

PRISON REFORM, GREATEST PRESENT DAY NEED

Report of the Commission on Prison Reform, Judge McKenzie Cleland, Chicago, Chairman, Before the World's Christian Citizenship Conference, Portland, Ore.

Reform Recommendations.

The appointment by religious denominations, business and social organizations of commissions to study prison conditions and disseminate information regarding them.

That we discourage wherever possible the spirit of revenge and retaliation in dealing with the unfortunate, remembering that He whom God sent to win the world through love never, by precept or example, advocated sending anyone to jail, but opened to every offender the door of hope when he said to the criminal "Neither do I condemn thee; go and sin no more."

That probation laws be enacted in every State, and by Congress for use in the Federal courts.

That we thoroughly approve the "Honor System" in use in Oregon, Arizona, Colorado and elsewhere, and urge upon every State the adoption of such system and the employment of its prisoners upon outdoor work so far as possible.

That we condemn the prison contract system and call upon every State where such system is in operation to abolish it.

That we urge upon every State the abolition of the system under which men are imprisoned merely because of their inability to pay fines, deeming such practice an unjust discrimination against the poor.

That the qualifications of judges of criminal courts should include a knowledge of social and industrial conditions in order that they may be properly equipped for dealing with delinquents.

Ignorance of crime and its consequences is a prevailing sin in every civilized country. Upon no other subject affecting its welfare is any nation so destitute of exact information. No one knows what crime costs nor how large is the so-called criminal class, nor the value of property stolen each year, nor how many of the graduates of our penal institutions fail to find their way back to a criminal court, although some improvement in this regard has been made in European countries.

Nor has there been in any State or Nation any successful effort to organize a complete system for the treatment of crime. Every city, village or other community has been left to solve the problem for itself. There is the utmost confusion and uncertainty as to what constitutes crime in different localities. A man who has lived in one community as a good citizen may become a criminal by doing the same things elsewhere. A felony in one State becomes a trifling misdemeanor in the next. In Louisiana incest is punishable by life imprisonment; in Delaware, by a \$100 fine. In New York it is a lesser crime to steal \$499 in the daytime than a street car ticket after sunset. Everyone, moreover, is conclusively presumed to know, not what the law seems to be, but what the courts may afterwards construe it to be, even though he be an immigrant just landed at Ellis Island.

The infraction of a law puts it within the power of any person who chooses to complain, to cause without expense to himself the arrest of the offender and his prosecution by a trained lawyer hired at public expense. If the accused is wealthy or influential, he is entitled to expend an unlimited amount of money or "pull" in securing an acquittal; if he is poor, ignorant and friendless, his case may be disposed of in a few minutes and with little consideration.

Inefficient Administration.

It is safe to say that no feature of Government has in recent years received or deserved more caustic criticism than the administration of the criminal law. Mr. Taft called it "a disgrace to our civilization." In its clumsy procedure and refined technicalities it is undoubtedly out of harmony with the progressive spirit of the age. If the convicted defendant is able to carry his cause to an appellate court, the chances of escape are much in his favor. The Supreme court of Florida reversed a conviction for stealing a cow, where the evidence showed that the animal was a steer. The Supreme Court of South Carolina reversed a conviction for stealing a piano when it appeared that the instrument was a pianola. In Alabama a conviction for stealing hides was set aside because the indictment did not specify from what particular animal the hides had belonged. In Illinois the indictment failed to specify whether the murder was committed in A. D. or B. C. and the conviction was reversed.

The antiquated system of determining the guilt or innocence of persons accused of crime has proved notoriously inefficient and it is, moreover, probable that no efficient system can ever be devised where punishment and not reformation is the end sought. Where conviction brings certain suffering and disgrace to both the accused and his family, it is natural that every effort to escape should be resorted to, and for this reason appeals to the sympathy of judge and jurors are so effective. On the other hand, were it the purpose of the court to reform the criminal and were the court properly equipped for that purpose, many delinquents would admit their guilt to obtain the assistance of the court in enabling them to reform and become restored to their proper places in society.

Understanding the Problem.

In order to appreciate the inability of our penal system to meet the requirements it is necessary to understand clearly:

(1) Who composes the so-called criminal class and

(2) The principle upon which they are dealt with in our courts.

Certain criminologists have endeavored to prove that there exists a well-defined criminal type which can be distinguished by certain hereditary

physical characteristics, as the shape of the head, the size of the ears, etc., but a criminal class there must also be a non-criminal class, which nobody believes. There are few, if any, persons nowadays who do not at some time violate one or more of our innumerable laws. Many keep within the letter of the law who violate its spirit and hence are really criminals. The criminal class, so-called, consists merely of those who are caught and convicted. Were this clearly understood and remembered, our attitude toward the criminal would materially change.

As a matter of fact, there is no well-defined distinction between the moral condition of people in and out of jail until those inside become demoralized by their surroundings. The overwhelming majority of persons dealt with in our criminal courts are weaklings who disobey the law through malice, weakness or ill-will to the State. Practically one-half of all arrests are for drunkenness. Few normal persons outside the professional criminal class deliberately plan to become criminals, but violate law under some sudden temptation or weakness. Fully 10 per cent of all arrested persons are physically, and 40 per cent mentally defective.

Failure of Punishment as Retaliation.

Because of these facts it must be apparent that as long as the administration of the criminal law is based upon the principle of punishment or retaliation it must fail. To punish a defective is not only inhuman, but useless, and yet we have the absurd spectacle presented of more than 5000 learned judges and prosecuting attorneys and many thousands of jurors spending their time condemning these lame and halt and blind to punishment and their more innocent and unfortunate wives and children to want and suffering. This punishment is administered for three reasons:

(1) To reform them;

(2) To deter others from violating the law;

(3) To enforce the payment of fines imposed for minor offenses.

All of these are excuses rather than reasons.

(1) All human experience teaches us that men, normal or abnormal, cannot be beaten into betterment. It is as much opposed to nature as for eggs to hatch in cold storage. There is no constructive power in either suffering or fear, but on the contrary, both are destructive. Especially is this true when the punishment is inflicted according to the caprice of a judge who may be influenced by passion or prejudice.

(2) Punishing one man in order to deter another from the commission of crime has not only been signally unsuccessful but it is hard to see upon what principle of justice or right it can be sustained. It is usual where a serious crime has been committed to demand the punishment of someone as an example, but that this is unfair and unjust everyone must admit. Moreover, experience teaches that it serves no good purpose. If this were a deterrent, crime should now be a thing of the past, because every nation has held up before every criminal the terrors of physical punishment.

Injustice of Imprisonment for Debt.

(3) The third reason for punishment, namely, to compel the payment of fines which have been imposed usually for trivial offenses, is so contrary to the spirit and humanity of the age as to shock our every sense of justice. Three hundred thousand persons are annually imprisoned in the United States, and 100,000 in England and Wales, for this reason alone; and their imprisonment is conclusive proof of their dire poverty. As soon as they pay the fine or work it out at a fixed amount per day, they are released. Imprisonment for debt is forbidden by constitution or statute in practically every State, and although the proceedings for the violation of municipal laws are ordinarily civil actions and the judgment therein becomes merely a debt due the municipality, yet unfortunates adjudged to pay these debts and being unable to do so, are denied the plain protection of these laws.

That the test of any person's liberty should be made to depend upon his wealth or poverty is revolting to every feeling of justice and fair play and should not be tolerated in any civilized country. As a method of punishment the assessment of a fine could not under any circumstances be made equitable or just unless every person were assessed not a fixed amount but a proportionate amount of what he possesses. To fine one defendant the same amount as another defendant who has a hundred times as much wealth is to fine him a hundred times as much as the other, which is a violation of every principle of justice.

Method of Punishment.

Except in cases of the death penalty, and in the State of Delaware the whipping post, but one means of punishment remains—the prison.

The prison is the tragedy of modern society, the connecting link between civilization and savagery. Invented in the early history of the race, it was used only for the detention of political prisoners awaiting trial. Were there no prisons now in existence it is inconceivable that enlightened society would adopt such an unnatural and unscientific system for the treatment of its defective members; and yet we have assigned to it the most important and difficult task in organized society, viz: the prevention of crime and the rehabilitation of the criminal. It is expected and required to take the hereditary criminal, the physical, mental and moral defective, the educated delinquent, the ignorant and unlearned, the unfortunate whose only offense is his inability to pay a fine, and with the crudest of equipment, consisting for the most part of sunless and unventilated cells, striped suits and perchance a few ill-sorted books, hand the unfortunates back in a few weeks or a few years to society freed from their hereditary taints, the influences of their neglected childhood, the enslaving power of passion and appetite, the misfortune of poverty—healthy, useful citizens, in love with their country and its laws!

It has failed and society proves its belief in such failure by refusing to

trust the ex-convict. It would seem to be the height of inconsistency to continue year after year subjecting offenders to a process in whose efficacy we ourselves have no faith. The increasing odium attached to a prison sentence is caused largely by the constantly increasing belief that few are reformed by the process.

"What good can there be," inquires one, "in simply ordering an offender into a cage, and what good can there be in putting the different kinds of offenders in the same kind of a cage?"

No Classification Attempted.

The essence of quackery consists in the idea that what is good for one is good for all, and here we find it in its highest development. What in all the range of human credulity can approach the belief that by shutting a vicious reprobate and a first offender in the same cell, one will be punished and the other reformed, or that by isolating men from the outside world they will be thereby fitted for the outside world?

In the report of the commission appointed by President Roosevelt to investigate the jails of the District of Columbia it is remarked: "The evils of such a state of things are too obvious to call for or even justify extended comment. That men and women should be sent to these narrow and crowded cells, the innocent with the guilty, the first offender with the hardened criminal in one promiscuous assembly, to corrupt and to be corrupted by each other, * * * to be fed like beasts and maintained at the public charge, not only with no prospect of improvement in their condition, but with the moral certainty that they will come out far worse than they went in, is a fact that has become a stench in the nostrils of the whole community, and ought to be felt as a shame and disgrace to the whole nation, whose representatives are responsible for its existence."

It is claimed by apologists for the system that these criticisms are of county jails and do not apply to State institutions. The difference, however, is one of degree, the principal distinction being in the more rigid discipline and in the employment given prisoners. In most of them, life is unnatural and the surroundings are abnormal; the performance of a kindly act or humane deed to an unfortunate fellow-prisoner is a violation of the rules; the qualities and emotions which make men desirable members of society are repressed and for them are substituted the terror, the fury, the vacuity and the bestiality of the solitary cell. The secret and degrading vices which are everywhere practiced among prisoners are merely incidental to the unnatural lives which they are forced to live. In about 100 prisons in which this subject was investigated by the commission the wardens estimated that self-abuse and sodomy were practiced by from 5 per cent in one prison to 90 per cent in another.

Wherein the Prison Has Failed.

1. It has not reduced crime. The largest single item of cost in every civilized nation is now the cost of crime. In the United States the investment in prisons exceeds \$500,000,000, while the annual cost of maintenance is upwards of \$200,000,000. No accurate estimate of the cost of crime is obtainable but it has been placed by excellent authority as high as \$6,000,000,000 per annum for the United States, a sum 10 times in excess of the total cost of the Government. In 26 years the annual number of homicides in the United States has increased over 200 per cent and it is estimated that there are at large in the United States 100,000 murderers. While newspapers now print little criminal news that is not sensational, yet the space given to it is constantly increasing. The number of persons in our penal institutions is no proof of the increase or decrease of crime. In one year in New York there were 32,679 reported cases of burglary and larceny, with but 3501 arrests for these offenses, or 11 per cent, while but only one in four so arrested was convicted and many of these were freed upon appeal.

It is no wonder that crime increases when, in dealing with society, the criminal uses the methods of the twentieth century, while in dealing with him, society uses the methods of the seventeenth century.

2. It has built up a professional criminal class. In every country there is a large and increasing class of professional criminals, practically all of whom have served one or more prison terms. These men have learned their professions largely through association with other prisoners and they in turn pass it on. It is of course a practical impossibility to segregate prisoners according to their moral status, and inquiries from more than 100 of the leading institutions by the commission failed to find any which even attempted to do so.

Prison Becomes School for Crime.

For this reason every prison is necessarily a school for crime. The most complete system of compulsory education in the world today is the education in crime by our penal system. Tens of thousands of these scholars are innocent persons unable to give bail and awaiting trial, who are subsequently discharged, infected to a greater or less degree by this moral contagion. Multitudes of them are young men and women. One thousand three hundred and eighty-nine boys and girls under age were confined in the Cook County (Chicago) jail during 1911. The jail system thus becomes a vast self-perpetuating institution.

3. It has increased disease and poverty. The Creator did not intend that men should live in prison. The laws of Moses made no provision for them and their effect upon the mind and body is destructive. It is a law of nature that no man can be normal amid abnormal surroundings. He degenerates and becomes an easy prey to every form of disease, especially tuberculosis, whose greatest aids—darkness, darkness and dirt—are the special characteristics of most prisons.

When the new warden of the Folsom (Cal.) prison took charge, he found that the bathing facilities for nearly 1200 prisoners consisted of two tubs and one dilapidated shower. It is estimated by the highest authorities that there is three times as much tuberculosis among prisoners as among others. A prison physician recently stated that men were being sentenced not to the gaols but to tuberculosis. About 50 per cent of all deaths in prison are from this cause. The usual occupations carried on in prisons are notoriously tubercular and no estimate can be

placed upon the amount of this disease disseminated by prison-made goods and discharged prisoners. Sixty per cent of this has had few advocates. If there is hostility in the South Carolina penitentiary were found to be either suffering from this disease or to have suspicious symptoms. Probably 50,000,000 articles for use or consumption are turned out by prison labor and sent into American homes annually.

Innocent as Well as Guilty Punished.

Poverty is increased not only because the longer a man remains in jail, the less fitted he is for outside, but because the stigma attached to a jail sentence prevents the ex-convict from obtaining remunerative employment. There is no more helpless object than the ordinary prisoner upon his discharge. He needs employment, but he needs sympathy more. He is usually "both a and finds himself an outcast from society. If a woman, whatever she was before, there is usually but one life open to her—prostitution.

4. It punishes the innocent as well as the guilty. The greatest wrong committed today is the imprisonment of the bread-winner and the sale by the State of his labor to prison contractors, or its confiscation by the state itself, while the family is left to suffer. This crime against innocent womanhood and childhood is as disgraceful as it is unnecessary. On what basis of reason or common sense should the State enter into a conspiracy with a wife-beater or deserter to feed and clothe him in return for his labor while his wife and children are left to starve? If when the State lacks up a criminal it intends at some time to release him, it should seek to preserve his home and family, in order that he may have a refuge upon his release and be encouraged to good citizenship. By wrecking his home and breaking up his family, the State makes it practically impossible for the offender to ever get a foothold again in society.

Prison Does Not Reform Offenders.

In the house of correction at Detroit, Mich., prisoners are divided into three classes according to their behavior, etc., and paid a small sum which they are enabled to send to their families. Deserted wives and children are also paid a weekly allowance.

5. It does not reform the offender. Forty per cent at least of all prison graduates are again imprisoned, many of them scores of times, the prison being merely a halting place between two crimes. Petty offenders in cities serve as many as 200 or more sentences. A census taken in England showed that 55 per cent of the convicts then in prisons had been previously convicted five times or more. If any process in the arts or manufactures turned out a product 40 per cent or more of which was defective, it would not be tolerated. The basis for right conduct is right thinking, but what is there to suggest right thinking in a felon's cell? If their purpose were to keep wild beasts in cages the most of them are well enough equipped. There is nothing about the jail that suggests reformation. Their failure is logical and inevitable. Not until roses can be grown in a cellar can character be developed in a cell.

Neither is the prison equipped for reformation. Little attention is usually given to those features such as the library, which are supposed to aid reformation. While there are many experienced and humane wardens, the great majority have had no training which would entitle them to be classed as experts in mending men. Of 46 institutions investigated by the commission, one had seven wardens in 10 years; two, five; four, four; nine, three; seventeen, two, and twelve, one warden each in that time. They are usually political appointees, chosen without regard to special fitness. One of the largest penitentiaries has had nine wardens in eighteen years.

Brutality Commonly Practiced.

In none of these prisons is there any attempt to separate the vicious criminals from the young and impressionable offender. The principal endeavor of the ordinary prison management is not to reform its inmates, but to pay expenses. The physician of the Auburn prison stated that the main object of the five administrations under which he had served was to make the prison pay its way and earn a surplus if possible.

6. It permits and practices in many cases brutalities which are utterly out of harmony with an age of refined civilization.

A characteristic of prison management and one which leads to much abuse is that little is known by the public about what transpires behind the walls and bars. All human experience shows that it is usually not safe to give any one man absolute physical control of others. Recent investigations have been made by legislative or governors' committees of 14 prisons, and their reports show cruelties practiced upon inmates which are shocking and disgusting.

One of the most recent is that of the Maryland State prison, which disclosed treatment that would not have been worse in China. Men were kept in dark cells infested with rats, for 10 days at a time, without beds or mattresses, compelled to sleep on boards covered with cobwebs and vermin. The convicts were required to pay for food to sustain life and men were actually worked to death, for want of sufficient food. Worms and vermin were found in the food and cooking utensils. During the five years preceding the investigation, an average of 213 men were subjected to physical torture every six months, while during the six months the investigation lasted but 18 were thus punished.

The special commission appointed by Governor Sulzer reported on May 11 that the "stories of torture of prisoners in the middle ages sound like descriptions of luxuries in comparison to the tales that have been told me of the lives that some of the prisoners in Sing Sing live."

Explanation of Unfortunates.

To even refer to the revolting disclosures of the various reports would be impossible, but the public has not yet forgotten the pardon of a few months ago by Governor Donaghey of Arkansas of 350 convicts as a protest against the convict lease system. In his message giving his reasons for this action, Governor Donaghey suggests that the penitentiary was not "designed for a revengeful hell" and among numerous cases referred to cites one where a convict's

flesh had rotted away from wearing shackles, and another who was serving a term of 36 years for forging orders for nine quarts of whisky. Other outrages by prison officials are cited which all the convicts engaged in making disclose inhumanities difficult to believe—all of which indicates that any system for the correction or control of prisoners should not be surrounded by the secrecy of the inquisition but should be open to the world.

7. It has led us into a wild debauchery of arrests. The most destructive process to which a normal man can be subjected is the process of arrest and imprisonment. He suffers thereby an indignity and loss which no surgery can repair. Good character and reputation have now a higher commercial value than ever before and yet a warrant to injure or destroy them may be obtained by the most irresponsible without cost. As a result the great power of the State to deprive its citizens of their liberty has been most shamefully prostituted to personal malice and private gain. The blackmailer, the creditor, the spiteful and revengeful enemy find in the warrant their ever-ready and most effective aid. To the real criminal it means little but to the innocent and weak it is an ever-present fear. Of the 800,000 arrests now made annually in this country, comparatively few are the result of any sincere desire to reform the offender or uphold the majesty of the law. The penal machinery is usually set in operation only at the complaint of one who is the victim of a real or fancied wrong, and the whole process is impregnated with the spirit of revenge. If the heart would lose its hate, the warrant would lose its popularity and the prison its population.

8. It has become a great political and commercial enterprise, where jobs are bartered at the counter of partisan politics and where the lives of men, women and children are coined into dollars for the profit of contractors.

The greatest obstacles to a reconstruction of our penal system are the enormous investment in plants and equipment and the political and commercial gain now resulting from their operation. The contract system, with its chain-gangs, its convict camps, its tubercular employment in crowded, ill-ventilated rooms, its cheap product competing with outside labor, presents a disgraceful chapter in the history of prisons. No adequate treatment of the subject can be attempted in this report but it is inconceivable that the system can be permitted much longer to continue.

Remedy Is Needed.

It must therefore be admitted that as a medium of reformation and restoration, the prison has been a colossal failure entirely out of harmony with the humane and progressive spirit of this century, but it nevertheless has a proper place in civilized society, viz: as a place of detention to protect society from those who cannot be trusted with their liberty. In other words, having failed to keep the prison safe for society, it must be trusted only to keep him safe from society.

Real rational attempts at reform must begin long before the prison is reached. That every crime has a cause is a principle in penology which nobody disputes. Before we can reform the criminal we must know why he did wrong. The severest punishment will neither disclose the cause nor remove it. That can only be done by individualization of treatment, with the good will and co-operation of the individual. If his consent cannot be had, it is a waste of time and effort to attempt his reformation. There is but one dynamo of sufficient power to force a criminal to reform, and that is his own will. Society may furnish the most elaborate reformatory machinery but it will be useless until the individual himself pushes the button.

The one institution of the State which is qualified and equipped to bring about this result is the court. Possessing the necessary power and intelligence, it can study the offender not as the naturalist studies a beetle, but as a man studies his neighbor. It can then bring to bear upon him the particular process by which his deficiency—physical, mental or moral—may be removed and he be restored to his proper place in society without the disgrace and contagion of a prison term.

Probation or the Suspended Sentence.

This is a principle as old as Christian civilization, but which was never embodied in statutory law until 25 years ago. It is now in operation in two-thirds of our states and many foreign nations.

This principle requires the court to recognize that every crime presents not so much a legal as a social problem, and that more may be found wrong with the criminal than the specific crime indicates—or less. It corrects the fundamental error that the court deals with crime and not with human beings, and considers the welfare of the home and the family. It teaches the offender that the law is not his enemy to destroy him, but his friend to help him if he will but obey it. It places the rich and poor, the weak and strong upon the same plane, not by putting up the law for sale to the advantage of the rich who can pay for its violation, nor by requiring punishment to which the poor must unequally submit, but by requiring reformation which all can render. It demands not strict justice, which none of us want, but mingles with it that mercy which blesses him that gives and him that takes.

Whenever administered by judges in sympathy with it, this system has been universally successful in reducing crime, its greatest handicap is the opposition and indifference of judges and prosecutors who have been trained under the old system and who regard as sentimental any effort to reform men without imprisonment. Less than 2 per cent of offenders are on an average given the benefit of these laws, whereas 50 per cent at least could probably be benefited by the.

An important element of every sincere reformation is restitution—the returning to the victim that of which the crime deprived him, so far as it can be done. This opportunity is denied the offender when he is locked up, but it is one of the great reformatory and economic features of probation.

Where Injustice Is Done.

Its salutary methods are well shown by the difference in two sentences recently inflicted by two courts upon two reckless autoists, each of whom had

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run down and killed a pedestrian. Each was sentenced to the penitentiary. One under the old system is serving his term, forgotten by the public, earning nothing, his own family and the family of his victim left uncared for. In a few years he will come out with the prison pallor, and the prison infection, for society to care for as best it may. The other offender was released on probation under a suspended sentence during his good behavior, and required to give bond to pay a fixed amount each month to the support of the family of his victim—a daily lesson to their reckless autoists. In case of his violation of law or the conditions of his parole he may be committed to prison.

In the first case nothing is made better but everything worse. In the last case everything is made better and nothing worse.

A striking illustration of the effectiveness of this principle is afforded by the magnificent reformatory work now going on in Oregon, Arizona and Colorado, and which is used to some extent in Utah, Nevada and Wyoming. Under the plan there adopted, convicts are released upon their honor and sent out without guards, to work for farmers and others and to build roads, being in many cases trusted with the property and lives of others. This is immeasurably superior to the indeterminate sentence and parole now adopted in 25 States, and which are at best but an admission of the weakness of the prison system while nevertheless approving it.

This honor system has been so successful that it must eventually be adopted in every State. It has been found that even those who were supposed to be incorrigible readily responded to it, and so few violate their parole as to be hardly worth mentioning. It has to a considerable extent removed from these States the odium attached to a prison term because the men have a chance while under public observation to demonstrate that they can make good.

In line with this work and leading to it is the outdoor work now being provided upon farms in connection with prisons in many States and countries. In the Kansas State prison every man is given six months when possible on the farm or at outdoor work previous to his release.