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English Penal Reform; A Backward Step—It is a commonplace to say that the best safeguard of the liberties of any community is an independent judiciary. No matter what the nature of the political institutions, so long as the courts are free to decide on matters of fact and of law in accordance with the conscience of their judges there can be no arbitrary tyranny. Freedom may be secured by a declared, constitutional separation of powers, as in the United States, or by a more pragmatic system such as obtains in England, where justice is done in the name of the King, but where the King's executive ministers, are quite powerless to sway any judgment in their favor, or use any influence to secure a verdict which will forward their own policies.

Yet, in criminal cases, once sentence has been pronounced, power over the prisoner does pass back to the executive. This is normal everywhere. The government has the prerogative of mercy, it can remit punishment upon conditions, and it makes the regulations for penal establishments. No one wishes to see this necessary power reduced; on the other hand it is important that it should not be artificially extended. What follows here is meant to show how such extension can be effected, without apparently anyone realizing what has happened or voicing a single warning against its dangers. The case may well contain a lesson for Americans.

In England, up to 1948, there were three classes of imprisonment to which criminals might be condemned. The severest was penal servitude, which meant a long period in one of two special prisons. The next class was imprisonment with hard labor; this could not exceed two years, but was rigorous while it lasted. Finally came the second division, simple imprisonment without specially onerous conditions. Different offenses of course carried different maximum sentences in one or other of these classes, but within the limits judges had a fairly wide discretion, which they exercised according to the gravity of the crime and the degree of personal culpability. Since the passing of the Criminal Justice Act of 1948 the legal distinction between the three classes has been abolished. Judges who feel constrained to send an offender to prison must do so without specifying the conditions under which the sentence will be served, so their discretion covers only the length of the term, except that certain youthful offenders can be ordered to correctional training and confirmed recidivists may be sent to preventive detention.

The change does not mean that all English prisons are now alike. On the contrary, the reason advanced for the new law was that the old classification had ceased to correspond with penal practice. Experiments had been begun which had the effect of creating, not only three, but many grades of penitentiary, ranging from grim Dartmoor to the latest "prison without bars," a country house in pleasant surroundings where the very minimum of restrictive discipline is enforced. Judges, it was argued, could not be expected to understand the varying conditions in all these places, some of which were still in the stage of development, nor to know enough about any individual offender to decide which of them would suit him best.

So an elaborate allocation system has been devised. Every prisoner whose sentence exceeds a certain period goes first of all to an observation center, where his physical and mental condition is examined, his aptitude for various kinds of work tested, his reactions to confinement and discipline watched and reported upon. In a word, criminology is brought into play;

scientific methods of diagnosis and treatment are used upon the delinquent as they are upon patients in hospital.

Now there is no need to scoff at all this. Those who operate the system are conscientious people, seriously engaged in seeking the conditions conducive to mending broken lives and to reforming criminal characters. They understand the resources at their disposal, and practice in their work must give them very good insight into the raw material that they are attempting to mould. Already they claim a degree of success, and statistics support their claim. Nevertheless there remain very serious objections. These may not be obvious all at once. While the system is new it is to be expected that those concerned, penal experts and psychiatrists and the rest, will show enthusiasm for their work. But they are government officials, and sooner or later the typical faults of bureaucracy will surely appear. Experimentation will harden into routine; there will be the normal disinclination to take responsibility for defying precedent. Administrative convenience will begin to dictate decisions. Character will be judged in the light of whether it is amenable to official authority; in other words sycophancy will be rewarded. Since this is the British Civil Service, there is no need to fear political influence or corruption, but, on the other side, it is obvious that the criminals under observation will seek the easiest roads to favoritism. Rumor will circulate through the underworld on the best way to insure a comfortable prison term; the smarter boys will learn some psychology too and model their behavior accordingly.

But these evils, when they appear, will still be relatively minor ones, the result of being clever with people whom cleverness usually impresses in the wrong way. The gravamen of the matter is different. It is that a judicial function, that of deciding what the lawbreaker's punishment should be, has been taken from the judiciary and given to a branch of the executive. The danger of this course is not dispelled by arguing that the executive is the better informed. A judicial act is done in open court, and the prisoner, his friends, and the world at large can see the reasons for it. The judge, beside being an embodiment of the law and impersonal in that sense, is also a recognizable human being, known by name and repute, and personally responsible for the justice of his decisions. This responsibility, combined with his position of independence, usually ensures him public respect, but he is not immune from criticism. If he errs, at any rate if he is over severe, his mistake is remediable, either by legal process of appeal or by pressure of public opinion.

In contrast, a board of officials, however expert, are almost anonymous. They work in private, when the interest aroused by the trial has evaporated. What they decide is known only to the prisoner; why they decide it may be kept secret even from him. They have taken no oath to do justice, and though no doubt they are responsible, their loyalty must be to the state that employs them. They are not administering a known code of law, but a science whose rules must continually be adapted to meet new conditions and growing knowledge.

Accept everything that is urged regarding the purpose of this reform, the amelioration of prison life and the teaching of honest habits, and it is still true that the power given to the officials is dangerously large. For it is exercised over persons who have already lost their freedom, and who in the nature of things cannot have ordinary rights of redress. It consists in deciding whether that loss of freedom shall be easy or painful, and by implication which person is worth taking trouble over and which is not. Being human, the officials will make mistakes; and being officials, they will not readily admit

them. In the circumstances there can be no real guarantee against injustice.—*From Magistrate B. H. Homersham, London, England.*

Berkshire International Forum—The Berkshire International Forum met at the Berkshire Industrial Farm in Canaan, New York, on June 22 through June 24. It was organized to provide an opportunity for an exchange of views among authorities on the institutional treatment of juvenile delinquency. Leonard W. Mayo was chairman of the Forum and Paul W. Tappan chairman of the Planning Committee. Some fifty authorities, including twelve members of the United Nations Secretariat, attended the Conference, representing among them the approaches of psychiatry, case work, sociology, education, institutional and governmental administration, the juvenile court and law. Speakers and discussants were drawn from major centers of the United States and other parts of the world.

During the course of the Forum sessions were held on the subjects of "The Community and the Institution, New Approaches in Institutional Treatment," "Developments in Recruitment and Training of Personnel," and a "Blueprint for the Institution of Tomorrow." At these meetings papers were delivered on major phases of treatment planning for unadjusted children, followed by forum discussions by the entire group. Among the speakers were Adolph Delierneux, Paul Amor, Judge Justine Wise Polier, Dr. Bruno Bettelheim, Dean Kenneth Johnson, Dr. George Gardner, Austin MacCormick, Henry R. Murphy, Dr. Richard Jenkins, Eric Haight and former Ambassador Joseph C. Grew.

A Statement of Policy and Principles was formulated by members of the Forum which this group believed to constitute a progressive guide to the development of treatment practice in institutions for juvenile delinquents. These were predicated on the view that society has the obligation to provide maladjusted children and youth the services which may lead to constructive social living. It is proposed that the papers, discussions and Principles will be published so as to be available for general distribution, though arrangements have not yet been completed with a publisher. The Statement of Principles formulated by the Forum may be secured by those who are interested through the office of the Berkshire Industrial Farm at 101 Park Avenue, New York 17, N. Y.—*From Professor Paul W. Tappan, Chairman of the Planning Committee, Berkshire International Forum.*

Medical Correctional Association—The Medical Correctional Association held its annual meeting in conjunction with the American Prison Association in Biloxi, Miss., October 21-26. It is an affiliate with the latter organization. As its name suggests, it is meant to invite all those who are interested in the medical aspects of crime—professionally or as laymen. Those eligible for membership in the Medical Correctional Association are:

(1) Physicians employed in Penal and Correctional Institutions, or Jails.

(2) Physicians, Social Welfare Workers and special workers engaged in medical research work in Penal and Correctional Institutions, or Jails.

(3) Physicians, Psychologists, Social Welfare Workers and special workers engaged in medical research work in connection with (a) institutions or hospitals for the mentally ill; (b) mentally defective individuals; (c) juvenile delinquents; (d) defective delinquents; (e) out-patient or behavior clinics dealing with any aspect of crime or its prevention; (f) criminal juvenile and domestic relation courts; (g) parole; (h) probation; (i) public and

private schools, colleges and universities; (j) federal, state, county and municipal public health organizations.

(4) Any other person who, though not automaticaly falling in any one of the three above mentioned groups, presents satisfactory evidence that he or she is engaged in research or an occupation in which the medical aspects of crime are acknowledged as important features.

Applications for membership should be sent to the Secretary, Dr. Ralph S. Banay, 709 Park Avenue, New York 21, N. Y., annual dues—$2.00.—From Dr. Stanley E. Krumbiegel, *Medical Director, Bureau of Prisons, Washington, D. C., Chairman of the Membership Committee of the Association.*

Canadian Conference—The program arranged for the sessions of the 46th Annual Conference of the Chief Constables' Association of Canada held in Halifax, September 18-21, left no doubt that this was one of the outstanding meetings in the history of the Association. Major-General F. F. Worthington, C.B., M.C., M.M., Co-Ordinator of Civil Defense for Canada presented an address as a basis for discussion on this vital subject. Chief Executive Commissioner of the Boy Scouts Association, Ottawa, also spoke on civil defense, with special reference to the role of the Boy Scouts in the work. Other speakers who stimulated discussion as they dealt with matters of vital interest included Miss R. Harvey, Judicial Section. Dominion Bureau of Statistics, Chief Walter Mulligan of Vancouver; and Past President George Taylor of Port Arthur, who discussed proposed amendments to the Criminal Code. Representatives from across the border included Col. U. E. Baughman, Chief of the U. S. Secret Service and Mr. J. E. Thornton, Special Agent in Charge, F. B. I., Boston. Other speakers on the agenda included His Worship Mayor Gordon S. Kinley of Halifax; the host, Chief Verdun Mitchell; G. R. Raney, K. C., Crown Prosecutor, Halifax; Chief Charles MacIver, Winnipeg; and the President's Address by Chief John Chisholm of Toronto.—CANADIAN POLICE BULLETIN, September, 1951.

"The Dangerous Sex Offender"—In an address before the 14th Annual Meeting of the Middle Atlantic States Conference of Correction, Professor Paul W. Tappan of New York University stated that, in the past decade fifteen states have established a completely indeterminate sentence for a single category of offenders: the sex criminal, based upon several implicit assumptions that must be faced and explored. Dr. Tappan believed that these assumptions are untrue:

1. That the behavior of the sex offender is more dangerous than that of other types of felonious criminals: robbers, burglars, thugs, kidnappers, arsonists, or murderers.
2. That the sex criminal is more disposed to repeat his offenses or to progress to more serious ones.
3. That effective treatment measures are known and, given an indefinite period of time in which to work, can be applied to sex criminals. Moreover, there is greater need for an indefinite treatment period for sex offenders than for other types of criminals.
4. That treatment personnel and resources are available, including institutional facilities—or may be provided to apply these efficacious treatment methods.

Dr. Tappan stated that the mass of sex offenders is far less dangerous than other criminals. Experience, here and abroad has shown that sex offenders

do not tend to become more serious in their types of criminal expression. Psychiatry has no uniform criteria for predicting dangerous behavior in even the non-criminals. In further negating the open-ended sentence theory, Dr. Tappan argued that we have not developed treatment to cure sex deviates. Little experimentation is being carried on and there are few psychiatrists qualified to carry on such research; although medical psychotherapy does attract the charlatan. We lack criteria for the release of the sex offender and since this type of offender is confined in an abnormal institutional situation, determination of his time for release is even more difficult than for the "run of the mill" type of offenders. Institutions are unwilling to accept these people because of the possibility they again may violate the sex mores and do not seem amenable to existing treatment methods. Specialized treatment and research centers are needed to study the problem of handling the sex criminal. Legislation and the indeterminate sentence cannot solve the problem by concealing sex offenders for indefinite periods behind hospital or correctional institution walls. Dr. Tappan stated the following facts about persons committing sex offenses:

1. There are very few aggressive and dangerous sex offenders in the criminal population. Most are mild and submissive, an annoyance more than a menace.
2. Sex offenders are among the least recidivous of all types of criminals.
3. The more serious and dangerous sex criminals receive long sentences. Parole may be arbitrarily withheld. Persons who are curable by known methods can be treated fully within the time provided by the maximum sentences under traditional law.
4. The persons who are not curable by known medical and/or psychotherapeutic methods should not be held in confinement by use of the open-ended sentence. The issue should be faced frankly through the establishment of longer sentences.
5. Dr. Tappan stressed the need for employing facilities and personnel in research to help solve the riddle of the sex criminal. Development of methods of therapy, diagnostic standards, criteria for release and personnel training programs should be carried on in a specialized institution created for the specific purpose.

During the discussions at this conference it was brought out that Herstedvester, Denmark and Utrecht, Holland, have centers which approach in reality the function of facilities mentioned previously by Dr. Tappan. Many views were aired and when the session ended all realized that the need was present for more adequate data. Present screening methods do not permit foolproof, early, accurate identification of people who are potential sex offenders, nor do present treatment methods of custody and medico-psychotherapy adequately treat them after they act.—*Communicated by the Hon. Sanford Bates, Department of Institutions and Agencies, Trenton, N. J.*

International Criminal Commission—Too often national boundaries have functioned as a barrier to pursuit of the criminal offender. The problem was a source of concern to police officials, but it was not until the First Police Congress in 1914 that an international answer was sought. The idea was extended in 1923 at the second such conference at Vienna, and out of it grew the International Commission of Criminal Police. Headquarters for that organization was established in the Austrian capital, where it continued to work until the Nazi seizure of Austria and the World War brought its activities to a standstill. In 1946, nineteen nations decided to revive the organiza-

tion, with headquarters in Paris. At the present time, some thirty-eight countries including Canada and the United States take part in this large scale approach to the problems of the international criminal offender. The International Commission of Criminal Police has a permanent staff headed by a Secretary General which is in constant communication with officials in member States. Its operation follow three main lines: first, the group provides links between police bodies in the various countries by means of a network of telecommunications which makes communication of information very simple; secondly, information is collected in card indices—one of them a phonetic index; finally, the Commission has set up a technical library which is at the disposal of all its members and publishes a monthly journal under the title THE INTERNATIONAL CRIMINAL POLICE REVIEW.

Within a few months of its formation, the International Commission has assumed an important role, so important that, in 1949, the United Nations gave it consultative status. Two questions continuously confront this project of international cooperation in police affairs: first, the unification of international penal law and extradition; secondly, it is not a question of an international police force, but of working out practical, common rules and unifying the approach to crime by encouraging personal contact between enforcement officials.—CANADIAN POLICE BULLETIN, September 1951.

State Juvenile Court: A New Standard—An eminent judge has stated that the juvenile court is not a court in the ordinary sense, but is more like a hospital or a clinic. The analogy is carried through the entire course of a sickness—diagnosis, hospitalization, treatment and discharge. (See *Of Juvenile Court Justice and Judges,* by Judge Paul W. Alexander, NPPA Yearbook, 1947). In the same publication there is an article by a child welfare consultant. "The juvenile court," she says, "is first and foremost a court. Its legal responsibility with respect to children, and to adults who have obligations toward them, is established specifically by law in terms of the behavior or conditions which bring individual adults and children within the jurisdiction of the court." Its procedures, although informal, are still court procedures. Contrasted with the court is the public welfare agency, with broad responsibilities to administer child welfare activities, but without power to impose obligations on individuals or to enforce orders.

Thus the juvenile court is pulled or pushed in two directions. Although both the judge and the child welfare specialist stress the importance of nonjudicial administrative processes in providing social services to children, they disagree about the nature and functions of the juvenile court. The juvenile court concept was given another going-over recently by the Committee on the Standard Juvenile Court Act of the National Probation and Parole Association. The first edition of the Standard Act was published in 1925 by the Association. Revised editions were published in 1927, 1933 and 1943. In 1949 a committee met to undertake another revision, and a fifth edition of the Standard Act, containing several important changes and a number of lesser revisions, was published.—(See *The Standard Juvenile Court Act, 1949,* by *Judge Justine Wise Polier,* NPPA YEARBOOK, 1959).

Is it surprising that the juvenile court idea should be so malleable? It was an experiment fifty years ago and the basic idea survives—that of removing children accused of crime from the criminal courts to a specialized court geared to their needs. Conflicting views—revised views of court structure and function—are welcome signs of experimentation and growth. Our concept of the juvenile court has become, not more confused through all this history,

but clearer.—*From an article under the same title by Sol Rubin, Legal Consultant, National Probation and Parole Association in* FOCUS, 1951.

New Penological Developments in Argentina—True to Argentina's tradition to pioneer in the field of penal treatment, this country has developed two amazing phases of the New Penology—a dignified system of conjugal visiting and a realistic and modern system of pre-release. It will be remembered that Argentina developed the first diagnostic clinic in a prison as early as 1907 under the supervision of José Ingenieros. Through the years the directors of the country's prisons have been aware of the importance of developing progressive concepts of treatment throughout the entire field. Today Argentina stands in the forefront so far as institutional treatment of delinquent children. In no country in the entire world do we find better establishments and programs for children.

Conjugal visiting may be shrugged off with disdain by Anglo-Saxon morality, but many penologists throughout the world feel that such a provision would go far in dealing more effectively with the many inmates immured behind prison walls.

In Argentina the system of sex visiting was begun at the suggestion of President Perón when he made a visit to the National Penitentiary in Buenos Aires in 1946. The decree of November 14, 1947 provides for the innovation. Great thought was applied to this problem before the system was finally put into effect. The result is a dignified and properly safeguarded system to which no sensible person should object.

There is a special building contiguous to the penitentiary that has been especially equipped for conjugal visiting. It is so designed that complete privacy is established. The privilege of this type of visiting is extended only to legally married inmates and must be voluntarily entered into by both parties. The wife enters the building from the street; the inmate from the prison. Each must be in good biological health. The wife is examined and supervised by female attendants only. The rooms are attractively furnished, each equipped with private bath. They compare favorably with comfortable hotel rooms. The inmate enters the room through the corridor running from the prison entrance; the woman from the corridor entering from the reception room. The time limit is two hours.

A prisoner may be granted a visit from his wife after a sixty day probationary period and he is entitled to subsequent visits every two weeks. While, in general, only those prisoners on "good behavior" are granted this special privilege, even those whose records are not exemplary may also participate provided their conduct while in the institution is not actually inimical to his or his wife's health. In other words, an inmate may not be denied a sexual visit through the caprice of the staff.

In short, every conceivable safeguard is taken to make this phase of prison treatment dignified, private, socially and biologically beneficial. The Argentina system is proof that conjugal visiting can be desirable by adding one more benefit to the rehabilitative process.

The pre-release program in operation in the National Penitentiary is also well advanced. Prof. Alfredo Molinario of the University of Buenos Aires, described this innovation at the International Penal and Penitentiary Congress at The Hague in 1950 (Sec. III, Q. 2). Dr. Pettinato, director of the penitentiaries of Argentina, refers to this as "Regime of transition to freedom" or "Softer Discipline Treatment." Pettinato is given the credit for developing this interesting regime.

All inmates, when approaching their conditional or outright release from prison, are moved from their cell block to a building, especially furnished, where they remain for the last two years of their sentence. This building was formerly a factory although it is attached to the prison proper. Special rooms for housing the pre-releases were constructed as well as special dining-room, lounging room, shower rooms, etc. The whole establishment resembles a modest but well-appointed men's club. The inmate continues with his regular work within the prison but he eats, sleeps, and participates in most of his recreation within the pre-release quarters. (The National Penitentiary has a beautiful swimming pool for all prisoners.)

The dining-room consists of small tables for four or six persons, covered with regular white table cloths and with food served on regular dishes. In the attractive lounging rooms the inmates may play quiet games of all kinds, read the daily newspapers or magazines, or listen to the radio. Adjacent to this room is a beautiful garden in which the men may walk or where they may sit and read.

Space does not permit a further discussion of this progressive form of treatment. Suffice to state that it was set in motion for the purpose of tapering off so far as possible, the disciplinary rigor of a congregate type of penal discipline. It is one more effort in penology to help prepare an inmate for the difficulties of release and the free community.

There is no doubt but that Argentina, under the able direction of Roberto Pettinato, has gone far in the modern world of progressive penology—*From Negley K. Teeters, Temple University.*