution called for by a list of crimes ranging, for example, from theft of a handkerchief to murder. When it abandoned the use of the death penalty for the former and a great variety of other minor and major offenses, society posed for itself the impossible task of setting up a graded scale of crime values with commensurate penalties.

The task of producing a legal slide rule on which one can compute the exact degree of retribution called for by a crime committed by a person at a given time under specific conditions is still more impossible. The wide divergence in sentences for the same crimes imposed not only by courts in the 48 United States but also by those of a single state and by the courts of the federal judicial system bear indisputable witness to our failure to develop exact scales of punishment or to use those we have even-handedly.

Retribution, moreover, implies the payment of a debt to society and expiation of one's offense. The very crimes that we are most anxious to prevent—murder, rape, and other crimes involving cruelty and violence—are those for which society can never exact adequate compensation by retribution, or the perpetrators make adequate payment by expiation. For these and other crimes it is impossible to pay one's debt to society and it is not good for the offender to believe that it is possible. Payment of a debt carries the implication that one is free to start running up a new account. This is all too often the view of prisoners who have served out the full length of a heavy retributive sentence to imprisonment.

Finally, if it were possible to use the prison as an instrument of retributive punishment with exactitude and justice, its use for such a purpose would defeat the achievement of so many more worthy purposes that the net result to society would not be gain but loss, not benefit but injury. The prison operated on the basis of a purely punitive philosophy would produce more criminals than it would prevent.

If we are to dismiss the idea of punishment as retribution, what of punishment for a purpose? What purpose could give validity to the use of the prison as an instrument of punishment? It is difficult to think of anything that can be admitted to consideration except deterrence. It is conceivable that, under a system of law enforcement in which the apprehension and conviction of offenders are swift and certain, punishment by imprisonment could be so imposed and carried out that it would deter the ex-prisoner and other potential offenders from the commission

of crime. Only the most unrealistic optimist, however, would claim that under the present system of law enforcement in the United States deterrence can be effectively accomplished by punitive imprisonment.

In the United States so small a percentage of all offenders are caught and convicted that what happens to them can have little effect on the great body of potential and actual violators of the law. Reports of the Federal Bureau of Investigation for 1939, the last pre-war year, from 78 cities with populations over 25,000 and a total population of about 13,000,000 show that for every 100 major offenses known to the police there were 27 arrests, 19 prosecutions, and 14 convictions. In some cities the ratios are even lower than these figures; in one large American city, for example, the ratio of convictions to known offenses in 1945 was 5 to 100. The odds clearly favor the criminal in such conditions.

Many offenders, moreover, are the type that would not be deterred even if the odds were heavily against them. Included in this group are many insane, mentally defective, neurotic, or psychopathic persons, some with uncontrollable compulsive urges, especially in the sexual field. There are others who act impulsively, without weighing the costs, perhaps under the stress of anger or passion; others who plan their crimes, such as insurance murders, but whose cupidity or predatory desires outweigh their caution; still others whose recklessness makes unfavorable odds more rather than less attractive, and many besides who do not know whether the odds are in their favor or not and do not care. In these groups fall the great majority of the types of offenders we would like most of all to deter from crime, because of the nature and frequency of the crimes they characteristically commit.

In spite of these facts, strengthening the processes of law enforcement so that more offenders are imprisoned would undoubtedly result in some degree of deterrence, but what degree is by no means certain. There can be little doubt, moreover, that emphasis on the use of the prison as an instrument of deterrence would result in a net loss rather than a net gain. To achieve the maximum deterrent effect it would be necessary either to impose excessively long sentences or to inflict harsh treatment and impose rigid restrictions and deprivations on the prisoners. The experience of centuries in Europe and America indicates that these methods not only defeat rehabilitation and increase recidivism but encourage in free society a brutalized viewpoint that fosters crime.

Experienced penologists do not dismiss the idea of punishment. They recognize the fact that being sent to a prison, however humanely it is operated, is punishment in itself. They know that it is impossible to make a prison so pleasant that the prisoners will not consider their

imprisonment punishment. They believe it is neither necessary nor justifiable to add to the punishment inherent in loss of liberty, separation from one's friends and family, and the stigma of a prison sentence. Experience has convinced them that efforts to do so tend to reduce the number of offenders who become law-abiding citizens on release and to increase the number who continue in crime. They are certain that emphasis on the punitive theory of imprisonment works against rather than for the protection of society.

Penologists in the United States today are generally agreed that the prison serves most effectively for the protection of society against crime when its major emphasis is on rehabilitation. They accept this as a fact that no longer needs to be debated. The best thought in what was once called the penal field, and is now significantly called the correctional field, is directed toward developing plants, personnel and programs that will accomplish the rehabilitation of as many offenders as possible and will enable those who cannot be released to adjust as well as possible to the restricted life of the prison. Although prison administrators know that a substantial percentage of adult offenders are not likely to be salvaged by any methods we have thus far developed, they direct their programs of rehabilitation to the presumably incorrigible as well as the probably reclaimable group, and consider only a small minority of prisoners as completely hopeless cases. This may seem to be an impractical and visionary viewpoint, but it is wholly realistic and is based on a clear-cut idea of what rehabilitation is and what it can accomplish.

Rehabilitation is not a vague, haphazard and loosely defined process. The essential elements of a well rounded correctional program of individualized training and treatment in an institution for adult offenders are well known. They include the following: scientific classification and program-planning on the basis of complete case histories, examinations, tests and studies of the individual prisoners; adequate medical services, having corrective as well as curative treatment as their aim, and making full use of psychiatry; psychological services, properly related to the problems of education, work assignment, discipline and preparation for parole; individual and group therapy under the direction of psychiatrists, psychologists, or trained social therapists; employment at tasks comparable in variety, type and pace to the work of the world outside, and especially tasks with vocational training value; education planned in accordance with the individual's needs and interests, with heavy emphasis on vocational training; library services, designed to provide wholesome recreation and indirect education; directed recreation, both indoors and outdoors, so organized as to promote good morale and sound

mental and physical health; a religious program so conducted as to affect the spiritual life of the individual as well as that of the whole group; discipline that aims at the development of self-control and preparation for free life, not merely conformity to institutional rules; adequate buildings and equipment for the varied program and activities of the institution; and, above all, adequate and competent personnel, carefully selected, well trained, and serving under such conditions as to promote a high degree of morale and efficiency.

That a high percentage of successes can be achieved by prisons with programs of this type, coupled with a sound parole program, is not problematical; it has been demonstrated. Perhaps the best available statistics in support of this statement are those compiled by the New York State Division of Parole. The State of New York is generally acknowledged to have a superior parole system, in which parolees receive thorough supervision. The programs of its penal and correctional institutions, however, do not include all the essential elements cited above and are not so clearly superior to those of other states as to make New York's figures on rehabilitation successes non-typical.

Each year the New York Division of Parole publishes statistics on parolees who were released from the prisons and adult reformatories of the state five years previously. The pre-war reports showed that about 65 percent of those paroled five years before had maintained clear records, that about half the remainder had been returned to institutions for technical violations of their parole conditions, and that the remainder, about 17 percent, had been convicted of new offenses, of which only half were felonies. During the non-typical war years the percentage of successes rose even higher. The report at the end of 1946 on the "Class of 1942" showed that, five years after release on parole, 73.2 percent had maintained clear records, 14.8 percent had been returned to institutions for technical violations, and 12 percent had been convicted of new offenses: 6.2 percent of felonies and 5.8 percent of misdemeanors.

It is probable that deterrence has also played a part in the success record achieved by the "graduates" of New York institutions and those of the federal prison system and a number of progressive state systems, which also show a high percentage of successes. But the fact remains that the administrators of these institutions stress rehabilitation and place their major emphasis on efforts to achieve it. They consider deterrence as only a by-product of institutional operation.

The position taken by the proponents of the theory of rehabilitation may be summed up as follows: They do not rule out the necessity of custodial segregation, but consider custody a means to an end in the

vast majority of cases, and an end in very few cases. They do not deny the desirability of achieving a deterrent effect if it can be done without impairing the effectiveness of rehabilitative programs that offer more assurance of good results than deterrence does. In short, they believe, all things considered, that rehabilitation is not the only aim of the prison but should be its primary aim.

They are certain that operating prisons so as to accomplish the maximum deterrent effect would cause more crime in the long run than it prevented. Being convinced by experience that a large percentage of all adult offenders committed to prison can be rehabilitated, they prefer in the operation of penal and correctional institutions to place their reliance on rehabilitative principles and methods that they consider ethically sound and practically effective rather than on principles and procedures that they cannot accept philosophically or practically.

While this is the viewpoint of most workers in the United States in the correctional services—probation, institutions, and parole—it is not the viewpoint of the great majority of those engaged in what is termed law enforcement: the police, prosecutors, and judges. It is a curious and most revealing fact that a sharp distinction is made between the processes of law enforcement and correction, and that the latter is not considered a part of the former by those who “enforce the laws” but all too often as antithetical to their aims and a hindrance to their efforts.

There is in this country a distinct break in the philosophy and methodology of what should be a continuous process of law enforcement. It occurs at about the point of conviction. The basis of much of our criminal law and of the processes of apprehension and conviction is the theory of retributive punishment. When the offender has been convicted, a second set of agencies and officials with an entirely different philosophy—that of rehabilitation—takes charge of him. The methods used on both sides of the dividing line reflect the widely divergent underlying philosophies.

Judges stand at the dividing line and may play two roles. As they preside over trials and impose the penalties prescribed by law, they are a part of society's ancient machinery of vengeance and retribution. As they utilize the clinical and probation services of their courts or, in imposing a sentence of imprisonment, take into account the possibility that the offender may be salvaged in prison and on parole, they are a part of society's modern machinery of correction. Because of their training, the traditions of their profession, and the punitive purpose of most criminal law, judges, with notable and increasingly numerous exceptions, are still found most frequently in the role of interpreters

and administrators of vengeful and retributive justice. In view of their position at the end of the process of apprehension, prosecution and conviction and at the beginning of the process of correction, and in view also of their great influence on the thinking of legislators and the general public, society may well ask the judiciary to take leadership in an effort to develop a single basic philosophy to which all those engaged in dealing with crime and criminals can subscribe.

The lack of such a basic philosophy and of approved methods and procedures derived from it is perhaps the most significant feature of the crime situation in the United States today. It is the chief reason for our failure as a nation to develop a continuous and fully integrated program of crime prevention and control. We are, instead, standing with one foot in the past and the other in the present, with one hand tilting the scales of justice toward retribution and the other tilting them toward rehabilitation. We are dealing with *crime* ineffectively because we have not come to an agreement on how to deal with *criminals*.

It is high time that we resolved our differences and the difficulties arising from them. To do so we must first relegate the idea of retribution to the scrap-heap of outworn ideas where it belongs. We must then strengthen law enforcement to the point where a large percentage of offenders are brought under legal control, and at the same time develop a wide variety of agencies, institutions and programs to deal with convicted offenders on an individualized basis, as we would deal with sick persons in a well organized public health program. Under such a system of dealing with offenders, the process of diagnosis, prescription and treatment in a given case may call for confinement in a prison for a long period, even life. But the prison will be expected to accomplish the restoration to free society as law-abiding citizens of as many of its charges as possible.

There is another contribution the prison can make to crime prevention that has been almost completely disregarded thus far. Prisons could play a role of great significance if they were organized and staffed not only to provide training and treatment with a view to rehabilitation but also to serve as research centers. It is true that the addition of professionally trained personnel to the staff of many institutions has resulted in the assembling of considerable information of scientific value and that some noteworthy research work has been done by institution staff members, frequently as part of their daily work, and by university professors and graduate students.

If the prison is to be an effective research center, however, there must be more than a spotty and sporadic research program. There must be

intensive research—carefully planned, adequately financed, and well staffed—into a variety of specific problems and there must be sustained and comprehensive research covering as much as possible of the entire field of crime causation and treatment. Research in prisons can throw more and more light on the causes of crime but it must have as its primary aim the determination of how we can prevent crime and can most effectively treat offenders whose crime we do not succeed in preventing.

One of the most promising research projects ever undertaken in a correctional institution, for example, was the study of psychopaths carried on in 1940-42 at the Federal Reformatory in Chillicothe, Ohio. A special building was constructed for the group under study, a carefully selected staff of Bureau of Prisons and Public Health Service personnel was assigned, and the project was pointed at trying to determine what makes psychopaths act as they do and what training and treatment are most effective in modifying their behaviour. It is most unfortunate that it was necessary to terminate this project, because of the loss of key personnel during the war, before any clear conclusions had been reached.

Similarly, the study of sex offenders carried on at Sing Sing Prison under the auspices of the New York State Department of Mental Hygiene, supervised by the State Psychiatric Institute and directed by Dr. David Abrahamsen, is of particular importance because it is concerned with developing effective treatment procedures as well as learning more about the causation of sex offenses of the type generally considered abnormal, aberrant, psychopathic, etc.

It is an interesting fact that some of our oldest and, in many ways, our least productive prisons could become highly useful institutions if they were organized and staffed to serve as research centers. To cite only a few very old prisons that are located in or near large cities, Sing Sing, the Massachusetts State Prison at Charlestown, and the Eastern Penitentiary in Philadelphia could make a greater contribution in their old age than they have ever made in their history of nearly a century and a half if they became centers of research. Almost at their doors are limitless resources for personnel to conduct research in the universities, medical schools, hospitals, clinics, schools of social work, and all the other agencies of Boston, New York and Philadelphia.

Research in prisons must not be concerned exclusively with an attempt to develop new modes of training and treatment. It must concern itself also with appraising methods that have been in vogue for many years and have been carried on without challenge, although their validity has never been proved. This has been well put by James V. Bennett, Director of the United States Bureau of Prisons, in these words:

We have established programs of treatment that are thought of as progressive. But now the time has come to analyze scientifically our methods. Is so-called "modern penology" an effective penology? Are classification, education, occupational training, case work, psychotherapy, and other elements of the modern correctional program producing results? If not, why not, and what is to be substituted? If so, how can they be made more effective? These are questions which the thoughtful prison administrator who is spending hundreds of thousands or millions of dollars from public funds must ask himself. The answer can be given only by research.<sup>3</sup>

In conclusion, when the prison is no longer expected to perform the ignoble task of serving as an instrument of retribution, when it holds offenders in custodial segregation only as a measure of safety, not as punishment, when its primary aim is the rehabilitation, reclamation, reform—call it what you will—of those committed to it, and when it makes through research its full contribution to scientific knowledge of crime causation and treatment, then and then only will the prison fulfill its true function, the protection of society.

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3. Bennett, James V., "Research Resources and Opportunities" in Reckless, Walter C., *The Etiology of Delinquent and Criminal Behavior*, Social Science Research Council, New York, 1943.