Journal of Criminal Law and Criminology

Volume 21
Issue 4 *February*

Article 6

Winter 1931

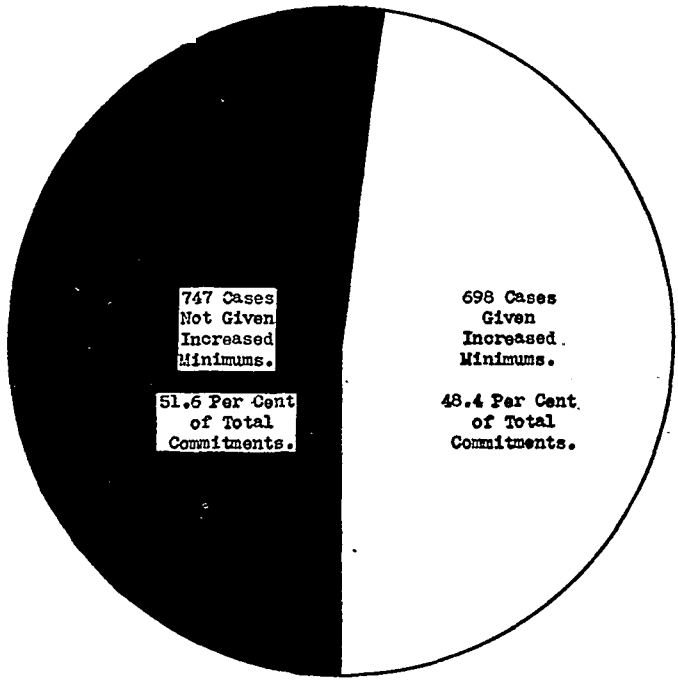
The Norwood Law and Its Effect Upon the Penal Problem in Ohio

Samuel A. Kramer

THE NORWOOD LAW AND ITS EFFECT UPON THE PENAL PROBLEM IN OHIO*

SAMUEL A. KRAMER, M. A.

A DISTRIBUTION OF SENTENCES UNDER THE NORWOOD LAW



EXPLANATORY AND METHODOLOGICAL NOTE

The Norwood Law has been causing much discussion among the penologists and criminologists of Ohio, but, apparently, judges and other members of the legal profession have not given it much thought or questioning. Among the persons desiring that some objective and scientific study be made of the effects of this commitment statute were Dr. James E. Hagerty, Professor of Criminology and head of the department of Sociology at Ohio State University; Mr. Preston E. Thomas, Warden of Ohio penitentiary since 1913, and

*A thesis presented to the Department of Sociology in the State University, Columbus, Ohio, 1930.

Mr. Prentice Reeves, of the Ohio Institute, a private research organization. With a view toward securing adequate data to direct any future action by the legislature, sociological societies, and legal fraternities in connection with the Norwood Law, Dr. Hagerty suggested to the writer that a study of the situation be made, in order to make possible definite proposals to modify the act, to enforce it as it now stands, or to repeal it. In the nine years of its existence, no such research had ever been made, therefore no other scientifically secured opinions could be expected to help form a prejudice or a belief of any kind.

At first it was thought that the only method to be pursued would be a statistical one, but the research had not progressed very far when it became evident that citations of individual cases, studying the peculiarities of certain judges, the use of some historical data and method, and the opinions of experts upon related subjects would combine to make a more valuable and complete study. However, the major method remained statistical. Since the law applies only to the Ohio penitentiary, information was secured concerning all the commitments to that institution from January 1, 1927 to December 31, 1927, inclusive. One year was considered a sufficiently representative time to show the general trends and reactions, since, in using it, seasonal changes would not be a factor in the final results. The particular year 1927, was selected because the judges had had enough time to become acquainted with the purpose and requirements of the Norwood Act, and also the two years elapsing until the study was made would allow for securing complete information relative to the individual prisoners, such as age, recidivism, and action by the Board of Clemency. The entry book at the penitentiary supplied the prison number, places of previous incarceration, age, color, crime, sentence set by the court, committing county, and the final disposition in the penitentiary. All this was recorded upon a separate card for each prisoner. Then it became necessary to open the "pockets," or individual prison and life record, to secure the name of the trial judge. It was here, also, that letters from judges, prosecuting attorneys, and witnesses, were found, some of which have been quoted in the following pages. The statutory sentence for each crime was ascertained, and recorded. Sorting the cards into some order was the next step, during which a few cases were eliminated. All those given a life sentence were discarded for the purpose of this study, since the Norwood Law would have no application here. This left a total of 1445 cards. Work tables, one for each of the 136 judges, were made, show-

ing total commitments, total given additional years of imprisonment, color, recidivism, and age of prisoners. A sample of such a table is placed in the appendix. This procedure proved to be of great aid, but it was nevertheless necessary to make many other combinations of the cards before the study was completed.

Since the writer knew that a similar law had once been on the statute books of the state of Pennsylvania, a comparison was considered to be effective and useful. At the same time a number of authorities were consulted, in their writings, about theoretical and practical problems of the administration of law. The Survey of Criminal Justice in Cleveland, sponsorel by the Cleveland Foundation, was very helpful. Among other publications were books on Ohio law, the United States Census of 1920, several books on criminology and penology, and many periodicals of various types.

It is hoped that this study may result in more attention being given by judges, lawyers, penologists, political scientists, and the general public, to existing and proposed statutes, the more clearly to see the full possibilities in each law. In addition to Dr. Hagerty and Mr. Reeves, previously mentioned, much credit for valuable suggestions and encouragement is due to Miss Julia E. Griggs and Miss Madeline Berry, of the Ohio State University department of Social Statistics; to Warden P. E. Thomas and Mr. D. J. Bonzo, head of the penitentiary record department, for their courtesy while information was being gathered at the institution; and to the inmates working in the record office, for their unfailing, friendly, and good humored help in securing elusive information. The latter would prefer that their names should not be mentioned. To Miss Sadie Fleisher and to Miss Matilda D. Kramer are given my sincere thanks for help in tabulating the material, and for typewriting and proof-reading the manuscript. Needless to add, the writer is to be held responsible for any errors in logic, false assumptions, or improper conclusions.

"PUNISHMENT IS NOT JUST BECAUSE IT DETERS, BUT IT DETERS BECAUSE IT IS FELT TO BE JUST."

VICTOR COUSIN

It is generally conceded that law is the written expression of that ill-defined term, "public opinion." Of course, when putting into concrete terms that opinion upon any particular subject, it becomes necessary to make such modifications as the leaders deem wise. This necessity may arise because of many reasons, such as forethought, expediency, lack of a consensus of opinion, or a general misunder-

standing. In a democratic country it is the expression of public will—through representatives, if necessary—which decides the formation of new laws. Should the elected representatives deliberately go against the public will, or mistake its meaning, new ones naturally would be elected at the earliest opportunity. It must always be kept in mind that any rapid change in the conditions of living will probably lead to an upheaval in the desires of the masses. It would not necessarily be a rational procedure on the part of the group, for, as Cooley says,[1] the masses contribute feeling, which is not a product of the mind.

Such a change was the World War. During its period, there was an excited clamor for statutes suppressing, forbidding, or punishing. Innocent bakers, plumbers, and musicians were thrown into prison, on no better charge than that they spoke with a German accent. With the signing of the armistice, the hysterical outburst subsided, but there remained the fatuous belief in the efficacy of rapid legislation. The United States had passed many laws referring to aliens and enemies; the United States had won the war. *Post hoc ergo propter hoc!* Statutes became synonymous with security.

Even if there is no such thing in reality as a "crime wave," it is to be expected that following so serious a cataclysm as a large-scale war, there would be an increase in crime—or at least in expected crime. This became evident in the years immediately following 1918. By 1920, the entire country was aroused by the actual or imagined "crime wave." It is irrelevant in this study whether or not this really existed. The population demanded action; and what better action could there be than the passing of new laws! The ordinary person regards the administration of justice and distribution of penalties as an affair which anyone can handle with little training or preparation. Therefore maladjustments must be due to inadequate legal provisions rather than incompetent administrators. As a result, more power was given to judges and juries.

Now let us leave this national aspect of the question, and turn to a more local situation as found in Cleveland, Ohio. "When Tom L. Johnson was mayor, a generous humanitarianism not adequately guided by science in the handling of offenders began which did not reach its sentimental climax until several years ago. The Chief of Police started to release without trial all first offenders in certain minor crimes, becoming thereby nationally known as 'Golden Rule' Kohler. The idea spread from police to judge, from misdemeanor to felony, until, as an editor of one of the Cleveland papers put it, 'a lawyer

[1]Charles Cooley, "Human Nature and the Social Order."

regarded it as a personal insult if a judge sent his client away.' "[2] In the report to the city for 1920, Mayor W. S. Fitz Gerald proudly points out, "The so-called Golden Rule policy of warning and releasing first offenders of minor misdemeanors was continued. There were 79,897 persons brought to the station houses, warned and released, in 1920, as compared with 70,735 in the previous year." As was intimated in the Cleveland Foundation Survey, the public, through its newspapers, was beginning to demand less leniency toward its criminals. About 1921, the opinion throughout the country was that there was a "crime wave" and stricter legislation could stop it. At the same time, in the largest city of Ohio the inhabitants were becoming tired of the Golden Rule policy. The law-makers complied with the demands of their electors, and amended existing statutes regarding criminals, or passed new ones. In an article entitled, "Some Tendencies in Criminal Law Administration," such an authority as Raymond Moley says that these ill-considered and hastily formed statutes may not be as valuable as was at first supposed. "A demand for 'reform' in the administration of justice has acquired a considerable momentum of late, and the legislators recently adjourned ground out many laws amending criminal procedure. Sheer conjecture guided much of this legislative action. Little study was made as to the need for the laws enacted or the probable effect of them. Research into the fundamental conditions under which the administration of justice operates guides only a bare handful of states. And yet, without such research there is genuine danger that much of the legislation now hailed with such enthusiasm may not appreciably affect the recognized shortcomings of criminal law administration at all."[3] Although this was said in 1927, it refers to some of the recent legislatures. One of these, answering the description, was that of 1921 in Ohio. Among other accomplishments it passed a law regulating the commitment to Ohio penitentiary of persons convicted of a felony. It was presented as an amendment to an existing act, 2166 of the General Code, and was known as the Norwood Bill. The new section gave the judge the right to set the minimum sentence for commitment of persons to the penitentiary, provided that he set it no lower than the minimum nor as high as the maximum fixed by law for each crime. It may be well to trace the various changes in the legal method of commitment in Ohio, the more fully to understand the last enactment submitted by Mr. Norwood.

[2]Cleveland Foundation Survey of Criminal Justice, Part I, page 95. (1922)
[3]Political Science Quarterly, Volume 42, page 498.

Changes in Method of Commitment

On March 24, 1884, was p- sed "AN ACT relating to the imprisonment of convicts in the Ohio penitentiary, and the employment, government and release of such convicts by the board of managers." Section Five of this act is relevant here, since it is the first indeterminate sentence law in Ohio. "Every sentence to the institution of a person hereafter convicted of a felony, except for murder in the second degree, who has not previously been convicted of a felony and served a term in a penal institution, shall be, if the court having said case thinks it right and proper to do so, a general sentence of imprisonment in the penitentiary. The term of such imprisonment of any person so convicted and sentenced, may be terminated by the board of managers as authorized by this act, but such imprisonment shall not exceed the maximum term provided by law for the crime for which the prisoner was convicted and sentenced; and no prisoner shall be released until after he shall have served at least the minimum term provided by law for the crime for which the prisoner was convicted." Some minor changes in phraseology were made on April 14, 1884, but the purpose and effect of the law were untouched. The court was permitted to impose a flat sentence or an indeterminate sentence on its own volition, in all cases of first offenders except for the crime of second degree murder calling for life imprisonment. The penalty for first degree murder at that time was death. It is significant that recidivists could not be given any other than a flat sentence. Another idea was added on April 11, 1890, without changing the foregoing act. "Provided, that any person now serving a sentence in the penitentiary, or that may hereafter be sentenced to the penitentiary for two or more separate offenses, where the term of imprisonment for a second or further term is ordered by the court to begin at the expiration of the first and each succeeding term of sentence named in the warrant of commitment, shall be entitled to have his succeeding term or terms of imprisonment terminated by the board of managers, as provided by law, at the expiration of the first term of sentence named in said warrant of commitment, without serving the minimum term as herein provided under more than one of said sentences." While it had previously been necessary to serve the aggregate of minimum sentences, in cases where consecutive imprisonments were ordered by the court, serving one minimum sentence was now sufficient to permit the board of managers to order the release of the prisoner. The statute now remained in force, without change of any kind, for twenty-three years. When the General Code of

Ohio was formed, this act was called Section 2166. Then, after the long period of satisfaction with the law, a radical change was effected on February 26, 1913, with the passage of, "AN ACT to provide for indeterminate penitentiary sentences and to repeal section 2166 of the General Code." The text is this. "Courts imposing sentences to the Ohio penitentiary for felonies, except treason, and murder in the first degree, shall make them general and not fixed or limited in their duration. All terms of imprisonment of persons in the Ohio penitentiary may be terminated by the Ohio Board of Administration as authorized by this chapter, but no such terms shall exceed the maximum, nor be less than the minimum term provided by law for the felony of which the prisoner was convicted. If a prisoner is sentenced for two or more separate felonies, his term of imprisonment may equal, but shall not exceed, the aggregate of the maximum terms of all the felonies for which he was sentenced and, for the purposes of this chapter, he shall be held to be serving one continuous term of imprisonment. If through oversight or otherwise, a sentence to the Ohio penitentiary, should be for a definite term, it shall not thereby become void, but the person so sentenced shall be subject to the liabilities of this chapter, and receive the benefits thereof, as if he had been sentenced in the manner required by this section." As can readily be seen, this is quite a departure from the statute which it supplants. Now the exceptions are treason and murder in the first degree, the latter carrying a sentence of death or imprisonment for life, at the discretion of the court. The change of greatest importance, of course, is that which makes the indeterminate sentence *mandatory* rather than *permissive*. The court could no longer impose any sentence for a felony, other than the statutory minimum and maximum. In a conviction of larceny, for example, there could be no deviation from the sentence, "not less than one year nor more than seven years imprisonment in the Ohio penitentiary." It was provided, naturally, that the Ohio Board of Administration could, presumably after sufficient investigation, give freedom to the person at the expiration of his minimum or any time thereafter until the end of the maximum time.

This law appeared to work satisfactorily until the World War, but as has already been explained, there were several factors causing dissatisfaction with criminal administration during the post-war period. This may explain why, on January 12, 1921, Mr. Frank K. Norwood, the Senator representing Carroll and Stark counties, introduced another amendment to section 2166. This, in its final form as passed

March 15, 1921, became known as the Norwood Act. This being the law to be studied here, it shall be quoted in full.

"Section 2166. Courts imposing sentences to the Ohio penitentiary for felonies, except treason and murder in the first degree, shall make them general, but they shall fix, within the limits prescribed by law, a minimum period of duration of such sentences. All terms of imprisonment of persons in the Ohio penitentiary may be terminated by the Ohio board of administration, as authorized by this chapter, but no such terms shall exceed the maximum term provided by law for the felony of which the prisoner was convicted, nor be less than the minimum term fixed by the court for such felony. If a prisoner is sentenced for two or more separate felonies, his term of imprisonment may equal, but shall not exceed, the aggregate of the maximum terms of all the felonies for which he was sentenced, and for the purpose of this chapter he shall be held to be serving one continuous term of imprisonment. If through oversight or otherwise, a sentence to the Ohio penitentiary should be for a definite term, it shall not thereby become void, but the person so sentenced shall be subject to the liabilities of this chapter and receive the benefits thereof, as if he had not been sentenced in the manner required by this section."

It should be noted that the word "not" appearing at the end of the last sentence of the statute, is opposed to the desired meaning, but has not been corrected. This may be taken as an evidence of the haste and lack of consideration with which the bill was passed. It was accepted by an overwhelming vote; in the Senate there were thirty-four in favor with none opposed, and in the House of Representatives there were ninety-one in favor with only fourteen opposed. It is impossible to say how much this distribution of votes was the result of careful consideration, indifference, or log rolling. However, the following notation is made by the veto clerk. "This bill was presented to the Governor March 22, and was not signed or returned to the house wherein it originated within ten days after being so presented exclusive of Sundays and the day said bill was presented, and was filed in the office of the Secretary of State, April 4th, 1921." The bill had become a law without the signature of Governor Davis, but with the enthusiastic approval of both chambers of the legislature. The journals of the Senate and the House of Representatives show that there was very little open discussion of the question.

At first, the Attorney General of Ohio ruled that men were still eligible to parole at the expiration of the statutory minimum, no

matter what minimum should be set by the court. This served to take all the force out of the law as desired by its adherents. Somewhat later, another Attorney General decided that the judiciary minimum was the binding one, which ruling is accepted to-day.

It is quite evident that this practically brought the law back to its status of 1884, in that the court once again was given permission to set flat sentences. If the judge deemed it wise or so desired, the minimum could be set one day less than the maximum, thereby making the sentence legal and binding, although for all practical purposes it would be a fixed sentence rather than the general one demanded by law. It virtually elminated the vital principle underlying the indeterminate sentence and parole—that a prisoner is to be released under supervision as soon as the examining and directing authorities should think he is ready for freedom, it being consistent with the best interests of society and of the individual. The Honorable Herbert G. Cochran, Judge of the Juvenile and Domestic Relations Court at Norfolk, Virginia, in an address entitled, "Old Crime and New Methods of Dealing With It," makes the claim that, "Parole and indeterminate sentence go really hand in hand. When the offender is deemed to be in a condition which indicates that he has a reasonable chance of adjusting in normal life he is released on parole and is given aid and help toward adjusting himself in his life outside of prison walls, under supervision. And if he does not make good, or if it is found that he is not safe to be at large, he is returned, instead of being freed at the end of his sentence to resume or continue a life of crime without society's having any further hold over him or his harmful activities."[4] Further, he says, "The indeterminate sentence is obviously a much more sensible and scientific method than the old inflexible fixed sentence based on the nature of the crime rather than on the individual's traits and tendencies and the promise the individual apparently has or develops which indicate the probability of his adjusting to normal social environment and leading a useful life in society. It has, I doubt not, come to stay."[5] The indeterminate sentence, in name and theory, may have "come to stay," but it is subject to so many legal hindrances and ramifications as to make it practically valueless. The study to be made here may reveal whether the Norwood Act is or is not such a liability. The indeterminate sentence presupposes the corrective influence of prison life, which in turn needs a friendly frame of mind toward society, on the part of the

[4]National Probation Association Proceedings (1928) page 79.
[5]Op. Cit., page 79.

convict. Under section 2166, the court decides when he shall become eligible for parole and, if no system is followed, the hardened criminal in one court may be given a smaller minimum than a young first offender would receive in another, or perhaps in the same court. Very many such cases can be cited, but a few will serve as illustrative material. Obviously, names of judges and counties must be omitted, nor would it be of any value to mention them. Three convictions for robbery, with a statutory minimum of ten years, were punished as follows: a first offender, colored, twenty-three years old, given a minimum of twenty-four years and six months; in another county, a first offender, white, twenty-eight years old, given a minimum of twenty-one years; and in the same county as the latter *under the same judge,* three months later, a four time recidivist, white, thirty-two years old, was given a minimum of fifteen years. Night burglary, with a statutory minimum of five years, received two divergent sentences in one court. A first offender, colored, thirty-one years of age, received a minimum of twenty-nine years, eleven months, twenty-nine days (practically a flat sentence) despite the fact that the same judge, two weeks previous, had given a recidivist, white, thirty years of age, the statutory minimum of five years. A contrast in manslaughter, five cases sentenced by one of the best known of Ohio judges, is highly significant. Four first offenders of various ages, sentenced at different times, were given minimum sentences of seven, four and three years, instead of the statutory one year. However, a five time recidivist was given the one year minimum. In burglary, an eight time recidivist was given the statutory minimum of one year. Convicted of embezzlement in a large county, two first offenders were given five year and three year minimums, while the same judge gave a recidivist a minimum of one year and six months. The sentence required by law for this crime is not less than one year nor more than ten years. It is interesting to note that the two cases receiving heavy punishments were given commutations by the governor, although they were not connected in any way.

This inequality of sentencing men convicted under practically identical circumstances, or the giving of lighter punishments to the less deserving criminals, would be likely to cause many of the men to become embittered against a society which could treat them so unfairly. Should a judge be sufficiently enlightened to desire to make good use of the discretionary power given him by the Norwood Law, it would be almost impossible for him to do so, for many reasons. Not all the facts are available at the time of trial, it is impossible

to foretell the length of time necessary for reform, the mind of the public may be overwrought because of unusual circumstances of the crime, or perhaps the personality or the actions of the prisoner in the courtroom may antagonize the judge. The last-named possibility is excellently illustrated by the case of a nineteen-year-old boy convicted of robbery in one of the larger cities of Ohio. The trial was drawing to a close, when the prisoner at the bar turned his head to look at the clock on the wall, while the judge was addressing him. The judge interrupted himself to say, "Never mind the time. I'll give you plenty of time." The sentence was, "not less than twenty-five years nor more than twenty-five years imprisonment in the Ohio penitentiary." In this affair, the judge overstepped his bounds since the sentence was for a definite term and therefore illegal. By a ruling of the Attorney-General, the sentence automatically becomes the one set by law, and the convict is eligible to parole at the end of ten years. It may be that the Board of Clemency will decide to keep him a longer time, but at least he will have the chance for freedom if he deserves it. After several years incarceration, this young man who received so heavy a sentence is a model prisoner, having recently been placed in an honor camp by Warden Thomas. Following is a letter concerning this case, sent to the Board of Clemency by the prosecuting attorney, who should have realized that what he asked could not be granted.

"Gentlemen:

"It has been called to my attention that there is a possibility of you considering the case of ..... for parole.

"I have been informed that his people are going to California, and if you would parole him out of the State to them I believe he would become a better citizen and would not transgress the laws again.

"When he was sentenced the Judge considered that his age was over twenty-one years, but I have been shown a certificate of his birth and it shows at the time of his arrest and conviction, he was only nineteen years of age.

"Trusting you will give this due consideration, I remain,

Yours very truly,

(SIGNED) ....

Prosecuting Attorney, ... County, O."

By his own admission, the prosecuting attorney, and presumably the judge, was not in possession of all the facts at the trial. Evidently another inquiry concerning the same case had been sent from the boy's lawyer at home, to which we find a reply by the warden.

Dear Sir:

"I have your letter relative to ..... and note what you say.

"The mother of this young man has been to see me a number of times and I was always very favorably impressed with her. The boy has had a somewhat checkered career and has been in the Boys' Industrial School in Pennsylvania and the Mansfield Reformatory before coming here. He was just one of those wild young chaps who chose the wrong line of endeavor and therefore was continuously in trouble. Lately I have seen a marked change in his makeup. He seems to have gotten hold of himself and I believe is developing rapidly in the right direction.

"He has caught the vision of a better life and what it means and I believe could safely be trusted with his liberty. I can do nothing for him in the way of clemency before the end of ten years at which time I believe I can call his case for parole, as he is serving an irregular sentence of 25 to 25 years, although the Board now questions whether such sentences are parolable, and have asked the Attorney General for an opinion. This question is based upon the fact that the Supreme Court recently ruled that sentences where the minimum and maximum are the same are determinate sentences and subject to good time. But that will soon be thrashed out, and I feel quite sure that the Board will be informed that they have a right to parole determinate sentences.

"Any action looking towards release for young ..... would have to be recommended by the Board of Clemency to the Governor. At the present time they are not doing much recommending as you have probably observed that paroles and pardons have become rather tight due to the fight made against them. I shall be glad to give what little aid I can in having the Board consider this case.

"With best wishes, I am,

Sincerely yours,
(SIGNED) P. E. Thomas
Warden"

Many things are revealed in this letter. Despite his two previous incarcerations, or perhaps because of them, a remarkable change had taken place in the psychological outlook of the convict. This the judge could not possibly have foreseen, while passing sentence. In fact, the prisoner told the writer of this study that, upon receiving so heavy a punishment, he immediately made up his mind to "get even" as soon as he could escape. However, when he was told of the fortunate change in his sentence, he felt that there might be some good for him after all. Had the minimum been set at one day less, there could have been no reformation. Even now, despite the idea of Warden Thomas that he "could safely be trusted with his liberty," the minimum of ten years must be served before parole is possible. The Governor might commute the sentence, but, as the warden says, "paroles and pardons have become rather tight due to the fight made against them." This in itself is an argument against the retention

of so high a statutory minimum as the ten years set by the Atwood Law of 1921.

As far back as 1911, a similar act was passed in the state of Pennsylvania, known as the Abbott Amendment to the Tustin Bill. It gave the judges the right to set both the minimum and the maximum within the limits set by the law. After much agitation and education, the legislature voted to repeal the amendment, but the repeal was vetoed by Governor Brumbaugh in 1918.[6] However, in 1923 Pennsylvania was given a new indeterminate sentence law, providing that the maximum as set by statute could not be changed and the minimum could not be more than one-half the maximum. Whether or not this is an improvement is not known, but the act of 1911 was found to be impracticable in Pennsylvania. "It proceeds upon the long-accepted but false assumption that the court can in every case determine the exact degree of culpability and then adjust the punishment accurately to the crime. This is not only absurd, but it is impossible. A Solomon with all his wisdom could not have done this! As the law now stands, we shall again find, as is indeed already the case, that the same court or adjoining courts may, even under practically identical conditions, impose greatly varying sentences, instead of putting all upon whom sentence is passed on an equality and giving all, under identical conditions, an equal chance, as the law originally contemplated . . . while in another case an old crook, who had been convicted for the sixth time, and whose new crimes should have brought him a maximum sentence of 16 years, received a minimum of 3 months and a maximum of 1 year. Since the law first went into effect several courts have also imposed flat sentences, without a minimum. This is clearly in conflict with the law, which is mandatory. It does seem as if courts that try and sentence lawbreakers should be the first to have a reverent regard for law!"[7] Most of this prophecy and indictment we have already seen, to some extent, to apply as well to the Norwood Law. Some statistical data concerning this Ohio statute, compiled from the total number of commitments to the penitentiary from January 1, 1927 to December 31, 1927, inclusive, may serve to show how it works in actual practice.

The Norwood Law in Practice

Preston E. Thomas, Warden of Ohio penitentiary since 1913, has publicly stated that one of the greatest causes of the greatly over-

[6]Cf., A. H. Votaw, "Penal Legislation of 1917 in Pennsylvania," pages 18-20.

[7]J. F. Ohl in "Journal of Prison Discipline," November, 1911, pages 22-23.

crowded conditions in the institution, unparalled in its history, is the Norwood Law.[8] A statistical study shows that this statement is probably not an exaggeration. The following figures, compiled with the aid of Mrs. Harper of the Ohio Public Welfare Department, are significant. Whereas the population for the fiscal year 1920 (the last year before statute 2166 was amended) in Ohio penitentiary was 1936, in 1929 it had risen to 5884, the latter figure including 959 at the penitentiary farm located near London, which was not in existence in 1920. These figures in themselves may mean nothing, since the increase may be a normal one for nine years in Ohio; but a glance at Table I and Table II will reveal interesting comparisons.

TABLE I

POPULATION OF PENAL INSTITUTIONS IN OHIO; 1920-1921-1922-1929

		Fiscal Years Studied		
Institutions	1920	1921	1922	1929
Penitentiary	1936	2290	2821	*5884
Reformatory (Men)	1601	1823	1876	3144
Reformatory (Women)	149	218	204	351
Industrial School (Boys)	1131	1194	1044	1130
Industrial School (Girls)	464	449	512	566
Total	5281	5974	6457	10075

*Includes Prison Farm at London.

TABLE II

PER CENT CHANGE IN POPULATIONS OF PENAL INSTITUTIONS; 1921-1922-1929
(Using Fiscal Year 1920 as the Base)

		Fiscal Years Studied		
Institutions	1920	1921	1922	1929
Penitentiary	0	118	146	*304
Reformatory (Men)	0	114	117	196
Reformatory (Women)	0	146	137	229
Industrial School (Boys)	0	106	92	100
Industrial School (Girls)	0	97	110	122
Total	0	113	122	191

*Includes Prison Farm at London.

It will be noticed that while the entire state of Ohio had a slight increase of 13% for 1921, the penitentiary had approximately the same gain, 18%. The following year, 1922, the state increased 22% over 1920, but the penitentiary jumped 46%. This somewhat greater growth may have been due to the fact that some criminals who ordinarily would have been released at the end of one year, had been given greater minimums under the Norwood Act passed the previous year. This is shown more conclusively in 1929. The Ohio penal population

[8]Address at the Ohio Sociological Society Convention, 1930.

grew to 1.91 times that of 1920, but the penitentiary increased to 3.04 times that of 1920. All other institutions, during 1921 and 1922, had only slight increases, or, as in the reformatory for women, the industrial school for boys, and the industrial school for girls, there were actual decreases. However, with the passing of eight years, after all the judges have familiarized themselves with the workings and possibilities of the new plan of commitment, and perhaps have worked out individual systems, the figures become startling. As was previously pointed out, the law applies only to those men who are sentenced to the penitentiary. Not one other institution approached this one in percentage increase! The reformatory for women at Marysville was the nearest, with 2.29 times the population of 1920; but in 1929 it held only 351 inmates as compared with the penitentiary's 5884. Also, there is no other institution to which women can be sent, such as the men have at Mansfield. The industrial school for boys had no change whatever in the eight years, probably due to its specialized method of giving releases, which need not be discussed here. Perhaps for the same reason, the industrial school for girls shows an increase of only 22%.

The reformatory for men, located at Mansfield, is the best suited for comparison with the pentientiary, since there are only slight differences between the two institutions. The reformatory does not accept commitments for murder in the first or second degree, nor men above the age of thirty-one years. There are comparatively few in the murder group (57 out of 1517 penitentiary sentences in 1927), while the greatest criminal age group is the one ranging from twenty-one years to twenty-four years[9]—which is included at both institutions. Other than murder, the crimes registered at each institution are the same. Population changes here are highly significant. The reformatory follows very closely the changes for the entire state, even into 1929. The penitentiary, however, shows that its population more than tripled in the nine years, while the reformatory—to which the Norwood Law does not apply—less than doubled the number of its inmates. Of course it is easily seen that if judges give greater minimums for certain crimes, the parole board cannot act, should it so desire, and new prisoners are constantly being added while relatively few old ones are being released. This is not meant to imply that it would be better to give freedom to prisoners simply in order to make room for others; but it does show that if any men should be ready for release at the end of the minimum set by law for the given crime,

[9]John L. Gillin, "Criminology and Penology," page 51.

the Board of Clemency is prevented from doing anything until the higher minimum set by the trial judge shall have expired. Furthermore, it may mean unequal and unfair sentencing. A sentence to Mansfield for highway robbery, although the man may be quite a hardened criminal, could mean an imprisonment of approximately one year, that being the average length of stay there. The judge would have nothing to say as to how long he should remain. Another person, under the same charge with practically identical circumstances, being sent to the penitentiary, must serve a minimum of ten years and may be given an additional term, as the judge sees fit. Unfortunately, some highly important information may not be known to the court at the trial. The following letter to the Board of Clemency is typical.

"Gentlemen:

While I was Prosecuting Attorney of ....., County, one ..... was convicted of a charge of robbery and sent to the Ohio Penitentiary and is now confined there. He has served about two and one-half years of his sentence. I am thoroughly familiar with the facts of his case and believe now that he should be pardoned or paroled. If parole is not permissible under the circumstances I think the Board should recommend a pardon."

What a change of mind in two and one-half years! The original statement made by the same man, *three days after the prisoner was received at the penitentiary,* was different in every respect. It deserves quotation in full.

Dear Sir:

"This man, together with one C..... and another person whose name cannot be determined, held up a foreigner and took from him $40.00 and a gold watch. ..... did not actually participate in the hold-up but laid the plans, obtained the information and shared in the proceeds. He said that he did not want to participate in the hold-up because he was so well known in the section where the hold-up took place. C....., being the better of the two, admitted his guilt and took the stand as a witness in the case against ..... His story was apparently clear and truthful and ..... on the stand made a very poor witness for himself. Before and at the trial .....'s statements were very inconsistent. He has served a term in your prison before on a charge of rape. I have known him for a long time and he bears a bad reputation."

The prosecuting attorney says it is against the man because he was inconsistent on the witness stand. Comparing the two letters of the official, can he be said to be consistent? He claims to have known

all the facts at the trial and arrived at the conclusion that the man deserved a heavy sentence (the minimum given was twenty years). The same facts later led him to the conclusion that the man should be given an early parole. Why? The logical thought is that he did not have all the facts in the first place.

At this point it would be well to see to what extent judges have taken advantage of the power granted to them by the Norwood Law. It is not mandatory for the sentence to be increased above the statutory minimum. The judge's desire to do so is the sole deciding factor. The following table shows how this special dispensation was used toward white and colored men. Since it may be desirable to know if there is any connection between the maximum term and the minimum set by the judge, the division was made according to the maximum rather than the crime. The expression "man-years" means the total number of minimum years given in any group; for example, if ten men have been given a minimum of five years each, there would be a total of fifty man-years. The "extra man-years" would be that total diminished by the aggregate statutory minimums—or, the total number of *additional* years given to the group of men as a whole.

It becomes at once apparent that, in the aggregate number of cases, the average additional years for each person who is given any extra at all, becomes greater as the maximum increases. It seems as if the judges presume that a few months or years added to the minimum sentence can only be effective in carrying out the purpose of commitment—whether that be retaliation, deterrence, reformation, or protection to society—if they are commensurate with the total sentence. This reasoning, perhaps subconscious, seems to be followed in both the white and colored groups, with the single exception of those crimes among the white men involving a thirty year maximum. Although each group had practically the same number of commitments, fourteen for the white and nineteen for the colored, and eight in each group were given increased sentences, the average additional for the white group was 3.5 years compared with 5.9 years for the twenty-five year maximum, while for the colored section the average additional was 14.6 years, being quite an increase over the 5.0 years of the twenty-five year maximum. It is in the thirty year group that we find the greatest appreciable difference in the length of minimum sentences, 11.1 years separating the white from the colored. The difference between the two racial divisions in the twenty-five and twenty year groups are, obviously, not negligible, being 0.9 years per person in the former and 1.2 years per person in the latter. These,

TABLE III

COMMITMENTS AND EXTRA MAN-YEARS, BY RACE AND MAXIMUM TERM

	WHITE				COLORED				TOTAL			
Maximum Term	Total Committed	Total Given Extra	Total Extra Man-Years	Extra Man-Years Per Person Given Extra	Total Committed	Total Given Extra	Total Extra Man-Years	Extra Man-Years Per Person Given Extra	Total Committed	Total Given Extra	Total Extra Man-Years	Extra Man-Years Per Person Given Extra
30	14	8	28	3.5	19	8	117	14.6	33	16	145	9.1
25	90	34	199	5.9	79	28	140	5.0	169	62	439	5.5
21	6	4	18	4.5	0	0	0	0.0	6	4	18	4.5
20	283	152	573	3.8	134	74	369	5.0	417	226	942	4.2
15	182	110	317	2.9	101	63	180	2.9	283	173	497	2.9
12	1	1	1	1.0	0	0	0	0.0	1	1	1	1.0
10	58	41	127	3.1	3	2	6	3.0	61	43	133	3.1
7	121	64	125	2.0	58	28	49	1.8	179	92	174	1.9
6	1	1	1	1.0	0	0	0	0.0	1	1	1	1.0
5	90	23	45	2.0	34	12	23	1.9	124	35	68	1.9
3	132	36	45	1.3	36	9	13	1.4	168	45	58	1.3
2	2	0	0	0.0	1	0	0	0.0	3	0	0	0.0
Total	980	474	1389	2.9	465	224	897	4.0	1445	698	2286	3.3

however, are relatively close to the other groups, in which the average "extra" are nearly equal. Comparing totals, it is found that the negro is sent up for longer terms than the white criminal, the first being given an average of 4.0 years additional, and the latter only 2.9 years. Even if the great difference found in the thirty year group should be disregarded, the negro criminal would nevertheless be receiving 3.6 years against the white man's 2.9. A simple arithmetical calculation from the figures in this table would show that while there is a perfect correlation in the ratio of white to colored commitments and those given increased minimums, the ratio in each case being 2.1 to 1, it does not hold for the total number of man-years, where the ratio falls to 1.5, showing that the negro really has been given much heavier sentences than the white.

Ratio of White to Negro		
Commitments	Given Extra	Man-Years
2.1	2.1	1.5

Since it may be possible that the reason for the number of additional years increasing as the maximum becomes higher, is that the number of recidivists is greater in those classes, it would be valuable to try and find some correlation between recidivism, maximum, and sentence. Should it be seen that sentences are distributed somewhat according to the recidivism, there would be a justification for the rising scale of additional sentences.

TABLE IV

RECIDIVISM AND NUMBER GIVEN EXTRA, BY MAXIMUM TERM

Maximum Term	Recidivism and Sentence: First Offender		Recidivist		Total	
	Commitment	Given Extra	Commitment	Given Extra	Commitment	Given Extra
30	16	8	17	8	33	16
25	91	29	78	33	169	62
21	6	4	0	0	6	4
20	280	145	137	81	417	226
15	150	85	133	88	283	173
12	0	0	1	1	1	1
10	53	39	8	4	61	43
7	103	42	76	50	179	92
6	1	1	0	0	1	1
5	83	16	41	19	124	35
3	109	28	59	17	168	45
2	2	0	1	0	3	0
Total	894	397	551	301	1445	698

Since it is the average additional *per person* which increased with the maximum, it must be expected that the *actual* number of recidivists would also increase. A percentage study here would be out of place. It is seen that there is no gradation of the number of recidivists, therefore it seems that on this score there is no reason

for the trend of increases as found in Table III. However, other interesting and important features are found from a perusal of Table IV. More first offenders than recidivists have been given extra sentences. This, of course, would mean more if there should be taken into consideration the total number of commitments for each group. When this is done, it is found that 54.6% of the recidivists committed were given additional years, and 44.4% of the first offenders. It should be kept in mind, however, that recidivist includes all those persons who have more than one record, and in this study goes as high as nine convictions; in which case the difference becomes insignificant. Table V shows this distribution of recidivists.

TABLE V

TOTAL CONVICTIONS OF RECIDIVISTS, BY MAXIMUM OF LATEST SENTENCE

Maximum Term	Total Number of Convictions								
	2	3	4	5	6	7	8	9	Total
30	7	5	2	2	1	..	..	..	17
25	43	27	7	1	..	..	..	..	78
21	..	..	..	..	..	..	..	..	0
20	74	35	17	7	3	..	1	..	137
15	88	32	8	2	2	..	1	..	133
12	1	..	..	..	..	..	..	..	1
10	8	..	..	..	..	..	..	..	8
7	49	16	7	2	2	..	..	..	76
6	..	..	..	..	..	..	..	..	0
5	25	6	8	1	..	..	..	1	41
3	34	21	1	1	2	..	..	..	59
2	..	1	..	..	..	..	..	..	1
Total	329	143	50	16	10	0	2	1	551

Of course the number of recidivists decrease rapidly as the number of convictions mount, since the repeaters may have deserted crime, or are residing in prisons, or are dead. Nevertheless, even among the third and fourth offenders there are large numbers.

TABLE VI

PER CENT OF COMMITMENTS IN EACH SECTION GIVEN EXTRA, BY MAXIMUM TERM

Maximum Sentence	Recidivism		
	First Offender	Recidivist	Total
30	50.0	41.2	48.5
25	31.9	42.3	36.7
21	66.7	0.0	66.7
20	51.8	59.1	54.2
15	56.7	66.2	61.1
12	0.0	100.	100.
10	73.6	50.0	70.5
7	40.8	65.8	51.4
6	100.	0.0	100.
5	19.3	446.3	28.2
3	25.7	28.8	26.8
2	0.0	0.0	0.0
Total	44.4	54.6	48.4

Table VI, showing in percentage form the same data as Table IV, demonstrates that at times a greater part of first offenders than recidivists are given extra sentences. This occurs in four groups, with the thirty year, twenty-one year, ten year, and six year maximums. The ten year group actually had a difference of 23.6%. The five year maximum, with a total of 124 commitments, was the only one in which a greater portion of recidivists were given extra years, the difference being 25%. The other groups showing a larger percentage of recidivists penalized with increased sentences, including the twenty-five year, twenty year (the outstandingly largest group), fifteen year, and three year maximums, merely have a difference of less than 10%. It might be claimed, by those not acquainted with modern penological ideas, that the type of crime or the circumstances of the crime may have been worse in the case of the first offender than the recidivist, and therefore the former should be more severely punished. Should such a claim be allowed, it would lead us back to the outworn classical theory of punishing the crime rather than the criminal. It is seen from the foregoing tables and discussion that this is actually what is being done, but that is not what *should* be done.

Of the larger groups, it appears that the twenty year, ten year, and seven year maximums are given the largest total number of additional sentences, which may indicate (since only in the seven year group is there a positive correlation with recidivism) that the judges consider that these maximums should have higher minimums. This may be shown in the case of Judge N....., who almost invariably gave a minimum of four years for embezzlement, instead of the statutory one year. His operations in various counties did not affect this method of sentence. Another judge, working only in one county, said in a letter concerning a prisoner whom he had sentenced for rape, "It is my rule always to give some additional years to the minimum set by law for crimes of this kind. However, I feel that the deterrent effect has been produced by the publicity given to his sentence, and therefore he could be paroled now." *The sentence had been given with a ten year minimum* instead of the statutory one year, and only *one and one-half years had been served* at the time the letter was written. The only reason advanced for the sudden change of the judge's mind was that the criminal's minister at home vouched for him as being a good church member. A recommendation from this clergyman accompanied the judge's letter. The idea, as stated by the judge that the deterrent effect had been secured by the pub-

licity given to the larger sentence, if carried to its logical conclusion could only mean that each criminal should be given a heavy sentence for the public to hear about, and a light, secret one which he should actually serve. The ridiculous results of such a procedure are too obvious to need explanation. Furthermore, the judge in question admits, without realizing that it is wrong, that he gives heavier sentences for their deterrent effect. All studies ever made point conclusively to the fact that heavy sentences in themselves do not prevent crime. It was mainly for this reason that public executions have been abolished in all the states of the United States, with the possible excepton of Florida. "Hanging, originally a public spectacle for the purpose of deterring spectators from the commission of crime, has become relatively secret, only the officials required and newspaper reporters being allowed to be present in most countries. New York State in 1835 abolished public executions. By 1906 Florida was the only state which allowed public execution. This development took place because it had become apparent that instead of public execution deterring people from crime it brutalized them and incited to crime."[10] It should not be thought that the judge quoted is an exception. More will be said of this deterrent idea later, but another table of recidivism

TABLE VII

CLASSIFICATION OF TOTAL CONVICTIONS, BY YEARS ADDED TO MINIMUM TOTAL NUMBER OF CONVICTIONS

Additional Years		Recidivists			
	One	Two	Three & Over	Total	Total
0	497	159	91	250	747
1	142	64	39	103	245
2	96	41	34	75	171
3	27	10	2	12	39
4	52	29	21	50	102
5	16	13	11	24	40
6	10	4	1	5	15
7	4	0	2	2	6
8	2	0	0	0	2
9	25	5	8	13	38
10	6	2	3	5	11
11	2	1	1	2	4
12	1	0	0	0	1
14	3	2	4	6	9
15	2	1	1	2	4
17	3	0	0	0	3
18	0	1	1	2	2
19	3	0	0	0	3
20	1	0	0	0	1
22	1	0	0	0	1
25	1	0	0	0	1
Total	894	332	219	551	1445

[10]John L. Gillin, "Criminology and Penology," page 355.

and minimum may serve to show something of the attempts of judges to deter from crime by such a procedure.

From the above table is found, among other facts, that the heaviest sentences were given to first offenders—those with only one conviction. Counting from four to twenty-five additional years, inclusive, there were 132 with no previous convictions, and only 111 with one or more previous imprisonments. Of the latter, 58, or *more than half,* had received only one conviction previous to the one studied here. Therefore, the greater the recidivism the lighter the sentences become, no reason for this being apparent—unless it is simply that the courts have given up in disgust. It is especially significant that of those given one extra year (which extra is the most widely used) 142 were first offenders and only 103 were recidivists. In line with the other findings, it is worth noting that 64 of the

TABLE VIII

DISTRIBUTION OF MINIMUM SENTENCES, BY MAXIMUM TERM

Minimum Sentence	Maximum of Crime Groups: Less Than Six Years	Six Years and Over	Total
0	...	1	1
1	216	407	623
2	51	217	268
3	19	114	133
4	2	34	36
5	7	121	128
6	...	9	9
7	...	17	17
8	...	4	4
9	...	1	1
10	...	149	149
11	...	3	3
12	...	15	15
13	...	1	1
14	...	...	0
15	....	27	27
16	...	...	0
17	...	3	3
18	...	3	3
19	...	2	2
20	...	12	12
21	...	2	2
22	...	1	1
23	...	...	0
24	...	1	1
25	...	4	4
26	...	...	0
27	...	1	1
28	...	...	0
29	...	...	0
30	...	1	1
Total	295	1150	1445

recividists had only one previous conviction. Counting the additional years from nine to twenty-five, inclusive, as being the very heavy ones, the difference is even more marked. In the first offender group are found 48, but the recidivists have only 30. In the column of totals is brought out another fact which it will be possible to corroborate later in this study. High points are reached at all places where the additional plus the usual minimum would total five or multiples of five. The statutory minimum for most crimes being one year, except for robbery which is ten years, peaks occur at four, nine, fourteen, and nineteen. All this can be verified by showing the distribution of minimum sentences, which is done in Table VIII. Those crimes carrying a maximum of five years or less have been grouped separately, since there could not be given a legal five year minimum for any of these. Figures have been taken to the nearest full year; for example one year nine months was considered as two years.

From the table and accompanying graph can be noted the peaks at five and multiples of five. It was shown before that one year and two year additionals were the most widely used (see Table VII) hence the high number of two and three year minimums; this also explaining the peak at twelve years, which would be mainly due to the ten year statutory minimum for robbery, plus the usual two extra years; also, the peak at seven years is due to the five year statutory minimum for night burglary and second offense automobile stealing. Of course, the huge number at one year shows the group that have been given the statutory minimum of that amount. The United States Census Bureau has found that the more ignorant or forgetful persons are likely to give their ages in multiples of five, for which corrections must be made in the final tabulations. Such corrections, it seems, should be made in figuring the actual amounts which criminals should serve. Judges seem prone to give sentences in exactly the same way as these persons give their ages—in multiples of five. This holds to so great an extent that there even occurs a peak at as high a minimum as twenty-five years. Corresponding to that is the unwillingness of the judges to give certain little-used numbers for the minimum sentence, such as nine, eleven, thirteen, fourteen, sixteen, nineteen, etc. In fact, of the 1445 cases, the numbers fourteen, sixteen, twenty-three, twenty-six, twenty-eight, and twenty-nine were never used as minimums, although there was one as high as thirty years. Such lengths of imprisonment clearly are not considered conducive to proper or effective reformation of the criminal, assuming that to be the pur-

pose of incarceration; nor are they considered useful in deterrence, should that be the desired end.

Now it is desirable to turn to another aspect of the use of the Norwood Law; namely, its effect upon crimes, or at least the treatment of various crimes. Since it would be impractical to list each crime, as a separate unit, use was made of the classification formed by the United States Census Bureau, (See Appendix). An arbitrary division of counties into urban and rural was also made, in order to see if the location of the crime had any effect upon its treatment. With the aid of the census of 1920, the per cent urban population in the total for each county of Ohio was ascertained. All counties having 50% or more urban population were considered in the urban group; all others were called rural. This formed a preponderance of rural counties, but final results showed that approximately three times as many commitments had been made from the urban districts as from the rural. This is not so very surprising, since the census shows that 63.8% of the total Ohio population was urban.

Urban	Rural		
Allen	Adams	Harrison	Paulding
Ashtabula	Ashland	Henry	Perry
Butler	Athens	Highland	Pickaway
Clark	Auglaize	Hocking	Pike
Columbiana	Belmont	Holmes	Portage
Crawford	Brown	Huron	Preble
Cuyahoga	Carroll	Jackson	Putnam
Erie	Champaign	Jefferson	Ross
Franklin	Clermont	Knox	Sandusky
Hamilton	Clinton	Lake	Shelby
Lorain	Coshocton	Lawrence	Union
Lucas	Darke	Licking	Van Wert
Mahoning	Defiance	Logan	Vinton
Marion	Delaware	Madison	Warren
Montgomery	Fairfield	Medina	Washington
Muskingum	Fayette	Meigs	Wayne
Richland	Fulton	Mercer	Williams
Scioto	Gallia	Miami	Wood
Seneca	Geuga	Monroe	Wyandot
Stark	Greene	Morgan	
Summitt	Guernsey	Morrow	
Trumbull	Hancock	Noble	
Tuscarawas	Hardin	Ottawa	

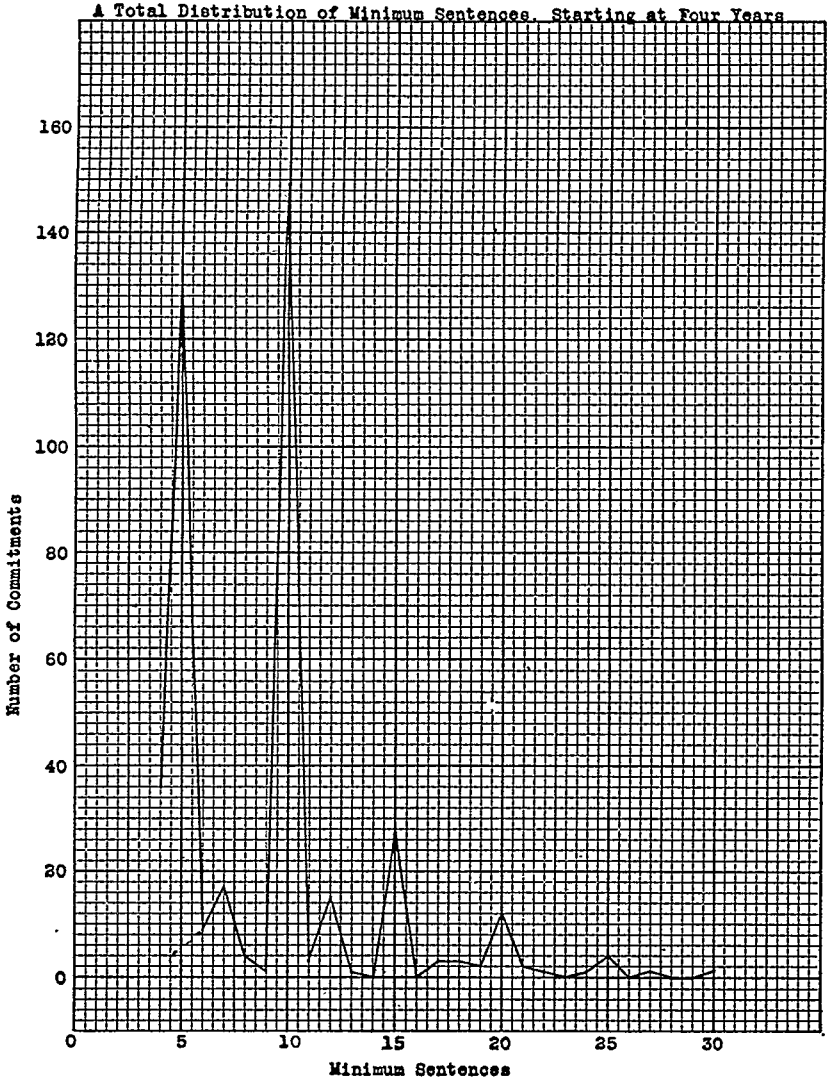
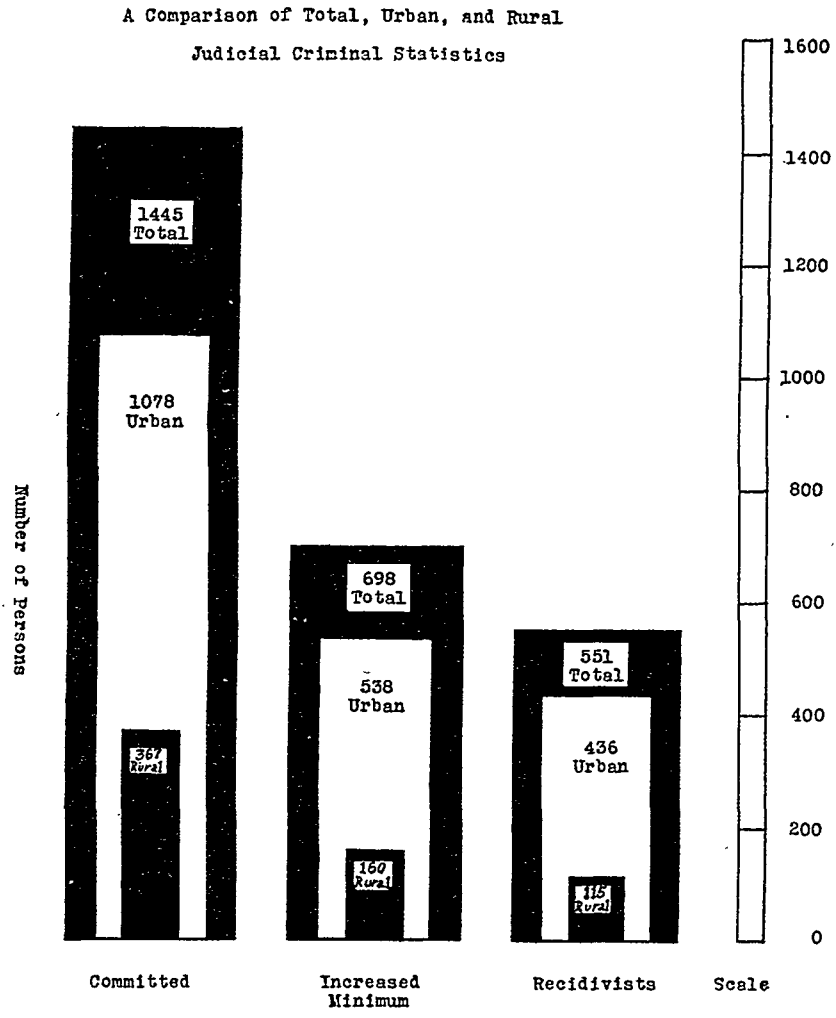

A Total Distribution of Minimum Sentences. Starting at Four Years
Number of Commitments
160
140
120
100
80
60
40
20
0
0
5
10
15
20
25
30
Minimum Sentences

TABLE IX

TOTAL COMMITMENTS, TOTAL GIVEN EXTRA, AVERAGE EXTRA, TOTAL RECIDIVISTS, PER CENT GIVEN EXTRA[1] AND PER CENT RECIDIVISTS;[1] BY CRIME AND DISTRICT

Crime and District	Sent to Penitentiary	Given Extra Sentence	Average Extra[2]	No. of Recidivists	% Given Extra	% Recidivists
Homicide						
Urban	60	43	6.5	7	71.7	11.7
Rural	15	12	6.0	3	80.0	20.0
Total	75	55	6.5	10	73.3	13.3
Rape						
Urban	14	11	5.5	1	78.6	7.1
Rural	17	14	6.0	3	82.4	17.6
Total	31	25	6.0	4	80.6	12.9
Robbery						
Urban	144	58	5.0	68	40.3	47.2
Rural	22	4	4.5	8	18.2	36.4
Total	166	62	5.0	76	37.3	45.8
Assault						
Urban	108	67	4.0	28	62.0	25.9
Rural	34	18	2.5	5	52.9	14.7
Total	142	85	3.5	33	59.9	23.2
Burglary						
Urban	211	126	5.5	103	59.7	48.8
Rural	79	36	3.0	42	45.6	53.2
Total	290	162	4.5	145	55.9	50.0
Forgery						
Urban	60	26	2.5	19	43.3	31.7
Rural	25	10	2.0	8	40.0	32.0
Total	85	36	2.5	27	42.4	31.8
Larceny						
Urban	334	156	4.0	173	46.7	51.8
Rural	86	39	2.0	31	45.3	36.0
Total	420	195	3.0	204	46.4	48.6
Carrying Concealed Weapons						
Urban	41	14	1.5	14	34.1	34.1
Rural	4	0	0.0	1	0.0	25.0
Total	45	14	1.0	15	31.1	33.3
Sex Offenses Except Rape						
Urban	24	17	2.5	7	70.8	29.2
Rural	11	11	3.0	4	100	36.4
Total	35	28	3.0	11	80.0	31.4
Non-Support						
Urban	35	9	1.0	9	25.7	25.7
Rural	35	7	2.0	1	20.0	2.9
Total	70	16	1.5	10	22.9	14.3
Drug Laws						
Urban	2	1	4.0	1	50.0	50.0
Rural	0	0	0.0	0	0.0	0.0
Total	2	1	2.0	1	50.0	50.0
Liquor Laws						
Urban	31	1	1.0	2	3.2	6.5
Rural	34	6	2.0	7	17.6	20.6
Total	65	7	1.5	9	10.8	13.8
Other Crimes						
Urban	14	9	3.0	4	64.3	28.6
Rural	5	3	2.0	2	60.0	40.0
Total	19	12	2.5	6	63.2	31.6
Total						
Urban	1078	538	3.5	436	49.9	40.4
Rural	367	160	3.0	115	43.6	31.3
Total	1445	698	3.5	551	48.4	38.2

[1]Of Total Number of Commitments for Each Crime in Each District.
[2]To the Nearest One-Half Year.



It is to be presumed that, in fixing the scale of punishments for each crime, the legislature has decided the amount of time necessary to reform the individual, or to repay society for the damage done, or to prevent others from committing similar crimes. As conditions or ideas change, these punishments are increased or decreased; such as was recently done when the penalty for bank robbery was made 20 years to life imprisonment rather than ten to twenty-five years, as it is for all other types of robbery. It is an interesting fact that some judges do not even trouble themselves to become acquainted with the

new sentences. For example, after the bank robbery law had been in effect a few months, Judge B....., of a large county, committed four men to "not less than ten years nor more than twenty-five years in the Ohio penitentiary" for this crime. It is highly probable that these men, instead of being imprisoned, could have been released on habeas corpus proceedings.

Despite what the legislature, representing the people, may think, the judges have their own ideas concerning the heinousness of certain crimes. The sex mores being so strong a factor in present-day society, any violation of them must be heavily punished by those having legal permission to do so. That may be the reason why a greater percentage of men in the two sex offense groups—rape, and all other sex offenses—are given higher than statutory minimums, than in any other crime group. The per cent of total commitments given additional years in these two classifications was enormous, being 80.6% for rape and 80.0% for other sex offenses. Nor are the extra punishments light ones. Six years was the average for each person in rape cases, and three years in the other sex classification. In both groups, the rural courts were more stringent than the urban ones, both in per cent given extra and in the length of sentence. This, therefore, corroborates what would ordinarily be expected; the more conservative rural districts are more appalled at a crime of sex than urban sections, although any part of Ohio is more greatly disturbed at this offense than at any other. In fact, in the group of sex offenses except rape, although only four rural persons were recidivists, the entire eleven convicts were given extra sentences. It cannot be said that the criminals in these two classes of crime are worse than others, since only 12.9% of the rape convicts, and 31.4% of the other group, were recidivists. Therefore there was no correlation between the number given extra and the number of recidivists.

Homicide, in this study including manslaughter and one case of abortion, but not first or second degree murder, was next in order of offensiveness to judges throughout the state. Again the criminals in this group were more harshly treated in rural than in urban communities, 80.0% of the total being given extra in the former, and 71.7% in the latter. The total for this crime shows a marked difference between the number given extra and the number of recidivists. Of the total commitments, 73.3% were given extra, but only 13.3% were recidivists. However, in this class the urban group was given heavier sentences, since the average extra number of years here was 6.5, while in the rural group it was 6.0. Since there was only one abortion

case, which carries a sentence of one to seven years, and seventy-four manslaughter cases, homicide may be considered, for purposes of comparison, as manslaughter, for which the statutory sentence is not less than one year nor more than twenty years imprisonment. It would be interesting to make a comparison of this crime with forgery. The legislature has definitely fixed the same scale of punishment for each of these crimes, showing that society considers them to be equally harmful, or the criminals equally difficult to reform—or whatever the basis may be for setting these limits. In Ohio, such decisions apparently mean little to the judges. There were 75 persons sentenced upon a charge of homicide, and 85 persons upon a charge of forgery. Of the former, 13.3% were recidivists, of the latter 31.8%. Yet, in the former group are found 73.3% given extra, with an average of 6.5 additional years for each person; but in forgery cases, 42.4% are given extra, with an average of only 2.5 additional years for each person. This demonstrates that in the opinion of the judges, homicide is approximately twice as dangerous to society, or twice as hard to cure, as forgery; yet society, through its legislature, does not think so.

Contrasting urban and rural sections, marked variations are found in giving sentences for various crimes. If any additional is given, assault in urban district means a minimum of 5.0 years, in rural districts 3.5 years; burglary in urban districts is punished with a minimum of 6.5 years, and in rural districts 4.0 years; urban larceny receives a 5.0 year minimum, rural larceny carries a minimum of 3.0 years; non-support is punished in urban sections by a 2.0 year minimum, and in rural sections the average is 3.0 years. It seems to be a general rule that crimes against property are more heavily penalized in urban communities; while crimes against sex mores, family life, or the *status quo* in general, are dealt with more strictly in rural districts.

The liquor problem has a curious aspect in judicial circles. Of 65 cases brought into court, only 7, or 10.8% were given additional years in the sentence. This was the lowest of any crime group. Of those given any extra at all, the average was 1.5 years. However, the great variation is found in contrasting the urban and rural districts. Although the number of cases were almost equally divided, 31 in the urban section and 34 in the rural, the former only had one person, or 3.2% given an additional sentence of one year; but the latter had six persons, or 17.6%, given an additional sentence of two years. It is true that there were more recidivists in the rural district, but a

study of the actual cases shows that some first offenders were among those given additional years.

Altogether it is a singular coincidence that the average number of additional years in the two divisions are almost the same, being 3.5 in the urban group and 3.0 in the rural. Also, in the urban section, 49.9%, or almost exactly half, of the total cases were given additional sentences; and somewhat less than this, 43.6% of the total cases in the rural group were given extra. As was noted previously, 48.4%, being approximately half, of the total commitments were given additional sentences, while only 38.2% of the total crimes were maneuvered by recidivists.

In order to make a comparison that would eliminate this difference due to locality, ten judges were selected from six urban counties, and some statistical data relative to them were studied. Two counties supplied two judges each, one county had three judges, and the other three counties were represented by one judge each.

The work of courts within the same counties, handling substantially the same types of cases, was shown to be totally different. The two judges in County One, for example, sentenced homicide in divergent methods. Judge "A" gave 71.4% of his cases extra minimums, with an average of three additional years each. Judge "B" gave 100% of his cases extra minimums, with an average of seven years each. Clearly, in the first court a man convicted of homicide may expect a lighter sentence than if he had been brought into the other court. Sex offenses in the same places of jurisdiction, are also treated differently. Not considering rape, each had five cases of this type of crime. Judge "A" gave extra sentences to all of his prisoners, with an average of two years additional to each. Judge "B" gave heavier sentences only to two persons, but they received an average of three additional years each. Of the total cases handled, it is true that each judge gave an average additional sentence of 2.5 years, but Judge "A" gave heavier than statutory punishments to 75.0% of his 100 cases, whereas Judge "B" so punished only 52.0% of his 75 cases. A man imprisoned from the second court had a better chance of an early release than one sent from the first court. County Two shows the same results. To consider some crimes not mentioned before, it is found that Judge "C" sentenced one of five burglars, or 20.0%, an additional amount of one year; while Judge "D" gave increased minimums to eight of nine men, with an average additional amount of 3.5 years. Larceny, also, was more harshly treated by Judge "D," who sentenced seven of eight cases, or 87.5%, an average of two ad-

TABLE X

COMPARISON OF SOME JUDGES IN URBAN COUNTIES, SHOWING TOTAL COMMITMENTS, TOTAL GIVEN EXTRA, AVERAGE ADDITIONAL NUMBER OF YEARS, AND PER CENT OF COMMITMENTS GIVEN EXTRA; BY CRIMES

Crime, Total Commitments, Total Given Extra, Average Additional Years, and Per Cent of Commitments Given Extra	County and Judge									
	ONE		TWO		THREE			FOUR	FIVE	SIX
	A	B	C	D	E	F	G	H	I	J
Homicide										
Total Commitments	7	3	1	0	0	1	2	3	2	1
Total Given Extra	5	3	0	0	0	1	2	3	2	1
Average Additional Years	3	7	0	0	0	6	5	13	6.5	2
Per Cent Given Extra	71.4	100	0	0	0	100	100	100	100	100
Rape										
Total Commitments	1	0	1	0	1	0	2	2	0	0
Total Given Extra	1	0	1	0	1	0	2	2	0	0
Average Additional Years	1	0	1	0	14	0	2.5	4	0	0
Per Cent Given Extra	100	0	100	0	100	0	100	100	0	0
Robbery										
Total Commitments	21	7	1	9	4	6	9	13	7	6
Total Given Extra	12	3	0	5	0	0	2	6	3	3
Average Additional Years	4	3	0	3	0	0	1	2	4	1
Per Cent Given Extra	57.1	42.9	0	55.6	0	0	22.2	46.2	42.9	50.0
Assault										
Total Commitments	10	7	3	3	1	3	6	4	3	5
Total Given Extra	8	3	3	3	0	1	3	4	3	3
Average Additional Years	3	2.5	1.5	2.5	0	1	3	3	6	1.5
Per Cent Given Extra	80.0	42.9	100	100	0	33.3	50.0	100	100	60.0
Burglary										
Total Commitments	17	17	5	9	9	4	14	7	13	10
Total Given Extra	15	12	1	8	6	4	11	4	7	5
Average Additional Years	2.5	2	1	3.5	1	6	1	1.5	5	3
Per Cent Given Extra	88.2	70.6	20.0	88.9	66.7	100	78.6	57.1	53.8	50.0
Forgery										
Total Commitments	1	4	3	5	1	3	3	1	3	0
Total Given Extra	1	0	2	5	0	0	2	1	2	0
Average Additional Years	0.5	0	1	3	0	0	1	2	1	0
Per Cent Given Extra	100	0	66.7	100	0	0	66.7	100	66.7	0

Larceny										
Total Commitments	33	28	9	8	11	12	16	11	9	11
Total Given Extra	27	14	3	7	3	0	13	8	2	4
Average Additional Years	1	1	3	2	1	0	1.5	2	1	0.5
Per Cent Given Extra	81.8	50.0	33.3	87.5	27.3	0	81.3	72.7	22.2	36.4
Carrying Concealed Weapons										
Total Commitments	3	3	0	0	2	0	9	2	5	0
Total Given Extra	0	1	0	0	1	0	4	1	1	0
Average Additional Years	0	0.5	0	0	0.5	0	0.5	0.5	1	0
Per Cent Given Extra	0	33.3	0	0	50.0	0	44.4	50.0	20.0	0
Sex Offenses, Except Rape										
Total Commitments	5	5	0	1	0	0	2	0	0	0
Total Given Extra	5	2	0	1	0	0	2	0	0	0
Average Additional Years	2	3	0	4	0	0	2	0	0	0
Per Cent Given Extra	100	40.0	0	100	0	0	100	0	0	0
Non-Support										
Total Commitments	0	1	0	0	0	0	1	0	2	2
Total Given Extra	0	1	0	0	0	0	0	0	0	1
Average Additional Years	0	0.5	0	0	0	0	0	0	0	1
Per Cent Given Extra	0	100	0	0	0	0	0	0	0	50.0
Drug Laws										
Total Commitments	1	0	0	0	0	0	0	0	0	0
Total Given Extra	1	0	0	0	0	0	0	0	0	0
Average Additional Years	4	0	0	0	0	0	0	0	0	0
Per Cent Given Extra	100	0	0	0	0	0	0	0	0	0
Liquor Laws										
Total Commitments	0	0	0	0	0	0	0	2	1	1
Total Given Extra	0	0	0	0	0	0	0	0	0	0
Average Additional Years	0	0	0	0	0	0	0	0	0	0
Per Cent Given Extra	0	0	0	0	0	0	0	0	0	0
Other Crimes										
Total Commitments	1	0	0	0	0	0	1	0	1	1
Total Given Extra	0	0	0	0	0	0	0	0	0	1
Average Additional Years	0	0	0	0	0	0	0	0	0	1
Per Cent Given Extra	0	0	0	0	0	0	0	0	0	100
Total										
Total Commitments	100	75	23	35	29	29	65	45	46	37
Total Given Extra	75	39	10	29	11	6	42	29	20	18
Average Additional Years	2.5	2.5	1.5	3	4	4.5	2	3.5	3.5	1.5
Per Cent Given Extra	75.0	52.0	43.5	82.9	37.9	20.7	64.6	60.0	43.5	48.6

ditional years each; the other court giving an average of three extra years each, but only to three of nine, or 33.3% of the total commitments. The same appears to be the trend in robbery trials, although Judge "C" had only one case, thereby invalidating any attempted comparison. Therefore it seems to be a safe conclusion that in order to make more certain of a lighter sentence in crimes against property in County Two, lawyers would do well to maneuver their clients into the court of Judge "C." Moreover, in looking at the totals, it is seen that the same would be true of all trials in general. Judge "C" gave increased sentences to ten of his twenty-three prisoners, or 43.5%, with an average of 1.5 additional years each. On the other hand, Judge "D" gave increased sentences to twenty-nine of his thirty-five cases, or 82.9%, with an average of 3 additional years each.

A study of larceny will serve to show the treatment of cases in County Three. Of the three judges, no two show the same practices. Judge "E" had eleven cases, giving three extra sentences, with an average of one additional year each. Judge "F," having twelve cases, gave no additional years whatever; while Judge "G," in convicting sixteen men, gave thirteen, or 81.3%, extra sentences averaging 1.5 years per man. Without a doubt, looking at the immediate interests of the criminal from his viewpoint, Judge "F" is an ideal personage. The totals serve to strengthen this thought. Of the three courts, "F" was the most lenient, giving 20.7% of its cases higher than statutory minimums. Next in order was "E" with 37.9%, and strictest of all was "G" with 64.6%. It is noteworthy that the greatest disagreement among courts occurs in the crime of larceny. Of the three remaining counties with one judge each, "H" gave 72.7% of the cases increased sentences, with an average of two years each; "I" punished 22.2% with an average of one year each; and "J" gave extra minimums to 36.4%, averaging 0.5 of a year per prisoner. This is significant when it is noticed that each of the last three judges had approximately the same number of cases for larceny; eleven, nine and eleven, respectively.

The preceding discussion of the activities of judges disproves the idea advanced by Lord Justice Fry in England many years ago, although most commitment and sentencing laws for various crimes to-day apparently agree with him. He said, "In a word then it seems to me that men have a sense of the fitness of suffering to sin, of a fitness both in the gross and in proportion; that so far as the world is arranged to realize this fitness in thought, it is right; and that so far as it fails in this arrangement, it is wrong except so far as it is a

place of trial or probation; and consequently that a duty is laid upon us to make this relationship of sin to suffering as real and as actual and as exact in proportion as it is possible to be made. This is the moral root of the whole doctrine of punishment."[11] Theoretically, this idea has now been discarded; in practice, fitting the punishment to the crime is probably still in use, although each judge apparently has his own idea of the proper measurement, as has been seen in the comparisons and contrasts made here. Such an indictment of our judicial system is vehemently made in the Cleveland Foundation Survey of Criminal Justice, edited by Roscoe Pound and Felix Frankfurter. "Administration is necessarily affected by the fundamental conflict with respect to aims and purposes which pervades our penal legislation. But apart from this, the conflicting theories are also at work in administration. One magistrate paroles freely; another may condemn the system of parole. One executive pardons freely, another not at all. One jury is stern and as like as not acts upon the revenge theory; another jury is soft-hearted. One judge is systematically severe and holds that crime must inevitably be followed by retribution; another is systematically lenient, and many others have no system or policy whatever. Thus the fact that we are not all agreed, nor are we ourselves agreed in all our moods, infects both legislation and administration with uncertainty, inconsistency, and in consequence inefficiency. All attempts to better this situation must reckon with a deep-seated popular desire for vengeance in crimes appealing to the emotions, or in times when crimes against the general security are numerous."[12] To show the truth behind such criticism, it would be valuable to note some individual cases. "One judge is systematically severe." Such is Judge "K" who, in nineteen cases of first offenders, gave the statutory minimum to only six. Perhaps it is merely a coincidence that twelve of the thirteen who were given additional years were colored. Among the sentences, all first offenders, are found such as these: twenty-two years old, 25 to 30 years for night burglary; nineteen years old, 5 to 15 years for day burglary; twenty-one years old, 10 to 15 years for day burglary; and twenty-one years old, 12 to 25 years for robbery. Sentences of other harsh judges are: nineteen years old, white, first offender, 10 to 20 years for assault; twenty-two years old, white, first offender, 18 to 20 years for assault; and to two blackmailers, first offenders, white, thirty-three and twenty-five years old, sentences of 4 years 11 months to 5 years, and 4 years to

[11]"Nineteenth Century Review," September, 1883, pages 521-2.

[12]Part VII, Roscoe Pound, "Criminal Justice in the American City," page 18.

5 years, respectively. The two last-mentioned cases might have shown the judge to have been wrong in his evaluation of their merits, in that both sentences were commuted by the governor, after imprisonment of 2 years 8 months. As instances of easy-going judges, the following are interesting. A white man, thirty-nine years old, with eight previous commitments, was given only 1 year 6 months additional sentence; another white man, sixty-five years of age, with five previous sentences, received no extra minimum; three others, aged twenty-six, thirty-one, and thirty-nine years, with four previous convictions each, were given no increased punishment. Inconsistencies and changes of mood are shown in the following cases. One judge pronounced five sentences for burglary, at different times, two second-time convicts being given no extra years, a third-time man receiving one additional year, another third-timer being given two additional years, *but a first offender twenty-eight years old was given four years in addition to the statutory minimum.* Another judge, sentencing for carrying concealed weapons, gave a recidivist no extra at all, while a first offender received one and one-half years extra. Automobile stealing was thought by another judge to be worth a one year additional punishment for a recidivist with three previous sentences, and four years additional for a first offender twenty-two years of age. Also, for assault to rape, a three-time recidivist was given four additional years, but a first offender twenty-one years of age thought worthy, by the same judge, of receiving nine additional years. Judges are evidently subject to human failings and idiosyncrasies, even when sitting on the bench to pronounce sentence upon prisoners. Among the least harmful of these peculiar traits or actions is that of Judge "L" who, being consistent in his sentences, always adds the one day of antiquity. It will be recalled that knights of old were forced to do chivalry for "a year and a day" before being considered fit to mingle with other knights. So this judge must think of his prisoners, for invariably we find the sentence "a year and a day to five years," or whatever the maximum may be for that crime. More dangerous are the two "mathematical" judges, who seemingly determine their sentences by arithmetic. One of these sets the minimum one year below the maximum, adds half the remaining year, then half of one month, exclusive of Sundays. For example, a first offender, thirty-six years old, convicted of robbery, was given as a minimum, "24 years 6 months 13 days." The other judge of that type uses three-quarters instead of one-half. He takes one year less than the maximum, adds three-quarters of the remaining year, then three-quarters of a month. One

of his sentences for pocket picking was "not less than 4 years 9 months 21 days nor more than five years." Life sentences have not been considered in this study, since the Norwood Law does not apply to them, but two cases of life imprisonment are worth noting as examples of the peculiarities of a judge. This man, sitting in a large county of Ohio, gave the following sentences to the only two murderers appearing in his court during the year 1927. "Life imprisonment, and October 28th each and every year to be spent in solitary confinement," and to the other, "Life imprisonment, and April 12th each and every year to be spent in solitary confinement." These two dates were the ones on which the murders had been committed. Since the charge in both cases was second-degree, the punishment would have been life imprisonment in any other court, but without the solitary confinement at stated intervals. Further evidences of strict or peculiar sentencing may be found. Five cases by various judges were given minimums of one year less than the maximum; six cases were given minimums of only six months less than the maximum, three of these being young first offenders; three were given minimums one month less than the maximum; and three others, two being first offenders, received minimums of one day less than the maximum. In addition, during the year 1927, there were eighteen illegal sentences, in that the minimum was exactly the same as the maximum, making them flat sentences. It is indeed strange that courts, while punishing prisoners for breaking the law, succeed in violating the laws governing their own actions! In this connection, it should not be amiss to note other illegal commitments to Ohio penitentiary. Section 2131 of the General Code specifies that, "The superintendent shall receive all male criminals between the ages of sixteen and thirty years sentenced to the reformatory, if they are not known to have been previously sentenced to a state prison. Male persons between the ages of sixteen and twenty-one years convicted of felony shall be sentenced to the reformatory instead of the penitentiary. Such persons between the ages of twenty-one and thirty years may be sentenced to the reformatory if the court passing sentence deems them amenable to reformatory methods. No person convicted of murder in the first or second degree shall be sentenced or transferred to the reformatory." The section pertaining to "male persons between the ages of sixteen and twenty-one years" is mandatory, making it illegal for the judge to send any such person, without a previous prison record, to the penitentiary. Furthermore, in the case of *Prescott* v. *State*, 19 O. S. 184, it was decided that, "the industrial school is not a prison,

and a proceeding for commitment thereto is not a criminal prosecution."[13] Despite this law and the clarifying court decision, in the year 1927 there were actually twenty-eight cases of boys twenty years of age or less, without a previous prison record, who were sent to the penitentiary. Seven of these had been in the industrial school, while *twenty-one of the boys had never been incarcerated before.* Even if the judges were unaware of the court decision in *Prescott* v. *State,* the twenty-one cases of first offenders sent to the penitentiary were absolutely inexcusable. Six of these were sent by one judge, and four by another. These two judges have already been cited here as being especially harsh in giving increased minimums to lawbreakers: yet they do not particularly care about laws intended to regulate their judicial activities. One of these, also, is the man who was previously mentioned as having sentenced four bank robbers with a ten year to twenty-five year term, rather than the legally required twenty years to life. That some of the prisoners realize that they are being unlawfully imprisoned is shown by the fact that the writer had the reformatory commitment law brought to his attention by a twenty year old convict who desired to know why he was in the Ohio Penitentiary rather than the Mansfield Reformatory. Of course in many cases, as in the following, the judge may claim that he was unaware of the prisoner's age. The only logical answer to this is that no sentence ever ought to be given until all the facts are ascertained. The letter to be quoted is simply one of many similar ones regarding different cases.

"Board of Clemency,
"Columbus, Ohio
"Gentlemen:

"Relative to ....., Serial No..... whom I sentenced to the penitentiary April 26, 1927, I discover from a letter written by Mr. Thomas, warden of the Ohio Penitentiary, that at the time of the sentence he was only nineteen years of age. That fact was not called to my attention at the time of sentence. He plead guilty to the crime of shooting with intent to kill. The person whom he shot at was an officer of the law. I note the penalty which I placed against him was quite severe, but had I known that he was only nineteen years of age, which I am now sure is a fact, I could not and would not have sentenced him to the penitentiary.

"Mr. Dignan, the officer who was shot at, advised me yesterday, that he would sign a letter asking for mercy for him. The Prosecuting Attorney also advises me that he will sign such a letter. And therefore, under all the circumstances, it is entirely agreeable to me for this boy to be released at the present time. He should have been sent to the Re-

[13]Quoted in Department of Public Welfare Publication No. 25, page 388.

formatory, at Mansfield, and in view of the fact that his sentence was not in accordance with law, I feel that he should not be required to go into Court to secure his release.

Very truly yours,
(SIGNED) ....."

The letters from the Prosecuting Attorney and the plaintiff were also on file. *It took three years to discover a fact which would have changed the entire sentence,* yet almost half the cases of 1927 were given higher than statutory minimums, at the regular trial in court. It is interesting to see the influence which an increased sentence has upon other investigators. The Superintendent of the Bertillon Department places a notation of his personal opinion regarding each prisoner. Of the convict just mentioned, nineteen years old with no criminal record, he said, "A crook and rover." Yet it is now admitted by the authorities that the sentence was too severe. Such hasty judgment seems to be the essence of the activities growing out of the Norwood Law.

Conclusions and Recommendations

R. M. Wanamaker, Associate Justice of the Supreme Court of Ohio, in an article entitled, "The Campaign Against Crime; The Judge's Part In It," said, "The law is what the judge says it is. The people make the constitutions—that is, they have the first word on the subject; the judges have the last word. The legislatures make the statutes—that is, they have the first word; the judges have the last word. Under the power of construing the law, whether constitutional, statutory, or otherwise, the plain provisions of the law are too frequently perverted and ofttimes partially or even totally defeated."[14] The findings in this research serve to corroborate this statement. In many cases the judges overstepped the limits of the law; in others they came perilously near to it. The comparisons of courts show that there are about as many systems of justice in Ohio as there are judges; although other tables and individual cases have shown that many of these judges cannot be said to have "systems" at all. "If our sentences are to have a preventive effect; if they are to satisfy the Public—not by the judges adopting the views which the Public hold, but by their leading the Public to a better course of thinking; if they are to excite what Sir James Stephen speaks of as a righteous indignation against crime; and lastly, if we are to deter with good effect and to save many men from sin and many goods from being

[14]Saturday Evening Post, October 28, 1922; page 11.

stolen, then the reason for the Sentence must be intelligible, not only to the talented members of the Bar, nor yet to the educated aristocracy or to the middle classes, but to the very lowest and stupidest of Her Majesty's subjects: for after all these form the class most tempted to steal, and therefore the class standing most in need of prevention. To them the subtle distinctions, which occur to the accute and highly trained mind of a judge, even if the very meagre evidence of motives adduced in court be sufficient to afford a fair opinion, are but as words in an unknown tongue."[15] Few, if any, convicts understand the reason why particular punishments were meted out to them. This is probably due to the fact that the judges themselves had no real reason, as shown by some of the letters already quoted. Another letter will bring this out even stronger, and at the same time show a point which has not yet been mentioned here. The quotation is reproduced in all details exactly as it is found in the original.

"Ohio Pententiary,
"Board of Clemency
"Columbus, Ohio.

"Gentlemen:

"I received a letter from a Mr. Webb who I sentenced to the O. P. last October for Burglary, and at the time i told him I would recomend his parole at the end of the year, as I felt that he needed to be sent to a place where he could sober up, rather than punish him for what he was charged with.

"If Mr. Webbs conduct has been such to warrent a Parole, while he has been in the institution, I am glad to give him my recomend to be paroled when his case comes up before the board.

"I was the presiding Judge in the case, being in cleveland by assignment at the time.

Yours very truly,
(SIGNED) ....."

There is no reason for believing that a man with so little education could be possessed of the proper training to form a correct sentence for a given criminal. The actual commitment was for the statutory minimum of one year "to sober up"; but the prisoner was then a seven time recidivist, in addition to having several indictments nolled. Nothing that has so far been learned about criminals shows that such a man should receive a plea for parole from the presiding judge, simply because of the feeling that the man was now sober.

It has been indicated that there are marked differences among courts in methods of fixing sentences. Perhaps this is due in part to a

[15]"Inequality in Punishment," T. B. L. Baker, page 10 (1883).

well-meant attempt to adjust sentences in accordance with each individual case and criminal personality. If this is so, then it has been sadly in error, as note the following two cases by different judges in two large counties. The descriptions were presented by the prosecuting attorneys, immediately after the trials. The first to be mentioned involved a robbery of fifty-two dollars by a first offender; the sentence being twenty years to twenty-five years.

"..... and ..... entered the plant of the Youngstown Sheet and Tube, around midnight, slugging one of the workmen over the head, injuring him permanently, and took, his pay check, which they cashed. They were convicted by a jury and the court raised the statutory minimum because of the lies they told. It is our recommendation that these men be kept in your institution the maximum time of their sentence.

(SIGNED) Prosecuting Attorney"

The following case involved a robbery of sixteen hundred and twenty-five dollars, by a three time recidivist; the sentence being twelve years to twenty-five years.

"Pleaded guilty to the robbery of one Dr. ..... In company with two other men ..... entered the home of Dr. ....., who was engaged in a game of cards with several other doctors. After completing the robbery, they attempted to put all the doctors in a closet and lock up the place. .....has also been identified as having participated in several other robberies which took place usually on dark highways. He also stuck up a man carrying a payroll for some company.

(SIGNED) Prosecuting Attorney"

A study of both cases did not show why the second should have been given a smaller sentence, especially so much smaller, than the first.

In view of these facts, and the others shown previously, the recommendations to be made are obvious. Judges should be so selected, that they are capable of separating the important facts from the unimportant ones, and of directing the trial in such manner as to bring out all possible relevant material. Also, they should have the proper training to enable them to select cases worthy of receiving suspended or purely indeterminate sentences. However, the Norwood Law could, even under such circumstances, be a hindrance to justice and the best interests of society, since, as was seen, it is impossible to secure all the necessary information during the course of the trial. Also, the law cannot help the penal problem because the concept of punishment is still the motivating one, rather than that of permanent treatment. This does not mean that there should no longer be long sentences,

even for life, but that these imprisonments should be guided by adequate scientific research and observation of the individual involved.

It is wholly logical, therefore, to advocate the repeal of the Norwood Law putting in its place a true indeterminate sentence worthy of the name without maximum or minimum limits. The time has long passed when a judge should be permitted to send a man to prison for any period he pleases; this the Norwood Law permits. As to maximum or minimum limits, the case of the young man given a flat sentence of twenty-five years for robbery, in which Warden Thomas states that, after seven years imprisonment, he "could safely be trusted with his liberty," but cannot be paroled until the statutory minimum has expired, is one of many cases proving the futility of, and harm done by, legal limits to sentences. Should an absolute indeterminate sentence of no days to life, for felonies at least, be considered as too far ahead of public opinion, then it is essential, as the second best step, to abolish the Norwood Law and return to the commitment act of 1913, by which the judge could only pronounce the statutory sentence, and a special board decided how long after the expiration of the minimum the prisoner should be freed. Even such a step, however, without its complement of a good parole board and well-organized parole system, would be a waste of time. A board, preferably with a penologist and a psychiatrist as members, capable of investigating fully each case, and a system of parole that is commensurate with the best standards as set forth by the National Probation and Prison associations, must be introduced into Ohio at the same time as the repeal of the Norwood Law. It is understood that such a body of experts should not be political appointees or elective officials. An objective test of qualifications should be made for each prospective member, by other disinterested experts (such as would be found on the faculty of a large university). This in no way is intended to cast aspersions upon the work of the Board of Clemency, but the two gentlemen comprising it are too busy to give more than a brief examination of convicts before granting or denying parole. The writer sat through eleven of their investigations, and timed each one. Measured in minutes, they were: sixteen, twelve, thirteen, fifteen, four, eleven, thirteen, nine, thirteen, eight, and eleven; the average being somewhat over eleven minutes. It is impossible to say, in the light of this study, that eleven minutes is sufficient time in which to decide whether or not a man is fit to live in a new society.

Penology teaches that there should be special institutions for the many classes of delinquents, and that individual differences of

criminals must be considered in deciding the proper sentence.[16] There are no two men, according to this school, who should be treated exactly alike. On the other hand, the legal theory is that there should be an ideal equality before the law for all persons. The Norwood Act is neither of the character of penology nor of the classical idealism of law.

APPENDIX

A Classification of the Felonies in Ohio, System of the United States Bureau of Census

1. Homicide.
   a. Abortion.
   b. Manslaughter.
   c. Murder
      1. Death Sentence.
      2. First Degree, Mercy.
      3. Second Degree.
2. Rape.
   a. Assault to Rape.
   b. Rape.
      1. Life Sentence.
      2. Other Sentences.
3. Robbery.
   a. Assault to Rob.
   b. Robbery.
4. Assault.
   a. Assault to Kill.
   b. Cut to Kill.
   c. Cut to Wound.
   d. Felonious Assault.
   e. Maiming.
   f. Shoot to Kill.
   g. Shoot to Wound.
   h. Stab to Kill.
   i. Stab to Wound.
5. Burglary.
   a. Burglary.
      1. One Year to Two Year Sentence.
      2. One Year to Five Year Sentence.
      3. One Year to Fifteen Year Sentence.
      4. Five Year to Thirty Year Sentence.
      5. Life Sentence.
   b. Attempted Burglary.
   c. Possession of Burglary Tools.
   d. Safe Forcing.
6. Forgery.
   a. Check to Defraud.
   b. Forgery.
7. Larceny. (Including Such Related Offenses as Embezzlement, Fraud, and Possession of Stolen Property.)
   a. Embezzlement.
      1. General Embezzlement.
      2. Embezzlement by Bank Officials.
      3. Embezzlement by Public Officials.
      4. False Conversion of Land.

[16] Cf., Boies, "Science of Penology," page 89.

b. Fraud.
   1. Blackmail.
   2. Check Without Funds.
   3. Defrauding Inn Keeper.
   4. Defrauding Insurance Company.
   5. False Financial Statement.
   6. Obtaining Property Under False Pretense.
   7. Removing Mortgaged Property.
   8. Selling Mortgaged Property.

c. Having Stolen Property.
   1. Automobile Stealing.
   2. Receiving Stolen Automobile.
   3. Receiving Stolen Property.

d. Larceny, All Degrees.
   1. Stealing or Destroying Ginseng.
   2. Horse Stealing.
   3. Larceny.
   4. Pocket Picking.

8. Carrying Concealed Weapons.
9. Sex Offenses, Except Rape.
   a. Bigamy.
   b. Incest.
   c. Indecent Exposure.
   d. Keeping House of Ill Fame.
   e. Pandering.
   f. Possession of Obscene Literature.
   g. Seduction Upon Promise to Marry.
   h. Sodomy.
10. Non support, or Neglect of Family.
11. Violation of Narcotic Laws.
12. Violation of Liquor Laws.
13. Violation of Traffic or Motor Vehicle Laws.
   a. Operating Motor Vehicle Without Owner's Consent.
14. Other Crimes.
   a. Arson.
   b. Aiding Escape.
   c. Bribery.
   d. Certifying False Pay Roll.
   e. Extortion.
   f. False Certificate.
   g. Fraud, Election Officials.
   h. Harboring a Felon.
   i. Injury to Domestic Animal.
   j. Interfering With Telegraph Message.
   k. Kidnapping.
   l. Malicious Destruction of Railroad Property.
   m. Meddling With Railroad Property.
   n. Perjury.
   o. Possession of Explosives.

GENERAL SUMMARY

1. Homicide.
2. Rape.
3. Robbery.
4. Assault.
5. Burglary.
6. Forgery.

7. Larceny.
   a. Embezzlement.
   b. Fraud.
   c. Possession of Stolen Property.
   d. Larceny, All Degrees.
8. Carrying Concealed Weapons.
9. Sex Offenses, Except Rape.
10. Non-support or Neglect of Family.
11. Violation of Drug Laws.
12. Violation of Liquor Laws.
13. Violation of Traffic or Motor Vehicle Laws.
14. Other Crimes.