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Helen Leland Witmer

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THE HISTORY, THEORY AND RESULTS OF PAROLE

HELEN LELAND WITMER*

I

THE DEVELOPMENT OF PAROLE IN ENGLAND

The origin of an idea is difficult to trace. We are fond in our day of going back to the Greek and Roman philosophers to find the starting point of each theory. Doubtless the same could be done for parole. Plato is sometimes credited with first suggesting the idea in his *De Legibus*. We are not concerned here so much, however, with the origination of the idea as with the history of parole in practice, and the honor of first developing it into a system must go to England. Maconochie is usually credited with being the father of parole, but there seems to be some evidence that the idea was current before he put it into practice on Norfolk Island. However this may be—and the history of it will be shown later—it is certain that it was in the Australian penal colonies that parole had its start. The starting point of a discussion of parole is, therefore, with the transportation system of England.

The word "parole" was not applied to the system until its introduction into the United States. England, then as now, called it by the various names of probation-pass, ticket-of-leave, and license, but the fundamental idea was the same.

The development of parole in England is so intimately bound up with that of transportation that it seems necessary to follow out the development of that system also. By the Magna Charta all Englishmen were protected from compulsory exile, and banishment was unknown to the common law except for those criminals in sanctuary who preferred *perdere patriam quam vitam*, to leave the country rather than their life. Before the time of Elizabeth imprisonment, too, which to our minds is such a common penalty, was not a legal punishment, and the gaols were used to house only untried prisoners, debtors, and felons under the sentence of death. The gallows, the pillory, the stocks, flogging, branding, fining, and the like were the means used at that time to deter crime. The era of Elizabeth, however, brought the necessity for new punishment, for pauperism, vagabondage,

*State University, Minneapolis, Minn.

and crime had been increasing to an alarming degree since the Reformation had taken away the monastic lands and with them the power of the church to care for these classes, and since the changing economic conditions threw many out of work. Wholesale hangings were first tried in an attempt to meet these new problems, and after their failure, more moderate methods; but the results were poor, and the act, 39 Elizabeth, c.3, establishing both houses of correction and transportation was passed. By this act rogues and vagabonds were given the privilege of leaving the country, but no definite provision was made for their banishment.

In spite of the fact that the penalty of hanging was the alternative to betaking themselves out of the country as speedily as possible, it seems that many of the felons lingered. So it became the practice of the justices, in whose keeping they were, to induce private contractors to take them away, these contractors being given a property right in the services of the felons. Before the development of the slave trade this was a profitable business in spite of their often receiving their cargo in such a state of jail fever and small pox that many perished before they touched America. The competition with negro slavery, however, made this too hazardous an undertaking, and the contractors began to demand as much as five pounds a head before they would accept a convict for sale.¹ This plan for transportation by contract was legalized by an act passed in 1717, and the Act 4, George I, c. 2 extended the privilege of transportation to all who were sentenced to a term of imprisonment of more than three years, thus greatly increasing the numbers whose labor might be sold. The preamble of this act makes a great show of the beneficence of the mother country in thus giving the poorly-stocked labor market of America the benefit of these additional men and women, but the colonies preferred their negro slaves and protested vehemently though without avail; and the system went merrily on until the Revolution put an end to America as an outlet for England's criminals.

In the years between the Revolution and England's taking over of Australia the convict population grew to unheard-of proportions, and the local jails were entirely unable to cope with the problem. It was at this time that the hulks of ships in the Thames were first resorted to as a place to confine prisoners, a make-shift at first, but a make-shift that continued in operation for many years. Even this was not sufficient to meet the problem, so when Captain Cook pro-

¹Clay, W. L., *Our Convict Systems*, Macmillan and Co., London, 1862; page 8. See this for a full account of the transportation system.

videntially discovered New South Wales, and the nation was demanding a return to the good old days when convicts were shipped out of sight, the Pitt ministry was only too glad to get such an easy solution to its difficulty. As there were no colonists there to whom the services of the convicts could be sold, it was decided to found a purely convict colony, and to that end Commodore Phillips set out in May, 1787, in charge of seven ships carrying about eight hundred convicts and landed in Botany Bay after eight months. From the beginning, as might have been expected, the colony was the scene of the most outrageous conduct, and the successive governors could do little to remedy conditions. The coming of free settlers, attracted to the country by the possibility of sheep-raising, gave the incentive for the introduction of the assignment system, by which convicts were given out to settlers for the length of their sentences, the money for their services being paid to the government.

There had been many attacks on transportation ever since its revival. John Howard, Jeremy Bentham, Romilly, Mrs. Fry, and the Evangelical philanthropists worked against it, but it remained for Archbishop Whately, who was the first to suggest the use of the indeterminate sentence, and Sir William Molesworth to rouse public opinion to the extent that this worst phase of transportation, the assignment system, was done away with. A committee under Sir William Molesworth reported to Parliament in 1838 what horrors were being wrought; and so realistic was their report that transportation to New South Wales was ordered stopped immediately, and Van Diemen's Land (now Tasmania) was made the sole recipient of convicts, with the idea that a new plan, called the probation system, would be worked out there.

This seems to have been the first official recognition that England gave to the parole idea. Just who originated it is not clear.² In

²Captain Alexander Maconochie is usually given credit for being the originator of the system in Australia. He was at one time the secretary of Sir John Franklin and may have suggested this probation system to him. Still it seems that the ticket-of-leave was not a completely novel idea at the time that Maconochie took charge of Norfolk Island. In a little pamphlet (*General Views Regarding the Social System of Convict Management*, Hobart Town, 1839), in which he tells about his social system with its emphasis on "marks" and progressive stages he says this in conclusion:

"Two forms of social management offer, in connection with the penal colonies, from either of which I could anticipate extraordinary advantage. One is that explained in my book on the subject, viz., Punishment in seclusion with social training in the colonies and progressive discharge in them through the intermediate stage of a double ticket-of-leave; and the other is that proposed by Lord Howick, in a minute addressed to the Transportation Committee, requiring both punishment and training to be inflicted in insular penitentiaries,

France Mirabeau had suggested it in a report he made about 1791, in which he declared that prisons should be founded on the principle of labor, separation, rewards under a mark system, conditional license, and aid-on-discharge.³ Sir John Franklin, the governor of Australia, had started to organize a probation system before the Molesworth report was made, and Lord John Russell, who became Colonial secretary then, developed the idea.⁴ Just then the ministry changed, and Sir Robert Peel became premier with Sir James Graham and Lord Stanley as Home and Colonial secretaries. This ministry followed the decision of the previous one to continue transportation under a reformed system, so in 1842 Lord Stanley sent word to Sir John Franklin sanctioning the probation system and ordering its extension.

A writer some twenty years later describes the system as follows:

"Five stages of convict discipline were established; and it depended on the good or ill conduct of the convict himself whether he passed the whole of his term of sentence under the irksome hardships of the lower stages, or worked his way to the comparative freedom of the higher. Transports for life, and the worst of those for fifteen years, were sent to Norfolk Island, there to remain, at least two year, in a condition of abject slavery. From thence they were transported in probation gangs to Van Diemen's Land, to which gangs of convicts for shorter sentences were assigned at once. For the gangs painfully hard labor was provided—road-making, timber-felling, and the like; but for the sake of holding out inducements to good behavior, each gang was broken up into divisions, the higher enjoying greater privileges than the lower. The convict might be required to serve at least a year in the probation gang, and then he might obtain a probation pass. The pass-holders, likewise, were classed into divisions, some with greater and some with lesser privileges; they were allowed to enter into the private service and receive wages, but they were not wholly free to spend their wages as they pleased. The pass-holder, after a time, was entitled to a ticket-of-leave and in due course of time the ticket-holder received a conditional of free pardon. But, to ensure thorough punishment before grace was granted, every convict was obliged to pass at least half of his original sentence (a life sentence was reckoned

from which release may be either complete or through the medium of a ticket-of-leave."

This would suggest that that particular feature of his system, the ticket-of-leave, was one familiar to a group of persons and not necessarily Maconochie's original contribution.

In his pamphlet entitled *Norfolk Island* (Hatchard and Son, London, 1847) he says that the error of the probation system in use in Van Diemen's Land lay in its failure to use his mark system. So it is evident that this system which is described above, was not his suggestion in entirety, at any rate.

³Ruggles-Brise, Sir Evelyn, *English Prison System*, MacMillan and Co., London, 1921; page 4, introduction.

⁴Clay, W. L., *Our Convict System*, page 14.

as twenty-four years) in one or the other of the first three stages of discipline."⁵

In this system of probation the "mark system" of Captain Maconochie was the most original and perhaps the most important contribution. The mark system rested on three principles: it inflicted a labor sentence instead of a time sentence; it taught self-denial and developed social responsibility by giving the convicts an interest in each other's good conduct; and it prepared them for their return to society by gradually relaxing the restraints that were imposed upon them. In order to put these principles into practice the convict was treated as a laborer with payments in marks instead of in wages. For a day's labor ten marks were paid, and from this the convict had to buy his food as well as save up marks for his freedom. For every ten marks saved, a day less imprisonment was earned. As food was sold at from three to five marks a day, wages were paid at the piece rate, and overtime was allowed, it is apparent that hard work and abstemiousness were encouraged, and, as fines for misconduct were also paid in marks, wrong-doing was discouraged.

Another feature of the system was the division of the sentence into three stages. During the first work was carried on under strict discipline. During the second, the social stage, the convicts grouped themselves into bands of six, self-chosen, and a practical communism in marks was carried out. This part of the scheme did not prove as successful as the rest, perhaps because communism is hard for even the best to practice. During the third stage the groups were broken up, and the men, though still working for marks, were in other respects free, had their huts and gardens, and even raised a few domestic animals.

Maconochie was put in charge of Norfolk Island, where the worst convicts were sent, and did a remarkable piece of work in bringing order out of chaos there. His mark system was not extended to the rest of the penal colony, however, and it is to this failure that he attributes the break-down of the probation system.⁶

There were doubtless other reasons too. On the one hand the probation system failed to recognize the fact that the lowest stage was made so irksome that the convicts were hardened and bitter by the time they came through it; and, on the other, it removed the incentive to the free settlers to endure the doubtful privilege of having convicts sent to them. Formerly they had gained in being given free

⁵Ibid, pages 20-22.

⁶Maconochie, Alexander, *Norfolk Island*, Hatchard and Son, London, 1847; page 15.

labor under the assignment system; now they were not so eager to suffer the difficulties of using convict labor when, in addition, they had to pay wages for it. So the probation system proved an abject failure, except for Maconochie's work on Norfolk Island. Clay says of the situation:

"The gangs fell into a state of chronic revolt, while the pass-holders and the ticket-of-leave men became the terror of the community. Yet into this unhappy colony fresh convicts were poured, during the next three years, at the rate of three thousand a year. The Home Government was kept in ignorance of the worst of the evils they were creating. The commercial embarrassments which had befallen the colony almost destroyed the demand for labor; the free emigrants were flocking to the neighboring continent; and the pass and ticket-of-leave men, unable to find employment, were thrown back on the government, which, at one time, with an empty exchequer, had to support more than 12,000 criminals. In fine, the inundation of criminals had well-nigh swamped the colonial administration.

"The classification on which Lord Stanley laid so much emphasis was well-nigh impossible. At many of the stations convicts of every grade and character—ticket-holders, pass-holders, and gang-men—were huddled together in promiscuous confusion. Many of the officers in charge were debauched rogues, who aided and abetted the villainies of the prisoners—the paltry wages offered could not buy for such a loathsome task the services of efficient men; and besides all this, the convicts had rapidly increased in number, that they now formed one-half of the population. To deal with such a medley of evils, the governor should have been armed with summary despotism; but to obey stale dispatches, which inevitably arrived by a twelve-month too late for all practical purposes, was his first duty. All this the governor duly represented, but of the horrible vice which had spread over the colony he gave no report, though the demoralization among men herded together in the probation gangs was unutterably awful. In vain Lord Stanley, warned from other quarters, pressed for information; the accounts of convict morality in Tasmania continued to be most pleasantly rose colored . . . However, early in 1846 the full truth became known in England—known chiefly through the protests of startling vehemence from the unfelonious inhabitants of Van Diemen's Land, who threatened to leave the colony in a body unless the probation system was instantly suspended—and consequently transportation was stopped for a time."⁷

At this time the ministry under Peel fell, and Lord Russell, who had always been interested in penal matters, came into power. His Home and Colonial secretaries formulated a plan to overcome the evils of transportation, which proved more successful. Under the Peel ministry transportation had been but one part of the penal system. Many of the convicts spent their whole term on the hulks, and Millbank prison had been built to be used as a first stage in the disciplinary

⁷Clay, *op. cit.*, page 17.

plan. Penal experts at that time were very much interested in the separate system, as it was developed in Philadelphia, and, as a result, it was adopted as the first step in the reformatory process. The plan, for those deemed capable of reformation, had been worked out by Peel and consisted of detention in Millbank for a certain length of time in separate confinement, labor on public works in gangs, a ticket-of-leave to a penal colony, and finally, complete pardon. This scheme the new ministry took over and revised. Transportation to Van Diemen's Land was stopped for two years in order to give the officials there time to bring order out of their chaos. Pentonville prison was opened to supplement Millbank, and improvements were made in the separate system by which some of its worst evils were overcome.

In 1848 transportation to Van Diemen's Land was renewed, the two years having proved sufficient for re-establishing order there. But the stream of convicts was soon seen to be too great for the colony to absorb without a renewal of the bad situation, so attempts were made to induce other colonies to receive these supposedly reformed prisoners. India plead that her climate was too hot; New Zealand, that her natives were too war-like; and the Cape rose up in rebellion when an attempt was made to land convicts there. New South Wales and South Australia did not protest so vigorously, but even there anti-convict leagues were formed. Western Australia offered to take care of some, for the colony there was near to ruin for lack of adequate labor, but the number it could absorb was limited. Even so transportation might have continued for many years had it not been for the fact that the inhabitants of Van Diemen's Land caught the anti-convict fever and in 1852, when a constitutional form of government was given to them, decided to close their doors to England's criminals. This practically marked the end of transportation, though a few convicts continued to be sent to Western Australia up to 1861.⁸ The act of 1857 abolished transportation as such, though it allowed the queen to make use of the system as she saw fit under the guise of a sentence of penal servitude. From the first shipment in 1787 down to the last in 1867 (a few were sent to Swan River at that time) more than 150,000 convicts were poured into Australia, Tasmania, and Norfolk Island. At the time Victoria came to the throne there were 45,000 there.⁹

⁸Adderly, C. B., *A Century of Experiments on Secondary Punishments*, Parker Son and Bourn, London, 1863; page 15.

⁹Webb, Sidney and Beatrice, *English Prisons under Local Government*, Longmans, Green and Co., London, 1922, p. 46.

Such is the history of transportation. Begun as a punishment only a little less dreadful than that of death itself, it changed into a reward held out for good conduct under the progressive stage system, and finally, with the discovery of gold, came to almost a prize which convicts strove for.

Wines attributes its failure to three causes: the inequality of the sexes, the lack of work for discharged prisoners, and the dissensions that arose after free settlers went to Australia.¹⁰

"The accompaniments of this form of punishment," he says, "were truly horrible. On the convict ships the discipline was much the same as on a slaver; men and women, separately chained in pairs, were imprisoned in the hold, where blasphemy and obscenity reigned, with little or no effort to put a stop to them. Ship-fever was common and fatal; in a ship that sailed in 1799, with three hundred convicts, one hundred and one died on the voyage. On land, the difficulty of enforcing discipline was the occasion for great brutality; the main reliance for order was the lash and in 1838, with 16,000 convicts, the number of floggings administered was 160,000, or an average of ten for each man. From 1793 to 1836, the death-rate among the transported was 41%, but among the free colonists was only five per cent."¹¹

Yet out of all this horror came at least two helpful ideas in the field of penal discipline, the mark system of Captain Maconochie and the ticket-of-leave; and it is the combination of the two that form the basis for all the parole laws of today.

THE PRISON SYSTEM IN ENGLAND

Early Development

The stopping of transportation caused the government to take radical steps toward a re-organization of the prison system in England. Before taking that up, however, it seems best to go back and see what the situation in regard to home prisons was. Prisons, as places of confinement and punishment, were of late development, but the common jail developed early as a place in which to keep prisoners awaiting trial. Such a person, in the times before the sixteenth century, was the responsibility of the constable or other apprehending person, and it was the custom to put him in the lock-up or not as the manor or parish saw fit. In those days there were a large number of common jails, maintained by a diversity of authorities. There was the

¹⁰Wines, Frederick Howard, *Punishment and Reformation*, New York, 1895, page 169.

¹¹Ibid, page

county jail, over which the county sheriff ruled; there were town jails with the mayor or bailiff or some other competent person in charge; and there were private jails of many descriptions with bishops, other ecclesiastics, or manor lords getting what revenue they could from them.¹² For the most astonishing thing about these early jails is that they were regarded as money-making institutions, the money being extracted from the prisoners in the form of fees. In fact so great was the amount to be extracted that even in 1730 this office of jailer, with no salary attached, was made the subject of purchase.¹³ Under such a system it was, of course, natural that the grossest abuses should grow up. There were a vast number of lawful reasons for collecting fees—the prisoner had to pay a fee for being arrested, for being allowed to use the prison beds, for being discharged—to mention but a few—and besides, since the jailer had complete charge and the power of making the conditions as miserable as he pleased, there was an excellent opportunity afforded for extortion of an unlimited degree. "In practice," say the Webbs, "so far as we can ascertain, every real or nominal keeper of the prison did exactly as he pleased. Right down to the third quarter of the eighteenth century at any rate, neither the Justices of the Peace, nor anyone else ever thought of visiting the gaols or taking any thought for their administration."¹⁴

By the act of 1576 houses of correction were established for the relief of vagrants and other unemployed persons. Their administration was put into the hands of the Justices of the Peace, and it seems that, for a time at least, they were run rather effectively. Various laws dealt with them, including the famous Poor Law of Elizabeth, but by the end of the seventeenth century they had lost their distinctive character and were merged, more or less completely, with the common jails. Persons were sentenced to either indiscriminately for the lesser offenses; the providing of work became more and more a neglected feature; and the administration fell more completely into the hands of those running them as private ventures. Their identity was recognized in the law of 1720 by which the justices were empowered to sentence debtors, minor offenders, or vagrants to whichever type of corrective institution they saw fit.

Due largely to this practice of letting out the jails as profit-making institutions and to the lack of adequate machinery to carry into practice what few laws Parliament did pass to mitigate the abuses

¹²Webb, Sidney and Beatrice, *op. cit.*, page 3.

¹³*Ibid.*, page 5.

¹⁴*Ibid.*, page 12.

in the jails, conditions continued to be uniformly bad up until John Howard began his epoch-making investigations in the last quarter of the eighteenth century. He was appointed in 1773 to be sheriff of Bedfordshire, and he took his duties in that office with most naive seriousness. The conditions he discovered in the jail of his own county were so bad that he travelled over the rest of England, and later on the Continent, to see whether the situation was the same there. He presented his findings in four volumes, whose dry detail is fascinating with the horrors it describes, and made such an impression on Parliament that it spent the years from 1774 to 1791 putting his suggestions into law. Howard, though zealous, had an outlook that was not as broad as the problem demanded, but in the hands of Sir William Blackstone and Lord Aukland his principles of a secure, sanitary structure, regular inspection, abolition of fees, and the introduction of a reformatory manner of treatment were broadened into the act of 1779. This was a time, it will be remembered, when the stoppage of transportation to America was forcing England to take thought of how to deal with the great increase in convicts at home and when national prisons were first being proposed. The act, which, though never put into practice, had a great effect on subsequent legislation, provided for the much-debated system of solitary confinement at night, non-intercourse during the day, gradations in the severity of confinement and labor, a regular system of nourishing food, clean cells, and clothing and amusements. To this was added the even more decided innovation, a plan for securing work for the convicts at the time of their release.

This, of course, was a great step in advance. It was reflected in the various local laws improving the conditions in the common jails and houses of correction, and formed the basis for the first general prisons act, that of 1791, which applied these principles to all the penal institutions of England and Wales. It too failed to accomplish much, for its terms were permissive instead of mandatory, and the result was that the end of the eighteenth century saw the prisons of England in much the same condition they had been in previously.

With the stopping of transportation to America the government was forced to provide for the greatly increased number of convicts, and when it was seen that the act of 1779 was not going to be put into effect very quickly, the hulks of ships at Woolwich were commandeered by the government and the system which the Webbs call "the most brutalizing, the most demoralizing, and the most horrible of all that British history records" was put into effect. The men confined there were employed on public works during the day, the

only conceivable advantage to the system. Though intended as a temporary expedient, the renewal of transportation to Australia made the necessity for national prisons less imperious, and the hulks were continued as places of confinement for eighty years. Dissatisfaction with them, however, was present from the first. Jeremy Bentham proposed his famous panopticon as a model prison at this time, and in 1810 Sir Samuel Romilly so stirred up Parliament that a committee was appointed to look into the situation. It was so impressed with the horrors of the old system that it reported in favor of "a system of imprisonment not confined to the safe custody of the person but extending to the reformation and improvement of the mind, and operating by seclusion, employment, and religious instruction."¹⁵ As a result Bentham's scheme was given up, and Millbank prison was erected in 1812.

At Millbank provision was made for separate and associated treatment of convicts, a reflection of one of the most disputed prison discipline questions of the day. After a time it became merely a depot for the holding of convicts sentenced to transportation, and Pentonville took its place as a model prison. Pentonville prison was erected in 1842 and was modeled after the Pennsylvania system that Sir William Crawford so enthusiastically described in 1834. This meant the separate system, which it was believed would be an excellent preparation for transportation. As was described before, the plan at this time was to confine prisoners for eighteen months at Pentonville under the separate system and then ship them off to Australia where they might, by good conduct, win a ticket-of-leave. Later an intermediate stage was introduced between separate confinement in Pentonville and transportation, that of congregate work for the government. Theoretically the system may have had much to its credit; it was surely an improvement on much that had preceded it; but in 1852, when Van Diemen's Land refused to any longer receive convicts, it came to an abrupt end.

PENAL SERVITUDE

The consternation that the stoppage of transportation created in the hearts of the inhabitants of England, who had been used for years to having their malefactors shipped out of sight, is reflected in many of the pamphlets of the day. This was aggravated by the passage of the act of penal servitude in 1853, which substituted shorter

¹⁵*First Report from the Committee on the Laws Relating to Penitentiary Houses*, House of Commons, No. 199, May 31, 1811.

sentences at penal servitude for the longer ones of transportation and permitted the issuance of tickets-of-leave to be used right in England instead of in far-away Australia. Penal servitude was never meant to imply a system of hard labor, nor was it ever like the *travaux forces* of France to which it is so often compared. Its essential features are a period of separate confinement and non-intercourse, a period of associated labor under the silent system, and a conditional discharge on a ticket-of-leave.¹⁶ The name is still in use to day and corresponds to our sentence to "hard labor."

This granting of tickets-of-leave to be spent in England was practically forced upon the government. The stoppage of transportation found the penal authorities with 6,700 prisoners on their hands, whom they had promised the right to employment on the public works and, later, a ticket-of-leave to Australia. To go back on that promise would have meant an insurrection in the prisons as well as bad faith on the part of the government. So England was forced to try for herself the policy she had been thrusting on the colonies for so many years, and in spite of the protests on the part of the public, the law went into effect.

The difficulties with this proper action on the part of the government lay in the way it was carried out—and it is interesting to notice the same troubles here in the beginning of the parole system that we still experience. The power of revoking licenses, as the tickets-of-leave are officially called, was reserved to the crown. On each license it was stated that it would be revoked if the person "associated with notoriously bad characters, led an idle or dissolute life, or had no visible means of livelihood." But there was no supervision whatsoever by which it could be known whether these conditions were ever kept. Parole officers were an unthought-of matter then, but many persons did urge that the prisoners be required to report regularly to the police. Others, of more tender hearts, felt that this would stand in the way of the convicts finding employment, and so a definite effort was made to prevent any possible connection between the police and the license-holders. The police were actually instructed to let them alone and to remain in official ignorance of their identity unless forced to make a new arrest. The convicts were shipped back to their original homes, provided with a few pounds, and were there free to do as they pleased,¹⁷ the whole system apparently being no different from a complete pardon.

The results may well be imagined. The public, opposed to

¹⁶Webb, op. cit., page 186.

¹⁷Clay, W. L., *Our Convict System*, pages 34 and 35.

the plan at the best, became genuinely alarmed as more and more were discharged in this way, and by 1855 a veritable panic arose. The next year committees were appointed in both houses to look into the working of the penal servitude act. The Lords' committee preferred to look for some means of renewing transportation, but that from the Commons held to the idea of tickets-of-leave to be used at home. They met the problem squarely by insisting that the conditions of the license should be vigorously enforced, that the police should have full information, and that they should exercise a real supervision over the ticket holders. In 1857 the second penal servitude act was passed. By it the sentences were lengthened, licenses were retained, and a progressive-stage system was set up. This called for a period of nine months to be spent in separate confinement with the rest of the sentence divided into three stages having differing amounts of privileges attached. This should have formed the basis for an improved situation, but the penal authorities seemed reluctant even then to carry out the provisions for supervision during the license stage. In Ireland, however, the scheme apparently met with greater success.

THE IRISH SYSTEM

Of all the arguments on the subject of prisons in that time of great interest in penal problems the most heated seem to center around the question of the English versus Irish system. Sir Walter Crofton, who became chairman of the Irish Prison Board in 1854, is usually credited with developing the so-called "Irish system," but many staunch Englishmen of the day tried to prove that all the glory should go to their own Sir Joshua Jebb. It seems true that Jebb did introduce some of the principles that had been worked out in Australia into Ireland before Crofton came into his position, but the features that distinguished the Irish from the English system, especially the use of the "intermediate stage," seem to have been Crofton's inventions.

The chief difference between the two systems lay in the way they were carried out. Except for the intermediate stage, the penal servitude act provided for the same police supervision that Crofton used so successfully and for the other features of his system. But Ireland put these provisions into practice, and England did not.

The following extracts from a lecture that Sir Walter Crofton delivered before the Philosophical Institution in Bristol in 1862 explain his system as he saw it.

"The object of the Irish Convict System was to make the new phase (that entered upon when transportation was stopped) as innoxious, as

possible. There were manifestly two most momentous and necessary ends to be attained:

"1. The public must be propitiated to assist in the absorption of the well-intentioned convict, by admitting him to the labor market.

"2. The training of the convict under detention must be of such an intelligible and natural character as to give confidence public that his admission to the labor market need not necessarily produce injury to his employer. . . .

"The simple principles that govern the system may thus very briefly be stated:

"1. That convicts are better and more reliably trained in small numbers, and by being made to feel throughout their detention that their advancement depends on themselves, through the active exercise of those qualities opposed to those which have led to their imprisonment.

"2. That the exhibition of the labor and training of the convicts in a more natural form before their liberation than is practicable in ordinary prisons is a course obviously calculated to induce the public to assist in their absorption, and thereby to materially diminish the difficulties of the convict question.

"3. That the institution of appliances to render the criminal calling more hazardous will assuredly tend to the diminution of crime; and, therefore, that 'police supervision,' photography, and a systematic communication with the governors of the county gaols, with a view to bring in all possible cases former convictions against offenders, and entail lengthened sentences upon them, are matters of gravest importance and deserving of the most minute attention.

"The first of these principles is carried out by the mark system somewhat similar to a system of marks originated by the late Captain Maconochie. . . . By it the attainment of a certain number of marks proportioned to each sentence, the convict reaches the intermediate, or more natural stage of his training, in which the second principle, before stated, is developed.

"In this stage there are no marks. The results of the self-discipline effected by their attainment is here to be tested before the liberation of the convict. Individualization is the ruling principle in these establishments: the number of inmates should be small and not exceed one hundred. The training is special, and the position of the convict made as natural as possible; no more restraint being exercised over him than would be necessary to maintain order in any well-regulated establishment. . . . The convicts are located in moveable iron huts, each capable of holding fifty persons, which answer to the purpose of a dining hall, lecture room, and dormitory. The officers of the intermediate establishments work with the convicts. At Lusk there are only six, and they are unarmed. Physical restraint is, therefore, impossible, and, if possible, would be out of place, and inconsistent with the principles which the establishments were instituted to demonstrate. . . . It is not difficult to realize that the exhibition of the labor of convicts in this natural form for several years has been the means of facilitating employment when liberated, and that the second principle has thus been satisfactorily demonstrated.

"Now I will tell you what is done in Ireland with liberated convicts. If they are liberated on tickets-of-leave the following conditions are indorsed on each ticket, and they are precisely the same as in England:

"1. The power of revoking or altering this license of a convict will most certainly be exercised in case of his misconduct.

"2. If, therefore, he wishes to retain the privileges, which by his behavior under penal discipline he has obtained, he must prove by his subsequent conduct that he is really worthy of Her Majesty's clemency.

"3. To produce a forfeiture of the license it is by no means necessary that the holder should be convicted of a new crime. If he associates with notoriously bad characters, leads an idle or dissolute life, or has no visible means of support, etc., it will be assumed that he is about to lapse into crime, and he will be at once apprehended, and recommitted to prison under his original sentence."

"These conditions are in Ireland most stringently enforced; a course that has proved beneficial, both to the public and to the convicts. Attached to the license is appended in Ireland, but not in England, the following instructions to the convict:

"1. Each convict will report himself to the constabulary station of his locality on his arrival in the district and subsequently on the first of each month.

"2. A convict must not change his locality without notifying to his constabulary station, in order that his registration may be changed to the locality to which he is about to proceed.

"3. An infringement of these rules by the convict will cause it to be assumed that he is leading an idle and irregular life, and thereby entail a revocation of the license."

"The convict system pursued in Ireland simplified is:

"1. Prison training conducing to the admission of liberated convicts into the home labor market.

"2. Voluntary emigration practicable by the gratuity every well-conducted convict under any system receives in prison.

"3. 'Crime rendered a hazardous calling' through the supervision of the liberated convict during the unexpired term of his sentence, and the systematic arrangements made to entail long sentences on prisoners formerly in convict prisons."¹⁸

Whether the reduction in the number of criminals in Ireland was due more to this system or to the fact that there were severe famines at that time, that the demand for labor was great, and that emigration to America was common is hard to say. Persons writing at the time differ widely, and it is hard to judge which are writing from prejudice and which from a knowledge of facts.¹⁹ The conclusions of the four visiting judges of the West Riding Prison of Wakefield, who went

¹⁸Crofton, Sir Walter, *Convict Systems and Transportation*, London, 1863.

¹⁹For the views of persons opposed to the Irish system see *Irish Facts and Wakefield Figures*, John Burt, London, 1862; *Irish Fallacies and English Facts*, Scrutator, London, 1862; *The Intermediate Prisons*, C. B. Gibson, Dublin, 1863.

into Ireland to study the system, would seem to have some weight. They say:

"It appears on the whole as to the convict system of Ireland—

"1. That it is comparatively low in annual cost per head; and producing a great diminution in the total cost of the special class of crime with which convict prisons have to deal.

"2. That, with little expensive prison equipment in any stage but the first, and with the least conceivable in the last, it has maintained strict discipline, and good order among the prisoners without recourse to violent measures.

"3. That it has restored public confidence, so as to facilitate the obtaining of employment by discharged convicts.

"4. That it has shown itself to be curatively deterrent and reformatory by the small proportion of relapses; and

"5. Preventively deterrent, by the diminished numbers who incur sentences of penal servitude, notwithstanding increased stringency of measures bringing offenders under sentence.

"As to the convict system of England, it appears—

"1. That its annual cost per head is high, and the total cost increasing notwithstanding a general diminution of crime.

"2. That with a vast amount of the most expensive prison equipment, it is yet, from time to time, obliged to have recourse to very violent measures to repress outrageous disorder among the prisoners.

"3. It has never attempted, or has utterly failed, to restore public confidence in itself, or in the men it discharges.

"4. Its failure to deter curatively, or to reform, is shown by the large and increasing number of relapses;

"5. Its failure to deter preventively, by the small diminution in the number of those who incur sentences of penal servitude, notwithstanding the considerable diminution in other classes of crime."²⁰

So, contrasted with the Irish system, the English appears to have been less satisfactory. They were alike in that separate confinement formed the first stage, and labor on the public works, the second; they were alike in that the prisoner rose through a scale of promotion, gaining a few privileges as he rose. In England, however, the second stage extended up to the moment of conditional liberation; in Ireland there was the intermediate stage which has been described. In England the prisoner on license might wander where he pleased; in Ireland he had to live under the supervision of the police. Another important difference lay in the kinds of stimulus to good conduct. In England, during the second stage, the men were divided into three classes and paid different wages for being in different classes, thus

²⁰Four Visiting Judges of the West Riding Prison, *Observations on the Treatment of Convicts in Ireland*, Simpkin, Marshall and Co., London, 1863, 2nd edition, p. 76.

being paid for being good; but there was little use made of the incentive of earlier liberty, on which the Irish system placed so much reliance. It is interesting to notice the defenses that the supporters of the English system put up and their reasons for not wanting the Irish system in England. Sir Joshua Jebb, as head of the English system and as a less violent abuser of the Irish system than some of the others interested in the question, may be taken as expressing the typical objections. He says:

"The least investigation will show that the two systems are identical, but that some of the colonial stages of the English system are worked out in Ireland. I have to show why they cannot, from circumstances, be so fully developed in this country. First, as regards the Intermediate Stage.

"The term penal servitude was adopted advisedly in order to describe the condition of a prisoner, who, during a great proportion of his sentence, would be working freely in association, and perhaps miles away from his confinement. Speaking generally, I would state as my opinion, that, as now established at Portham and Chatham, it is as much of a system intermediate between imprisonment and release on license as is necessary for promoting the best interest of all concerned. One step further in the way of relaxation, and the interests of the general public justice would be sacrificed without any corresponding advantage."²¹

Individualization, he claims, was accomplished in the English way of doing things, even in the much larger prisons, by having officers, scripture readers, and schoolmasters proportioned to the number of prisoners. Reducing the number of prisoners per prison, as the Irish system under Crofton contemplated, he considered too great an expense.²²

The lack of police supervision in England would seem to need considerable explanation on the part of the proponents of the system, but it is rather lightly brushed aside on the ground that such supervision would prejudice the career of the convict.

"To impose conditions and restrictions that would eventually stamp them as individuals belonging to the criminal class, in this country would manifestly be a most inexpedient exercise of power, and one that would be calculated to defeat the whole object of an improved system of convict discipline. . . . To impose police supervision over a poor wretch struggling to find employment is the way to add to his difficulties and throw him back into crime instead of helping him out of it. It would be a prejudicial restraint, the ill effects of which would fall upon the public."²³

²¹Jebb, Sir Joshua, *Explanations Showing the Difficulties, Which Would Attend the Introduction into England of the Probationary Stages of Discipline and Supervision of the Police Which Have Been Adopted in Ireland*, Victoria Press, 1862; page 47.

²²Ibid, page 51.

²³Ibid, page 55.

In spite of all the official protest to the contrary, sentiment in England seemed to lean more and more toward the Irish form. In the early sixties there was another increase in crime that alarmed the country to the extent that a Royal Commission was appointed to look into the workings of the act of 1857. Its conclusion, in view of the discussions of the time, are interesting: the minimum term of penal servitude should be increased, they said; the mark system in use in Ireland should be adopted; the Irish supervision by police should be added; and transportation to Western Australia (the charm of thus shipping convicts out of sight still appealed) should be renewed. These recommendations were embodied, to a large extent, in the act of 1864, by which the minimum sentence was raised from three to five years, a system of having convicts on license report to the police was adopted, and the mark system instituted. This latter was practically the same system that Captain Maconochie had worked out in Norfolk Island and which Ireland had been using.

The principle of police supervision was further added to by the act of 1871. Under this act a person indicted for the second time might be sentenced to police supervision for a period not exceeding seven years after his release from prison. The provisions regarding the supervision of persons released on license was also strengthened. The effect of this is shown by the fact that by 1877 the number of reconvictions, those sent back for having broken the terms of their licenses, rose from 11%, the figure for 1856, to 21%.²⁴ By all these laws the obligation was laid on the convict to report to the police, due likely to the fear of attaching a stigma to the holder of a license and to the difficulty of enforcement if the obligation were reversed; but it seems probable that a great deal of deception crept in under this arrangement.

After the act of 1871 no very important changes were made in the penal system (except that the local prisons were taken over by the government in 1877) until the nineties. In 1891 an act was passed which, among other things, reduced the minimum period of penal servitude to three years and made minor changes in the licensing system. A later act made a provision for the more complete operation of the progressive stage and license system for persons sentenced to this shorter period. The act of 1898 produced several important changes in the convict code—the control of both local and convict prisons was placed under one board; parliamentary sanction was re-

²⁴Ruggles-Brise, Sir Evelyn, *The English Prison System*, Macmillan and Co., London, 1921, page 36.

quired for the prison law; independent boards of visitors were provided for—but no great changes were made in the license conditions. Since then several new features have been added: the Borstal system, preventive detention, and the extended use of aid societies.

AID ON DISCHARGE

One of the chief characteristics of the English penal system is the use of a national organization of Discharged Prisoners' Aid Societies, a description of which is necessary before going on to the situation today. Prisoners in England are broadly classified into two divisions: those on penal servitude and those on shorter sentence in what were formerly called local prisons. Aid-on-discharge was originally confined to the latter, and a gratuity system took care of the former, this consisting of a sum of money that the prisoner had earned under the mark system, sometimes supplemented by the government. As early as the fifteenth century it was customary for persons to leave money for the care of prisoners on discharge, and an act of 1792 allowed free passes to his original parish to a person released from a local jail. In the forties and fifties several private organizations were formed with connections with definite prisons for the purpose of aiding discharged prisoners to find employment. Among the first of these was that established by the Rev. Mr. J. T. Burt at Birmingham, and the movement spread so rapidly that legal cognizance of it was taken in 1862. By this act the Justices were allowed to give sums of money, not to exceed two pounds per person, to aid the societies in their work, and an act of 1865 provided that this money should be raised by local taxation. When it came to applying this system to the national prisons, some opposition was met from those who favored the greater use of marks and thought that the purpose of these would be defeated if sums of money were given regardless of merit. After some time, however, it was agreed that both should be used, and that the Aid Societies should be subsidized.

Difficulties were encountered in the fact that the practices of the societies varied greatly from prison to prison, so in 1896 a code of rules was drawn up in the hope that greater uniformity could be secured without, at the same time, destroying the good effects of freedom of action. By 1909 it was seen that the problem was too big a one to be handled in this manner, especially when the rehabilitation of a man on license (the societies by this time had charge of that too) was at stake. As a result the Central Association for the Aid of Discharged Convicts was established in 1910, combining all the societies then at work on the problem. It was subsidized by the government, thus being made independent of voluntary contributions.

The gratuity system was abolished, and all discharged prisoners were placed on an equal footing, with the exception of those discharged from the Borstal institutions and from preventive detention. This use of private associations, subsidized by the government, is a unique feature of England's parole system, corresponding somewhat to the use made of private associations in New York and Minnesota.²⁵

THE BORSTAL SYSTEM

In 1908 the Prevention of Crime Act brought two notable changes in the penal policy of England: the more serious of the juvenile-adult offenders were subjected to a new form of treatment under the Borstal system, and the problem of the hardened criminal was met by the use of preventive detention. Both of these include a form of parole supervision and so are of interest here.

The name Borstal is derived from the little village where the system was first tried out. Here there was an old convict establishment which housed but a few prisoners, so there was adequate space to experiment with the class that English penal language designates as juvenile-adult, persons between the ages of 16 and 21. Up to this time the English law fixed upon 16 years as the age of criminal majority; but there was a very large body of opinion that was convinced, largely through the success of the reformatories in the United States, that his age was entirely too low and that, in fact, the ages between 16 and 21 were ones particularly fraught with danger. The Committee of 1894 made a determined effort to have something done about this but nothing was accomplished officially until 1908. Before this, however, Sir Ruggles-Brise, the chairman of the Prison Commission, visited the New York and Massachusetts Reformatories and was so converted by what he saw there that he decided to make an experiment toward the rehabilitation of the prisoners between 16 and 21 in the London prisons. A London Prisoners' Association was formed to visit these boys, who were later removed to Borstal, and from this group grew the Borstal Association, the moving spirit of the system.

The aim of the Borstal system is to check the criminal tendency by the individualization of the prisoner. It is designed to deal not with "the youthful offender . . . who may have lapsed into some petty crime and occasional delinquency, but the young hooligan, far advanced in crime, perhaps with many previous convictions, and who appears inevitably doomed to a life of habitual crime."²⁶ To be eligible a person must be convicted of an offense for which he is

²⁵For a more complete account of the development of these societies see Ruggles-Brise, *op. cit.*, pages 164-184.

²⁶*Ibid*, page 94.

liable to be sentenced to penal servitude; he must be of criminal tendencies or an associate of persons of bad character. The minimum period of detention is for two years, the maximum three. Boys may be released on license after six months, and girls after three. Licensing is frequently resorted to, for in this is thought to lie one of the chief advantages of the system.

Immediately upon his entry into a Borstal institution, the record of the prisoner is sent to a Borstal Association, which then does a piece of careful case work in an attempt to thoroughly understand the situation. The home of the prisoner is visited; his friends, relatives, and possible employers seen; and contact is made with the prisoner by personal visits. Three months before his discharge he is visited by a representative of the Association, and arrangements are made for his employment on release. If he is let out on license, he remains under it one year longer than the remainder of his sentence. The conditions of the license are as follows: the prisoner must report to the headquarters of the Borstal Association; he must obey its instructions as to attendance at employment; he must report any change in his residence; he must not violate the law, must abstain from association with persons of bad character, and he must lead an industrious life to the satisfaction of the Borstal Association. If he fails in any of these points, he is liable to return to the institution to complete his sentence.

The supervision of convicts out on license is carried on by voluntary workers from all ranks of life, an advance, perhaps on the other system of police supervision, but the absence of trained workers may account for fact that the system is not as successful as might be expected. For in spite of the glowing account of the system that is presented by its founder, the official Hobhouse-Brockway report is not so optimistic. It shows that of the 1454 boys who were discharged between 1909 and 1914, only 64% were reported as being satisfactory when last heard of, and of the 137 girls, only 54%.²⁷ Since under the system of preventive detention a 61% success is reported with hardened criminals, it might seem that the Borstal system was not as successful as was expected—but we will have more to say later about the reliability of institutional percentages.

PREVENTIVE DETENTION

The other innovation of the Act of 1908 was that of preventive detention. This is an attempt to solve the problem of the habitual and the professional criminal. Since public opinion was not yet advanced to a stage where a completely indeterminate sentence would

²⁷Hobhouse and Brockway, *English Prisons Today*, page 434.

be tolerated, a compromise was made, and persons who have been convicted three or more times since the age of 16 and are known to be living a dishonest life may be sentenced to preventive detention; that is, in addition to their regular term of sentence they may be detained for a period not to exceed ten years. It is no part of the theory that a more rigorous form of punishment should be inflicted; in fact there are definite provisions for making the discipline less severe. The whole aim is reformatory; there are special grades and rewards for good conduct; and the hope of parole is always held out as an incentive. The license system seems to be better worked out here than in any other part of the English penal system. There is an advisory committee, an unpaid body appointed by the Secretary of State and unconnected with the official administration, whose duty it is to advise when there can be conditional liberation without danger to the community and with likelihood of good behavior from the convict. Each prisoner remains in the custody of the prison only until the advisory committee thinks he can be safely released (in contrast to the penal servitude system where only a fraction of the sentence can be remitted in this way regardless of conduct) and then he is released to the Central Association for the Aid of Discharged Convicts. The form of license follows that used in the Borstal system. It is positive in form; each convict must do certain things, not merely refrain from doing some, thus being superior to the kind used for men released from penal servitude.

The results, so far as can be judged from the official reports, seem to be good. Of the first 200 men discharged during the years 1912 to 1917, only 24% were reconvicted. As recidivism had been as high as 83% among this class of men, this would seem to be a good showing.²⁸ "We are justified" says the Hobhouse-Brockway report, "in forming the conclusion that, even with the drawbacks, the preventive detention system succeeds in reinstating twice or even three times as many of its difficult and most hopeless cases as does penal servitude, when working with the same recidivist material. . . . Reports of the Commissioners for 1919 and 1920 suggest that their view is that the remarkable difference in favor of preventive detention is due chiefly to the fact that the after-care by the Central Association is so good and that the positive license requires a man to earn an honest living against a negative one that only requires him to report each month to the police and abstain from association with other criminals. . . . Our own view of the matter is that the greater measure of success is due to the state of mind in which they leave Camp Hill and only in a less degree to the licensing and

²⁸Ibid, pages 459-460.

after-care, which, admirable as it is, would be ineffective as a restraining power upon the majority of the convicts as they come direct from such a prison as Dartmoor has hitherto been."²⁹

SUMMARY

There are at present, then, three types of parole, or license, in England. There are those which are granted under the penal servitude act. Persons are sentenced to penal servitude for the graver offenses; sentences are for at least three years; release on license is allowed only after a certain amount of the sentence has elapsed; and the supervision is only through the negative way of having the convict make monthly reports to the police. For the habitual criminal there is the preventive detention system, where the supervision of the licensed is carried on through the Central Association for the Aid of Discharged Convicts. For the juvenile-adult, who shows a tendency toward a life of crime there is the Borstal system with its supervision through the Borstal Associations. There are, as in the United States, reformatories and industrial schools for children under 16, and from these, too, licensing is permitted. There seems to be little doubt but that the system of supervision through the various associations for discharged prisoners is superior to that of police supervision. The Commissioner's Report for 1919 says:

"For many of the crimes for which men are sentenced to penal servitude it is neither necessary nor reasonable to inflict a long period of segregation under severe penal conditions. A comparatively short period, followed by discharge on positive license, with a liability of forfeiture on relapse, would restore many men to normal conditions of life, before the habit of hard work had been blunted by imprisonment and family and other ties broken, and should save large sums of public money now expended on imprisonment."³⁰

The 1920 report suggests that preventive detention might well be extended to all terms of penal servitude.³¹

Parole is apparently not so well worked out in England as in the United States. We miss the, supposedly, careful selection of parolees by parole boards, the securing of employment, the supervision through trained parole officers. The worst criminals among both adults and juveniles appear to fare well, but we wonder what becomes of the average offender of both groups. On the other hand, England has a better means of following up her criminals after parole, and so she perhaps knows better just how her system is working out.

²⁹Ibid, page 461.

³⁰Report of the Prison Commission, 1919, page 13.

³¹Report of the Prison Commission, 1920, page 16.

II.

THE THEORY OF PAROLE

At the basis of parole seem to lie three different, though not necessarily conflicting, theories. There is the theory that parole should be granted as a kind of reward for good conduct in the institution. Amos Butler said, in discussing the question of who should be paroled, that parole should be granted to "those who by their ability to keep the rules inside the prison give evidence of their ability to keep the law outside; who by their life gain the confidence of the management and whose release is not contrary to the public sense of the community from which they come."¹

This was the theory inherent in the Elmira system. Only the best should be paroled; parole is the prize to be attained by obedience and diligence at work. Under this theory the only record that counts is that made at the reformatory, and the paroling authorities are the same as the institutional ones. Given a completely indeterminate sentence and a course of treatment that is truly reforming, such a theory of parole might be justified. But even the reformatories have not worked out such a course of treatment; sentences are not indeterminate; and, in practice, it has been found that this theory will not work.

The second theory is a natural outgrowth of the first. Parole is still, in part at least, a reward for good conduct in the institution; but other tests have been added. The following rules from the Ohio State Reformatory illustrate the change:

"WHAT THE LAW REQUIRES THE BOARD TO CONSIDER IN PAROLING"

"Judgment by the Board as to the worthiness of the applicant for parole will be based on the following considerations, arranged in the order of their relative importance:

"1. The record and character of the applicant as established in the institution.

"2. The nature and character of the crime committed.

"3. His previous record and environment.

"4. Information gained from a personal interview with the applicant.

"5. Probable surroundings if paroled.

"6. All other facts bearing upon the advisability of parole the management may be able to obtain.

"It may be well to observe that while a good record in the institution is the first requisite and of prime importance, it is not the only considera-

¹Butler, Amos, *Treatment of the Released Prisoner*, Journal of Criminal Law and Criminology, 1:403.

tion in the determining of fitness for parole, as inmates and their friends sometimes suppose."²

Professor Robinson feels that this is a step backward. He says:

"There is a regrettable tendency, in releasing on parole, to deviate somewhat from the method employed at the Elmira Reformatory. . . . When items such as previous record and environment, nature of crime, information gained by the parole board in a personal interview are considered, it indicates pretty clearly that the reformatories have not yet succeeded in working out a scheme that is mensurable or which provides the prisoner with the incentive to reform. . . . Now, while admitting that it is very difficult to develop standards for measuring reformation, it is readily seen that unless this can be done the whole theory of the indeterminate sentence falls to the ground."³

In actual practice, however, it is hard to see why this should be considered a backward step. It may indicate that the reformatories have not come up to their highest aspirations, but it may be possible that they can never reduce to an exact science the measurement of a person's reformation. Conditions outside are not the same as those inside; it is hard to tell how much of reformation is assumed and how much is real; personal prejudices may enter always. So, as long as the theory has it that only the best are to be paroled, it seems the better theory to consider all the factors that may possibly enter to show the chances of success. It may even be doubted whether conduct in the reformatory is any criterion of success outside at all. This is the conclusion that Warner comes to in his study of parole violators from the Massachusetts reformatory. He shows that the parole violators had lost, on the average, 57 marks apiece in the reformatory, while parole successes lost 68 marks; and he comes to the conclusion that, while basing parole on conduct may be a means of maintaining reformatory morale, it is almost useless in determining who will be successful on parole. He recommends that there should be a more careful inquiry made into the cause of the crime; that more attention should be paid to the medical and psychiatric reports; that a record should be kept of the prisoner's reactions to the various conditions of prison life; and that there should be a thorough investigation of the environment into which the prisoner is to be paroled.⁴

The third theory is one that is encountered more often in the minds of criminologists than in actual practice. It abandons the

²Robinson, Louis N., *Penology in the United States*, Winston Company, Philadelphia, 1921, page 147, note.

³Ibid, page 146.

⁴Warner, Sam, *Factors Determining Parole from the Massachusetts Reformatory*, *Journal of Criminal Law and Criminology*, 14:189f.

idea of parole being a reward of any kind and looks at it rather as a continuance of the reforming process and as a safeguard to the public. According to this theory it is not the best prisoner, but every prisoner, or, if any exceptions must be made, the worst prisoner who should be paroled. The purpose of parole is to enable the law to keep in touch with all persons who have offended against it; to help them to adjust themselves to life in free society again; to aid them, to befriend them, but to incarcerate them again if they show that they are a menace to society. In a perfect penal system, so these theorists would have it, there should be a completely indeterminate sentence law. Then those persons who are habitually or inherently criminal would be permanently segregated. All others would be put through a process of reformation, the success of which would be tested by parole. Supervision of the parolees would be in the hands of experts, and the parole period would last until reformation was assured.

Ferri had about this idea in mind when he wrote:

"Conditional liberation in the system of definite punishments, without distinction among the types of criminals, is both contradictory in theory and ineffectual in practice. . . .

"It will be understood that conditional release, as it would be organized in the positive system of indeterminate segregation, ought only to be granted after a physio-psychological examination of the prisoner, and not after an official inspection of records. So that it will be refused, no longer, as now, almost exclusively in regard to the gravity of the crime, but in regard to the greater or less readaptibility of the criminal to social conditions. It will therefore be necessary to deny it to made or born criminals who are guilty of great crimes."⁵

Professor Mittermaier suggested that parole should be an integral part of the sentence and should not be given only to exceptional cases, and that the period of parole should not be made equal only to the remainder of the sentence but should last until reformation is assured⁶ Harry Elmer Barnes, to cite a present-day authority, says in discussing the ideal penal system,

"Hence, the modern institution for the reformation of the criminal will need to have as supplementary aid an adequate parole system, which will make it possible, on one hand, to assist those successfully treated to make their adjustments to society, and, at the same time, will make it

⁵Ferri, Enrico, *Criminal Sociology*, Appleton and Co., N. Y., 1896, pages 216 and 217.

⁶Mittermaier, M. W., *Amendments to a System of Conditional Liberation*, International Prison Congress, Washington, 1910.

possible to bring back for further treatment or ultimate segregation those whose reformation has not been adequately achieved."⁷

Without a real indeterminate sentence law it is unlikely that this theory could ever be worked out to complete satisfaction. At present there seems to be no attempt to apply it in the United States, for every state law seems to require good conduct in the institution as a prerequisite for release on parole, and none of them have any way of holding, after his term has expired, the prisoner who has never exhibited this good conduct. Of course the theory does not mean that good conduct in the institution would not be required; it only means that it is those whose conduct is not very good who most need supervision after release. The best compromise that has been made between the present system of indefinite sentences and the indeterminate one is that which is being tried out in England under the name of preventive detention. Here, as we have said, it is possible to hold habitual criminals for ten years longer than their original sentence, and during these ten years liberal use is made of parole. If this were combined with an adequate system of parole supervision, it would seem to be a great step forward.

It is hard to see why some such sort of system could not be worked out here. Parole could still be used to inspire a prisoner to reform and would be granted whenever the authorities found it compatible with the safety of society and the best interests of the criminal. But it should also be used for those who never earned it while serving out their sentence. They, more than the others, require supervision after release, both for their own benefit and for the benefit of society. It is a rank waste of public money to confine them for a certain number of years and then to release them, only to have them drop back into crime again. It is only reasonable that everything possible should be done to supervise their conduct immediately upon their release and to return them to the institution, without the delay of going through another prosecution, if they cannot conduct themselves in a manner demanded by society. Wines gives this additional reason for parole, a reason that applies even more to the unreformed than to the reformed criminal:

"Conditional liberation has one element that renders it useful in diminishing the number of recidivists; it excites in the convict a fear of returning to prison at the moment of leaving it . . . a moment when the strongest restraint is necessary because the liberated prisoner is in danger of abusing all those things whose use was forbidden him during

⁷Barnes, H. E., *The Crime Complex*, Current History Magazine, 21:366, December, 1924.

this prison life. During those critical days that follow immediately after his discharge, the fear of returning to the prison for faults which are not crimes or even misdemeanors, but which put him on the high road to their commission, is greatly salutary, and it is a new reason for regarding provisional liberation as a real progress of science."⁸

This theory of paroling every prisoner, however, has not been adopted in any of the laws up to the present time, so further discussion of it here is beside the point. Given the theory that we are working on today, our purpose is to discover what are the principles that will make it as successful as possible.

II.

Robinson states as the two essentials of a parole system, opportunity for self-improvement in the institution and active assistance and strong moral support on re-entry into normal life.⁹ A possible third element may be the indeterminate sentence, but parole systems have been built up without it. This is done by building on the foundation of the good time laws. Robinson says of this type:

"A parole system thus untinctured with any 'indeterminate sentence' is better adapted to institutions which offer little in the way of training than one under which the prisoner is sent on an indeterminate sentence. The prisoner can calculate at the beginning the length of his sentence, and he knows far better what he will have to do to earn an early release than under an indeterminate sentence in a backward institution offering him little training. In such places, theoretically, the length of his confinement depends on his progress toward a better life; but, actually, there is little opportunity to measure gain or loss, and he is thereby completely subject to the whims of those over him. Good conduct and the observance of institutional rules are within the realms of calculability; but it is rank hypocrisy to make a man's stay in an institution depend on all-around progress where conditions are such as to make progress impossible."¹⁰

This type of system, lacking in both institutional training and in indeterminate sentence, must, it seems, be far from model. Still, even this is an advance on no parole at all, and Robinson's contention that the two omissions should go together is well taken.

The question of opportunity for self-development in the institution is a vital one as a basis for good parole work, but it is beyond the scope of this investigation. It must be said, however, that the sympathy of the prisoner must be won in the institution, if at

⁸Wines, E. C., *State of Prisons and of Child-saving Institutions in the Civilized World*, Cambridge, 1880, page 672.

⁹Robinson, Louis N., *Penology in the United States*, page 220.

¹⁰*Ibid*, pages 222 and 223.

all, and that adequate industrial and educational training must be offered if the average criminal is to be expected to make a better showing on release than before his conviction. Where crime has been due to lack of economic opportunity, it is clear that this deficiency must be made up before success can be hoped for. Where it is due to physical and mental defects, they too must be cured, or the person should be permanently segregated. Where the fault has been weakness of character, nothing will be accomplished if the prison term means only punishment. So, in every case, parole success demands a solid foundation in a good institutional system.

With the prisoner ready for parole, the next question that comes up is who should parole him. The Elmira plan, as we have noticed, provided for parole being granted by the same authorities that planned for and watched over the reforming of the prisoner. Today that plan has largely been abandoned, and Robinson says:

"It is clear that it has not yet been settled where this power to fix the length of a man's stay in prison is to reside. Taken out of the hands of the judiciary through the efforts of the Classicists and given to the hands of the legislative branch of the government; then handed back in part to the judiciary through the minimum and maximum sentence laws; taken from them again and turned over to the prison authorities, and, later, in some instances, put into the hands of an independent board or commission of parole; grasped at by the chief executive, this power to determine the length of sentence, a power that ought clearly to be exercised under all due legal restraint, safeguarded in every way that the liberty of no individual may be unduly infringed, is still a prize fought for by all branches of the government. . . .

"The experience with the parole system has been too short to give any clear indication of what should be the composition of the parole board. A few guiding principles can, however, be suggested. In the first place, it seems certain that the more training the institution has to offer, the greater weight it should have in the granting of parole. . . . If, on the other hand, the institution is one of the old sort, there seems to be little or no reason why a state board, functioning separately from the authorities controlling the institution, should not make the decision as to the proper time to place on parole, making the institution one of the sources of information in regard to the prisoner and weighing the information according to the character of the institution."¹¹

Other persons question whether the institution should have the right to say when the time for release is at hand. There is, even in the best institutions, the danger of prejudice arising. Institutional authorities, too, know the man only from one angle, and that not the angle of his reaction to life in freedom. And there is also the

¹¹Ibid, pages 229 and 231.

question whether it might not be better to free the parolee from any connection of any kind with the penitentiary.¹² The committee of the American Institute of Criminal Law and Criminology comes to the conclusion that "a separate, independent board keeping in close touch with the trial of cases at court, with home conditions of prisoners, with the conduct of prisoners under duress, and who will further take up the field work of assistance, sympathy and encouragement while convicts are on parole, must undoubtedly bring even greater success than has already been accomplished under any prevailing parole system."¹³

Who should be paroled is a question that has already been discussed in part. While we might like to see every prisoner freed subjected to a period of supervision first, this is not the theory on which our laws work today. In 1915 the proportion of persons put on parole varied from zero to 30% of the prison population in the various states.¹⁴ The laws differ greatly in regard to who is eligible for parole. One study that was made of this question comes to this conclusion:

"So far as evidence can be secured, no greater success with men was attained by states which parole only first offenders than by those which parole older offenders or those committing more serious crimes. Wyoming and Pennsylvania point out with some surprise the fact that habitual criminals paroled have uniformly made good."¹⁵

The Massachusetts Reformatory had the policy of not granting parole, except under unusual conditions, to sex offenders or gunmen. A study that was made of the effects of this policy showed that there was no reason to justify that hesitancy, other than for the sake of an example to the community, and that persons convicted of petty crimes, such as larceny, broke parole much more frequently than did the more serious offenders.¹⁶ Of course, there is the old difficulty in placing too much reliance on such studies: institutional statistics are not of such a character as to justify definitely saying how much success there is in any case. But, taking success as meaning not being returned to the prison during the parole period, the figures are correct and do show the comparative standing of the different groups.

Many states forbid the parole of life prisoners or, what is the same thing in part, the paroling of those who have committed certain

¹²Parson, H. C., *Probation and Parole*, National Conference for Social Work, 1919, page 113.

¹³Committee F of the American Institute, *Indeterminate Sentence and Release on Parole*, Journal of Criminal Law and Criminology, 1912, page 155.

¹⁴Brown, B. W., *Parole, an Institution of the Future*, Ibid, 6:65.

¹⁵Ibid, page 70.

¹⁶Warner, Sam, op. cit., page 188.

crimes. This is a survival of the older theory that the punishment must be made to fit the crime and that the character and needs of the criminal have nothing to do with the matter. The more advanced states have come to see that even life prisoners are not necessarily unreformable, and that there is no necessity for keeping them in prison for life at the expense of the state after they have been reformed. In our modern theory there is no place for the idea that certain crimes in themselves should exclude a person from parole. Many petty offenders might well be segregated for life, while some murderers, depending entirely on the man and the circumstances of the offense, might be released at an early date with no danger to the community.

This raises the question of what facts parole should be based on and when parole should be granted. The present-day answer to the first is well stated by the Prison Survey Committee of New York.

"The committee recommends as a matter of supreme importance that the Board granting paroles base its discussion for granting or refusing to grant parole upon definite and supporting data. When the prisoner applies to it for parole, the Board should have before it the following records:

- "1. A record of the main facts of the trial resulting in sentence.
- "2. A history of the prisoner, supplied by the receiving station.
- "3. Certificates from the receiving station stating the prisoner's mental and physical ability and limitations.
- "4. A record of the prisoner's conduct during the prison sentence.
- "5. A record showing the prisoner's work record; including the work to which he has been assigned, his application and progress therein, together with the amount of money he has earned.
- "6. A record showing the extent of the prisoner's education—if he was illiterate on his entry into prison, the record will show his progress in the prison school in reading, writing, and speaking English; if already proficient in those branches, the school attendance will show interest in self-improvement.
- "7. A statement of the person or agency assuming responsibility for the prisoner and the employment he is to undertake."¹⁷

Much the same suggestions were made by the committee that reviewed Pennsylvania's system in 1919. They said:

"It would seem that the first step toward the reform of the paroling system is not to set up a new paroling authority but to devise some more effective machinery to put before the existing authorities all the essential facts as to the applicant's mental, moral, and physical capacity to conduct himself as a self-respecting, useful member of society."

They add a second suggestion, which, while not quite in line with our question, is well to keep in mind:

¹⁷*Prison Survey Committee Report*, State of New York, 1920, page 254.

"A second, but not less necessary step, is such a change in the spirit and method of prison discipline as will develop in the inmates by actual practice the qualities of self-respect and self-reliance, and the habit of co-operation so essential to fit them for a life of freedom and responsibility, and, at the same time, equip them with the habits of industry and the vocational skill which will enable them to make good in the life that awaits them beyond the prison wall."¹⁸

With these conditions fulfilled, when parole should be granted is a very open question, and the state laws vary greatly in this respect. It is certain that the emphasis should be put on the person, and as Burdette Lewis says:

"No person should be paroled or discharged until he is physically and mentally capable of taking his place as a member of society—unless he be discharged for commitment to another institution better fitted to give him the care and training he deserves. . . . Where there is a maximum term, it is advisable to release the inmate on parole before the expiration of this term, so that he may have the advantage of a return to society and of supervision before the state loses control over him."¹⁹

In other words, it is impossible to lay down any hard and fast rule as to when a person should be paroled. The practice followed in some states of paroling practically every person as soon as the time set by law allows cannot be other than a poor one. It gives the prisoner the idea that it is only the minimum (or whatever else the law says) that counts as the real sentence, and it covers up the true principle of parole, if we are following the theory that parole is to be based on progress and reformation. If parole were granted by an authority competent to judge, and it were based on the conditions set forth above, it would be best to have no time stated in the law at all, leaving the decision of when to release up to this authority.

The person to whom it is best to parole prisoners is a question that has received little attention by paroling authorities, and yet it is clearly a question of great importance, as any person who has studied the problem of placing dependents of any type will recognize. Edith Burleigh, the superintendent of the girls' parole department of the Massachusetts Training School, always stresses it in her discussion of paroling girls, and it is just as important with any group. The majority of paroling authorities allow any person to act as first friend or sponsor, and any investigation that is made is very perfunctory. Winthrop Lane says:

¹⁸*Report of the Commission to Investigate Penal Systems, Commonwealth of Pennsylvania, Philadelphia, 1919, p. 29.*

¹⁹Lewis, Burdette, *The Offender, and His Relation to Law and Society*, New York, 1917, page 95.

"The cardinal principle of good parole work, or of any effective care of prisoners after release, is the preparation of the environment into which they will go. This involves primarily the prisoner's relation with his family, with prospective employers, and with former associates."

Then he quotes from the report from the Westchester County Penitentiary, New York, to show what might be done along this line.

"Our employment agent gets acquainted with the man and learns everything possible about his industrial life and wishes. The home conditions, if any, and, if not, the other conditions surrounding the man's life and work previous to coming to us, are investigated personally. The man's weekly progress in the institution gives light from time to time to the officers. The Tuesday morning Cabinet meeting, the Cabinet consisting of the warden, the psychiatrist, the deputy warden, the employment agent, the director of child welfare of the county, the deputy county commissioner, and any officer or officers who may be called in for consultation, takes up in routine the case of every man who has entered the institution since the previous Tuesday, and the consideration of every man's case who is ready for parole or discharge within the next two weeks. The fullest possible discussion is undertaken to the end that the man shall fit as perfectly as possible into the environment we have selected for him after discharge, and be able to function as efficiently as possible in the job he is to accept.

"The next step is to properly place the man in his work. This, we consider a very personal matter. The Employment Agent meets the discharged prisoner in the office of the institution and takes him personally to his new job, introducing him to his employer, assisting him in finding a boarding place, if necessary, and doing any other act of supervision or consideration that is likely to lead to more comfortable relations between the man, his job, his environment, and the community."²⁰

This question of to whom a person should be paroled raises two others—into what type of community should the parole take him, and into what line of work? If the community from which the man came is responsible in a large measure for his crime, it is, of course, useless to parole him back into it. On the other hand, the practice of paroling men into communities, such as lumber camps or farming sections, where there is little likelihood that they will remain after release has something to be said against it. After all, the purpose of parole is to adjust the man to the community in which he will remain after attaining freedom; anything else is merely making the work of the parole supervisor easier. It would seem necessary, then, to make a careful study of the relation between the

²⁰Lane, Winthrop D., *Wine's Punishment and Reformation*, Thomas Crowell, New York, 1919 edition, page 357, quoting the first annual report of the Westchester County Penitentiary, 1917, page 97.

community and the crime. If the causal relation is not too great, and if the man is almost sure to return to that community at any rate after release, it would seem better to return him there on parole. If, however, the situation is clearly bad, and a fresh start can be made much better in a new environment, it should be part of the parole officer's duty to select the place where this may best be done.

Much the same principles apply to the job. There is the practice in some states of putting a paroled man into any sort of job that offers itself with no regard whatever for his fitness for it or his desire of keeping it after release. The paroling of a physician to work in the railroad shops, for instance, would look like an example of this—a true example also. The job should, clearly, be adapted to the man's training. If his former job offers too much temptation to the crime he committed, then, perhaps, it should be changed. But there is surely no use in putting a man on parole and supervising him on a job which there is no chance of his keeping after his parole term is served. There should be adequate training offered in the institution along lines in which there are opportunities for the men to find work after release; and this training should be of sufficient variety to meet the needs of the different types of men in the institution. Then it should be the duty of the parole officer to fit the job to the man.

Release on parole, of course, means supervision, and that this should be of the highest order is a fact that every writer on the subject stresses. Wines says:

"The prisoner who is in the enjoyment of conditional liberation must be subject to kindly but vigilant watching; that is to say, there must be a supervising body, active, honest, and sufficiently intelligent to apply rules, which leave something to the discretion of those applying them. Now we either possess such a body or we do not. If we possess it, conditional liberation will be a blessing; if we do not, it will degenerate into license and tyranny."²¹

There are various methods of supervision. Abroad the general rule is to have the police supervise. This method is open to the criticism that the police are untrained for that kind of work, that their viewpoint is not such as would make for success with paroled prisoners, and their work is already sufficiently heavy without putting this new and difficult task upon them. In the United States the most common method is to have a parole officer connected with each institution. If the institutions were truly reformatory, this might be

²¹Brown, B. W., *Parole, an Institution of the Future*, Journal of Criminal Law and Criminology, 1915, 4:925.

considered the best policy, for then the work started there could be carried on by a person already in touch with the prisoner. As it is, however, this system often means ineffectual supervision due to the fact that the criminals under the care of the parole officer are too widely scattered. This difficulty has been avoided in some states by districting and using a state-wide system of parole officers, unconnected with any institution. Besides the saving in time, this has the advantage that the paroling system is free from the institutional and court savor, a matter of great importance in the opinion of some authorities.

The actual work of supervision, however, is usually carried on through the aid of first friends or sponsors. They are often the employers, and it is they who are responsible for seeing that the conditions of parole are observed. New York and Minnesota make use of voluntary organizations which devote themselves to the problem of released prisoners. In Michigan any sheriff, chief of police, or truant officer may be requested to serve as supervisor. The use of probation officers is a suggestion coming from New and Illinois. The technique of probation and parole is much the same; trained rather than volunteer workers would be secured in this way; and much of the difficulty of finding supervisors could be eliminated.

Two other questions present themselves in connection with this problem of supervision: what should be the proportion between parole officers and their charges, and how much money should be spent on supervision? A study some years ago attempted to show that there is a correlation between parole success and these questions; but, while this is possibly true, there is the difficulty in deciding how much reliance to place on institutional figures of success. However, the results of the study are interesting, if only to show what a variation there is in the answers to these two questions. The author found the following:

DEGREE OF SUPERVISION

State	Rates of Officers to Parolees	Percent Making Good
North Dakota.....	1- 40	96
Texas	1- 40	90
South Dakota.....	1- 45	93
Arizona	1- 55	96
New Hampshire.....	1- 55	66
Indiana	1- 80	74
Illinois	1-100	84
Iowa	1-200	70
California	1-302	85
Kansas	1-325	80
Pennsylvania	1-450	85
New Jersey.....	1-809	80

AMOUNT OF MONEY SPENT PER YEAR ON PAROLE

State	Cost Per Man Annually	Percent Making Good
New Jersey.....	\$ 0.48	80
Kansas	3.00	80
New Hampshire.....	6.00	66
Pennsylvania	9.00	85
Colorado	10.00	80
New York.....	13.00	79
Illinois	15.00	84
South Dakota.....	17.00	93
California	27.00	85
Federal	44.00	91
Maine	48.00	85
Texas	56.00	90
North Dakota.....	60.00	96 ²¹

It is clear that no great amount of correlation is proved by these figures, but this does not mean that there is no correlation between these facts. In some cases the small number of supervisors is doubtless helped out by some other means of supervising, although this is no excuse for the very large number of convicts for each parole officer in some states. After all, parole work means case work of the most intensive kind if it is to be successful, and, with parolees scattered all over a large state, it would seem that requiring one man to supervise so many must almost necessarily spell failure.

The figures as to costs are even more striking, even when we discount the fact that the figures were compiled before the war. In 1912 Amos Butler stated that a prisoner kept in a state institution cost \$172 a year.²² Even if this same amount were spent on supervising, society would still be saving money, for the paroled persons are earning wages and supporting their families. So, when an average of \$30 is spent instead of \$170, there would seem to be just cause for complaint if the results were not so good as might be expected.

It would seem, then, that in regard to supervision, the best results would be obtained if the supervisors were well trained, adequate in numbers, had sufficient money to spend to do a good job, and, perhaps, were unconnected with the institution.

How long the parole period should be is another question on which there is far from complete agreement in the state laws. Several states require only six months to be spent in this way if the conduct of the parolee is good during that time; Kentucky, according to a recent opinion of the attorney-general, may technically keep prisoners on parole for life; and the majority of the states extend the supervision until the maximum of the sentence is served. Again it is

²²Butler, Amos, *Indeterminate Sentence and Parole Laws in Indiana*, Journal of Criminal Law and Criminology, 4:925.

impossible to lay down any hard and fast rule. Just as with release on parole, the whole question resolves itself into one of dealing with individuals and deciding the question in each individual case. As supervision should not prove irksome if carried on properly and not hedged about with too many minute restrictions, it would seem best to make the parole period not of too short duration, for then the whole point of supervising is lost. Aschaffenburg says:

"The longer we extend the right of recall, the easier it will be to separate the actually improved offender from the socially dangerous one. The shortest time that should be required seems to me to be three years in the case of first convictions, and five years where there have been several former convictions."²³

The emphasis on the number of convictions rather than on the type of crime, as indicated by the maximum sentence, is an advance toward considering the criminal rather than the crime, and might well be copied in this country.

Summing up then, we find the following situation in parole theory today, all based on the assumption that only those most nearly reformed should be paroled. There is no agreement as to what should constitute the paroling authorities. All we can say is that the persons who grant parole, be they an outside board or the institutional authorities only, should be well qualified for their position. They should understand the need for good mental and physical health on the part of the men they are to parole, the necessity of taking the social background of the prisoner into consideration, the need of careful placing of men in jobs, and they should not be misled by popular conceptions of revenge or prison conceptions of good conduct inside being the best criterion for judging future conduct outside.

On the question of who should be paroled we found that it is a matter, not of crime, or of number of previous convictions, or of length of sentence, but rather a matter of who is ready for it; and this is wholly an individual question. In the granting of parole all the facts that can possibly be gathered about the criminal should be taken into consideration, and his placing and supervision should be determined by these.

The amount of time that should be served before parole is granted is another matter on which we can lay down no definite rules, though here, perhaps, public opinion must be taken into consideration before the authorities decide to release a person at too early a date.

²³Aschaffenburg, Gustav, *Crime and Its Repression*, Little, Brown and Company, 1913; page 297.

In deciding on whom to parole a person to, all the facts that were discovered about him must be taken into consideration. Careful adjustment of the man to his job and to the community into which he goes will mean a great deal in the probability of success on parole. We offer as a suggestion that it might be better to parole a man to the community and the kind of work which he prefers to stay in after his parole term is served.

Supervision on parole should be in the hands of well-trained parole officers, adequate in numbers and well-paid enough to ensure a good job being done. They may be assisted by carefully-selected sponsors or employers.

The parole term should cover a period of time long enough to show whether the convict is really reformed. This may well be several years, especially in the case of those who have served several sentences or of those who are young and unstable.

III.

RESULTS OF PAROLE

The most important thing to know about any system is, of course, how it works. This, in the case of parole, has never been discovered. Of course, there are official statements by the score, and there have been a few disinterested investigations, but none of them tell what it is most important to know—how many paroled men become recidivists as compared with those who have gone through an old-fashioned prison sentence? Two facts make that impossible to answer at present: there is no system by which we can trace people after they are discharged from parole, and no means by which we can know definitely whether they appear in the prisons or jails of another state subsequently; and, for the same reasons, we do not know for certain what is the amount of success or failure of the old prison system.

With such a discouraging state of affairs, it might well be thought that nothing could be said as to the results of parole. Still many institutions publish results, and some attempts have been made to trace down discharged prisoners. The institutions' reports look very optimistic, and parole might well be hailed the panacea for prison ills if they could be believed. The trouble is with their definition of success. With one accord they define it as failure to be returned to prison during the parole period. Now with such a definition it might well be questioned whether a record of 95% success or 70% success were the better. For success measured in this way may merely indicate that the quality of supervision that is exercised is poor, that

the wrong persons are used as supervisors and sponsors, and that the conditions that must be lived up to are too exacting. Given excellent supervision, 95% success is a tribute; given poor supervision, it is a reflection on the system.

Indiana may be taken as an example of a state in which the supervision is probably good. In a study made in 1920 of the results of parole from 1897 to that date, the following facts were discovered:¹

	State Prison	Reformatory	Women's Prison	Total
Number released on parole	5,430	7,992	442	13,864
Unsatisfactory	26.5%	26.1%	33%	26.5%

From Massachusetts come these figures: for the period, October, 1922, to September, 1923:²

	Number Granted	Percent Revoked
State Prison.....	58	8.6
Massachusetts Reformatory.....	414	19.3
Women's Reformatory.....	93	8.6
Prison camp and hospital.....	320	2.8
State farm.....	1,530	27.3

James A. Leonard, the superintendent of the Ohio State Reformatory, makes this guarded statement:

"The writer's experience and observation lead him to believe that after making due allowance for those who may lapse after final discharge and find their proper place in some distant part of the country, at least three out of four young men discharged from reformatory institutions refrain from crime and become helpful and useful members of society."³

This collection of statistics from various states shows what a range of success is claimed:⁴

State	Period Covered	Percent Making Good
California	1893-1913	85.52
Canada	1899-1913	94
Colorado	1914	80
Connecticut	1911-1912	91
Illinois	1895-1912	84.3
Indiana	1912	74
Massachusetts	1911-1912	97
Michigan	1911-1912	76.7
Minnesota	1912	74
Nebraska	1914	80
New York.....	1913	79
Pennsylvania	1910-1914	73
Texas	1911	97
Washington	1914	78
Wisconsin	1907-1912	91

¹Eichorn, W. H., *Methods and Results of Parole*, Journal of Criminal Law and Criminology, 11:368.

²*Annual Report of the Bureau of Prisons, 1923*, Massachusetts, page 13.

³Henderson, C. R. *Penal and Reformatory Institutions*, New York, 1910, page 127.

⁴Gault, R. H., *Parole System a Means of Protection*, Journal of Criminal Law and Criminology, 7:173.

Nothing could show more clearly how unreliable such figures are. Texas and Massachusetts show the "best" records; Indiana, and Pennsylvania, the worst. Yet the truth of the matter is, at least so far as we can judge from their success along other lines of social work, that Massachusetts and Indiana are both doing good work on parole.

Even if these were correct, little would be proven. Of course, if it were absolutely certain that, say ninety percent of the persons on parole were actually living the decent lives that the parole laws require, the system could be amply justified as a substitute for prison. For, if people can conduct themselves so well under supervision, a financial argument might be made for parole, provided that the public mind were freed from the idea of the necessity of punishing the criminal. It might also mean giving up the idea of reformation, for such figures would mean only that the persons conducted themselves well while watched. What we would like to know is how do they behave after they are discharged from parole. The man on the street is loath to see punishment done away with. If the parole system must base its claim to success only on the fact that its parolees behave while they are being supervised, the public will not be satisfied in having the deterrent features of the prison removed. If, however, it can be shown that paroled men are reformed men, then even the favor of the conservative public can be won.

Still this, under our present system, is almost impossible to prove. Back in 1888 Brockway made a study of all the men who had been paroled up to that time from the Elmira Reformatory. 78.5% were found to be leading self supporting and orderly lives.⁵ The explanation, however, that the men were reached "whenever their addresses could be found" leads one to wonder whether this survey was really as successful as it looks on the surface. The most extensive survey that has been attempted was also made at Elmira. 16,000 cases were studied, and 67% were found to be making good.⁶ But no questionnaires were sent, and no country-wide inquiry was made; all the information came from the books of the institution.

In 1920 E. R. Cass, the secretary of the New York Prison Association, wrote to every prison and reformatory in the country asking for all the information they had on paroled prisoners. Of the seventy replying (and the same is even more likely to be true of those that did not reply) not one could give any information as to the after careers of their parolees. He says in concluding his study:

⁵Brockway, Z. R., *Fifty Years of Prison Service*, page 297.

⁶Cass, E. R. *Study of Parole Laws and Methods*, Prison Association of New York, 1921, page 20.

"It is my firm belief that we shall never be able to determine, with any degree of reasonable accuracy, the results of indeterminate sentence and parole until there is established a system whereby every penal institution in the country will be required to file with a central bureau duplicate copies of the records of its inmates."⁷

Mr. Lee, the warden of the Wisconsin State Prison, expressed the same conviction. The criminal is in many cases a floater, the same factors leading to floating and to criminality. Then, too, he is often young, unmarried. If he lives in a small community, he prefers to find a new location on his discharge from prison; if he lives in a city, it is even more likely that he will not stay in the same place for many years. If, after a lapse of years, any considerable proportion is to be found at their old addresses, nothing more is proved but that they are the more stable element, and, hence, the more likely to make good at any rate.

Nor, under our present system, can we look at it from the other end and find how many have committed new crimes. Even within the same state it is hard, at times, to know definitely whether a given person has served a prison sentence before. When it comes to knowing whether the paroled men commit crimes in other states, the situation is much more hopeless. Only one step has been taken toward solving the problem. There has been established in Washington a bureau to which all federal prisons send the finger-prints of their inmates and to which state institutions may do so if they want to. If state laws could be passed making this compulsory on all penal institutions, a great advance would be made. Until that is done, however, we cannot hope to make any very definite statements as to the success of the parole system.

We can, however, look at it from a purely institutional point of view. We can take their figures as they give them, study their records, and discover something as to the methods that are being pursued and the results so far as the parole period itself is concerned. This is what we have done for the state of Wisconsin, and the following chapters are offered with the full realization that this proves nothing as to the ultimate success of the parolees.

⁷Ibid, page 22.