

PAROLE; PRINCIPLES AND PRACTICE OF  
A PRISON RELEASE PROCEDURE

A SOCIOLOGICAL STUDY OF PAROLE  
WITH PARTICULAR REFERENCE TO THE  
LEGAL ASPECT OF PAROLE IN NEW YORK STATE

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## CHAPTER I

### DEFINITION AND HISTORY OF PAROLE

The consequences of law-breaking are seldom contemplated by the prospective criminal until he is apprehended. His only thought in violating the rules of society is to "get away" with his act. Once he is caught however and confronted with incarceration behind bars, the law-breaker seeks his freedom and in that he is aided by the appropriate public officials who manifest the hope that in releasing the prisoner he will mend his ways.

His release may be by parole, probation or pardon. These three terms are used indiscriminately not only by the public, but by officials and judges, as well as in the statutes. The misapprehension is complicated further by the use in some states of such terms as "conditional pardon", "bench parole", and "executive parole".

This study will be confined chiefly to an exposition of parole as administered by the Federal government and the states. Inasmuch as there are differences in the law and procedure, the problem will be treated generally with specific reference to salient features of the procedure.

Credit is given to Dr. S. G. Howe of Boston for the first use of the word "parole" in the United States. In a letter written to the Prison Association of New York on



December 21, 1846, he said, "I believe there are many who might be so trained as to be left upon their parole during the last period of their imprisonment". The word is derived from the French "parole", meaning a "word" and is defined by Webster as a "word of honor", a "word of promise" or a "plighted faith".<sup>1</sup>

More explicitly parole is the act of releasing an inmate or the status of being released from a penal or reformatory institution before the expiration of a completed sentence, on condition of maintaining good behavior and remaining in the custody and under the supervision of the institution or some other agency approved by the state until a final discharge is granted.<sup>2</sup>

The Declaration of Principles of the American Parole Association in 1933 defines and differentiates parole as a means of social control, as follows:<sup>3</sup>

In a formal or legal sense, parole is conditional release from a correctional or penal institution under supervision. Properly conceived and administered, it is not a form of clemency or leniency; it is not employed for the purpose of shortening an offender's term; it is not giving an offender a reward for being a good prisoner. Fundamentally, there are two ways in which an

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1 Klein, Prison Methods in New York State (1920) p 417.

2 Bramer, Parole (1926) p 19.

3 American Prison Association, Proceedings of the 63rd Annual Congress held at Atlantic City, N.J. (1933) p 358.

offender may be released from an institution. He may be completely and finally discharged, with no subsequent supervision, or he may be conditionally released, under supervision, the competent body retaining the authority to return him to the institution if he violates the conditions of his release or commits additional crimes. We believe that the second of these affords a fuller measure of protection to society. Parole is a carefully considered part of the whole process of treatment begun when the offender enters the institution or earlier. It is an extension of the authority and effort of the state beyond the doors of the institution and beyond the time of institutional residence. A period spent on parole is a period of supervision and readjustment from the extraordinary and artificial life of the institution to normal life in the community. In this view, parole is not based primarily upon consideration for the offender; it is based primarily upon protection of society, seeking protection through the readjustment and welfare of the person who has broken laws. To this end, it uses and coordinates all the resources of the community, and aims at the prevention of crime and the reduction of recidivism.

Originally there was a system of indenturing in the United States during Colonial times. prisoners/ This was the forerunner of parole and by this method inmates were removed from the institutions and placed under the supervision of masters or employers and could be returned to the institution if they did not behave properly. Later this supervision was aided by a state visiting agent appointed solely to protect the ward against imposition and from being exploited.

The parole idea sprang from the theory of reformation which can be traced to the writings of Plato who

admonished that the best thing for the state was to reform the criminal.

After the middle Ages, some of the first advocates of reformation were churchmen, the lead being taken by Pope Clement XI who in 1704 placed the following inscription over the entrance of St. Michael's<sup>4</sup> prison in Rome:

Clement XI, Supreme Pontiff, reared this prison for the reformation and education of criminal youths, to the end that those who, when idle, had been injurious to the state, might, when better instructed and trained, become useful to it.

A modern trend is found in the same century exercised by Viscount Villain XIV, Burgomaster of Ghent, Belgium, who founded a convict prison and who pronounced the following:<sup>5</sup>

"Reformation is a primary end to be kept in view; hope the great regenerative force; industrial labor a vital force for the regeneration of the criminal; abbreviation of sentence and participation in earnings an incentive to diligence, obedience, and self-improvement; the enlistment of the will of the criminal in his own moral regeneration, in a new birth to a respect for the law; the mastery by every prisoner of some handicraft as a means of honest support after his liberation; the use of the law of love and love in law as an agent in prison discipline; and

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4 Boies, The Science of Penology, (1901) p 135

5 Slocum, "The Prison as a Great Charity", Proceedings, American Prison Congress, (1899) p 311

finally the careful education and industrial training of the children of the poor and of all children addicted to vagrant habits or otherwise in peril of falling into crime.'

Subsequently men like Mirabeau, Thomas Paine, Montesquieu, Turgot, Condorcet, Rousseau, and Voltaire became champions of penal reform.<sup>6</sup>

As early as 1830, the English convict colonies, Australia in particular, developed a system known as ticket of leave which allowed for release with but little supervision. The ex-convict was always a thorn in the flesh of the body politic. They did not care to assimilate the hardened criminals who were deported and branded.<sup>7</sup>

In 1840, under the leadership of Captain Alexander Maconochie, the Australian idea of the ticket of leave was developed by means of conditional liberation.<sup>8</sup> To certain English convicts transported to Australia, the Governor was permitted to make remission of part of their sentences as an incentive to hard work. This system passed the convicts through a series of stages. First, strict imprisonment; then, labor on government chain gangs; next, freedom within a limited area; and finally, ticket of leave, resulting in

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6 Haynes, Criminology. 2nd Ed. (1935) p 164

7 Bates, Prisons and Beyond, (1936) p 148

8 Haynes; supra, p 314

conditional pardon, followed by full restoration of liberty. The convict passed from one stage to another by a system of credits given for labor, study, and good behavior.

This marks system, which placed the maintenance of prison discipline on the basis of hope rather than fear passed from Maconochie to Sir Walter Crofton who introduced it into Ireland.<sup>9</sup> Crofton founded the Irish system and he definitely established the value and practicability of conditional liberation as an aid in the rehabilitation of prisoners and as a means of protecting the community.

In this country many states adopted "good time" laws which allowed a reduction in prisoners' sentences of so many days a year for good behavior. Good time laws were originated here and abroad in the nineteenth century as an aid to prison discipline, prison labor production, and reformation.<sup>10</sup> While these good time laws took account of the prisoner during his period of incarceration, he was disregarded upon release. Penologists find no favor in this method.

More progressive and more favorable is the indeterminate sentence, an American development, which sends the

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9 Gillin, Taming the Criminal, (1931) p 116

10 Morris, Criminology, (1935) p 469

convict to a penal institution until he is pronounced fit<sup>11</sup> to be restored to social freedom by a competent tribunal. The idea is that if conditional liberation is to be granted at a time when the prisoner is most likely to respond favorably to parole treatment, the exact period of his incarceration can seldom be determined in advance. It is the indeterminate sentence which plays an important part in the philosophy of parole.

Beginning with 1869 abortive attempts were made to install a parole system in this country but it was not until 1878 when there was introduced in the United States parole as we know it today. In that year the Elmira Reformatory was opened as the result of an act passed by the New York State Legislature in 1869. The act provided for the training of prisoners, the marks system, and conditional liberation under supervision. It further provided that if during the period of supervision the parolee violated its terms, his conditional<sup>12</sup> release could be revoked.

Parole, as a method of releasing prisoners, is constantly being more widely used as is evidenced by the following<sup>13</sup> table.

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11. Boies, op. cit. supra, note 4 at p 147

12. Attorney General's Survey of Release Procedure (1939) Vol IV, pp 18-20

13. Tannenbaum, Crime And The Community (1938) p 437

PERCENT OF DISCHARGED PRISONERS RELEASED BY PAROLE  
IN THE UNITED STATES

1916 . . . . .	44.4	1925 . . . . .	47.6
1927 . . . . .	46.0	1931 . . . . .	50.6
1918 . . . . .	45.5	1932 . . . . .	50.6
1919 . . . . .	45.3	1933 . . . . .	50.4

Bringing the picture up to date, of the 68,652 prisoners who were set free by prisons and reformatories in the United States in 1939, only 38.8 per cent had been held to the expiration of their full sentences and 58.9 per cent were  
<sup>14</sup>  
paroled.

From these figures it appears that parole is the principal means by which release from imprisonment is granted in the United States.

#### A. PAROLE AS DISTINGUISHED FROM PROBATION

There is an unfortunate misconception in the use of these terms. Probation is a method of treatment granted by a court where no formal penalty is imposed, or if imposed, is  
<sup>15</sup>  
not executed. No imprisonment is required. Or as the Chief Justice of the United States recently stated, "Probation or suspension of a sentence 'comes as an act of grace to one  
<sup>16</sup>  
convicted of a crime'". It is an amelioration of the

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14 Prisoners, 1939. U.S. Department of Commerce, Bureau of the Census, p 4

15 Cosulich, Adult Probation Laws of the United States (1940) p 7

16 Berman v. United States, 302 U.S. 511, (1937)

17  
sentence.

9.

If the prisoner is sentenced and released on probation before he is imprisoned there occurs what is known as "bench parole". It is the incarceration which distinguishes parole from probation. In the former release is granted after the inmate serves part of his sentence in a penal institution and is granted by an administrative board or an executive.

#### B. PAROLE AS DISTINGUISHED FROM PARDON.

These terms, likewise, because of misguided interchangeable use must be differentiated. Pardon involves forgiveness. Parole does not. Pardon is a remission of punishment. Pardoned prisoners are free. Parolees may be arrested and reimprisoned without a trial.<sup>18</sup> A pardon is an act of mercy or clemency, ordinarily by an executive; parole is an administrative expedient.

Some courts have gone to the extent of defining pardon and when compared with the term "parole" the distinction is clearly brought home to mind.

"It (pardon) is a remission of guilt and a declaration of record by the authorized authority that a particular individual is to be relieved from the legal consequence of a particular crime".<sup>19</sup>

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17 United States v. Murray, 345 U.S. 347 (1917)

18 Wilcox, "The Open Door". The Annals of the American Academy of Political and Social Science, Vol 157, Sept. 1931, p 103

19 Territory v. Richardson, 9 Okla. 579, 60 Pac. 344 (1900)



The distinction was clearly and aptly suggested in an address before the American Prison Association at Buffalo, New York, in 1916,<sup>20</sup>

"The whole question of parole is one of administration. A parole does not release the parolee from custody; it does not 'discharge or absolve him from the penal consequences of his act'; it does not 'mitigate his punishment'; it does not 'wash away the stain' or 'remit the penalty'; it does not 'reverse the judgment of the court' or 'declare him to have been innocent' or affect the record against him. \*\*\*\* Unlike a pardon, it is not 'an act of grace or mercy', of 'clemency' or 'leniency'. The granting of parole is merely permission to a prisoner to serve a portion of his sentence outside the walls of the prison. He continues to be in the custody of the authorities, both legally and actually, and is still under restraint. The sentence is in full force and at any time when he does not comply with the conditions upon which he was released, or does not conduct himself properly, he may be returned, for his own good and in the public interest."

It would appear that the only similarity between parole and pardon is that in both cases the prisoner is released from an institution. Parole presupposes supervision. In granting a pardon, society is taking the blame for what it has done in sending a man to prison. He is sent out on his own without any conditions of supervision being imposed. When released the sentence is over and pardoned prisoners are free.<sup>21</sup>

Further confusing the picture are "executive parole"

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20 Spalding, Parole Proceedings American Prison Association (1916) p 458

21 Miller, "Evils of Existing Confusion Between Pardon and Parole", Proceedings American Prison Association (1937) p 118

and "conditional pardon". Executive paroles usually involve some measure of supervision and can be classified as parole only when the supervision is effectively enforced. Executive paroles are granted by a governor and may be referred to a parole board.

Conditional pardons are granted by the Governors of some states and are releases without supervision. For that reason they cannot be classified as paroles. Conditional, because while the pardon carries with it a remission of guilt the original penalty may be restored if the conditions of liberation are violated.<sup>22</sup> It may be said, however, that the conditional pardon if properly supervised is akin to parole because all conditional releases which is what a conditional pardon purports to be should be by parole. The practice found in some states (particularly Texas, Idaho, Virginia, and Florida) of using conditional pardons for conditional releases is usurpation of a function which belongs to parole.<sup>23</sup>

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22 Sutherland, Principles of Criminology (1939) p 534

23 Weihofen, "Pardon: An Extraordinary Remedy." Rocky Mountain Law Review, Univ. of Colorado, Vol. 18, No. 2, Feb. 1940, p 112

## CHAPTER II

### THEORY, AIMS, AND FUNCTION OF PAROLE

#### A. ARGUMENTS IN FAVOR OF PAROLE.

There is almost no public question which is so surrounded with hysteria, prejudice and misinformation as parole and, similarly, there are few social and economic problems on which there is a greater diversity of opinion and conflict of views and philosophies.<sup>14</sup>

Antagonism toward parole is probably greater than toward any other penal policy and because of the unfair attacks made upon it is in serious danger of being discredited. Fortunately, penologists and high minded administration officers can readily conceive of untold benefits as the result of a well administered parole system.

Unjust criticism emanates from the politician, selfish interests and the average citizen, who, unacquainted with the technicalities of the administration of justice bases his opinion upon what he reads in the daily newspapers. He is led to believe that parole boards are comprised of or

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14 James V. Bennett. "Of Men Who Failed". Keynote address delivered before the Central States Probation and Parole Conference, Chicago, April 21, 1940. Federal Probation, Department of Justice, Washington, D.C. Vol. IV, No. 3, August-October 1940, p 6

are dominated by politicians who deliberately and willfully reduce sentences and open prison doors for hardened and habitual gangsters and racketeers, enabling them to return to the community to commit new and spectacular crimes of violence.

Glaring headlines have the tendency to mislead the public and on that score the newspaper editor is at fault. No matter what the facts, the general impression prevails that no first rate kidnaping, bank robbery, or a violation of the person of a minor is ever perpetrated except by men released from prison on parole. Nothing can be further from the truth. Parolees from the reformatory and the prisons of the State of New York commit few new felonies.

Of the 1422 persons originally released on parole in New York during 1939 only 8 were returned to the state prison after conviction of a subsequent felony.<sup>25</sup> A five year study was made of 2237 persons released on parole in 1935 and during that period 148 or 6.5 per cent were convicted of felonies and were returned to prison with new sentences.<sup>26</sup> Bearing in mind that the original figure includes 553 definite sentence prisoners whose terms had ex-

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<sup>25</sup> Tenth Annual Report of the Division of Parole, New York, (1940) p 163

<sup>26</sup> Id. at p 149

pired but under the law were subject to supervision for the term of their good time allowances, the felonies committed by actual parolees would be materially reduced. Taking into consideration one of the worst parole years -- 1934 -- only 9.4 per cent of 1257 inmates paroled that year were convicted of new felonies within the five years following.<sup>27</sup> These figures are official and should be an answer to the misguided opinions of the gullible citizen.

In any event, parole has been judged by its spectacular failures and not by its successes.<sup>28</sup> The saving of a human soul from sin and crime has no dramatic appeal. The quiet rebuilding of the parolee is not news.

No system is perfect and obviously the present method has its deficiencies but if citizens will not recognize that there will be failures on parole, the system should be abolished. A tolerant and understanding attitude should be the order of the day.

It is a fact that human behavior cannot invariably be predicted. No matter how careful the selection or supervision may be, failures are bound to evidence themselves. Nevertheless, these defections can be reduced to

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27 Canavan, "Parole Is A Success", Proceedings American Prison Association, (1939), p 270

28 Hutchins, "The Legal and Social Concepts in Parole", Proceedings National Parole Conference, Washington, D.C. April 1939, p 30

a minimum and it is on the basis of the progress made in this direction that parole should be evaluated.

Critics of parole, in their indictments, make no distinction between good and poor systems of parole and both exist in this country. Nevertheless, some system is in force in practically every locality and " - - - most reasonable men will agree that society will be better protected by such a system of conditional supervised release than by a system which permits the criminal to go scot-free."<sup>29</sup>

Much criticism of parole has been made because it is expensive. True, efficient parole work must be expensive, but actually the direct cost to the state is very small. A survey of the costs in various states was made in 1915 and it was found that they varied from \$.48 per person on parole in New Jersey to \$60. in North Dakota, with a mean cost of \$15.<sup>30</sup> Costs have since increased and decreased but the mean remains about the same. It has been estimated that New York State alone saved over \$16,000,000 by parole<sup>31</sup> between 1876 and 1900. In New Jersey the yearly per

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<sup>29</sup> Wilcox, "Parole, Principles and Practice". Journal of Criminal Law and Criminology, Vol. XX, No. 5, Nov. 1929, p 346

<sup>30</sup> Brown, "Parole An Institution of the Future", Journal of Criminal Law and Criminology, Vol. VI, May 1915, p 69

<sup>31</sup> Boies, op. cit. supra note 4 at pp 135-137

capita cost of prison care is about \$560, while the yearly per capita cost of parole today is \$20.<sup>32</sup> Obviously there is a financial saving by parole and a point in favor of its continuation.

One of the great advantages of parole is that it knows at all times where its parolees are and in what work they are engaged.<sup>33</sup> The hardened criminal possessing a slinking feeling seeks his old friends and associates in crime. He likes to hide from the eyes of the authorities. He is inclined to travel from one community to another or establish himself in a foreign city and unknown to the authorities there assume an alias and keep himself hidden while resuming his career of crime.

Parole makes this impossible by dictating his place of living, compelling him to keep in constant touch with the board of parole and sending him back to prison if he so much as gives an incorrect address. Of course, the rebellious parolee can evade these restrictions but like a bad penny he will show up again.

A person busily occupied will forget his ills, chagrin and disappointment and it is important that the parolee

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32 Beeley, Social Planning for Crime Control (1935) p 44

33 La Roe, Parole With Honor, (1929) p 5

be provided with suitable living quarters and a paying position which will relieve him of want and close the doors to temptation. These items can be cared for by parole but not if the prisoner is to be discharged after the expiration of his sentence.

On the other hand if an inmate "sits out" his sentence he is inclined to feel that he has paid his debt to society. In some instances he is of the opinion that he has overpaid his debt by remaining in prison for the full period of his designated incarceration with the result that he is constantly mulling over in his mind possible opportunities for evening up the score. Parole attempts to avoid such possibilities by shortening the sentence and putting the prisoner in a state of mind which creates an obligation on his part to follow the straight and narrow path upon his liberation.

An outstanding argument for a parole system is that it constitutes a higher degree of protection to the public.

A paroled prisoner in Massachusetts was arrested for selling "snow", or powdered morphine. A parole agent was in attendance at the trial of the defendant under this new charge. The accused in endeavoring to establish his innocence offered testimony to show he was selling bicarbonate of soda and not morphine. The jury found him not guilty. The verdict did not satisfy the parole agent. Even if the verdict was justified he felt that the



activities of the parolee were not creditable -- he was perpetrating a fraud upon some wretched addict. The prisoner's parole was promptly revoked upon his own statement and he was required to serve the rest of his sentence.<sup>33a</sup> It is this sort of personal and official supervision which safeguards the unsuspecting public.

Many an inmate sitting within the confines of a prison maintains an air of truculence and unwillingness to abide by the rules of the penitentiary. His one aim is to settle a score when he emerges a free man. His one thought is to dispose of every uniformed officer. With parole the fear of prompt retribution may deter him because the officer may get him first.

Prison exodus has its concomitant pit-falls. It is difficult and dangerous to proceed from a constricted prison life to a self-supporting existence in a free community. It is comparable to the tunnel worker who arises to the surface without the benefit of a compression chamber.

Proper parole administration attempts to overcome the handicap resulting from the sudden change. Sound rehabilitation is accomplished by pertinent education of the inmate while in prison, a choice of proper environment and a suitable position following his liberation as well as personal and intimate relationship with his parole officer, who is in a position to advise and right the wrong.

Sometimes unjust punishment is meted out. On occasion,

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33a Bates, op. cit. supra, note 7 at pp 248, 249

long and arbitrary sentences are given to the offender. Whatever mistakes, if any, the prisoner is subjected to, can be rectified by the method of parole because each individual case is carefully examined. This is not exercising clemency but it is an attempt to rectify a wrong and if there is an intelligent, fearless, honest, full-time parole board, such as functions in the Department of Justice in Washington, there should be no fear of the results achieved.

The arguments in favor of parole may be summed up  
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 as follows:

1. It gives to the public the added protection of a supervised release.
2. It offers an incentive for good behavior.
3. It sends the prisoner out of prison under an obligation rather than with a score to settle.
4. It permits the time of release to be fixed at a favorable occasion.
5. It acts as a bridge between the abnormal environment of the prison and life in the community.
6. It saves expense.
7. It gives an opportunity to correct mistakes and reduce excessive sentences.

Governor Herbert H. Lehman of New York State in a stirring address before the National Parole Conference in

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34 Bates, op. cit. supra note 7 at p 250

Washington in 1939 remarked that parole should be measured by the gold it finds and not by the cross it has inherited. He concluded his address with the following which epitomizes the features of parole;

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Parole has justified itself, if for no other reason than that it has found a constructive rather than a destructive thousands who have never known that discipline and stability before.

Parole has justified itself, if for no other reason that that it has found a constructive rather than a destructive outlet for the talents of at least some of the men under its supervision.

Parole has justified itself, if for no other reason than that it has helped create more stable and healthy home lives for men whose bitter unhappy environments have set a fuse to their criminal activities.

Parole has justified itself, if for no other reason that that it has separated offenders from old criminal associates and found for them normal companionship.

Parole has justified itself, if for no other reason than that it has saved the children of criminals from corrosive influences by creating a better adjustment between their parents.

Parole has justified itself, if for no other reason than that it has compelled medical treatment for the diseased who both drained those around them and infected the innocent.

A special commission appointed by Governor H. Earle

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35 Lehman, "Conserving Human Resources Through Parole", Proceedings of the First National Parole Conference, Washington, D.C., April 1939, p 24

to study the operation of the parole in the State of Pennsylvania says in a recent report:

"The truth is that imprisonment for crime as a weapon in penology is in a large measure unscientific, barbarous and cruel, and destructive rather than constructive . . . Instead of reformation by punishment, penology has turned to the principles of instruction while in prison and supervision, encouragement and aid after release . . .

"This being the true nature of parole, it would be a backward step in the handling of one of the greatest of our social problems to abandon it as a weapon for the combat of crime. An enlightened civilization will foster and develop it. Being therapeutic in nature, it cannot guarantee the reformation of all. The parole violator will always exist . . . If the powerful and beneficent influences of religion, family, environment and good example have so often failed to make men law-abiding, it would be folly to expect complete success from the best of parole systems.<sup>36</sup>

#### B. THE PRESENT EXTENT OF PAROLE.

Parole in its modern form was introduced into New York by Mr. Z. R. Brockway in 1869 when legislation was adopted as part of the program to be used at the Elmira Reformatory. Between 1864 and 1898, it was extended to state prisons and accepted as a progressive scheme by <sup>37</sup> twenty-five states. By 1912 parole was in operation in forty-four states. Today only four states -- Florida,

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36 Report of Governor's Commission to Study the Probation and Parole Systems of Pennsylvania, (1938) p 8

37 Morris, op. cit. supra note 10 at p 475

Idaho, Mississippi and Virginia -- are without parole laws. <sup>38</sup>

The Federal government first made use of the parole system in 1910. An act was passed authorizing the parole of prisoners sentenced to one year or more after they had served one-third of the sentence imposed. Boards of parole were established at the several penitentiaries and prisons. The board at each penitentiary was composed of the superintendent of prisons in the Department of Justice and the warden and physician of the particular penitentiary while the board at a Federal prison was made up of the superintendent of prisons and such officers of the particular prison as the Attorney General designated. However, the Act further provided that no parole should become effective until approval <sup>39</sup> by the Attorney General.

In 1930, the Federal parole system was materially altered. Instead of the numerous penitentiary and prison boards a single parole board in the Department of Justice was created composed of three members to be appointed by the Attorney General. This board was given power to grant paroles without any requirement of approval by the Attorney

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38 Attorney General's Survey of Release Procedures (1939)  
Vol. I, p 285, Vol. IV, p 20

39 36 Stat. 819-821 (1910), 18 U.S.C.A. secs. 714-718

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General.

In 1932 among important amendments made, a parolee shall continue on parole until the expiration of the maximum term or terms specified in his sentence without deduction of such allowance for good conduct as is or may here-<sup>41</sup>after be provided for by law.

The laws of parole differ among the various states. Sixteen states permit parole after the minimum sentence has been served. Louisiana, Massachusetts and New Hampshire require inmates to be released at the end of their minimum term if their records have been good. In other states, release is discretionary with the parole boards. Some states forbid the paroling of repeated offenders or those guilty of heinous offenses.

What appears to be uniform is that in twenty-three states parolees must remain under supervision until their maximum sentences have expired.

In twenty-six states and the Federal Government parole is granted by a central board. In sixteen the Governor is the sole authority but is usually assisted by a supervisory officer or board. In a few states the authority is

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40 46 Stat. 272 (1930), 18 U.S.C.A. secs. 723a - 723c

41 47 Stat. 381 (1932), 18 U.S.C.A. sec. 716a

shared by the Governor and a central board or an institutional parole board.

It would appear that the expediency, responsibility, efficiency and coordination of parole systems are best found in central parole granting agencies. Allowing a Governor to grant paroles is extremely dangerous because of his multifarious and onerous duties in connection with other problems of the state.

Because of the divergence and lack of uniformity of parole laws the proportion of prisoners released by parole to the total released for the year 1938 ranged from 1 per cent in South Carolina to 94 per cent in Colorado, Indiana, New Hampshire and Vermont.<sup>42</sup> For the fiscal year ending June 30, 1939, the Federal Government released 21 per cent<sup>43</sup> by parole.

Realizing the need for uniformity of parole laws and to spread information which offered the hope of improving the administration of parole in many jurisdictions, the first National Parole Conference was called in 1939 by the Attorney General at the request of President Roosevelt.

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42 Attorney General's Survey of Release Procedures, (1939) Vol. IV, p 112

43 Federal Offenders (1939) p 153

The conference which met in Washington was attended by approximately 800 delegates representing all branches of law enforcement in the Federal Government and 47 of the states.

Three major objectives were established for the conference.

1. To present the facts about parole.
2. To reach an agreement as to desirable standards in parole administration.
3. To point the way to closer cooperation between the Federal Government and the Governments of the several states.

Before adjourning the delegates unanimously endorsed a Declaration of the Principles of Parole, which was prepared by a Committee under the Chairmanship of Mr. Justice Harold M. Stephens of the United States Court of Appeals for the District of Columbia.



## CHAPTER III

## THE ADMINISTRATION OF PAROLE

## A. ORGANIZATIONS SET UP FOR ADMINISTERING THE FUNCTION OF PAROLE.

Within the past three decades numerous crime conferences have been held and much attention at these gatherings has been given to the administrative bodies of parole. The cogent reason is that many of the defects in parole can be placed at the door of the administrative organization.

The value of an administrative body is gauged by its equipment, personnel and organization. This statement is made because of the fact that good administrators function to a high degree of efficiency with inadequate laws and facilities while incompetent administrators often fail with the best available means on hand.

Three types of agencies have been mentioned -- central boards, Governors, and institutional boards. In 27 states and the Federal Government are to be found central boards vested with the power to grant paroles. The administrators on each board range between three and seven although, frequently, the direct administration of the parole system is placed under one member of the board. A sad feature of

most of these boards is that the commissioners are part-time or unpaid officials.

In 17 states, the sole power to grant parole is vested in the Governor although in most of the states of this group, the Governor is assisted by an advisor or advisory board. This power is looked upon with much disfavor because a governor, no matter how much he may be interested in penological problems, is not chosen because of his qualifications for the task. Furthermore any chief executive of a state is extremely busy with other governmental matters which he usually considers more important than parole matters. Where there is a board advising the Governor, he merely acts as a rubber stamp which is not in keeping with the dignity of his office. Finally, the Governor of a state is a political officer and his decisions regarding parole cases might be looked upon with suspicion by the public.

Significant was the situation in Texas prior to 1936. Texas was one of the states where paroles could be granted only by the Governor or with his approval. <sup>3145</sup> During Governor "Alfalfa Bill" Murray's term, 1931-1934, 375 burglary convicts were freed on parole, 317 robbery offend-

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45 Texas Laws (1st C. Sess.) 1929, Ch. 45

ers, and 56 inmates convicted of murder received their clemency the same way.<sup>46</sup> Governor "Ma" Ferguson gave clemency to a grand total of 3,145 prisoners during the two years which ended with January 15, 1935.<sup>47</sup> These wholesale releases of dangerous offenders on parole do not speak well for a system which vests the power in the Governor and brings to the fore the contracts and obligations of politically minded officials.

Institutional parole agencies are to be found in seven states. In some instances they serve as advisory boards to the Governor while others are empowered to grant parole.

It has been found that the institutional board creates waste and inefficiency. There is a lack of uniformity so necessary in proper parole procedure. Several boards may be doing the same sort of work with respect to different groups of prisoners. Where, as in Indiana, New Hampshire, and Pennsylvania, the institutional board does not grant parole but recommends parole which may be granted only by a central agency, the danger of lack of uniformity of operation is somewhat overcome.

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46 Tannenbaum, op cit. supra note 13 at pp 445, 446

47 Cooper, Ten Thousand Public Enemies (1935) p 341

## B. OFFICERS COMPREHENDING PAROLE ADMINISTRATION BODIES.

In only 10 states and the Federal Government are full-time agencies maintained for the purpose of granting parole. Three states have full time boards for the purpose of making recommendations to the Governor.

For the most part the function of granting parole is performed by boards composed of part time appointees or of state officials or agencies whose principal duties relate to some other function of government.

In some states where there is a central agency, state officials are inducted into service, one of whom is usually the Attorney General. These state officials are already burdened with a multitude of official duties in which they are usually more interested and which they frequently consider more important. They are asked to squeeze in a few hours a few times a year with the result that parole selection suffers and an injustice is done to both the prisoner and the public.

It may well be that in sparsely populated states where the prison population is small, the granting of parole by state officials or part time appointees is justifiable in the interest of economy but efficient administration cannot be effected by less than full-time independent boards and the added outlay should not be considered a luxury but the expen-

diture should be measured in terms of social protection and rehabilitation of the prisoner.

Penogogists recognize the need for full-time boards and the suggestion is often repeated at official gatherings. A resolution adopted by the Attorney General's Crime Conference in 1934 provided that paroles should be granted only by a full-time salaried board of duly qualified persons. An independent board of parole, the members of which are experienced in this field will insure a maximum of protection to the public.

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The failure of some states to provide an independent, competent parole board has led inevitably to the use of political influence and corruption to obtain the early release on parole of dangerous offenders. In New York when the Tammany regime was in full sway an influential gangster, Joe Rao, was confined in Blackwell's Island Penitentiary. He seemed to have a great deal to say with reference to releases from the institution. He had the warden get him lemons for lemonade and spent a great deal of time in his office. The warden would present him with lists containing marks given to prisoners by the parole board and Rao's comments were invited. It was revealed that he was dissatisfied with

the ratings, pointing out that some of the men he had recommended for parole before Christmas or what he called "the Christmas break" would not get out until March.<sup>49</sup>

Expediency and responsibility exist in the smaller boards. No complaint has every been recorded as to the smallness of the board in those states which have three member boards. Some of the most progressive parole systems utilize boards of three members.<sup>50</sup> The odd number is especially desirable where action of the majority controls.

In most states appointments to the parole board are made by the Governor subject to the approval of the Senate which normally follows as a matter of course. This arrangement fixes responsibility in the Governor who, for that reason, is inclined to appoint men of merit and outstanding qualities. An alert legislative body, however, will serve as a check should there be any misconduct in this respect by the Governor.

As a rule no pertinent qualifications are required of appointees but diligent executives look for the best men in the field. As a typical example, the most recent board in New York State may be cited being composed of Frederick A. Moran, well versed in prison reform, Dr. Joseph W. Moore, doctor and psychiatrist, and Sanford Bates, author and former Director of the Federal Bureau of Prisons. Dr. More recently

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49 Berg, Revelations of a Prison Doctor (1934) pp 111-112

50 Attorney General's Survey of Release Procedures, Vol IV  
p 57

replaced the late Joseph F. Canavan, an expert in the field of parole.

Very few states have legal provisions concerning qualifications as to training, experience and ability. In Kansas members are appointed because of "fitness for office". In Michigan the members must be "familiar with the knowledge of penology". In Tennessee they must be "qualified to judge the merits of a parole applicant". Other provisions vary. In New York a member of the board must not hold any office in any political party. In Ohio not more than two of the four member board, and in New Mexico not more than three of five, can belong to the same party. In Massachusetts there is no requirement other than that the board must be composed of three men and two women.

All in all, there appears to be a total lack of statutory provisions requiring appointment because of ability with satisfactory training and sufficient experience. As has been said this is left to the discretion of the appointing agency and it is hoped that sometime soon some statutory regulation with reference to qualifications will be enacted in those states which, at present, do not have any specific requirements.

States having effective parole systems have salaried board members ranging from \$5,000. upwards. Compensation reaches as high as \$12,000. per year paid to the New York

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members while no compensation is given to some part-time boards as in the case of the institutional parole boards in Connecticut, New Hampshire, New Jersey and Pennsylvania.

Tenure is an important feature in effective parole administration. It is the basis of security which serves as a bait for the qualified member. The average term is 4 years and that period seems satisfactory. The states having commendable parole systems have a stated period of 4 years or more for their parole administrators. Arkansas, Oklahoma, Oregon and Rhode Island<sup>appointees</sup> serve at the pleasure of the Governor. The term is 6 years in Minnesota, New York, Washington and Wisconsin.

#### C. THE GRANTING OF PAROLE.

There is no standard method of granting parole. One of the most unfair features of some parole laws is the requirement that the prisoner must formally present his case to the parole board. Frequently, this calls for the services of an attorney, and sometimes the inmate must bring a great deal of pressure to bear to get his application considered. The result is, of course, that the prisoner who has friends and funds will get consideration, whereas the poor man will be forgotten.

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51 Bennett, "The Present Status of Parole", Proceedings National Parole Conference, (1939) p 43



Parole should begin with the rehabilitative process the moment a man enters the prison walls. All resources of the institution -- medical, psychiatric, educational, correctional religious -- must be marshalled in a joint attempt to arrive at a fair and reasonable classification. There should be a competent classification<sup>board</sup> in each institution, representing each of its major functions, and it should work continuously. When the classification work is well done much of the guesswork is eliminated from parole.<sup>52</sup> A parole system without classification for prisoners is like a house without a foundation.

It is the contention of practically every penologist that every prisoner who leaves the gates of our prisons should be released on parole. This, of course, may tend to unnerve the public since it abhors the idea of extending the system to dangerous criminals. Yet it must be borne in mind that the most dangerous of criminals is released from prison at some time. Consequently, it is better that he be given his freedom under surveillance.

Inasmuch as parole serves to protect the community against the offender by attaching restrictive conditions to his release, it becomes evident that the public would need

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52 Ellis, "Practical Results of The Classification Program". Proceedings American Prison Association (1940) Mimeographed Sheets, p 12

the protection against the more dangerous type. This can be done by close supervision after release.

In states where parole conditions are ideal, no difficulty is experienced in determining who is to be paroled. But in those localities where personnel and facilities are limited, boards of parole are prone to limit the granting of parole to those who can be most easily supervised and who afford no trouble in so far as discipline is concerned. This is an unfortunate situation because the well-behaved prisoner who is expected not to be troublesome is the one the public should fear the least while the more dangerous type is the one against whom the public needs the maximum of protection. Eventually the more dangerous criminal must come out only to be released without supervision because of the folly of parole boards whose hands are necessarily tied because of an apathetic legislature.

At least, in theory, it should be axiomatic that the more dangerous the criminal, the greater the need for safeguards which parole provides.

It is unthinkable to grant parole to the more hardened criminals. Yet it is more so to attempt to release them without parole. The line of demarcation is left to the boards and an earnest attempt is being made to segregate the likely prospect from the bad. Errors, of course, creep in. For instance, in some quarters parole boards attach more

weight to the number of previous felonies than to the quality of such offenses. In some other localities, a second or third offender is given no consideration at all.

Strangely, practically all boards seem to be in accord in the consideration given to forgers. This is one of the more serious crimes and there is ever predominant the expression "once a forger always a forger". This is borne out by statistics gathered by the Federal government wherein it was shown that of the total number of those convicted for counterfeiting and forgery in 1939, 51.7 per cent were re-  
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cidivists. During that year there were 939 such offenders in the Federal prisons, and 66.2 per cent of 827 cases de-  
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cided were denied parole. A similar situation exists in the various states and, rightfully, boards are extremely careful about the circumstances under which they parole a

man who has forgery or false pretenses in his past history, fearing that he will not be a fit subject for rehabilitation and reformation.

About half of the states require the prisoner to file a formal application for parole while in the other half the question of parole receives automatic consideration after the expiration of a definite portion of the sentence imposed.

The Federal government requires the inmate to fill

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53 Federal Offenders, (1939) p 168

54 Id. p 212

out a blank shortly before he is eligible for parole containing information regarding his crime, his future plans, his prospective employer and his adviser. If he does not wish to be paroled, he is asked to sign a waiver forfeiting that right.

There are bad features in both systems but much more satisfaction is obtained where parole consideration is automatically given. By using the formal application, boards may find themselves overloaded with applications at any particular sitting with the result that the inmate does not receive fair and proper consideration. Where boards instigate parole release in the first instance, they can apportion the number of cases so as to allot sufficient time for thorough investigation although in states where the sole authority to recommend consideration lies with the warden, his decision, being based merely on the inmate's prison behavior, may result in a dangerous procedure. Furthermore, such authority may be misused because of a possible disciplinary weapon.

Because of the time element involved in considering each prisoner's case when he becomes eligible for parole, a thorough preparole investigation should be part of the record. The importance of this cannot be underestimated. The object of such an investigation is to provide such factual evidence on each case that the board will be able to form a competent

and unbiased opinion on the potentialities of each individual offender for parole.

Such matters as the offender's criminal record, types of offenses, motives, his personality traits, his social and educational background, his prison life reflecting his mental attitude, family conditions, environment, adaptability to a trade, chances for employment and rehabilitation and similar inquiries, go to make up the preparole investigation.

The time spent on each case is one of the most important elements in the granting of parole. It takes time to thumb through records, read reports, conduct hearings, listen to appeals, and continue investigations. Yet, in view of the fact of the limited number of parole board meetings in a good many localities, it seems inconceivable that the consideration properly ~~due~~ is given to either the criminal or the public.

In most states, parole hearings are held about once a month. In others, they vary from once every six months to three times a week. The frequency of the hearings depends upon whether the board is a full-time, properly compensated organization.

The number of cases to be decided should have an important bearing on the number of parole board meetings held throughout the course of a year. Infrequent and crowded meetings before which are an excessive number of parole cases cannot produce the looked for results. A sound selective

policy must necessarily suffer. In a good many cases individual consideration is well nigh impossible.

In Arkansas about 250 cases were considered at a one day session. Assuming that the board was in session for fully 8 hours this leaves only about 2 minutes for each case and the inadequacy of time is apparent.<sup>55</sup> Arizona gives an average of 6 minutes for each hearing.

States having a well-defined parole system give much more time. The Washington board examines 175 cases over a period of 5 to 8 days and each hearing lasts from 5 to 40 minutes. In New Hampshire about a half an hour is given to each case. In Connecticut about 40 cases are examined in a one day session.

Where, because of the abundance of cases, hearings are limited in time, inmates are not present at the meetings. A personal appearance in view of the nature of the proceeding would appear to be the natural step but in a good many instances such a privilege is withheld.

Some states allow lawyers to be present at the hearing. In others, by statute or regulations, they are barred. The injection of legal technicalities and emotional arguments by paid attorneys would seem to be contrary to the basic

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<sup>55</sup> Id. at p 160

principles involved in parole. Sound parole administration suffers and with the presence of an attorney the impression is created that parole is either a matter of clemency or a question involving a fundamental right of the prisoner.

Relatives or friends of the inmate are often allowed at hearings although in some jurisdictions they are specifically excluded. Whatever information is needed from these interested persons can, of course, be had in writing.

In most jurisdictions parole hearings are informal. What boards are accustomed to look for are such facts presented in such a manner that will enable them to form a reasonably accurate opinion as to the advisability of parole release.

Summarizing, there are certain positive requirements which appear to be indispensable to a sound selective  
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policy:

1. Adequate time should be allowed so as to insure careful and objective consideration for each case. Consideration of several hundred cases at a single meeting inevitably results in bad decisions as to many of the cases.

2. The prisoner should be present at the hearing, since the main purpose of the hearing is to pass judgment on the offender as a parole risk. Although a personal interview is sometimes misleading, it is desirable that the opportunity be given to the prisoner and to the board to "talk

it over".

3. A hearing without an adequate preparole investigation cannot serve any useful purpose. The hearing is meant to complement the results of preparole investigation, not substitute for it. Before the hearing starts, the parole board members should be thoroughly familiar with each case scheduled for consideration.

4. Last and most important, the parole board should consist of competent officials with training and experience.

The actual hearing in a good many instances produces outstanding defects and weaknesses in procedure. The tendency of some boards is to act as boards of judicial review or as boards of clemency and they fail to ask definite, pertinent questions. Instead their inquiries are innocuous, presumably, because many boards consist of inexperienced laymen.

The information gathered at the hearing should concern itself with the social attitude of the prisoner, his chances for rehabilitation and employment, and his behavior problems. The criticisms do not apply, of course, to all parole jurisdictions since there are many competent parole boards.

Practically all states impose conditions which the prisoner must fulfill in order to be paroled. They differ in varying degrees although a majority seem to be in accord with respect to employment. In at least 35 states the



prisoner is not released unless he has a job.<sup>57</sup> The more progressive states to a great extent avoid this condition.

The result of the employment condition is to allow for fictitious jobs offered by friends and relative who are in no position to retain the parolee. With the economic situation as it is today and the millions of unemployed such a rigid requirement is extremely difficult. Furthermore, there is considerable danger of parolees being exploited by employers when they are forced to accept any sort of a position in order to be paroled.

In some jurisdictions, boards have a regard for the unsuspecting public in requiring the inmate to submit to medical treatment if he has contracted a venereal disease.<sup>58</sup>

Some few states prescribe sterilization or castration to those convicted of sex offenses.<sup>59</sup>

As the doors open for the parolee, he is given some sort of a gratuity varying from less than \$5 in Arkansas to \$15 in New York and New Jersey. A suit of clothes and transportation are also furnished.

These discharge gratuities are insignificant and the sentiment has been voiced that the least prison authorities can do is to provide the released prisoner with a decent suit of clothes to avoid the stigma of an ex-convict together

57 Id. at p 180

58 District of Columbia, Minnesota, Washington, and Wisconsin

59 Nebraska, Oregon and Washington.

with transportation to a place of employment and enough money to tide him over the first few days after his release. All of these minimum conditions will help prevent a relapse into crime which occurs in many cases soon after release.

## CHAPTER IV

### PREPARING THE INMATE FOR PAROLE

#### A. TREATMENT OF THE INMATE IN PRISON.

Inasmuch as more than 95 per cent of those incarcerated for crime are returned to the community sooner or later, 50 per cent of them within two years, some regard must be given to the offender's prison life which has a bearing on his post prison behavior.

The fact that approximately 60 per cent of those now in prison have been imprisoned at least once before for the commission of a crime is evidence that incarceration alone does not deter many offenders from committing further crimes. Confinement, alone, may bring about deterioration or embitterment which makes the prisoner a greater menace than before.

Since it is the aim of authorities to parole, steps toward that end should begin the moment the offender enters the prison doors. In that way, the inmate is prepared for a better life upon release and the chances are that he will become a fit person for the society upon whom he turned his back.

Stern discipline and unnecessary solitary confinement lead to vindictive thoughts. On the other hand, coddling of a prisoner fails to make him realize his responsibilities.

There is a happy medium and the warden upon whose shoulders rests the care of the prisoner must promulgate a program which would make it easier for parole boards to exercise judicious selectivity.

The basic function of the prison of today is the protection of society. A prison can temporarily protect society by the safe keeping of its prisoners, but for a permanent and lasting protection, it must rebuild its charges so that they leave prison, willing and able to take their places in normal community life.

Inasmuch as the policy of imprisonment is adopted as a means of protecting society from crime, justification for such incarceration should lead to the reformation of the criminal. The success of imprisonment as a means of reformation has been very slight, however. In 1936, 56.5 per cent of the persons committed to state or federal prisons and reformatories had previous records of commitments to  
<sup>60</sup>penal or reformatory institutions. Glueck found that 55.3 per cent of 474 young men released consecutively from the Massachusetts State Reformatory committed serious offenses either during the parole period or a five-year post-parole period; and that only 11.1 per cent of 452 men had

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60 Cutherland, op. cit. supra note at p 435

no record of serious or minor-offenses subsequent to release. <sup>61</sup>

Confronted by the high percentage of recidivism prison authorities have set about to correct the evil. Instead of being confined, where sullenness and vindictiveness were the order of the day, prisoners, in some institutions, are allowed out of their cells as long in the day as the available warden has officers to mind them. Mess hall improvements have been made, libraries installed, games provided and more important, various types of prisoners have been segregated.

Brute force in disciplining prisoners was one of the worst features of the prison system whereby human beings were treated as though they were cogs in a machine. <sup>62</sup> Happily this is on the decrease. Now the work ability of the inmate is considered and he is given greater freedom and latitude.

Rigid discipline tends to create apathy, listlessness, vagaries, or else irritability, hatred and nervous irascibility. Sutherland suggests that rigid discipline may be modified by giving a thought to the ideal or reformation by denial of choice, the attitude of dominance by prison officers, the attitude of retaliation by the prison officers and the danger of escape. <sup>63</sup>

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61 Glueck, 500 Criminal Careers, (1930) pp 169, 184

62 Doty, "Maggie Martin, 933". Century Mag. No. 88, p 843 Oct. 1914

63 Sutherland, op. cit. supra note 12 at p 448

## B. FACILITIES IN PRISON FOR REHABILITATION

Out of a total of 184,537 male prisoners in American prisons in 1936-37, (1) over 40,000 prisoners were living in such crowded quarters as to injure both their moral and physical health; (2) only 20,000 industrial jobs, 26,000 farms, road and forestry jobs, and 33,000 maintenance jobs were available; there was no work for 55,000 prisoners; (3) less than 35,000 enrollments were reported in prison educational activities, and less than 400 civilian instructors were employed to teach them; 100,000 prisoners were not enrolled in any training courses.

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These figures reveal that rehabilitation in our prisons is in need of revision. Manifestly, the primary function of any prison is custody and since prisons were constructed and to a great extent are administered with that in mind, the abnormal living conditions; stringent discipline, lack of privacy, lack of exercise, wearisome routine, monotonous diet, and lack of companionship retard any effort toward effective rehabilitation. It is practically impossible within the confines of the penitentiary.

Any forceful plan for rehabilitation must come after the inmate has left the prison. However, this should not interfere with parole preparation and since such preparation

must begin on the day the offender enters prison, the treatment of the prisoner should be directed toward his hoped for rehabilitation.

The important element in rehabilitation is to have the inmate so occupied that his mind will be diverted from evil thoughts. Such penal treatment tends to improve his mental, physical and industrial status.

The theory of proper rehabilitation has only recently been accepted by prison authorities and we may look for fruition of thoughtful planning in the near future. In some instances, rehabilitation accomplishments have already been recognized. Symbolically, the Tombs prison in New York City has set an example.<sup>65</sup> Recently a small gift allowed for the purchase of a medicine ball, blackboard, map of the world, and crayon and paper. This equipment started the first rehabilitation program in the history of the Tombs.

Mr. Charles Russel, Curator of Education at the American Museum of Natural History had his staff build a slide projector for the prison and started a series of illustrated lectures on Byrd's Little America, natural science, old New York, and other subjects. The purchase of a 16 mm. film projector made the showing of educational motion pictures

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65 Woltmen, New York World Telegram "No More Lock Step" April 17, 1939

possible. Lectures were given by the Health Department about syphilis, which some inmates never heard of, and other health subjects. In the mornings, classes are held in composition, geography, current events and law. Christmas and Valentine cards are made. Carpentry occupies some of the offenders.

True the Tombs houses untried offenders but such activity at a time before they are enmeshed in the toils of justice will not be lost in the period of penal servitude which befalls the sentenced offender. The effect is to give the inmate something worthwhile to do and to bring to the fore some dormant task. Rehabilitation is also helped by self-government.

Such a system can be traced to the Walnut Street jail in Philadelphia in 1793 and has come a long way since then. In its modern form, it is well defined in its creation at Sing Sing Prison in New York State by Thomas Mott Osborne.

Lane gives a very good statement of the theory of self-government, as follows:

Self-government in penal institutions "is simply an application of the educational principle that people learn by doing . . . Its method is to establish on a small scale a society in which he can form the habits, accustom himself to the responsibilities and gradually acquire the wholesome mental attitude that make normal life attainable . . .

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66 Lane, "Democracy for Law Breakers". New Republic XVIII p 173, March 8, 1919



It is an effort to train persons in the art of living in concert . . . The traditional fealty of the law breaker is first to himself and then to his 'pal'. Often this fealty is loyalty to the whole body of prisoners. By its very operation, self-government indentifies each inmate with all of his fellow inmates."

### C. EDUCATION OF THE PRISONER.

Illiteracy is rampant among the inmates of our prisons and any prison program which looks to rehabilitation includes provisions for teaching the unfortunate, so that a better acquaintance with both academic and vocational education may be had.

The first legal recognition of academic education as desirable in penal institutions was in 1847 when the New York legislature provided for the part time appointment of two teachers for each of the state prisons to give lessons in English. However, further recognition has been retarded somewhat and as recently as 1937, a few of the larger prisons throughout the country had no educational program whatsoever.

The creation of the Works Progress Administration has done much to alleviate the educational problem in prisons by the installation of professional standards and methods found in modern school systems.

Prison education, primarily, must aim to reduce the tendency to criminal behavior among prisoners and in doing so it must have an aim and a philosophy. Its philosophy

is to consider the prisoner as primarily an adult in need of education and only secondarily as a criminal in need of reform. Its aim is to extend to prisoners as individuals every type of educational opportunity, that experience and sound reasoning show, may be of benefit or of interest to them in the hope that they may thereby be fitted to live more competently, satisfactorily, and cooperatively as members of society.

Judged by its value as training for future rehabilitation or as a means of establishing new social attitudes and objectives, much of the educational work in state prisons today is beside the point. There is need for a realistic evaluation of the aims and purposes of education for prisoners as it affects their criminality and their future rehabilitation. Since rehabilitation is the chief function of parole, the importance of education in any rehabilitation program is apparent.

The program of education must be real, it must be active, it must be practical, and it must be tied up with the industries and maintenance departments of the institution in a vocational training program.<sup>68</sup> Every prison shop must be a school, and every prison employee must, in essence, be

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68 Wallack, Kendall, and Briggs, Education Within Prison Walls. (1939) p 30

a teacher.

#### D. MEDICAL ATTENTION.

There is ever present the problem of possible relationships between physical or health handicaps and criminality. The solution involves detailed research of which there is very little in the prisons. This is an item of sound parole preparation because of the eventual release of most offenders into society. No man with any physical disorder can properly carry out his parole duties.

Modern penologists contend that physical handicaps are also moral handicaps and must therefore be removed in order to give the best opportunity for the processes of rehabilitation to get under way.

Prisons are gradually veering away from the original idea of employing medical men to give first aid to the criminal undergoing torture and to resuscitate him when he fainted so that he might endure and feel more torture. The prison doctor is gradually developing into a hospital superintendent in charge of a complete diagnostic and treatment center.<sup>69</sup>

Some prisons have a psychiatric service where individual cases are handled, helping to prevent mental

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69 Wilson and Pescor, Problems in Prison Psychiatry, (1939)  
p 19

deterioration in the prisoner who arrives at the institution under emotional strain and mentally upset.

When the medical program has been completely carried out the ex-prisoner is certainly less likely to become a public charge and in addition to an improved body he has also been taught a correct mental attitude toward his physical handicaps and received lessons in hygiene and the art of living which should be useful to himself and family and the community in which he lives.

#### E. LEARNING A TRADE FOR POST PAROLE MAINTENANCE.

Parole can be given a triple A rating only when, in conjunction with other means of rehabilitation, it enables an ex-convict to take his place in the community once more as a law-abiding citizen.<sup>70</sup> Employment is one of the means referred to and work is a panacea for the released criminal.

The transition from an unusually constricted prison life to a self-supporting existence in a free community is an extraordinarily difficult one even in normal times. It is even difficult for the law-abiding citizen to get a permanent position in these troublous times so that the lot of the parolee is even more insurmountable. An ex-convict without a trade has absolutely no chance. Knowledge of some

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70 Stokes, "Sing Sing, Class of '34," The New York Times Magazine, April 16, 1939

type of business, in any event, while not a cure all places him in a better position to earn a wage.

Recent scientific inquiries into the causes of crime indicate with startling unanimity the industrial shiftlessness and unreliability of the men who go to prison.<sup>71</sup>

Reformatories make definite but limited attempts at trade instruction but in only a few of them are the courses well-organized or capably conducted. Prisons have done still less to prepare convicts to earn a living upon their discharge.<sup>72</sup>

#### F. PRISON CAMPS.

What could be a splendid feature in the reorientation of the prisoner is work in a prison camp. Although 30,139 of 126,957 male prisoners or approximately 20 per cent, in 1936-37, were confined in road, farm and forestry camps in the United States,<sup>73</sup> very little if anything is being done today in the way of preparing prisoners for parole release by a transitional period in the camps.

Wisconsin, one of the pioneers in the field of prison farms and camps, has approximately 18 per cent of the

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71 Bates, op. cit. supra note 7 at p 91

72 Morris, op. cit. supra note 10 at p 435

73 Attorney General's Survey of Release Procedure, Vol V  
p 40

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prison population assigned outside of the walls. These camps are so-called honor camps. One is 325 miles from the prison proper, another 212 miles away and still another 180 miles away. There are no guns, no walls, no fences, no bloodhounds at these camps. At 10:00 P.M. the officers and inmates alike go to bed. One inmate in each camp stays up all night as a night watchman. His job is to keep the public from coming in and stealing prison property.

Most camps are found in the South where the prisoners for the most part are under the supervision of armed guards, and are often in shackles. With very few exceptions are they treated specifically in view of parole release. Even one of the bitterest opponents of parole proclaims the farm idea for readjustment purposes.

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The value and the potentialities of road, farm and forestry camps as a medium of preparation for parole release are clearly indicated in the report for 1936 of the California Board of Prison Terms and Paroles:

Experience demonstrates that the greatest asset we now have in our penal institutions to prepare an inmate for parole and for later success is the road camp. Here alone is it possible for a prisoner to work in wholesome surroundings and in an environment reasonably like conditions outside. The record clearly shows that the

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74 Burke, "The Function of the Prison of Today". Proceedings of the American Prison Association, Cincinnati, Ohio, (1940) Mimeographed Sheets p 12

75 Mooney. The Parole Scandal, (1939) p 163

possibility of a new crime being committed by a released prisoner is very sharply reduced if the man has served part of his sentence in a road camp. These camps are the most significant rehabilitative factor we have . . . If it were possible to do so, in our opinion, the most desirable thing would be to sentence most inmates for a period of time of which a part would be spent in the institution, a part in the road camps, and a part on parole. By such a plan a prisoner would, through these successive stages, be better prepared for release to society.<sup>76</sup>

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76 Fifth Annual Report to the Governor of the State of California, Board of Prison Terms and Paroles (1935-36) p 27

## CHAPTER V

## SOME METHODS OF PAROLE PREDICTABILITY

Modern criminologists believe that there is a science of parole and have attempted to interest parole boards in the use of predictability tables. While it is conceded that psychiatrists, classification committees, superintendents of institutions, judges and prosecuting attorneys, have recommended inmates who have succeeded on parole more frequently than those who have been paroled automatically, mistakes have been pointed out both in selecting successes and in selecting failures. This has accounted for the attempts to develop a more adequate system of choosing parolees.

By correlating certain objective data concerning offenders, some common ground or technique was sought in reaching an equitable basis for the disposition and treatment of these persons. To this end, many studies on "parole prediction" have been made.

A. BURGESS' METHOD

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The Burgess method attempted to answer two questions:

1. What specific facts about the man and his past history as stated in the record could be related to the fact that he had, or had

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77 Burgess, The "Workings of the Indeterminate Sentence Law and the Parole System in Illinois, (1918) p 121



not, violated parole.

2. What, if any, additional facts significant in the light of his record on parole must also be secured.

He studied 1000 records of men paroled in the state of Illinois from each of the State penitentiaries at Joliet and Menard and a like number from the reformatory at Pontiac. These records were studied in the light of 21 factors,

(1) Nature of offense (2) Number of associates in committing the offense (3) Father's nationality (4) Parental status, including broken homes (5) Marital status (6) Type of criminal as first offender, occasional offender, habitual offender, or professional. (7) Social type as gangster, hobo, ne'er-do-well (8) County from which committed (9) Size of community (10) Type of neighborhood (11) Resident or transient in community when arrested (12) Statement of trial judge and prosecuting attorney with references to recommendation for or against leniency (13) Whether or not commitment was upon acceptance of a lesser plea (14) Nature and length of sentence actually served before parole (15) Months of sentence actually served before parole (16) Previous criminal record of the prisoner (17) His previous work record (18) His punishment record in the institution (19) His age at the time of parole (20) His mental age according to psychiatric examination (21) His personality type according to psychiatric examination (22) His psychiatric progress.<sup>78</sup>

Each element was analyzed with reference to violation of parole rates and parole failure and success depended

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78 Id. at p 121

upon the violation percentage.

The violation rate for each factor was calculated for each prisoner and an average determined. The individual would be credited with a favorable point if he was below the violation average and an unfavorable point if above. This was followed throughout the entire list and if the inmate had sixteen or more favorable elements he would be accorded a much better chance of completing his parole period than one whose record indicated only two to four favorable influences out of all of the factors.

A comment on his research is that his prediction schedule was based upon the combined study of reformatory and state parolees. As would be the case, there are wide differences in age, number of previous offenses, extent of previous commitments when considering both of these units so that reasonable comparisons are difficult.

#### TIBBITTS' METHOD.

Tibbitts' study comprised of analyzing 3000 parolees<sup>79</sup> from the Illinois State reformatory. Two groups were studied; one made up of 1000 boys whose parole period was one year; the other included 1000 boys who had spent a year on parole although the parole period extended beyond that year. In setting up a one-year period Tibbitts did not class

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79 Tibbitts, "Success or Failure on Parole Can Be Predicted", Journal of Criminal Law and Criminology (May 1931), Vol XXII pp 11-50

as a violator a boy in the second group who had violated his parole after the one year period had passed.

He used 15 factors, 13 borrowed from Burgess, to ascertain the correlation between the presence or absence of the individual factors on parole. The four added by him were:

1. Types of neighborhood to which the inmate was paroled;
2. His first job on parole;
3. His last work assignment in the institution; and
4. Use of alcohol (dropped because of little significance)<sup>80</sup>

Tibbitts' results were expressed in a series of correlations although part of his study followed closely the pattern of the Burgess study. He set up a prediction scale which was the chief difference between his study and that of Burgess. The latter allowed only for the consideration of favorable factors while Tibbitt's study included both favorable and unfavorable elements in the prisoner's life.

#### C. GLUECK'S METHOD.

The Gluecks undertook to study 510 prisoners released from the Massachusetts Reformatory. Their plan was based upon a five year post-parole period to gauge the process of reformation alleged to have been initiated in the reformatory. The Gluecks maintained that by considering the period within

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<sup>80</sup> Id. at p 41

five years after parole expiration a somewhat truer picture could be had than that obtained by the previous studies.

Their prognostic table was comprised of seven factors<sup>81</sup> eliminating most of Burgess' which seemed of little importance as reflected by low coefficients of contingency when compared with conduct during the post-parole period.<sup>82</sup> The Gluecks drew up a table as a possible model for parole boards in determining which men to release on parole and in obtaining some true conception of the probable length of parole<sup>83</sup> supervision needed in different cases.

The Gluecks delved deeper into success factors. For instance, while most studies generally showed that married men succeeded on parole more frequently than single persons, the Glueck study revealed that married persons having domestic troubles succeeded less frequently than single men.<sup>84</sup>

#### D. VOLD'S METHOD.

The object of Vold's investigation was to answer these questions:

What information, in the parole records accumulated by the Board, is important as an indicator or probable conduct on parole? How may the Board know, in any given case, whether it is taking a serious chance or acting on a relative certainty in the matter of an inmate's probable

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81 Glueck, op. cit. supra note 61 at p 183

82 Vold, Prediction Methods and Parole, (1931) p 17

83 Glueck, op. cit. supra note 61 at p 183

84 Id. at p 170

conduct on parole? . . . If, from the study of a man's past life the question of his behavior on parole can be consistently answered in terms of probability, then it would seem that a device of great practical value is at hand for the better discharge of the parole function.<sup>85</sup>

Vold in undertaking his study recognized the principle of the cumulative effect of individually insignificant factors. Forty-nine factors were classified under the following main headings:

I. Factors involving the circumstances and conditions of the trial and commitment;

II. Factors involving the circumstances and conditions of the social background;

III. Factors involving the traits, habits, and characteristics of the individual;

IV. Factors associated with the period of stay in the institution; and

V. Factors associated with period on parole.

Vold was the first to conduct experiments with both weighted and non-weighted factors whereas previous studies give all factors equal importance and influence.

#### B. LAUNE'S METHOD.

Laune adopted a new technique entirely.<sup>86</sup> He put

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85 Vold, op. cit. supra note 85, at p 5

86 Laune, "A Technique for Developing Criteria of Paroleability", Journal of Criminal Law and Criminology, Vol XXVI (May 1935) pp 41-45

much faith in one prisoner sizing up another and in this way arrived at a method of analyzing prisoners in much the same way as their cell-mates did. He used two prisoners for the experiment. A questionnaire based upon these prisoners' "hunches" was prepared and 60 other inmates were pledged to answer it truthfully.

Vold reviewed Laune's experiment and stated in part:

"Sympathy with the efforts to quantify and objectify methods in criminology must not be permitted to conceal the fact that the whole basis of (Laune's) elaborate analysis rests on the unverified 'guesses' or 'hunches' about the probably future criminality of prisoners as expressed by two fellow convicts . . . as a method of predicting criminality it is far fetched and elusive."<sup>87</sup>

#### F. OTHER PREDICTION STUDIES AND COMPARISONS.

The studies on parole prediction were started on their way by Professors Sam Bass Warner<sup>88</sup> and Hornall Hart.<sup>89</sup> Both agreed that methods other than those in existence at the time of their studies should be adopted for parole selection.

Professor Warner studied 680 cases at the Massachusetts Reformatory for the years 1912-1911. These cases included 300 parole successes, 300 parole violators and 80 non-paroled cases. He used 60 odd factors in his evaluations

<sup>87</sup> Vold, A Review in the Journal of Criminal Law and Criminology, Vol XXVIII (May-June, 1937) pp 151-152 of Ferris F. Laune's "Predicting Criminality"

<sup>88</sup> Warner, "Factors Determining Parole From the Massachusetts Reformatory", Journal of Criminal Law and Criminology, Vol XIV, (1913), p 171

<sup>89</sup> Hart, "Predicting Parole Success", Journal of Criminal Law and Criminology, Vol XIV (1913), p 108

reaching the conclusion that,

"But poor as the criteria now used by the board are, the board would not improve matters by considering any of the 60-odd pieces of information placed at its disposal, which it now ignores, except the alienist's report. This would be of considerable assistance to the board in a few cases, but in many cases it would be of little assistance because the alienist is no more able than is the board to work without data. No considerable improvement is possible without a complete change both in the methods of obtaining information for the board and in the nature of the information obtained."

Warner insisted that there were very few factors that had any marked bearing upon parole success or failure. He stressed, however, the importance of the previous industrial record of the prisoner and his accumulated prison experience. If he was in prison a number of times he was less likely to succeed on parole while if he had been gainfully and steadily employed he would turn out to be a good parole risk.

Professor Hart in commenting upon Warner's conclusions averred that violations at the Massachusetts Reformatory would have been cut in half if the board scientifically utilized the data already collected by the prison authorities of that institution. He advocated the usefulness of applying to penology statistical methods of determining probability

such as are commonly used by insurance companies.

In compiling data for the Attorney General's Survey on Release Procedures an interesting research was made to determine the effect of certain factors on parole outcome.<sup>91</sup> It was an attempt to show the results that would have occurred had the quantitative parole prediction methods been applied to those already paroled. In this manner, it would be ascertained whether it would be more effective than the "common sense" approach in parole selection. A feature of the study is that it also considers the outcome of certain prisoners who were not granted parole.

Information was obtained on 113 factors from 2000 cases and carefully tabulated by different sets of recorders and finally boiled down to 82 essential factors divided among the following: factors dealing with parental history; factors dealing with social history; factors dealing with criminal history; factors dealing with institutional history; factors dealing with post institutional history. Eventually these factors were applied to 22,593 persons released by way of parole or conditional release during the years 1930-35 inclusive. 17,049 of the number were granted parole while 5,544 were conditionally released.

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91 Hurwitz and Peterson, "Federal Parole Prediction", Attorney General's Survey of Release Procedures, (1939) Vol IV, p 545



The conclusion reached was that the Federal Parole Board in using the common sense approach to the problem of parole selection did, in effect, take into consideration the factors associated with "good risks" and "poor risks" for parole. It was pointed out that the common sense approach does not necessarily mean that the board makes a conscious effort to select parolees according to the factors which the violation rates, as classified in the report, show to be associated with good records on parole. The Federal Parole Board takes each case individually basing its decisions upon careful study of the case and the availability of acceptable parole plans. In this way the board is able to recognize those general traits associated with "good risks".

One reason advanced for the failure to apply prediction tables to Federal practice is revealed by an inspection of the devices so far available. They use violation rates as criteria of success or failure on parole and since the Federal parole periods are extremely short, they provide for insufficient time for adequate study of the conduct of persons released from prison.

It is recognized, however, that apart from the Federal observations, parole prediction technique is a step in the right direction. It may be that accurate predictions can be made of the deportment of offenders after they are released from prison. Consideration must be given to a

standardization of factors to be used in the analyses. The divergence at present is too great with one recommending a minimum of 22 factors and others in varying numbers upwards. Agreement upon the analyses factors may lead to a definite standard for selecting parolees and determine the exact time when he would be a better risk on parole. More regard should be given to changing attitudes of the prisoner while in prison and a detailed study made of post-parole behavior which the Gluecks attempted to do.<sup>192</sup>

It is to be hoped that prediction tables are not to serve as mechanical devices for disposing of prisoners but to supplement experience and good judgment and not to supplant them. The methods described represent an attempt to scientifically approach the administration of justice, methods that will not replace intelligence but make its judgments wiser.

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92 Glueck, 500 Criminal Careers (1930) pp 279-296; Five Hundred Delinquent Women (1934) pp 251-263; "Predictability in the Administration of Criminal Justice", Har. L. Rev. Vol XLII, No. 3 (Jan 1929) p 300; Later Criminal Careers (1937) pp 98-106; S. Glueck, "Individualization and the Use of Predictive Devices", Journal of Criminal Law and Criminology, Vol XXIII (May-June 1932) p 67

## CHAPTER VI

FACTORS GOVERNING ELIGIBILITY AND EXTENT  
OF PAROLE

## A. THE SENTENCE.

The sentencing structure has a far reaching effect upon boards of parole in their ability to consider the case of the offender. The legislative trend is to provide for an indeterminate sentence excluding certain offenses. The indeterminate sentence may provide for a minimum or maximum term. Nevertheless, in spite of this modern tendency, most criminal courts fix a definite sentence wherever they are allowed to do so by law.

Generally, a certain minimum period must be spent in prison before an offender can become eligible for parole consideration. The one exception is found in states where indeterminate sentences are predominant or exclusive but where there is no statutory restriction requiring the serving of a minimum term. This permits a prisoner to receive parole consideration at any time after his incarceration.

How much time is to be served when the inmate is

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93 Thomas and Jensen, "A Study of the Indeterminate Sentence, Probation, and Parole in Utah", of Utah Bull. Vol 21, No. 7, 1931

eligible for parole is a matter for the various boards and concrete figures can only be garnered from jurisdictions imposing definite sentences. Typical is the Federal report<sup>94</sup> which shows that in 1939, 55.8 per cent of the parolees served from one-third to under one-half of their time, 15.9 per cent one-half, 22.9 per cent over one-half and under two-thirds, and 5.4 per cent two-thirds and over.

It is not to be inferred that parole is a form of leniency. In 1938, the average time served by all prisoners in state institutions who finished their terms and were released by expiration was 19.9 months, while the average length served by all persons who had been released under parole was 21.0 months.<sup>95</sup> The Federal situation is somewhat more marked. For the year ending June 30, 1939, the average time served by male prisoners released after full time servitude was 20.6 months.<sup>96</sup> Those released by parole averaged 23.5 months.

The average sentence served is not lowered by the granting of parole and as a factor with respect to the release by such procedure, no favor is made in behalf of the criminal, but the advantage rests with society because of the required surveillance.

B. GOOD TIME DEDUCTIONS.

The shortening of a prison sentence may be accomplished

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94 Federal Offenders, 1939, p 158

95 Prisoners, 1938, p 22

96 Federal Offenders, 1939, p 158

by the application of "good time" laws. This allows for a reduction in the sentence of so many days a year for good behavior.

Some states allow a reduction from the minimum to be served making it possible for parole release eligibility before the minimum term has been served. Other states require the serving of a minimum term before good time reductions become effective. A few states regulate the law so that deductions can be made only from the maximum term.

Regardless of the method employed, it is generally agreed that parole is not helped by these good time deductions. While good time laws originated as a help to prison discipline, labor and reformation, in view of the credits granted, conduct inside the prison has no bearing on an inmate's demeanor once he is released.<sup>97</sup> Criminals are anxious to breathe the free air. There may be an outward show of good reportment which will hurry the release but the result is to shorten the period of parole supervision after release when it is most needed. A curtailment of the maximum sentence brings about this situation since parole discharge is coincidental with the expiration of the maximum term.

In some cases because of good time laws and other

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97 Morris, op. cit. supra note 10 at p 489

credits, prisoners are released without any parole supervision whatsoever.<sup>98</sup>

#### C. HABITUAL OFFENDERS.

In parole selection, consideration is being given to the number of prior convictions. While it is not the aim of legislatures to entirely exclude recidivists, much attention has been given to the question. In doing so, states make a distinction between felonies and misdemeanors considering only the former in their calculations. From a criminological viewpoint, prisoners with a long record of petty offenses are recidivists.

No uniform policy is followed in refusing parole to recidivists. It varies from one to four prior convictions although one state, Washington, forbids the parole of habitual offenders. Other factors must be brought into play to absolutely refuse parole because of prior convictions inasmuch as habitual criminals are just the ones who need parole supervision.

#### D. OVERCROWDED PRISONS.

Overcrowding of prisons presents a problem which is all too easily waived aside by not too diligent parole boards. While the solution is not within the province of parole boards so many of them accept veiled suggestions from prison

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98 Attorney General's Survey of Release Procedures - Vol IV  
p 117

authorities that parole is made to suffer.

35 penal institutions out of a total of 85 studied indicated a serious problem of overcrowding.<sup>99</sup> With a total standard capacity of 35,151, they housed in 1936-7, 52,092 prisoners. Of the surplus, 13,374 were living with a like number, two in a cell; 4,441 living in quarters unfit for habitation, and 5,526 were improperly crowded into cells and dormitories in various other ways. In most other prisons, overcrowding is tolerated but not to exceed 10 per cent of the capacity of the institution.

While consideration for the comfort<sup>of the</sup>/prisoner is not of primary importance in a good many prisons, a saturation point in crowding is often reached but room must be made for more convicts and the natural consequence is to release a few by way of parole.<sup>100</sup> This may curtail proper pre-parole investigation, and may result in a rushed rehabilitation, and instances where the inmate is totally unfit for immediate parole release.

#### E. RACE.

In the Attorney General's Survey of Release Procedures 85,779 cases of persons released either by parole or unconditionally from a total of 41 institutions in 30 states were examined. It shows that 31 per cent to 38 per cent were white persons, while negro releases ranged from 1 per cent to

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<sup>99</sup> Attorney General's Survey of Release Procedures, Vol V p 55

<sup>100</sup> Cantor, Crime and Society (1939) p 165

69 per cent, the higher percentages of Negroes released<sup>101</sup> taking place in the South, which is to be expected.

In showing the relationship between race and the outcome on parole, over 90,000 cases were examined for violation statistics. Of 75,368 whites who were paroled 19,609 or 26 per cent were recorded as violators. 15,238 Negroes, 35 per cent were recorded as violators of parole. 12,850 of 17 per cent of whites committed new offenses while on parole, while 3,139 or 20 per cent of Negroes committed new offenses. The statistics further show that 6,759 whites or 9 per cent of the total violated conditions on parole other than committing new offenses, while 1,272 or 15 per cent of the Negroes were similarly recorded.

18 per cent of the total whites had their paroles revoked and 12 per cent of the Negroes had theirs revoked.

- It would seem that the "race" factor has no significant bearing on parole outcome although there is some indication that Negroes are slightly worse parole risks than whites. There are other races confined to the prisons but their number is too small to be included in an analysis.

#### F. MARITAL STATUS.

It goes without saying that the married offender is

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101 Attorney General's Survey of Release Procedures, Vol IV, pp 317-318



a better parole risk than the single person. This is probably due to a realization of obligations. Consequently, married persons seem to have a better chance of being released on parole.  
102

15,350 single persons, or 31 per cent of 51,826 unmarried individuals, were recorded as having violated the terms of parole and only 4,949 married persons or 19 per cent of 26,145 married parolees violated the conditions imposed upon them. 10,235 single persons or 20 per cent committed new offenses while on parole, while 2,168 or 12 per cent of married parolees became recidivists. A much higher percentage of the single than married persons had their paroles revoked for violation of the terms of parole because of no restraining influence on the part of the spouse.

G. NUMBER OF DEPENDENTS.

The presence of minor dependents other than wives increases the probability of selection for parole and discrimination is evident where a person has no dependents. As already observed the married offender is a better parole risk than the unmarried person and considering the married offender alone for parole, boards show much more sympathy to the one who is blessed with children, hoping the inmate will recognize the additional obligation to support his offspring.

Of 47,139 married parolees with no dependents, 14,592 or 31 per cent violated their terms of parole. On the other

hand, 36,697 parolees with dependents, only 23 per cent were recorded as parole violators. 20 per cent of married persons without dependents committed new offenses; 14 per cent with dependents violated their paroles by committing new crimes.

Further revealing that parolees with dependents make better parole risks than those without dependents, the Survey figures <sup>103</sup> show that 23 per cent of parolees without dependents as contrasted with 16 per cent having dependents had their paroles revoked for violation of the terms of parole.

#### H. NATURE OF OFFENSE

In general the nature of the crime committed is not consistently considered an important factor in granting parole. While in the states more men are convicted for burglary and larceny offenses than for any other crime, it follows that proportionately more men are parole who have been imprisoned for burglary, larceny and similar crimes.

Results however do prove that offenders convicted of robbery, burglary, larceny, forgery, and counterfeiting make poorer records on parole than those convicted of criminal homicide, assault, sex offenses and liquor law violations.

The Federal government recognizes that the type of

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103 Attorney General's Survey of Release Procedure, Vol IV, p 362

crime committed and subsequent violations of parole have no bearing on parole selectivity because its latest statistical review gives no violation rates since they would be highly misleading.<sup>104</sup>

#### I. AGE OF INMATE.

First offenders comprise the largest group between 14 and 29 years of age. Most youths committing their first crimes under 18 years of age are sent to reformatories and are less likely to be paroled than those who began their criminal careers at a later age. They prove to be poorer parole risks. Criminals who have passed their twenty-second birthday and are first arrested for a crime show creditable records while on parole. In the former group of 22,340 parolees, 37 per cent violated parole and in the latter group of 40,882 parolees, 21 per cent were recorded as parole violators.

18 per cent of those who first committed a crime under 18, committed new crimes while on parole. 11 per cent of those of 18 years and over became second offenders. In the 18 year group, 30 per cent had their paroles revoked and in the 29 year group 13 per cent lost their parole status by revocation.

Individuals committing a crime for the first time over 39 years of age, are exceptional good risks on parole.

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These figures taken from the Survey support the view that criminal habits developed in early childhood are not appreciably influenced by present day penological methods. Parole is no cure-all and even with careful supervision youthful offenders who have been conditioned to crime from childhood are likely to continue as adult offenders, unless a much more effective method of parole treatment is developed.

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105 Attorney General's Survey of Release Procedures, Vol IV  
pp 398, 400, 405

## CHAPTER VII

### SUPERVISING THE PAROLEE

#### A. SUPERVISORY AGENCIES.

Academic criminologists and parole officers have constantly stressed the importance of parole selectivity whereby the prison inmate is to be returned to society under supervision, but the supervision of the parolee has received little attention by the authorities. Supervision is an equal if not a more important part of parole.

Without supervision, parole serves simply as a means of releasing the prisoner before the expiration of his maximum term. Those in favor of parole maintain that it costs more to keep an offender in prison than on parole. While this is a factor to be considered the protection of society is of primary importance. If a prisoner is kept within the walls he cannot commit a new crime. If he is released on parole there is always the danger that he will revert to his old habits unless his activities are carefully supervised by parole officers who can return him to prison for any violation of the parole regulations.

In addition to the fundamental objective of the protection of society, there are the social and emotional problems presented by parolees and their families which must be solved.

In the final analysis the success of any parole system is largely dependent upon the extent and kind of supervision provided for the released prisoner. The very fact that parole with certain conditions have been granted to the inmate implies necessary supervision to observe him in his obedience of the rules prescribed for his release. If there is no supervision, authorities will have a difficult time in ascertaining if compliance is being made with the conditions imposed.

As a rule, parole supervision is in the same board which grants parole, with the actual administration of supervision in the hands of a single officer. In some states where no statutory provision has been made for a legitimate supervisory agency, the real work of supervision is left largely to philanthropic organizations, such as the Catholic Church, a Prison Association, the Salvation Army, a Jewish welfare society. This has been found to be inadequate although their aid is not to be belittled. Use, also has been made of policemen, sheriffs, and other officers of the law as supervisors of paroled prisoners but such experiments have been declared unfavorable because these law-enforcement officers are usually skilled in methods of surveillance and the art of crime detection and not in supervisory methods so necessary for rehabilitation. This, of course, is a general statement and there must be prevailing exceptions.

The practice of employing an agency having no connection

with the granting of parole is no doubt open to criticism. The elimination of a division of authority ordinarily results in greater efficiency, less shifting of responsibility, and a better coordination of activities.

#### B. SUPERVISORY OFFICERS.

Over half the states have definite supervisory organizations in which several parole officers are employed. Many states have but one officer while several have none.

The Federal parole system carries out its supervision by distributing probation officers throughout the country who are directly controlled by the parole executive in the Bureau of Prisons at Washington. Several states employ this central-  
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ization idea.

In several states, the state is divided into districts with officers assigned to each. The number of districts depends upon the number of officers covering each district. Districts are so arranged that officers working within a district can make contacts with parolees with a minimum amount of travel and in that way are able to interview a greater number of parolees than if they were not assigned to definite territories. Of course, where the state is small, district assignments work to no special advantage, so that, in some states, several parole officers are used without dividing the

state into districts.

Proper parole supervision demands the undivided attention and the intense application of the efforts of a supervisory officer. The use of part-time officers for such work is being done away with.

A parole officer's chief duty is one of assistance. Assistance may fall into different categories but, in any event, special skill is required. Most states have no legal provisions or administrative rules governing the qualifications of parole officers. The danger is that appointment may be the result of political rewards. In one state, one parole officer was an automobile mechanic and another was an insurance and real estate agent, neither having the proper training in parole work before they were appointed.

Several states, however, are meticulous in selecting parole officers and specify definite requirements as to qualifications. Some have competitive examinations with knowledge of parole problems, an appropriate personality, and successful parole work experience as prerequisites. In Massachusetts and New Jersey, civil service lists are employed and selection is based on previous experience in correctional work. New Jersey's qualifications are unusually high, including:

"Education equivalent to that represented by colleges or universities of recognized standing; standard courses in social investigation, or education and experience accepted as full



equivalent by the Civil Service Commission. Knowledge of problems of delinquency, laws governing commitment, care and parole of delinquents; knowledge of approved methods of social case work, investigation ability, thoroughness, accuracy, tact, leadership, fairness, good address".

Of the 18 men and 6 women parole officers in New Jersey in 1933, only 6 have been appointed since this standard was set up in 1929 although a few of those already serving could meet or approximate these requirements.<sup>107</sup>

Parole officers in civil service states retain their positions until they reach retirement age and compensation ranges from one to four thousand dollars per year. Traveling and other necessary expenses are paid to parole field agents in addition to their annual salaries. Where there is no civil service system, parole officers hold their positions at the whim of the board in charge of parole supervision.

It has been said that parole is essentially a problem of good case work, and at no point in the procedure is this more true than in regard to supervision. A saturation point is reached and beyond that a parole officer's duties become perfunctory and mechanical. The necessary individualized treatment can no longer be maintained.

Case loads vary from 50 to 600. The Federal system is a guilty offender in assigning too many cases to its

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107 Morris, op. cit. supra note 10 at p 482

officers. The accepted standard case load is 50, whereas in 1939 the average total case load of the Federal officers was 160 persons which was a reduction from 185 during the previous year, attributable to the addition of 34 officers to the staff.<sup>108</sup> No state can show any substantial results where its parole system is so undermanned, overworked and ill-equipped.<sup>109</sup>

Many factors account for this overloading. In some localities parole officers perform the double duty of investigation and supervision. The distance between cases plays an important part. Supervision in a rural area takes up more time than in a metropolitan area. A great deal of time is spent in record work which could be utilized in the field. The parole period has some bearing upon the time available for supervision as well as the time needed for each parolee since, depending upon the type, the amount of time needed for some may be considerably less than for others.

Inasmuch as parole is a conditional release it is granted with specific conditions to be fulfilled by the parolee. The parole officer helps to fulfill these conditions by enforcing the regulations imposed upon the parolee. This, in importance, precedes his duty in watching his charges to

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108 Federal Offenders 1939, pp 10, 21

109 Lane, "A New Day Opens for Parole", Criminal Law and Criminology, Vol 24 (1933) pp93-95

prevent his misbehavior and misconduct. The agent's positive approach to the problems of supervision will obviate the necessity for repressive methods and disciplinary measures. He must have a close personal knowledge of the locality which he serves. He must make frequent visits to the parolee's neighborhood to obtain information useful in checking violations. He must cooperate with community agencies, from church to police, in order to obtain an insight into the parolee's habits and conduct.

Since the functions outlined are of a professional and technical nature calling for the exercise of special knowledge and skill, a parole officer should be placed in the category of a public servant who should be a career officer. 110

#### C. SUPERVISORY METHODS.

There is no uniform method of parole supervision. It would appear that the ideal treatment for the individual case is personal contact. While practically all states require the parolee to report to a parole officer, the time of such visits varies and too often the parolee seeks out his officer solely for the submission of a report which in some cases may be done by mail.

It is interesting to follow the various types of

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110 Bixby, "Probation and Parole: A Career Service".  
Federal Probation. Vol IV, NO. 2, May 1940, p 24

parole supervision. A few jurisdictions require only written unverified reports by the parolee. This is true where the state has no or but one parole officer stationed at a central place. Two or three states require written reports although there is volunteer oversight in some cases, such supervision being done by social agencies. Other localities in addition to the written report require volunteer supervision in almost all cases.

A mixture in the type of supervision is found in states requiring written reports and field oversight by part-time parole agents paid by the state, supplemented by some volunteer oversight while others call for written reports and field oversight exclusively by part-time parole officers paid by the state.

Finally, we find a good many states requiring written reports and field oversight by full-time or parole-probation agents paid by the state, supplemented by the use of volunteers although the acme of perfection is sought to be attained by California, Delaware, Massachusetts, Minnesota, New Jersey, New York, Ohio, and Rhode Island where field oversight is done by full-time professional parole agents paid by the state.

Summarizing, in the main, all of the states depend upon one or more of three principal methods of supervision; namely (1) written reports by the parolee, (2) oversight by

unofficial volunteer sponsors, and (3) oversight by paid  
<sup>111</sup>  
 supervising agents.

As an aid to the supervisory methods adopted by the state, the parole agreement includes certain conditions to which the inmate must promise to adhere before he obtains his release. He must have a thorough knowledge and understanding of their terms and meanings before he leaves the institution. In certain jurisdictions the passing of a written examination in these conditions is necessary.

New Jersey, a forerunner in parole methods, serves as a typical example of what is expected of the parolee and to which he must subscribe. The conditions imposed are as  
<sup>112</sup>  
 follows,

1. The parolee must have a job or relatives who can afford to take care of him until he finds one.
2. He must have a suitable place to live.
3. He must obey his parole officer and advise him of any desire to change an address.
4. He must report to his parole officer either in person, by telephone, or by letter within two days after leaving the institution and receive further instructions about reporting.
5. He must receive written permission to leave the state.
6. He must not go with bad company.

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111 Tannenbaum, op. cit. supra note 13 at pp 443, 450

112 Pamphlet issued to inmates at Rahway and Annandale Prisons in New Jersey

7. He must be industrious and attempt to save money.
8. He cannot get married without permission of the parole officer.
9. He must support his dependents.
10. No automobile can be owned or purchased without the consent of the parole officer and approval of the Parole Division.
11. Use of narcotics is prohibited and drinking of intoxicating liquor is advised against.
12. He is advised to attend church regularly.
13. He must submit to medical treatment if ordered to do so.
14. He must not consort with another parolee or anyone convicted of a crime.

#### D. OBTAINING EMPLOYMENT FOR PAROLEES.

Paroling authorities place a great deal of emphasis upon employment during the parole period. The importance of employment as a factor in parole success is justified from the data obtained of parole violators.

Of 7,663 parolees unemployed during the parole period, 53 per cent violated the terms of their release while only 17 per cent of 22,753 employed throughout violated their parole. <sup>113</sup> 36 per cent of the/ <sup>totally</sup> unemployed/committed new offenses on parole. On the other hand, 12 per cent of the <sup>parolees</sup> while on parole <sup>totally</sup> unemployed/committed new offenses/which served to terminate their release period.

Obviously, from the figures mentioned, the employed

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<sup>113</sup> Attorney General's Survey of Release Procedures, Vol IV  
p 446

87.  
parolee is more likely to succeed on parole. The net result is the availability of a position for the parolee. This is the one serious drawback encountered by parole boards and the task of finding a job for a criminal is not an easy one.

Too many of our state and Federal agencies close their doors to the person with a criminal record and if the sovereign power creating the parole board is adamant to this extent no better cooperation can be expected from private employers. Warden Lawes of Sing Sing wrote that we return the prisoner to the community with pious words of admonition yet with vengeance in our hearts we deny him the right to work  
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honestly.

The parolee faces a problem in his endeavor to reform and rehabilitate himself. If chauffeurs jobs are open, he is prevented from obtaining a license. If he is ambitious enough to desire to take a civil service examination, the rules preclude him. The next thing we know, he is discouraged, easily tempted to do the wrong thing, which, of course, amounts to a parole violation.

Most boards require the parolee to have a job in readiness upon his release. The unavailability of a position may cause a man to be detained in prison when he is best prepared to go out into the world. An objection to the guarantee of employment is that many jobs are liable to be fictitious.

A close friend or relative will come forward manifestly offering a position which is mythical and the parolee, on the assumption that he will be busily engaged, obtains his release.

Another objection is that the paroled man is often exploited because his employer must be notified of his prison record. Wages are withheld; he must put in extra time without compensation. If he complains, he is threatened with dismissal or denunciation as a parole violator.

The burden, of course, falls to the parole officer who must constantly look for a job for the parolee whereas he could spend the time more profitably doing his other work. While he often meets with some success in obtaining employment for the parolee, it is a known fact that 60% of the parolees hold their jobs one month or less!<sup>115</sup> This causes the officer to be on the move again looking for another opening for his charge.

Disregarding the bad features connected with employment, a steady congenial job with a fair wage will be a tonic for the parolee. It will keep him off the streets and away from bad company, relieve the economic pressure which weighs him down and his rehabilitation is helped by the moral and psychological effect of being able to do something in accordance with his capabilities and interests.

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115 Glueck, op. cit. supra note 75 at p 171



## L. OTHER FACTORS OF SUPERVISION.

Some of the efforts of the officer are directed toward the family of the parolee because some family trouble or trouble may have contributed to his downfall. Whatever the defection was, it must be remedied before the parolee once again becomes a fit member of society. Family relationships play such a vital part in rehabilitation that they merit constant watch on the part of the officer.

The neighborhood which housed the criminal before his incarceration adopts an anti-social and hostile attitude toward the parolee upon his release. This is of no help to him inasmuch, as he must keep away from bad company and seek out the good. This air of indifference must be overcome and if the community is a wholesome one with recreation places for diversion, where aid is given for securing a job, and clinics established for free medical and dental care, then the neighborhood has, to some measure, fulfilled its obligation toward the rehabilitation of the prisoner. The trained parole officer will seek out these advantages and make use of them in individual cases.

Parolees released into communities of less than 1,500 population are more likely to succeed on parole than those released to cities having more than 500,000 inhabitants. 37 per cent of 37,457 parolees residing in cities of more than 500,000 population violated their paroles and only 17 per cent

of 25,321 parolees released into communities with less than 2,500 population violated their terms.<sup>116</sup> This would seem to show that parolees are better behaved in small communities which are rural in nature and the evil may be cured by releasing the parolee into a rural district but the factors of employment and helpful friendly assistance must be given consideration.

Some police possess the idea that once a criminal always a criminal with the result that an inmate is spotted the moment he is released on parole. A suspected violation by the parolee will often find him arrested again and lodged in jail. A job is lost and the parolee becomes antagonistic. This has caused friction between policeman and parole agent with misunderstanding and distrust on both sides and the parole officer's carefully nurtured plan for rehabilitation<sup>117</sup> is ruined.

Both can be cooperative, the agent in revealing any evidence of wrongdoing and the police to inform him of any suspected violation of parole. Once the parole officer can convince the police that he is not trying to conceal violations but in punishing them, parolees will be free from the overlurking shadow of unwarranted police attention except

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<sup>116</sup> Attorney General's Survey of Release Procedure, Vol. IV p 221

<sup>117</sup> Kavanagh, The Criminal and His Allies. (1928) p 344

91.  
where they have furnished reasonable grounds for suspicion.

The fact that a parolee has been placed in the charge of a parole officer puts a responsibility upon the latter which must be carefully demonstrated. He must be aware of the parolee's financial conditions, help him budget his income, and teach thrift. He must arrange for medical care and hospitalization. His specialized work is brought to the surface by his treatment of the parolee. He must know how to talk his way into the heart and mind of the parolee for there are times of unemployment and financial distress which require not only material relief but moral support.

A spirit of confidence and good will must be established between the two so that problems may be better understood. The officer must be tactful, firm and helpful while being resolute at the same time. If the officer allows the parolee to go his way except for periodic reporting, he is losing a glorious chance to aid society and later intensive efforts are likely to meet with little response.

Another supervisory factor which lends some importance is the length of the parole period. If a short one, little opportunity is given for corrective behavior and the accomplishment of any change in social attitudes, while too long a period may prove onerous to the parolee. The remedy would be to shorten or lengthen the period in the discretion of the supervising authorities. The rehabilitation of the

criminal is not a matter of a fixed period of time but until such time as his attitude, habits and condition shall be, at the very least, improved.

Economic conditions have forced parolees to travel from state to state in their endeavor to survive. Sometimes migrations are the result of wanderlust. Whatever the occasion for travel is, the authorities are confronted with the serious problem of out-of-state supervision of parolees. It used to be a rule that if a parolee wanted to leave the state, he would be given the permission provided he remained outside the boundaries of the state and if he returned it would be a violation of his parole. While this solved the problem of the expelling state, it foisted upon another community an unwanted criminal and no legal control could be exerted over him except when he committed another crime.

A creditable improvement in this condition has been originated by reciprocal supervision and is highly desirable. This has been given added impetus by the recent organization of regional parole and probation conferences or associations. These groups, fostered to a certain extent by the American Parole Association, have now been formed in six regions. At their annual meetings, views are exchanged and cooperative enterprises are worked out designed to meet their common problems. The only drawback is that parole standards are not the same in all states which was recognized by the

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**1 OF 3**

Governor of New York State who frowned upon such a procedure explaining his unwillingness to enter into a proposed out-of-state supervisory compact as follows,

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"Some weeks ago I was requested to execute a blanket compact with 25 other states covering interstate supervision of persons on parole or probation. I felt that it was unwise to do so. This state will be only too happy to enter into compacts with any states having satisfactory parole and probation standards. Before entering into any compacts, however, it must satisfy itself that both contracting parties have adequate standards. This is the only way in which the level of parole in this country can be permanently raised."

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118 Lehman, "Parole in a Progressive State", Proceedings of the New York State Conference of Social work, (1937) p 9

## CHAPTER VII.

## PAROLE VIOLATORS

## A. WHEN IS PAROLE VIOLATED?

The Bureau of the Census, United States Department of Commerce, reports that during 1939, 5,900 conditional release violators were returned to the prisons, both Federal and State.<sup>119</sup> This number included those paroled, conditionally pardoned, and other conditional releases. An approach to the number of parole violators can be made when we consider that during that year 27,948 inmates in the United States were paroled, 1,663 received conditional pardons, and 10,845 received other conditional releases.<sup>120</sup>

More specific rates of violations are evidenced from the Federal report which shows that during 1939, there were 193 violations of parole out of 5,038 persons on parole.<sup>121</sup>

For the period from July 1, 1929 to June 30, 1939, violators of parole conditions were 2,283 or 6.4 per cent and 33,370 non-violators or 93.6 per cent.<sup>122</sup>

In recording the figures for the various states, it

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<sup>119</sup> Prisoners, 1939, Census, table 1, p 1

<sup>120</sup> Id.

<sup>121</sup> Federal Offenders, 1939, p 116

<sup>122</sup> Id. at p 18

must be borne in mind that many of them are without parole supervisions so that violations go by unnoticed which to some extent is also true of those states having rigid parole regulations.

This is true in Massachusetts where 401 parolees were on parole one or more months; of that number 215 had never been personally visited while on parole and only 3 had actually<sup>123</sup> been seen as often as once a month. Massachusetts is a state which has fairly good parole rules so that the status of parole violations in about 40 states where nothing like an adequate force of parole agents exists and where many violations, naturally, go unnoticed is beyond comprehension. It is from these states that we get reports that from 70 to 37 per cent of their parolees make good while under supervision, the number of unknown violators having been omitted from the computations.

The Gluecks, in their studies, reveal that 25 parole violators of the 474 men released from the Massachusetts State Reformatory were unknown to their supervising agents who on the other hand, knew 59 parolees guilty of serious misconduct whose parole permits had not been revoked because of a failure to report the infractions.<sup>124</sup> This situation presupposes a successful parole period which is not altogether true.

More to the point of parole violations is that the

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<sup>123</sup> Morris, op. cit. supra note 10 at p 489

<sup>124</sup> Glueck, op. cit. supra note 61 at pp 168, 169



Gluecks found that 80 per cent of the Concord group (men)<sup>125</sup>  
 and 55 per cent of the Framingham group (women)<sup>126</sup> violated  
 their paroles. It is true that the Glueck investigations  
 were based upon a post parole period of five years but their  
 findings more nearly approach the truth of violations during  
 the parole period.

It is the consensus of opinion that strict adherence  
 to parole conditions would upset a well regulated parole  
 program so that minor infractions are not considered as vio-  
 lations. In such cases a well timed admonishment and strict-  
 er surveillance prevail.

A sad situation is the policy of some states not to  
 apprehend its parole violators where the cost would be high  
 so that parolees located in distant corners of the state or  
 out-of-state, aware of the stand taken, become constant violators.  
 Such states help defeat the purposes of parole and once the  
 inmates are made cognizant of the fact that boards will in-  
 sist upon compliance with parole conditions and that they  
 will be returned for infractions no matter where they may  
 be, the parole program will be put on a firmer footing. The  
 policies of Minnesota, Maryland and New York are to return

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125 Id.

126 Glueck, Five Hundred Delinquent Women (1934) p 109

parole violators regardless of cost excepting minor infractions, no matter where they may be found.

In the main, very few parole violators are apprehended and returned if they have left the state. It has been a habit with parole boards to purposely grant permission to parolees to go out of the state, knowing that their return would be difficult in the event of an evasion. They are primarily interested in ridding their state of criminals.

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It is likewise true that if a parolee violates his conditions and leaves the state no attempt is made to bring him back.

In some few states where there is no personal supervision, a parolee is not considered a violator unless he has been caught for the commission of a new crime and in some cases for suspicion of committing another crime.

It cannot be stated with uniform consistency just what violations will be considered breaches of parole conditions. Obviously, in all cases, the implication in another crime will return the violator to prison. We find that in cases where the parolee does not cooperate with his officer, he is deemed a violator; likewise, persistent failure to submit reports; leaving the state without permission; failure to adjust one's self to the community result in a return to penal custody.

#### B. HEARING THE VIOLATOR.

A parole violation appears to be prima facie evidence

for reincarceration so that little, if any, opportunity is given the parolee for a hearing. In any event such a hearing is discretionary with the paroling authorities. Some states, however, New York among them, do hold hearings on violations so as not to be accused of unjustly revoking a parole or to avoid faulty judgment which is possible with parole or peace officers. When a hearing is held, no trial in court is needed but sole jurisdiction rests with the parole board or a designated individual.

Where the parole agent is overhasty in picking up the parolee for a parole violation, a hearing would be in order because many cases have shown a friction between the agent and his charge. In some instances, the parolee being at the mercy of a sponsor employer is subjected to threats and trumped up charges. These can be aired only at a hearing.

A hearing would also serve as a check up on the parolee's emotional status in his attempt to rehabilitate himself.

Finally, a hearing would give the violator the opportunity of having himself analyzed by men interested in his behavior and in that way corrective measures may be suggested so that he could mend his ways.

#### C. REVOKING THE PAROLE AND ITS EFFECT.

Once the parole is revoked the question of penalties for the violation arises. Some states feel that the return to prison is not enough and further punishment is meted out

although this would be impossible where a definite sentence was imposed originally.

In states employing the indefinite sentence method, the prisoner's reincarceration may be extended until he again becomes a fit subject for parole. If he has been returned to prison for the commission of a new crime, it is the established procedure to have him serve both sentences consecutively unless because of the indeterminate sentence he should be released at a time when the board so desires. Where the state law imposes a minimum and maximum time in the indeterminate sentence, it is the rule that the violator serve the maximum length of time.

Prison privileges have been revoked when a violator is returned to penal custody and there is a possible prison program change.

In some cases, prison "good time" has been revoked. The element of good time deductions serves as a disciplinary and corrective measure so that its revocation is asserted cautiously except in cases where the prisoner continues his bad behavior within the institution. Of course, if at the time of parole the prisoner is apprised that his misbehavior on parole will result in the forfeiture of his prison privileges and good time deductions, parole boards would have no alternative once the violator is brought before them. It has been suggested, however, that if good time deductions were

feasible before parole, their value is not diminished after the violator's return to prison.

Another question of some concern to the parole boards is whether the violator shall be given credit on his sentence for the time he was on parole. Authorities are of the opinion that if the parolee was absolutely anti-social and deliberately violated his parole by committing new infractions, no credit should be given him. However, considering the prison program and its ultimate correctional value such a severe stand might lead to harshness and an unjustifiable rule. For instance, if an administrative provision was violated the refusal of a credit on the sentence would have a deleterious and inhuman effect on the prisoner.

A word should be said about the voluntary revocation of parole. Sometimes, it is difficult to find employment and oftentimes a sensible parolee asks to be returned to the institution. In a few instances, a parolee realizing his incapacibilities asks to be returned so that he can complete a course in trade or vocational training. Similarly the parole agent suggests a reincarceration, acquiesced in by the parolee, because of the needs of additional training, medical care or for some other reason. It takes no stretch of the imagination to observe that such a revocation results in an effective furtherance of the rehabilitative processes to be accorded to the inmate.

## D. REPAROLING

As a matter of practice, in states where reparing is not frowned upon, the prisoner is not granted a second parole or, at best, the procedure is used sparingly. This practice is adduced from the fact that the parolee has failed in his rehabilitation and it would best serve his interest to be kept in prison. Criticism of such a procedure has been made because of the prisoner's eventual release upon the termination of his sentence without further supervision defeats the purposes of parole and such a feature is inimical to the best interests of society.

Some restrictions on reparing are to be found among the states. Eligibility for reparole is not allowable until after 6 months to 2 years of prison servitude and then the inmate becomes a subject for further consideration. A few states allow a third parole after a definite prison stay upon being returned for a second violation.

A good many states prohibit reparing after the conviction of a new crime. This has not met with universal approval because of the idea in some states that the parole approach is a scientific one and fosters social rehabilitation. States having an exacting personnel make parole a significant asset in correcting the criminal so that the hardened criminal may eventually soften. It is he who needs the supervision and if it appears that society is best served by extending supervision over repeated as well as first offenders there is justification for extending the practice of reparing far beyond its present bounds.

## CHAPTER IX

### RELATION OF PAROLE TO INDETERMINATE SENTENCE

The habit still persists in the United States to mete out punishment to fit the crime. Legislators prescribe, in advance, and judges fix, at the time of trial, the amount and type of punishment which a convict must serve before he can regain his freedom. This has the tendency to make the release of the prisoner obligatory within specified limits of time whether he is still a social menace or not. Authorities believe that the only rational plan is to commit offenders for a wholly indefinite period and make their release contingent upon their demonstrated fitness to return to freedom. The exact date on which any given offender should be released from confinement, with due regard for the protection of society and the increase of the prospects of his rehabilitation, is actually indeterminate. It cannot be determined accurately by even the wisest persons, five, ten or more years in advance. <sup>128</sup> The fact was recognized and set forth <sup>129</sup> in the Wickersham Commission's report, as follows:

An indeterminate sentence law, permitting the offender to be released conditionally at a time when he is most likely to make

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128 Ruth Commission Report of the Investigation of the Administration of Criminal Justice, Pennsylvania, (1938) p 91

129 National Commission on Law Observance and Enforcement, "Report on Penal Institutions, Probation and Parole. No. 9 (1931) p 324

good, not at the end of a term fixed arbitrarily in advance.

The sentence known as an indeterminate sentence is in which one/ the time of release is determined by an administrative board after the court imposes minimum and maximum limits of the penalty.<sup>130</sup> While an indeterminate sentence is not necessarily connected with parole it may have some bearing upon an effective parole system, the prisoner having to prove that he is suited for release.<sup>131</sup> Parole systems may be in force where there is no indeterminate sentence such as<sup>in</sup> the Federal Government. It is also possible to obtain a complete release after serving an indeterminate sentence without being placed on parole. Since the underlying idea is to install an indeterminate sentence in the states with the view of justifying a prisoner's release on parole its bearing on such a system becomes manifest.

The early proponents of the indeterminate sentence of Archbishop Whately of Dublin in 1838 and cited the good work of Captain Alexander Macdonald at Norfolk Island where he introduced a mark system as the chief means of bringing order to a turbulent and ill-managed group of prisoners, the idea first possessing him in 1840.<sup>132</sup> This system was enlarged by Sir William Crofton who sent his

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130 Gault Criminology (1938) p 329

131 Best, Crime and the Criminal Law (1930) p 432

132 Robinson, Penology in the United States (1921) p 128



prisoners through various stages before being released. <sup>133</sup>

Crofton was at Mountjoy Prison where he put a prisoner in solitary confinement for 8 or 9 months. During the first 3 months he was fed on limited rations and kept idle as a means of making him appreciate the joys of working. He was then transferred to a work prison where he progressed through four grades, his advancement depending upon the number of marks he was able to accumulate through industry, school progress, and good conduct. He then went through a new third, or intermediate stage of at least six month's duration to test his fitness to be at large.

While neither system invoked the indeterminate idea, nevertheless, a germ was implanted in the minds of penologists giving rise to the belief that good behavior should be rewarded which would be impossible if legislative enactments insisted upon the serving of a full definite penalty.

While some evidence of early indeterminate sentences can be traced to the Inquisition when a criminal was sometimes sentenced to prison "for such time as seems expedient to the Church" and to Connecticut in 1769 when the colony <sup>persons</sup> confined/to the workhouse "until released by order of the law", no state prisons were involved. First definite implications along that line may be attributed to Z. R. Brockway

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133 Lindsey, "Historical Sketch of the Indeterminate Sentence and Parole System" *Journal of Criminal Law and Criminology*, Vol XVI, No. 1. (May 1926) p 13.

who, in 1870, read a paper before the National Prison Association entitled "The Ideal of a True Prison Reform System" in which he stated the essential reasons for the indeterminate sentence proclaiming it as a logical element of an ideal reformatory plan.

When Elmira Reformatory was opened in 1876, Brockway drafted a bill for the New York State Legislature providing for a wholly indeterminate sentence believing that it was an important cog in the reformatory scheme on the ground that a motive for improvement was essential and that the love of liberty was the strongest and perhaps the only desire capable of arousing the interests of prisoners. However, fearful that the Legislature would not approve the bill, he redrafted it permitting young offenders to be sentenced to Elmira until reformation, except that their imprisonment could not exceed the maximum provided by law for the offense. His indeterminate sentence<sup>idea</sup> became the model for the country but Joseph F. Scott, one time Superintendent of Reformatories for New York, believed<sup>134</sup> that his original draft could have been passed just as well and he thereby lost the chance to introduce the wholly indeterminate sentence which penologists are still struggling to obtain over sixty years

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134 Henderson, Penal and Reformatory Institutions, Vol II of Correction and Prevention. (1910) p 94

after Brockway's decision.

Originally, all of the states, in legislating for penal offenses, fixed definite terms for punishment. Justification for such a fixed sentence was based on the assumption that the main purpose of punishment was to serve as a deterrent and that the would be criminal would fear the fixed rather than the indeterminate sentence. This assumption has hardly been proved for most criminals act either upon impulse or rely upon their chances of escaping detection.

Even if punishment is the only desideratum, it has become quite apparent that in many instances the sentences imposed will be either too long or too short.

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Gradually, authority was given to courts or parole bodies to fix the period of incarceration within limits set by the legislatures. Some judges who were opposed to the basic ideas of an indeterminate sentence in pronouncing judgment made the minimum term almost equal to the maximum term. For instance, if the legislative limits were five to ten years, a judge, seemingly abusing his authority, would sentence the guilty offender to a term of from nine to ten years. This forced the legislatures to adopt corrective measures and new legislation was passed to provide for a minimum sentence of not more than one-half, or some similar fraction, of the

maximum. More recently, the tendency has been to take away from the courts the authority to fix the sentence and such authority is left to the parole boards although, to avoid complications, the legislatures have allowed to the courts to impose the minimum and maximum sentences provided by law.

The assumption that a trial judge is in a position to determine the length of a sentence is hard to justify. To some extent this would be true in small jurisdictions where everyone knows everybody else and where proper estimates could be formed. However, judges in such small communities have no knowledge of the essential factors with regard to transients and non-residents and estimates of criminals are rarely, if ever, possessed by the judges in our large cities.

Whether or not minimum and maximum limits are necessary, is open to question. It has been said that a minimum sentence is essential to serve as a check on parole boards. Some boards become sentimental and corrupt and are easily politically swayed. Other boards release prisoners as soon as the minimum sentence has been served which is some proof that they might have been released as soon as sentenced if there was no minimum restriction, although recent investigations show that in states where there is no minimum requirement there has been no wholesale release of prisoners.

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136 Sutherland, op. cit. supra note 12 at p 519

If the board is to be trusted and that can be justified from the appointments, the absolute indeterminate sentence would not be abused and the board could hold the prisoner as long as it sees fit as well as releasing the prisoner after a short period if his case warrants such action.

The maximum sentence presents greater difficulties. Some criminals are born recidivists and under the present set-up they would have to be released after the expiration of the maximum term without supervision. A sentence without a limitation would obviate this danger although a mistake can be made in keeping a prisoner confined for life when he would become a useful member of society. Here again, faith must be had in the boards and long, intimate, and analytical study of each case will reduce the margin of error.

In the final analysis, the removal of the limits depends upon the integrity of the personnel of the board and when perfection in administration and working conditions is reached, the elimination of the limits should not be the bugaboo that it is.

Previously in 1900, 11 states adopted some form of indeterminate sentence. This was increased to 21 by 1911 and to 37 by 1922.<sup>137</sup> Today but four states are without parole laws while 17 jurisdictions, including the Federal Government,

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<sup>137</sup> Haynes, The American Prison System (1939) p 738

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have no indeterminate sentence law.

There were no less than 13 types of indeterminate sentences in its early stages. These<sup>types</sup> have been boiled down to three.<sup>139</sup> The first is a maximum of detention not to exceed the maximum set by law. The second provides for a maximum and minimum of detention fixed by the court, the sentence being within the limits prescribed by law. The third<sup>the obligation</sup> imposes upon the court to sentence the offender to the maximum and minimum stated in the law.

The original idea in Europe, attributed to the indeterminate sentence was to imprison the residivist and habitual criminal who could not be reformed for a period without a maximum limitation and as a result there were many permanent incarcerations. Now, in the United States, the indeterminate sentence has become linked with the parole system. In showing this attachment to the parole system, it is interesting to note that none of the 17 states where definite sentences are exclusive or predominant has a higher extent of parole<sup>of the total released</sup> than 61 per cent, while 17 of the 27 states where indeterminate sentences are exclusive or predominate have a higher extent of parole<sup>of those released</sup> than 77 per cent.<sup>140</sup> In only 3 of the 27

138 Attorney General's Survey of Release Procedures, Vol IV, p 10

139 Haynes, op. cit. supra note 6 at p 396

140 Attorney General's Survey of Release Procedures, Vol IV, p 116

states having indeterminate sentences, parole is used in less than 40 per cent of the releases presumably because of statutory restrictions.

From these observations, it can be seen how the indeterminate sentence is associated with the use of parole indicating that parole is closely related to such a procedure and its further extension would seem to be a prerequisite for a sounder parole policy.

## CHAPTER X

## PAROLE IN NEW YORK STATE

## A. DEVELOPMENT AND HISTORY OF LAWS AFFECTING PAROLE

After Brockway was allowed to introduce a form of parole at Elmira Reformatory in 1869, the New York Legislature in 1877 enacted a statute specifically referring to the reformatory and used the word "parole"<sup>141</sup> for the first time. It gave power to the board of managers of the reformatory to establish rules and regulations under which prisoners may be released and to remain while on parole under the control of the board and further subjecting them to reimprisonment for a violation. The managers of the reformatory were empowered to appoint suitable persons to supervise prisoners who were released on parole.

That same year legislation was enacted providing for the appointment of a State agent for the guidance and employment of discharged convicts.<sup>142</sup> The agent was appointed by the Superintendent of State Prisons and was required

- a. to visit all penal institutions and reformatories of the State;
- b. to visit each prison at least once each month;
- c. to confer with all convicts whose terms were

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141 New York Laws 1877 Ch 173 (5)

142 New York Laws 1877 Ch 424



about to expire in order to induce them to proceed immediately from the place of confinement to suitable homes and places where employment was to be secured for them;

- d. to contact employers so as to secure suitable employment for discharged convicts;
- e. to furnish convicts discharged from prisons and reformatories with transportation, food, clothing, and any necessary tools and advice, so that they may enter upon employment.

In 1889 an indeterminate sentence law was passed making it permissive for a court, when making commitments to prison, to pronounce a sentence with minimum and maximum limits specified, instead of a definite sentence for a fixed term.<sup>143</sup> The same law created a Board of Commissioners of Paroled Prisoners consisting of the Superintendent of State Prisons, the agent and warden, the chaplain, the physician and the principal keeper of each prison.<sup>144</sup> The Board of Commissioners could authorize the release of an indeterminate sentence prisoner, if it appeared to them that there was reasonable probability that the prisoner would remain at liberty without violating the law. During the parole period the parolee was under the legal custody of the warden and was subject to rearrest and returned to the institution if he violated his parole. Upon his return the prisoner was given the opportunity of appearing before the Board of

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<sup>143</sup> New York Laws 1889 Ch 382

<sup>144</sup> Id.

Commissioners who could declare him to be delinquent and cause him to be imprisoned for a period equal to the unexpired maximum sentence. The Board was also empowered to grant absolute discharges. It became mandatory for the prisons to maintain biographical records of all prisoners serving indeterminate sentences.

A long series of ~~the~~ changes, though slight, began in 1895 when chapter 424 of the Laws of 1877 which provided for the appointment of a state agent for the guidance and employment of discharged convicts was repealed.<sup>145</sup>

A more elaborate and extensive change occurred in 1901<sup>146</sup> when the jurisdiction of the Board of Commissioners of Paroled Prisoners was extended to include definite sentence prisoners who were sentenced to five years or less and who had never before been convicted of a felony. Whenever such a convict was given a maximum penalty of five years or less,<sup>147</sup> the sentence was deemed to be indeterminate. The definite term of the prisoner was construed as the maximum sentence, while the minimum was declared to be one-third of the definite term.

The earlier law in 1901<sup>148</sup> supplanted the Board of Commissioners of Paroled Prisoners with the already existing

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<sup>145</sup> New York Laws 1895 Ch 93

<sup>146</sup> New York Laws 1901 Ch 280

<sup>147</sup> New York Laws 1901 Ch 425

<sup>148</sup> New York Laws 1901 Ch 280

State Commission of Prisons, composed of three persons and which assumed all the powers and duties of the previous board. This board which retained the longer name designation was required to meet at each prison four times a year and entertain an application for an inmate's release on parole or for his absolute discharge, each of which could be done upon the expiration of the minimum term. The Superintendent of State Prisons was required to appoint a parole officer for each prison. These officers were to aid paroled prisoners in securing employment and were to visit the parolees and exercise supervision over them while on parole.

In 1902, absolute discharge was continued as relating to indeterminate sentence prisoners. <sup>149</sup> As regards definite sentence prisoners, the Board of Commissioners of Paroled Prisoners was required to submit a report to the governor for his discretionary action.

A forerunner of present day organization took place in 1907 when the legislature created a board of parole for state prisons to consist of the Superintendent of Prisons and two members appointed by the governor. <sup>150</sup> The Board of

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149 New York Laws 1902 Ch 500

150 New York Laws 1907 Ch 467

Parole was

1. to take over all the power and duties of the Board of Commissioners for Paroled Prisoners;
2. to adopt a uniform system of marking prisoners so as to determine when to release them;
3. to examine and make recommendations to the governor on all applications for pardons referred to it by the governor.

The law also charged each warden with the responsibility of appointing a parole officer for his prison. One month before the expiration of his minimum term a prisoner could make application for his release on parole or for an absolute discharge. Indeterminate sentences were given to all persons never before convicted of a felony, who were sentenced to State prisons after conviction of a felony other than murder in the first or second degree.<sup>151</sup>

In 1909, an enactment extended the application of chapter 260 of the Laws of 1901 by doing away with the limitation of the provision that the definite sentence was to be five years or less.<sup>152</sup> All definite sentence prisoners never before convicted of a felony, then in prison, became

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<sup>151</sup> New York Laws 1907 Ch 737

<sup>152</sup> New York Laws 1909 Ch 489

subject to the jurisdiction of the board of parole. The definite term was still the maximum sentence while the minimum sentence was to be one year in all cases when the definite term was two years or less. When the definite term was more than two years, the minimum sentence was to be one-half of the definite term.

The following year, a law provided that where an indeterminate sentence prisoner had a sentence in which the minimum term was more than one half the maximum, he became subject to the jurisdiction of the board of parole after he shall have served one-half of the maximum term.<sup>153</sup>

In 1912 the power of the board to grant absolute discharges was extended to apply to prisoners serving definite terms.<sup>154</sup>

Some years later prisoners confined to life sentences were given some consideration and their sentences were construed as being indeterminate with a maximum of life and a minimum of ten years, at which time they became subject to the jurisdiction of the board of parole.<sup>155</sup>

In 1918 a law provided that if a parolee was

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<sup>153</sup> New York Laws 1910 Ch 669

<sup>154</sup> New York Laws 1912 Ch 286

<sup>155</sup> New York Laws 1917 Ch 480

apprehended and convicted of a felony before the maximum expiration of his term, he was required to serve the remainder of his maximum term without commutation.<sup>156</sup>

The everchanging trend of the legislature was evidenced in 1921 and 1926. In the former year, the power to grant absolute discharge to definite sentence prisoners was revoked,<sup>157</sup> while in the latter year the legislation of 1917 which made life sentences indeterminate was revoked.<sup>158</sup> In that same year a Division of Parole was created, the Board of Parole being its head.<sup>159</sup> The Board of Parole consisted of the Commissioner of Correction and two members appointed by the governor.

In the meantime the entire parole system was being investigated and in 1926 it was declared to be an "under-financed moral gesture".<sup>160</sup> Agitation forced the legislature to survey the entire parole program and a slight change was made in 1928.<sup>161</sup> The system of marking prisoners so as to determine when to release them was done away with and the board of parole was charged with

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- 156 New York Laws 1919 Ch 198
  - 157 New York Laws 1921 Ch 567
  - 158 New York Laws 1926 Ch 494
  - 159 New York Laws 1926, Ch 606
  - 160 Alger, Report on the Parole System of New York (1926) p 18
  - 161 New York Laws 1928 Ch 485

1. determining what indeterminate sentence prisoners who had completed minimum terms should be released on parole;
2. fixing conditions on parole;
3. supervision of all prisoners released on parole from state prisons;
4. making investigations;
5. determining whether violations of parole existed;
6. taking action with reference to violations;
7. aiding paroled prisoners to secure employment;
8. duty of personally studying prisoners serving indeterminate sentences, so as to determine their ultimate fitness to be paroled.

The board was required to keep preparole records to contain reports as to the prisoner's social, physical, mental and psychiatric condition and history. No longer was the prisoner allowed to make an application for parole but provision was made for the automatic consideration of all indeterminate sentence prisoners one month before the expiration of the minimum term. Another important change abolished both conditional and absolute discharges from parole prior to the expiration of the full maximum term.

By another law the composition of the board of  
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 parole was changed. Its members were the warden of the

prison in which the prisoner was held, the commissioner of correction and the second commissioner of correction.

Provision was also made for a director of parole and fourteen parole officers.

1930 saw the Division of Parole placed in the  
<sup>163</sup> Executive Department. Provision was made for three full time members to constitute a board of parole. Various staff provisions were also included.

In 1932 the legislature permitted parole of fourth offenders after the prisoner had served a sentence equivalent to the maximum term prescribed by law for the felony constituting the offense for which convicted.  
<sup>164</sup> The minimum time however was not to be less than fifteen years and the maximum to be the natural life of the offender. The sentence was deemed to be indeterminate and by a ruling of the Attorney General, "good time" was not to be deducted from  
<sup>165</sup> the minimum of fifteen years. The indeterminate provision, however, does not apply to convictions for murder, first  
<sup>166</sup> or second degree, or treason within the state.

Where a fourth offender was convicted of burglary

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<sup>163</sup> New York Laws 1930 Ch 824

<sup>164</sup> New York Laws 1932 Ch 617, N.Y. Penal Law. Sec 1942

<sup>165</sup> Op. Atty. Gen. (1932) 304

<sup>166</sup> N.Y. Penal Law. Sec 1942



and larceny for which the maximum penalties were 10 and 5 years, respectively, and sentenced to serve his natural life under a prior statute and upon resentencing under the 1932 statute he was given a minimum of 25 years and a maximum of life, he could not complain that had his original sentence been under the later statute he would have been<sup>167</sup> eligible for parole in 15 years. As interpreted the indeterminate sentence may be any period between 15 years and life. Nor is the statute unconstitutional because of a claim that the punishment is harsher. The resentencing for a probable lesser term with the privilege of parole was<sup>168</sup> more favorable to the convict.

A law in 1936 extended the power of the board of parole to all prisoners sentenced to indeterminate terms<sup>169</sup> and confined in a state prison. The law further required that second or third offenders were to be given indeterminate sentences with minimum terms of not less than the longest term prescribed upon a first conviction and maximum<sup>170</sup> terms of twice the maximum prescribed upon a first conviction.

It has been held that where a second offender was

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167 People ex rel Barber v Hunt, 252 App Div 248, 299 N.Y.S. 663 (1937)

168 Id.

169 New York Laws 1936 Ch 70

170 New York Penal Law, Sec 1941

place of detention by virtue of his arrest as a parole violator shall, upon his return to prison or the Elmira Reformatory for such violation, be calculated as a part of the term of the sentence imposed upon him.<sup>175</sup>

It further provided that when a prisoner while on parole shall be charged with a new crime and there shall have been a parole violation warrant lodged against him prohibiting his admission to bail pending the disposition of the charge and where the charge against him shall automatically be dismissed or he is acquitted thereof, the time spent by such prisoner in a place of detention shall be calculated as a part of the term of his original sentence.<sup>176</sup>

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175 Id (2)

176 Id (3)

## B. THE BOARD OF PAROLE

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The law creating the present Division of Parole provides for a board of parole to consist of three members to be appointed by the Governor, by and with the consent of the Senate. Each member receives for his services an annual salary of twelve thousand dollars.

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The law further provides that the members of the board and their officers and employees shall not hold any other public office or serve as the representative of any political party, or as an executive officer or employee of any political committee, organization or association, and that the members of the board and its staff must devote their whole time and capacity to parole. This was confirmed by the Attorney General who declared that a member of the state board of parole may not accept appointment to any other public office, nor to an office of a voluntary association requiring the performance of duties by the incumbent. A probation officer, however, with the approval of the court may act as a parole officer.

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177 New York Laws 1930 Ch 824

178 N.Y. Executive Law Sec 115

179 Op. Atty. Gen. (1933) 136

180 N.Y. Criminal Code Sec 937

The board of parole has jurisdiction over the release of prisoners on parole from the seven state prisons - Attica, Auburn, Clinton, Great Meadow, Sing Sing, Walkill, and the Women's Prison at Westfield State Farm and the Elmira Reformatory,<sup>181</sup> as well as the normal prisoners transferred to the Woodbourne Institution for Defective Delinquents.<sup>182</sup> The board is not to be confused with the parole system created in certain cities where there exists a department of correction which has jurisdiction over a workhouse, a penitentiary and a reformatory.<sup>183</sup>

The board of parole must meet at each of the institutions under its jurisdiction at such times as it may be necessary for a full study of the cases of all prisoners eligible for release on parole and to determine when and under what conditions and to whom such parole may be granted.<sup>184</sup> Questions of violations and delinquencies must also be determined by the board and for the purpose of any investigation it may issue subpoenas compelling the attendance of witnesses.<sup>185</sup>

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181 N.Y. Correction Law Sec 210

182 Id. Sec 460

183 Id. Article 7A. Secs 200-208

184 N.Y. Executive Law Sec 115

185 Id. Sec 116. Op. Atty. Gen. (1937) 122

The board must, with the approval of the Governor, appoint an executive director as the administrative officer of the board.<sup>186</sup> The executive director is required by law to formulate methods of investigation and supervision, to develop various processes in the technique of the case work including interviewing, consultation of records, analysis of information, diagnosis, plan for treatment, correlation of effort by individuals and agencies, and methods of influencing human behavior.<sup>187</sup>

The board also appoints a chief parole officer, three case supervisors, an employment director, social investigators who are to supply it with information which may serve as a basis for its decisions, and a staff of parole officers sufficient in number so that no such officer is required to supervise more than 75 persons at one time.<sup>188</sup>

Actually the case load is much more than that suggested by the statute. All employees of the board shall be in the competitive class of the civil service.<sup>189</sup>

While the statute makes no provision for the removal of any employee it does specify that the board must act in cooperation with the civil service commission in establishing

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<sup>186</sup> N.Y. Executive Law Sec 117

<sup>187</sup> Lehman, "Parole in a Progressive State", Proceedings of the New York State Conference on Social Work, (1937) p 9

<sup>188</sup> N. Y. Executive Law Sec 117

<sup>189</sup> Id.

standards of governing selection and appointment of employees. Consequently it was held that the board was without authority to suspend a chief parole officer without pay pending a determination of a hearing upon charges.<sup>190</sup>

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190 Bramer v Board of Parole, Division of Parole  
247 App. Div. 414, 228 N.Y.S. 108 (1936)

### C. HEARINGS BEFORE THE BOARD OF PAROLE

The state is divided into three districts, each  
<sup>191</sup>  
 under the control of one board member.

The first contact a prisoner has with a member  
 of the board is at the initial interview soon after the  
 prisoner's arrival in prison, the member first having read  
<sup>192</sup>  
 the probation officer's report that have been made. Such in-  
 formation is not privileged from disclosure in court on  
<sup>193</sup>  
 instructions from the court.

The release of a prisoner on parole shall not be  
 upon the application of the prisoner but solely upon the  
<sup>194</sup>  
 initiative of the board of parole. The prisoner appears  
 before the board automatically at the expiration of the  
 minimum sentence less the period of the time off.

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191 Tenth Annual Report of the Division of Parole, New  
 York State (1940) p 3  
 Appendix B

192 N.Y. Correction Law Sec 211

193 Op. Atty. Gen. (1937) 122

194 N.Y. Correction Law Sec 214

In considering the case of a prisoner eligible for parole the law provides <sup>195</sup> that the board must have before it a complete statement of the crime for which the prisoner was sentenced and the circumstances of the crime, the nature of the sentence, the court in which the prisoner was sentenced, the names of the judges and the district attorney, copies of probation reports, as well as reports regarding the prisoner's social and mental history, and the complete criminal record of the prisoner. In addition the board shall have the warden's report containing a detailed statement of infractions, discipline, prison conduct, and his attitude toward society and the persons involved in his incarceration. His prison industrial record must also be supplied as well as reports of physical, mental, and psychiatric examinations. A member of the board must give his personal views and recommendations. In addition, the life history of the prisoner must be checked by a parole officer and a report made regarding the home to which the prisoner plans to return and the kind of work at which he is to be employed.

The Correction Law specifies that the board of parole, before paroling a prisoner, must be satisfied that "if released,



the parolee will be suitably employed in self-sustaining employment."<sup>196</sup> No discretion is allowed the board in this respect. The largest factor in withholding parole to those legally eligible for it was unsatisfactory employment plans. This was the reason for refusing parole in 28.5 per cent of the cases in 1939.<sup>197</sup> An employment bureau and director are provided for by law to aid persons in securing employment.<sup>198</sup>

In releasing a prisoner, the board specifies in writing the conditions of parole, and a copy of such conditions is given to the parolee.<sup>199</sup> The board has been given the privilege of adopting general rules with regard to conditions of parole and their violation. The following conditions are prevalent in the state today,<sup>200</sup>

1. I will proceed directly to . . . . ., the place to which I have been paroled and within twenty-four hours, I will make my arrival report to . . . . . When I make my arrival report, I will have in my possession the money I received at the time of my release, except necessary expenditures of funds for travel, food and shelter.

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196 Id.

197 Tenth Annual Report of the Division of Parole, New York State (1940) p 59

198 N.Y. Executive Law Sec 118

199 N. Y. Correction Law Sec 215

200 Tenth Annual Report of the Division of Parole New York State (1940) p 99

2. I will not leave the State of New York or the community to which I have been paroled without the written permission of any parole officer.
3. I will carry out the instructions of my parole officer, report as directed, and permit him to visit me at my residence and place of employment. I will not change my residence or employment without first securing the permission of my parole officer. If, for any reason, I lose my position, I will immediately report this fact to my parole officer. I will make every effort to secure gainful employment and I will cooperate with my parole officer in his efforts to obtain employment for me.
4. I will conduct myself as a good citizen. I understand that this means that I must not associate with evil companions or any individuals having a criminal record; that I must avoid questionable resorts, abstain from wrong-doing, lead an honest, upright and industrious life, support my dependents, if any, and assume toward them all my moral and legal obligations; and that my behavior must not be a menace to the safety of my family or to any individual or group of individuals.
5. I will not indulge in the use or sale of narcotics in any form and will abstain from the use of intoxicating liquors.
6. I will not marry without consulting with and obtaining the written permission of my parole officer, nor will I live with any woman not my lawful wife.
7. Before making application for a license to hunt or to drive a motor vehicle, I will secure the approval of my parole officer. If, while on parole, I hunt or drive a motor vehicle, without a license, I know that it will be considered a violation of parole.
8. I will not correspond with inmates of the State prison or the Elmira Reformatory without the written permission of my parole officer.

9. I will reply promptly to any communication from a member of the Board of Parole, a parole officer, or an authorized representative of the Board of Parole.
10. I understand that any reports, either verbal or written, made or submitted by me to my parole officer, which are subsequently found to be false, will be rejected by the Board of Parole and will not be used in crediting parole time served and, in addition, may be considered a violation of parole.
11. During the period which I am on parole should I commit a felony, within the State of New York, or any other state, I understand that in addition to serving the sentence pronounced upon me for this offense, I shall be compelled to serve in a State penal institution, the portion remaining of the maximum term of such release on parole to the expiration of such maximum.
12. If I should be arrested in another state during the period of my parole, I will waive extradition and will not resist being returned by the Board of Parole to the State of New York.
13. I will not carry from the institution from which I am released, or send to any penal institution, whether in New York or elsewhere, any written or verbal message, or any object or property of any kind whatsoever, unless I have obtained specific permission to do so from the warden, superintendent or other duly authorized officers of both the institution from which I am released, and the institution to which the message, object or property is to be delivered.

Since individuals released on parole are not free  
out, until the expiration of their maximum sentences, are

still in the custody of the warden of the institution from  
<sup>201</sup>which they are released, they may be returned to the  
institution for any violation of the conditions of their  
<sup>202</sup>parole. A parole is not revoked because a prisoner  
was committed to another penitentiary after violating  
<sup>203</sup>the conditions of his parole. When a person's sentences  
had not yet expired when he was rearrested as a parole  
violate, he was not entitled to release but must be  
<sup>204</sup>returned to prison. A warrant must be issued for the  
<sup>205</sup>retaking of a violator and such a warrant has been held  
to be good if issued before but not served upon the violator  
<sup>206</sup>until after the expiration of his maximum term. The same  
ruling held true even if the original warrant was lost or  
not available after the expiration of the maximum term and  
a duplicate warrant dating back to the original was signed  
<sup>207</sup>by a new member of the parole board. The prisoner is  
required to serve the remainder of his term subject to any  
<sup>208</sup>action of the parole board.

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- 201 N.Y. Correction Law Sec 220  
202 Id. Sec 216, N.Y. Criminal Code Sec 296  
203 People ex rel. Schuyler v. Brophy 256 App. Div. 1045  
10 N.Y.S. 2d 754 (1939)  
204 People ex rel. Wydro v. Hunt, 257 App. Div. 910, 12  
N.Y.S. 2d 315 (1939)  
205 N.Y. Correction Law Sec 216  
206 People ex rel. La Placa v. Heacox, 238 App. Div. 217,  
263 N.Y.S. 407 (1933)  
207 People ex rel. Ryan v. Lawes, 254 App. Div. 589, 3 N.Y.S.  
2d, 56 (1939)  
208 People ex rel. Bickhofer v. Lawes, 255 App. Div. 673,  
7 N.Y.S. 2d, 667 (1938)

Where there is reasonable cause for believing a parolee to be a violator, the board at its next meeting shall declare the prisoner to be delinquent and the time owed shall date from such delinquency.<sup>209</sup> The Correction Law<sup>210</sup> provides that as soon as practicable, after the return of a violator, the board of parole must consider the cases of violators. The violator shall be given an opportunity to personally appear before the board, but not through counsel or others, and explain the charges made against him. It is only because of the provision in the statute that a violator is entitled to a hearing and not as a matter of right<sup>211</sup> because the violation is not considered a criminal offense. Within a reasonable time, the board must act upon these charges and may, if it sees fit, require the violator to serve the balance of the maximum term or any part thereof. The time elapsing between escape to avoid re-arrest as a violator and the retaking will not be allowed<sup>212</sup> as part of the term.

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209 N.Y. Correction Law, Sec 218

210 Id.

211 Note, Minn. L. Rev. Vol. 24, pp 584-7 (1940) Commonwealth ex rel. Meredith v. Hall, 126 S.W. 2d 1056 (Ky. 1939)

212 Magistro v. Wilson, 253 App. Div. 48, 300 N.Y.S. 1216 (1938)

The court has no power to review the determination of<sup>213</sup>  
a parole board which followed the prescribed procedure.

The parole board may reparole a violator without<sup>214</sup>  
returning him to prison as of the date set by the board.  
The board, however, having declared a parolee delinquent  
cannot hold delinquency in abeyance and continue to receive  
parole reports and later declare parolee delinquent as of<sup>215</sup>  
original date.

If the violator has been convicted of another felony  
and is returned to prison with a new sentence, he must, before  
beginning to serve the new sentence, serve the remaining part  
of his first sentence from the date of his release to the<sup>216</sup>  
expiration of the maximum sentence. The commission of another  
felony renders the parolee delinquent immediately and no<sup>217</sup>  
declaration of delinquency is necessary. The parole board,  
under the statute, has authority to interrupt a sentence  
imposed on conviction of a crime committed by the paroled  
convict by requiring him first to serve the unexpired portion<sup>218</sup>  
of his previous sentence. The felon is not excused from

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213 People ex rel. Schuyler v. Brophy 256 App. Div. 1045,  
10 N.Y.S. 2d 754 (1939). People ex rel. Kurzynski v.  
Hunt, 250 App. Div. 378, 294 N.Y.S. 276 (1937)

214 Op. Atty. Gen. (1934) 108

215 Op. Atty. Gen. (1934) 109

216 N.Y. Correction Law Sec 219

217 Op. Atty. Gen. (1932) 111

218 People ex rel. Block v. Murphy, 252 App. Div. 825, 299  
N.Y.S. 357 (1937)

serving the time left on his original term even though the  
<sup>219</sup>  
 maximum term has expired.

<sup>220</sup>  
 The Correction Law provides that every person  
 sentenced to an indeterminate sentence and confined in a  
 state prison, when he has served a period of time equal to  
 the minimum sentence imposed by the court for the crime of  
 which he was convicted, less time off for good behavior and  
 for work willingly performed, shall be subject to the juris-  
 diction of the board of parole. The time of his release is  
 discretionary but he cannot be released until he has served  
 the minimum which must be at least one year. The action of  
 the board is a judicial function and is not reviewable if  
<sup>221</sup>  
 done according to law. The board also supervises prisoners  
 serving definite sentences released by the Governor upon  
<sup>222</sup>  
 commutation thereof. Such supervision is automatic when  
<sup>223</sup>  
 the definite sentence is reduced by good time allowances.

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219 People ex rel. Seymour v. Branham, 155 App. Div. 747,  
 6 N.Y.S. 2d 857 (1938)

220 N.Y. Correction Law Sec 212

221 People ex rel. Gariti v. Brophy, 255 App. Div. 823,  
 7 N.Y.S. 2d 19 (1938)

222 N.Y. Executive Law Sec 117, N.Y. Correction Law  
 Sec 241

223 N.Y. Correction Law, Sec 241

The commutation referred to is a matter vesting solely in the discretion of the Governor and is not a matter for the courts.<sup>224</sup> Commutation of sentence has been defined as a remission of a prisoner's duty to serve in full a sentence imposed by the court, with the result that the remitted part ceases to exist and only the unremitted portion may be enforced, but when the unremitted portion is served, the original sentence, as modified is satisfied.<sup>225</sup> Once the Governor acts upon a prisoner's allowance of "good time", the prisoner becomes subject to the control of the parole board until the expiration of his maximum term.<sup>226</sup>

In cases where definite sentence prisoners do not automatically come under the control of the board of parole, the Governor may impose such a condition to the reduction of sentence making the prisoner subject to the jurisdiction of the board.<sup>227</sup>

A prisoner who has been pardoned by the Governor, although under a conditional pardon, is not amenable to the jurisdiction of the parole board<sup>228</sup> except when his conditional

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224 People ex rel. Spillman v. Wilson 236 App. Div. 201, 258 N.Y.S. 253 (1932)

225 Application of White 166 Misc 481, 2 N.Y.S. 2d 582 (1938)

226 Handler v. Hunt, 258 App. Div. 772, 14 N.Y.S. 2d 839 (1939)

227 N.Y. Correction Law, Sec 242

228 People ex rel. Madden v. Barr, 143 Misc 716, 257 N.Y.S. 395 (1932), reversed on other grounds 236 App. Div. 319, 258 N.Y.S. 546 (1932)



pardon release is accepted by him subject to the rules of the  
<sup>229</sup>  
 board.

Inasmuch as the time of release is discretionary with the board, it may keep an inmate in prison for the maximum  
<sup>230</sup> just cited term. In the Bitz case, the prisoner received an indeterminate sentence and the Governor commuted his minimum term in prison. It was held that such reduction of the minimum did not serve the purpose of allowing the prisoner to be discharged by release on parole, or otherwise, but merely permitted him to be considered by the board of parole at an earlier period than he would otherwise have been considered.

Each month the three members of the board of parole, acting as the Board of Parole, hold three types of hearings  
<sup>231</sup>  
 at the institutions over which the board has parole jurisdiction.

The first type of hearing deals with indeterminate sentence prisoners, who have served their minimum sentences and with allowances for good time, and jail time, are eligible for release on parole; and with definite sentence prisoners, who are eligible for release when they agree in writing to accept the jurisdiction and supervision of the board of parole for the amount of time their sentences have been reduced

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229 People ex rel. Sullivan v. Barr, 236 App. Div. 721, 157 N.Y.S. 1029 (1932) affirmed without opinion, 260 N.Y.582, 184 N.E. 102 (1932)

230 Bitz v. Canavan. 257 App. Div. 247, 12 N.Y.S. 2d 862 (1939) Affirmed, N.Y. 699, 23 N.E. 2d 536 (1939)

231 Tenth Annual Report of the Division of Parole, New York State (1940) p 51

through the operation of "good time" laws.

The second type of hearing is for indeterminate sentence prisoners who have violated the conditions of their parole, and definite sentence prisoners who have violated the conditions of their supervision, and who have been returned to prison for a further period of incarceration and after serving this delinquent time, they are again eligible for consideration for release under supervision.

The third type of hearing is limited to those indeterminate sentence prisoners who have violated the conditions of their parole, and those definite sentence prisoners who have violated the conditions of their supervision, and have recently been returned to the institutions for such violations.

During 1939 the board held a total of 6,812 formal<sup>232</sup> hearings at which all three members were present. This figure does not include the number of informal interviews with prisoners by the individual member. With 2395 prisoners released on parole during 1939, there were 10,484 persons in all under the board's supervision as of the end of the<sup>233</sup> year.

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232 Id. p 52

233 Id. p 75

The New York board's careful consideration of parole releases resulted in 76.6 per cent of the indeterminate prison cases being denied parole in their first appearance during 1939.<sup>234</sup> It might be added that 25.5 per cent could not have been paroled in any event, because of legal restrictions or general policy in the interest of society. Of 1441 prisoners making their first reappearance before the board, 59.6 per cent were denied parole.<sup>235</sup> 61.2 per cent were denied parole after a second reappearance;<sup>236</sup> 63.0 per cent at the third;<sup>237</sup> 66.7 per cent at the fourth;<sup>238</sup> and 74.7 per cent at the fifth and subsequent reappearances.<sup>239</sup> The total number in the latter category had dwindled to 75 prisoners.

It has been asserted that economically, parole is sound in New York. It costs the taxpayers 60 dollars a year per parolee to perform every function of parole while the cost runs to 550 dollars a year, not including the capital cost of the prison itself, to maintain an individual in a state prison.<sup>240</sup>

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<sup>234</sup> Id. at p 55

<sup>235</sup> Id. at p 57

<sup>236</sup> Id. at p 58

<sup>237</sup> Id. at p 61

<sup>238</sup> Id. at p 61

<sup>239</sup> Id. at p 62

<sup>240</sup> Lehman, op. cit. supra note 187 at p 18

#### D. THE INDETERMINATE SENTENCE AND PAROLE

A sentence to imprisonment in a state prison for a definite fixed period of time is a definite sentence.<sup>241</sup>

A sentence to imprisonment in a state prison having minimum and maximum limits fixed by the court or the Governor is an indeterminate sentence.<sup>242</sup>

<sup>243</sup>  
The Penal Law states that a person never before convicted of a crime punishable by imprisonment in a state prison, other than murder in the first or second degree or kidnapping, shall be sentenced to an indeterminate term, the minimum of which shall not be less than one year, or in case a minimum is fixed by law, not less than such minimum; otherwise the minimum of such sentence shall not be more than one-half the longest period and the maximum shall not be more than the longest period fixed by law for which the crime is punishable of which the offender is convicted.

Indeterminate sentences are now being given to

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241 N.Y. Correction Law, Sec 230 (1)

242 Id.

243 N.Y. Penal Law, Sec 2189

244 245  
second, third, and fourth offenders.

In New York State the constitutionality of the indeterminate sentence has never been raised. Outside of this state, the principal constitutional objection raised against indeterminate sentence laws and parole acts has been that the use of an indeterminate sentence with power in a board to release on parole constitutes an impairment of the judicial power vested by the constitution in the courts. <sup>246</sup> Another objection has been that it is an infringement <sup>247</sup> on the pardoning power of the Governor. From the standpoint of the offender the chief objection has been that the indeterminate sentence renders the punishment uncertain so that it falls within the constitutional inhibition <sup>248</sup> of cruel or unusual punishments. It has also been <sup>249</sup> claimed that the right of trial by jury is interfered with, <sup>250</sup> that the sentence is not due process of law, and that the <sup>2</sup> punishment is not proportioned to the nature of the offense.

244 N.Y. Penal Law, Sec 1941

245 Id. Sec 1942

246 State ex rel. Attorney General v. Peters, 43 Ohio  
629, 4 N.E. 81 (1886)

247 People v. Cummings, 88 Mich. 249 50 N.W. 310 (1891)  
State v. Duff, 144 Iowa 142, 122 N.W. 829 (1909)

243 Miller v. State, 149 Ind. 607. 49 N.E. 894 (1898)

249 George v. People, 167 Ill. 447, 47 N.E. 741 (1897)

25) Woods v. State, 130 Tenn. 100, 169 S.W. 558 (1914)

251 Miller v. State, supra

While these objections have prevailed in a few cases, they have generally been held to be not well founded, and doubts as to whether parole and the indeterminate sentence are constitutional need no longer be entertained.<sup>252</sup> However, this statement does not apply to a true indeterminate sentence. While the constitutionality of such a sentence has never been tested, inasmuch as there is no statute providing for a thoroughly indeterminate sentence in any state,<sup>253</sup> it is possible that such a statute would be declared invalid.<sup>254</sup> It is to be noted that it was only by holding the indeterminate sentence to be in legal effect a sentence for the maximum term that the courts preserved it from the objection of uncertainty and indefiniteness.<sup>255</sup>

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252 People v. Joyce, 246 Ill. 124, 92 N.E. 607 (1910);  
Sims v. Rives, 84 F. 2d 871 (U.S.C.A. D.C. 1938)

253 Dickinson and Colson, "Probation and Parole".  
W. Va. L. J. 44:121 (1937-8)

254 Note, 50 Harv. L. Rev 679 (1937)

255 Lindsey, "Historical Sketch of the Indeterminate Sentence and Parole System." 16 J. Crim. L. & Cr. 64 (1915)

### E. GOOD TIME AND PAROLE

Good-time laws are of two types: Those which hasten the time when the prisoner becomes entitled to a final, absolute release, and those which hasten the time when he becomes eligible for parole. Under indeterminate sentence laws the first type applies to reduce the maximum sentence, as in Arizona. The second type affects only the minimum sentence. The New York law is of this kind. The statute provides that a prisoner may receive for good conduct and efficient and willing performance of duties assigned, a reduction of his sentence not to exceed ten days for each month of the minimum term in the case of an indeterminate sentence. The reduction is to be computed upon the minimum term of the indeterminate sentence less jail time allowance, which is the time spent in prison awaiting trial. In the case of definite sentence prisoners the time is taken from the term imposed by the

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256 Clark v. State, 23 Ariz. 370, 204 Pac. 1032 (1922);  
Arme v. Rogers, 32 Ariz. 502, 260 Pac. 199 (1927)

257 N.Y. Correction Law, Sec 230 (2)

258 N.Y. Correction Law, Sec 230 (3)

259  
court.

The granting of this "good time" does not reduce sentences, but it does make indeterminate sentence prisoners eligible to appear before the Board of Parole at an earlier date.<sup>260</sup> The right to release on parole, however, and to a shortened term for good behavior and efficient work performed is an act of grace and favor and not a right.<sup>261</sup> It is discretionary with the board.<sup>262</sup> Likewise, an application for peremptory mandamus requiring the warden to certify prisoner's name to Governor for computation of commutation and deduction of sentence will be denied.<sup>263</sup>

In any event, no prisoner shall be released from a state prison until he shall have served at least one year nor shall any person confined in a penitentiary have his sentence reduced by "good time" until he shall have served at least three months exclusive of jail time.<sup>264</sup>

The privilege of granting the so called "good time"

259 Id.

260 Bitz v. Canavan, supra at note 230

261 People ex rel. Kleinger v. Wilson, 254 App. Div. 406, 5 N.Y.S. 2d 934 (1938)

262 Hogan v. Canavan, 245 App. Div. 391, 283 N.Y.S. 91 (1935)

263 People ex rel. Wilczpolski v. Murphy, 256 App. Div. 1024, 10 N.Y.S. 2d 753 (1939); Cedar v. Lawes, 249 App. Div. 821, 292 N.Y.S. 378 (1937)

264 N.Y. Correction Law Sec 230 (3)



allowance rests with a board in each institution composed of the warden, the principal keeper, the physician, and the officer in charge of industries.<sup>265</sup>

Apart from "good time" deductions determined by the prison board, the Governor may grant reductions of sentences with certain conditions.<sup>266</sup> Such a reduction is a commutation of the sentence which actually modifies it, while a parole does not suspend or curtail the sentence originally imposed by the court.<sup>267</sup> When commutation is granted a prisoner he becomes subject to control of the parole board until expiration of his original maximum term.<sup>268</sup>

While a prisoner receiving a commuted sentence is released into the custody of the board of parole, only those conditions imposed by the Governor prevail and the Parole Board cannot impose as an additional condition of commutation that the prisoner make a report to it each month.<sup>269</sup>

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265 N.Y. Correction Law, Sec 235

266 Id. Sec 241

267 Application of White, 186 Misc. 481, 2 N.Y.S. 2d 582 (1938)

268 Handler v. Hunt, 258 App. Div. 772, 14 N.Y.S. 2d 839 (1939)

269 U.S. ex rel Humphries v. Hunt, 15 F. Supp 608 (D.C.N.Y.1936)

## F. INTERSTATE COMPACTS

The problem of what to do with the nonresident criminal when he is released on parole is not a new one, although it has assumed an increasingly important position in recent years. Serious economic distress coupled with the facility of modern transportation has been responsible for the migration of many individuals to other states; migrations which have frequently culminated in law violations, followed by imprisonment and eventual release on parole. The question that presents itself to the paroling authority which releases the nonresident offender is this: Shall he be retained in the state of release or returned to the state from which he came?

One answer to this problem, still used to some extent, was to parole the person on condition that he remain beyond the boundaries of the state. The parolee's return to the releasing state then became a violation of the conditional release and hence ground for reincarceration. While this may have solved the immediate problem of the expelling state, all states suffered when the practice became general, since each became the unwilling "host" over unwanted criminals and no legal control could

be exercised over this element.

Parole administrators have taken steps to remedy this situation and parole authorities of adjacent states have entered into informal arrangements providing for reciprocal supervision of parolees. They assure the paroling state that persons released to the adjacent state will be given the same degree of supervision as the receiving state gives to its own parolees, and the latter state has some sort of a check on the parolees thus received.

New York releases parolees to other states only when the parole board is satisfied after careful investigation that a suitable program prepared by the inmate has been approved by the official representatives of a public or private social agency in the locality where the prisoner desires to live.

The total number of individuals under out-of-state supervision during all or part of the year of 1939 was <sup>270</sup> 1,292. Conversely, New York parole agents were actively supervising 372 parolees during the same period received <sup>271</sup> from 21 states and the District of Columbia.

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270 Tenth Annual Report of the Division of Parole, New York State (1940) p 133

271 Id. at p 137

Due to the existing lack of uniform methods of release and standards of supervision no formal agreements or compacts have been signed with other states, but it has been the policy of the board to continue to develop reciprocal agreements with states which have signified their willingness to adhere to minimum standards of parole work.

In addition to the informal arrangements for the exchange supervision of parolees, Federal legislation has been enacted providing for out-of-state supervision of parolees. In 1934 Congress authorized the states to enter into compacts "for cooperative effort and mutual assistance in the prevention of crime, and for other purposes . . . ." <sup>272</sup>

Under this authorization it is intended to facilitate (1) the arrest on close pursuit of criminals fleeing from one state to another; (2) the speedier return of criminals across state lines for trial; (3) the supervision by one state of parolees released by another.

Under the terms of the compact, the paroling authorities of a state which is a party to the compact may permit any person released on parole to reside in any other state which has agreed to the compact, if that person is in fact a resident of, or has his family residing in the receiving state, and can obtain employment there. If the

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<sup>272</sup> Act of June 6, 1934, c 406, 48 Stat. 909 (18 U.S.C.A. Sec 420)

person is not a resident of or if his family does not reside in, the receiving state, then he may be sent there only with the consent of the receiving state. Before permission to go to another state is granted, the receiving state is given the opportunity to investigate the home and prospective employment of the parolee. By the terms of the act, the receiving state undertakes to give the same standard of supervision to such persons as it exercises over its own parolees. The sending state, however, retains the right, through its duly accredited officers, to enter the receiving state and retake any parolee thus released without interference by the latter. The compact, however, does not permit retaking if the receiving state has criminal charges pending against the parolee. By statute New York may detain a criminal who has broken the parole conditions of another state.

The authorization of Congress known as the Uniform Act for Out-of-State Parolee supervision was incorporated by the legislature in the Correction Law in 1936,<sup>274</sup> giving the Governor permission to enter into a compact with any other state.

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273 N.Y. Criminal Code, Sec 842

274 N.Y. Correction Law, Sec 224

However the Governor, so far, has thought it unwise for this state to enter into such a compact and explained  
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his stand as follows:

"Some weeks ago I was requested to execute a blanket compact with 25 other states covering interstate supervision of persons on parole or probation. I felt that it was unwise to do so. This state will be only too happy to enter into compacts with any states having satisfactory parole and probation standards. Before entering into any compacts, however, it must satisfy itself that both contracting parties have adequate standards. This is the only way in which the level of parole in this country can be permanently raised.

New York is content to rely upon informal agreements with her sister states.

## G. THE PAROLE COMMISSION

While this study is confined chiefly to an analysis of the Board of Parole of the Division of Parole which has jurisdiction over the state prisons and the Elmira Re-  
<sup>276</sup>formatory it must not be forgotten that there are other penal institutions which admit and release prisoners. Since these prisons are not taken care of by a municipality. The care and supervision of the inmate, then, is concomitant with the management of the institution and the parole question reaches a height equal in importance to that accorded to persons incarcerated in state institutions.

In 1915 a Parole Commission Act was passed by the  
<sup>277</sup>legislature affecting the City of New York. This act was later amended to apply to all cities of the first  
<sup>278</sup>class. These laws were tested in the courts and declared

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276 Supra note 41

277 New York Laws 1915 Ch 579

278 New York Laws 1916 Ch 287, 1919 Ch 242

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to be constitutional and valid.

Having been reassured by the validity of such a law, the legislature in 1939, enacted a statute entitled "Parole System In Certain Cities".<sup>280</sup> In part it states that a parole commission may be created by the board of estimate and apportionment or other corresponding body in any city of the first class wherein there is a department of correction which has jurisdiction over a workhouse, a penitentiary, and a reformatory.<sup>281</sup> The legislative intent, however, was not to affect any parole provisions incorporated in the New York City charter unless expressly repealed.<sup>282</sup>

The commission in each pertinent community consists

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- 27.9 People ex rel. Cerzozie v. Warden of New York County Penitentiary 223 N.Y. 307, 119 N.E. 564 (1918), People ex rel. White v. Commissioner of Correction, 198 App. Div. 384, 190 N.Y.S. 471 (1921), People ex rel. Berger v. Warden of the Workhouse, 176 App. Div. 602, 163 N.Y.S. 910 (1917), People ex rel. Liebowitz v. Warden of New York County Penitentiary, 186 App. Div. 730, 174 N.Y.S. 823 (1919), People ex rel. Koplitz v. Warden of Penitentiary, 112 Misc. 598, 184 N.Y.S. 254 (1919), People ex rel. Kpnis v. McCann, 199 App. Div. 30, 191 N.Y.S. 574 (1921) affd 234 N.Y. 502, 138 N.E. 422 (1923), People ex rel. Kane v. Hanley, 116 Misc. 624, 191 N.Y.S. 41 (1921)
- 280 New York Laws 1939 Ch 661, N.Y. Correction Law secs 200-208
- 281 N. Y. Correction Law, Sec 200
- 282 New York Laws, 1939 Ch 661 sec 81



of five members, three of which are appointed by the mayor and the commissioner of correction and the police commissioner who are ex-officio members.<sup>283</sup> The members give full time<sup>284</sup> to the performance of their duties. An interesting feature of the act is the permission granted to a committing magistrate or judge to sit with and vote at a meeting of the parole commission during the consideration of the eligibility for parole of any person sentenced by the<sup>285</sup> magistrate or judge.

The act provides any person sentenced to the penitentiary shall not receive a fixed or limited term except<sup>286</sup> that it shall not exceed three years. A sentence to a workhouse shall be for a definite period not to exceed six months except for certain offenses for which the<sup>287</sup> sentence shall be indeterminate not to exceed two years. Commitment to a reformatory under the jurisdiction of the department of correction shall be made in conformity with

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<sup>283</sup> N.Y. Correction Law, Sec. 201 (a)

<sup>284</sup> Id. (b)

<sup>285</sup> Id. sec 202 (c)

<sup>286</sup> Id. sec 203 (b)

<sup>287</sup> Id. sec 203 (c)

laws providing for such institutions and commitments thereto.<sup>288</sup>  
 Prisoners sentenced in the manner described come under the  
 jurisdiction of the parole commission which may parole,  
 conditionally release, discharge, retake or reimprison any  
<sup>289</sup>  
 such inmate.

The object of the parole commission law is the moral  
 reformation of the prisoner rather than punishment<sup>290</sup> and  
 while the board of parole of the Division of Parole governs  
 the lot of hardened and habitual criminals it seems some-  
 what incongruous that certain rules which benefit the con-  
 vict confined to a state prison do not apply to the inmate  
 of an institution under the control of a department of cor-  
 rection. For instance, it has been held that provisions  
 of the Penal Code concerning calculation of terms of im-  
 prisonment are inapplicable to sentences under the Parole  
<sup>291</sup>  
 Commission. The provisions of Section 230 of the Cor-  
 rection Law which permit a discretionary reduction of

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288 Id. sec 203 (d)

289 Id. sec 204

290 People ex rel. Montana v. McGee, 16 N.Y.S. 2d 162 (1939)  
 People ex rel. Rabiner v. Warden of City Prison, 209  
 App. Div. 795, 205 N.Y.S. 694 (1924), People ex rel.  
 Kipnis v. McCann, supra at note 139

291 People ex rel. Singer v. Parole Commission of City of  
 New York. 172 Misc. 423, 15 N.Y.S. 2d 267 (1939)

sentence not to exceed ten days for each month for good behavior to prisoners in a state penal institution do not apply to the New York County Penitentiary.<sup>292</sup> Similarly Section 2193 of the Penal Law which allows jail time credit<sup>293</sup> has no application to the Parole Commission.

Under the commission's power to parole, a penitentiary prisoner may be detained for the entire period of three years in the commission's discretion and like the state parole board its discretion is not subject to judicial review.<sup>294</sup> The cogent reason for such a stand has been that parole is not a right, but a privilege, to be granted or withheld as discretion may impel.<sup>295</sup>

Inasmuch as the commission may make its own rules prescribing the conditions under which eligibility for parole may be determined and under which inmates may be

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292 People ex rel. Kohlepp v. McGee, 256 App. Div. 792, 11 N.Y.S. 2d 755 (1939), People ex rel. Pinchback v. Warden, 184 App. Div. 777, 172 N.Y.S. 382 (1918)

293 People ex rel. Kohlepp v. McGee, supra People ex rel. Stein v. McCann, 225 App. Div. 623, 234 N.Y.S. 21 (1929)

294 People ex rel. Kohlepp v. McGee supra at note 152, People ex rel. Romain v. Parole Commission, 116 Misc. 758, 191 N.Y.S. 410 (1921) aff'd, 205 App. Div. 840, 197 N.Y.S. 940 (1923)

295 People ex rel. Cecere v. Jennings, 250 N.Y. 239, 165 N.E. 277 (1929)

paroled, conditionally released, discharged, retaken and  
imprisoned,<sup>296</sup> it follows that it has the right to determine<sup>297</sup>  
when a prisoner's application for release may be considered.  
Likewise an act of the parole commission issuing a warrant  
for the recapture of one whose parole conditions were not  
kept was not reviewable on certiorari.<sup>298</sup>

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296 N.Y. Correction Law. sec 204 (2b)

297 People ex rel. Kohlepp v. McGee, supra at note 152

298 People ex rel. Romain v. Parole Commission, supra at  
note 154

## CHAPTER XI.

## THE FUTURE OF PAROLE

Throughout this study, in stating a specific situation in the operation of parole, a seemingly weak point was accentuated by a suggestion for improvement. In concluding this work, it becomes necessary to review in one's mind the entire parole system in order to determine whether such a procedure is feasible. If not, the entire structure may be discarded. If it is a necessary adjunct to our criminal procedure, what, if any, improvements can be made to justify its existence?

Whether or not parole is to be retained can be determined by the obvious answer to the question of prison release. Is it better to release a prisoner without supervision at the end of his term than to impose restrictions upon his conduct while he is, in theory of law, still in custody? There is no doubt that it is safer to release a man with conditions than without them and it is safer to release a prisoner who has been nurtured and prepared by recognized training methods within the prison than one who has not been so prepared. That seems to be the theory of parole.

Since over 95 per cent of our prisoners must eventually be released,<sup>299</sup> parole seems to be the safest method

299: ~~Saltonstall, "The Public's Stake in Parole", Proceedings~~  
National Parole Conference (1939) p 38

by which this vast army of known social misfits can be assimilated into the normal life of the community. While this theory is well recognized, parole practice is completely defeated in a good many of our states because of inefficient and vicious methods of administration. The result is that theory is confused with practice and while we speak in high terms of the former, we frown upon the practice in certain localities and eventually theory vanishes.

Experienced and intelligent observers criticize parole by an expression of belief in the theory of parole, followed by a statement of the faults to be found in actual practice. When a man like J. Edgar Hoover criticizes the results it matters little that he believes in the theory of parole. Mr. Hoover has said, "The theory of parole is fine and uplifting. I subscribe to it . . . Parole has been a success where it has been done carefully." In the next breath this same person excoriates parole in general. Mr. Hoover was called to account by Winthrop D. Lane, director of the Division of Parole, Department of Institutions and Agencies of the State of New Jersey who remarked <sup>300</sup> that the prisons and reformatories of the United States contain

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300 Haynes, op. cit. supra note 6 at p 345

hundreds of thousands of young men besides Baby Face Nelsons, Pretty Boy Floyds, and the Dillingers and there was no way of keeping most of these men in prison indefinitely.

Further answering Mr. Hoover he said "Nor is it true, as sometime stated, that a large percentage of men now being arrested are on parole at the time of arrest. Volume 6 of the Uniform Crime Reports (published by Mr. Hoover's own bureau) disposes of that error. Out of 90,000 arrests recorded during the first three months of 1935, as indicated by fingerprint cards which were examined by Mr. Hoover's bureau, only 508 persons were on parole at the time of arrest. These figures show that out of 1,535 arrested for criminal homicide, not a single person was on parole. The true facts about parole can be known only by looking at the whole picture, not at isolated cases."

Newspapers are eager to publicize criticisms made by men such as Mr. Hoover featuring the faults and overlook or neglect to mention the good points. In news items of an apprehended criminal, the fact that he is a parolee makes good copy and from reading such articles the public gains its

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301 Address by Winthrop D. Lane, director of the Division of Parole, Department of Institutions and Agencies, given before the International Association of Chiefs of Police, Atlantic City, N. J., July 10, 1935

impression of parole.

Perhaps some of our more truculent editors, who are continuously and unreasonably attempting to make parole a scapegoat, have not taken the trouble to investigate the cases where parole boards have erred, not on the side of leniency, but on the score of severity. Mistakes of this sort rarely come to the attention of the public. More often does a parole board through fear of criticism prolong the sentence beyond the time when it is necessary for true reformation, rather than unduly shorten it.

An inmate at the Iowa State Prison at Fort Madison, Iowa wrote an article for "The Presidio" published at the prison and he described exactly what happens when one parolee fails to make good and his failure becomes public. 302

"From the misstep of any one man a complete case is made against the parole system, and by judicious propaganda the public is led to infer the entire system has broken down and that penal institutions are nothing but factories where prisoners are turned out hardened criminals and that inmates are being mollycoddled to such an extent criminals look forward to a term in prison as a sort of vacation from the rigors of life on the outside. Not one word is ever said of the thousands who have expiated their crimes and gone on to lives of useful endeavor.

"It behooves the paroled man to watch his



step, for if temptation confronts him and he lets go, he then inflicts punishment upon those he has left behind, even though he has no intention of hurting them, because the awaited chance to howl is eagerly grasped by those who enjoy pointing out the faults of those who have once been convicted of wrongdoing.

"To do this is as unfair as it would be to expect every employee of a business to reimburse the concern for a defalcation of another employee. Such a thing would never occur to any sane-thinking businessman. Neither would a man in the fruit business discard a whole barrel of fruit, just because one or two pieces had gone bad. He would remove the rotten and worthless and accept the situation as an inevitable part of the business.

"Why couldn't such a sane view be taken in dealing with imprisoned men? Surely the business of helping a man find and follow the road to right living is just as important as any other. It is not right nor just that so many be kept from their families, be denied the right of earning an honest living because of the few who were released before they should have been."

Apart from the superficial criticism of parole, there has been a legitimate demand for improvement brought about by conditions observed throughout the country as a whole. Unfortunately, in some states parole is pretty largely a paper system of extending leniency to the prisoner or is used merely as a substitute for the pardoning power. In some states it is used merely as a political football; elsewhere it is so handicapped by legal restrictions that parole is all but useless as an intelligent and modern in-

dividualized procedure for releasing prisoners. In some places it is bad because the administration staffs are encumbered by incompetent and unqualified persons. In many places it is also starved for lack of funds.

The future of parole will be guaranteed if there can be devised a suitable and acceptable system. A uniform parole law is hardly necessary such as we find in some branches of the substantive law. Its non-enforcement is apparent. Nevertheless creative suggestions can be made and their adoption will, it is hoped, so entrench the system that the malodorous opinions of yesterday will evaporate.

In attaining the acme of perfection certain obstacles must be overcome, chief among these are public indifference and misunderstanding. An apathetic public, because of its unconcern, will not champion a good cause. Likewise it will not denounce poor practices and a bad procedure may further deteriorate. A public which is misinformed is even worse, for then it acts through bias and subjective judgments. Educating the people alone will not create the necessary interest but proper notice with remedial attention given to parole inefficiencies and evils will create an understanding in the public and a resultant expression for the need for a worthwhile system. In other words, for parole to continue and justify its existence, it must be geared to the

public need.

In order to effect a proper parole system, a requisite law is necessary. Such an enactment should be all inclusive, wholesome and workable. It should be written so, that in the main, it is to serve as a protection of the public from criminals and unscrupulous administrators. The law should prescribe rules for administrative boards and personnel. It should define the rights of parolees. Above all it should provide for an indeterminate sentence.

Few things are so badly needed in the field of penology today, and few would go as far in overcoming the tribulations now being borne by the courts, law enforcement officers, and penal institution administrators as the indeterminate sentence. Short sentences are probably the greatest curse of our present system for over 60 per cent come back for more punishment. The practical effect of the short sentence is to release the wrongdoer quickly so that he may have the opportunity to commit additional crimes. If sentenced indeterminate the chances are that a certain number of them might be diverted to a form of useful living.

The indeterminate sentence within limits is in use in a number of states and seems from all accounts to be working satisfactorily. The ideal plan is for the courts to pass only on the guilt or innocence of the accused, who is then sentenced to the state such as is presently done with mental

patients.

The expediency of an indeterminate sentence law is recognized by the Federal Government. A recommendation was adopted at the Annual Judicial Conference attended by Mr. Chief Justice Charles Evans Hughes,<sup>303</sup> endorsing the enactment of such a law under which special boards instead of judges would fix the specific punishment for criminals.

Under the proposal, any criminal guilty of a crime punishable by imprisonment for more than one year in a Federal penitentiary would be sentenced tentatively by the judge to serve the maximum provided by law. Within four months after the sentence was begun, a parole board would investigate all phases of the crime and the background of the criminal and fix a definite sentence not in excess of the original.

A good parole system is one in which releases are granted only by qualified, honest officials who make this work a profession. Only proper people can administer properly a proper law. The board should be comprised of men of vision who are inspiring, courageous, socially-minded and intelligent. They should be competent, sympathetic, responsive to demands, creative and imaginative. A well-qualified state board would allow parole to take its place in the

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303 Report of the Judicial Conference, Washington, D. C. October Session, 1940, p 14

social organization to which it is entitled.

While the board is the spear-head and beacon light for parole practices, the detailed work must be carried out by an organization. There should, in the first place, be a centralization of authority which would create a well defined channel of responsibility. Much of the criticism of parole arises out of inadequate organization and administration which is largely due to limited appropriations for support, the practice of political appointments, untrained personnel, and the all too frequent use of political influence.

The staff should be adequate and each officer be developed into a well trained case worker with a load of not more than 50 active parolees instead of the 100 to 300 he has, in some states, to day. Case work is as effective a tool as has been devised for the understanding of people and the treatment of their ills. In order to be an efficient case worker, he must, of course, be intelligent, of high ethical standards, understanding and practical. He must be sensitive to human situations and be well balanced.

The staff should be created on a merit basis with adequate remuneration for each employee. Opportunity should be given to each worker for promotion with security of tenure. There should be satisfactory in-service training and opportunity given for further study.

Parole work can be a combination of art and science which creates a demand for disciplined minds equipped with

specific knowledge. In order to effect the proper treatment of parolees the officer must get to know his man after acquainting himself with his ward's background. He must utilize his skill so as to ease tensions by specific services such as <sup>domestic</sup> ~~medical care~~, employment placement, relief and medical care. Parole treatment must help produce changes in parolees so that they become more acceptable to themselves and hence to their communities and it must protect the community against the potential recidivist.

In spite of the good work done on prediction tables, post parole behavior is only relatively predictable. No one can tell in advance what a parolee will do. We might be able to foretell something from the general behavior of a parolee but there is no scientific data which is bullet proof and while prediction tables may help there is no substitute for a complete social case history and intelligence, although they are more subjective than the prediction table.

The various tables do not prove that the prospects of success on parole are dependent upon certain favorable elements. They do show the error of the court in sentencing a man who would succeed on parole in spite of imprisonment which may serve as a drawback in his rehabilitation in view of his penal experiences. If use are to be made of such tables they should be before the court or sentencing board when the

offender appears for sentence. Alone, they are of little value but the research of interested parties in that direction should not be denounced. If intelligence and prediction tables could be coordinated, practical results may ensue and statistics as an aid would approach primary importance.

The Federal Parole Board made a realistic use of statistical analysis of actual experience with men on parole in reviewing 8,700 cases it was handling.<sup>304</sup> In considering men suffering from venereal diseases, it was found that failure on parole was 18 per cent greater than the normal percentage of failures. In a later survey, it was ascertained that the percentage of success on parole of those afflicted with a venereal disease was higher than the group in good health. This resulted from the efforts of the Board in isolating the diseased convict after the first survey. The study further revealed that a high percentage of failures occurred within the first two months of release on parole. Here was something else to cope with -- especial emphasis of supervision and guidance during the first few months of release. This, then, may be the standard for parole prediction tables plus intelligence.

Society must be protected and in the last analysis it is good case work and proper surveillance which should make

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304 Bates, op. cit. supra note 7 at pp262-263

it possible to detect danger signals at all times, to follow up clues and suspicions and to remove troublesome parolees from the community.

It is this sort of patient supervision which is the sine qua non of good parole work. The intelligent and sympathetic kind will redirect antisocial behavior; it will prevent men and women from relapsing into criminal ways; and it will protect the public. Parole is supervision.

It has been reiterated time and again that parole should begin the day the offender begins his sentence. Everything he does, every move he makes, should be calculated to aid in preparing him for his release. Educational advantages should be given him, proper correctional treatment of his attitudes, health, physical, and mental check-ups, and inviting vocational training to prepare him for his post prison role. Attempts should be made to erase an embittered feeling and secure for him a welcome place in the community in which he will eventually find himself. Prisons should be revamped and modernized and made comfortable for the inmate. Segregation of types should be made whenever necessary. These and other reforms will be possible when the state decides that the chief business of correctional institutions is to make men rather than profits which some wardens seek to do in assigning inmates to the prison shops.



When the time for parole selection arrives, boards must choose between the good risks and the bad and for intelligent procedure each board should have before it all of the available preparole data, as complete as possible a personal and family history of the inmate and an analysis of the significance of the background. In addition the board should be in possession of facts in the development of the prisoner during the period of incarceration, a medical history and the results of recent medical examinations, a report of recent psychological and psychiatric examinations, reports of institutional progress covering treatment, training, and discipline during the period of incarceration, a verified report on the prisoner's parole plan including where he is to live, where and for whom he is to work, and what resources are available to meet his other needs as a normal, independent member of society.

Legislatures should not be niggardly in their appropriations because without enough money parole will not work. While state finances are of concern to the taxpayer it must be remembered that it costs more to house a prisoner than to keep him on parole. There appears to be unanimous approval of the remarks of Edward R. Cass, secretary of the National Probation Association when he says <sup>306</sup> that intelligent parole costs no more than the stupid variety; that good supervision

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306 Cass, "Parole Can Be Successful", Journal Criminal Law and Criminology. Vol XXXI, No. 1, May-June 1940, p 7

costs no more than the faulty kind ; that a good parole law costs no more than an ineffective law; that a parole personnel appointed by merit costs no more than one that is subservient to racketeering politicians.

Finally when parole functions on the bases as suggested, then, and only then, can a true conclusion be reached as to its effectiveness and while there may be some failures, in all fairness, it should be measured by its successes as well. Failing to see the logic in the reasoning that parole is inherently bad because of a few failures, Mr. Justice Frank Murphy of the United States Supreme Court, then Attorney General, said at the National Parole Conference, <sup>307</sup>

"Do we hold any other social institution completely responsible for the after-life of every individual who comes under its influence? A university is not indiscriminately attacked because some of its graduates fail to live in accordance with its teachings. A judge is not impeached if the future conduct of every person who is treated by the court does not comply with its orders. We do not condemn the church as a failure if some of its members fail to abide by its tenets."

Realizing that parole can be good but not divine it must be fixed indelibly in the minds of all that parole is not clemency; it is not leniency; it is not discharge from prison; it is not a privilege granted to a prisoner. It is a condition imposed upon him for the protection of the public.

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307 Murphy, Keynote address, Proceedings National Parole Conference, Washington, D. C. (1939) p 10

No prisoner has a right to it but the public has.

Parole with all of its deficiencies should not be curtailed. If it is weak, mismanaged, corrupt, or suspicious the solution will be found in the community courage by ebullient spirit, to compel impartial, effective, honest parole and not to clamor for its abolition.

Good parole which may be found chiefly in New York, New Jersey and the Federal Government has been praised because of its accomplishments. If it can function as it has in these communities, its principles can be adopted where there are failing methods so that the procedure throughout the United States may be brought on an even plane. As President Roosevelt has said, "Well-administered parole is an instrument of tested value in the control of crime."<sup>308</sup>

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308 Roosevelt, Proceedings, National Parole Conference, Washington, D. C. April 1939, p 57

## APPENDIX A

A DECLARATION OF THE PRINCIPLES OF PAROLE  
WE, THE DELEGATES TO THE NATIONAL PAROLE CONFERENCE,  
ASSEMBLED AT THE REQUEST OF THE PRESIDENT OF THE UNITED  
STATES, AND REPRESENTING THE GOVERNORS OF THE SEVERAL  
STATES, THE JUDICIARY, FEDERAL STATE, AND MUNICIPAL LAW  
ENFORCEMENT OFFICIALS, THE CHURCH, THE COMMUNITY, AND  
THE VARIOUS PENAL AND CORRECTIONAL SYSTEMS IN THE UNITED  
STATES,

## RECOGNIZING THAT

Practically all imprisoned offenders are by operation of law ultimately released, and that

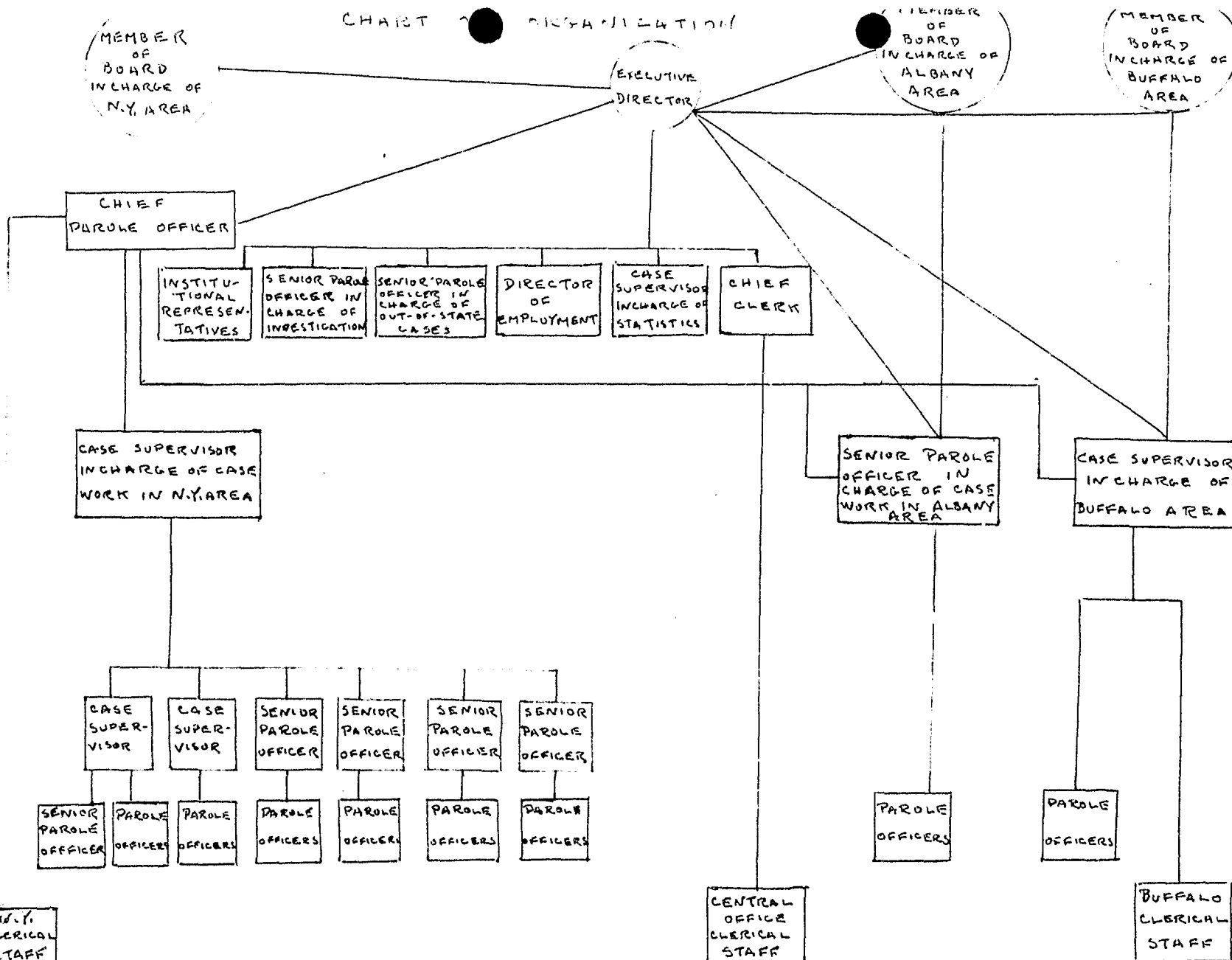
Parole, when properly administered and carefully distinguished from clemency, protects the public by maintaining control over offenders after they leave prison, do declare and affirm that

## FOR PAROLE FULLY TO ACHIEVE ITS PURPOSE

1. The paroling authority should be impartial, non-political, professionally competent, and able to give the time necessary for full consideration of each case;
2. The sentencing and parole laws should endow the paroling authority with broad discretion in determining the time and conditions of release;
3. The paroling authority should have complete and reliable information concerning the prisoner, his background, and the situation which will confront him on his release;
4. The parole program of treatment and training should be an integral part of a system of criminal justice;
5. The period of imprisonment should be used to prepare the individual vocationally, physically, mentally, and spiritually for return to society;
6. The community through its social agencies, public and private, and in cooperation with the parole service should accept the responsibility for improving home and neighborhood conditions in preparation for the prisoner's release;

7. The paroled offender should be carefully supervised and promptly reimprisoned or otherwise disciplined if he does not demonstrate capacity and willingness to fulfill the obligations of a law-abiding citizen;
8. The supervision of the paroled offender should be exercised by qualified persons trained and experienced in the task of guiding social readjustments;
9. The state should provide adequate financial support for a parole system, including sufficient personnel selected and retained in office upon the basis of merit;
10. The public should recognize the necessity of giving the paroled offender a fair opportunity to earn an honest living and maintain self-respect to the end that he may be truly rehabilitated and the public adequately protected.

# CHART ORGANIZATION



APPENDIX B

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## BIBLIOGRAPHY

## BOOKS, PAMPHLETS AND REPORTS

Alger, George W. Report on the Parole System of New York. Albany, N.Y. J.B. Lyon Co. 1928.

American Prison Association, Proceedings of the 63rd Annual Congress. New York, N.Y. 1933.

Attorney General's Survey of Release Procedures. Washington, D.C. Department of Justice. Government Printing Office. 1939.

Bates, Sanford. Prisons and Beyond. New York, N.Y. The MacMillan Co. 1936.

Beeley, Arthur L. Social Planning For Crime Control. Salt Lake City, Utah. University of Utah Press. 1935.

Berg, Louis. Revelations of A Prison Doctor. New York, N.Y. Minton, Balch & Co. 1934.

Best, Harry. Crime and the Criminal Law. New York, N.Y. The MacMillan Co. 1930.

Boies, Henry M. The Science of Penology. New York, N.Y. G.P. Putnam's Sons. 1901.

Bramer, John Philip. Parole. New York, N.Y. The Irving Press. 1916.

Burgess, Ernest W., Bruce, Andrew A., and Harno, Albert, J. The Workings of the Indeterminate Sentence Law and the Parole System in Illinois. Chicago, Ill. 1928.

Cantor, Nathaniel F. Crime and Society. New York, N.Y. Henry Holt & Co. 1939.

Cooper, Courtney Riley. Ten Thousand Public Enemies. Boston, Mass. Little Brown & Co. 1935.

Cosulich, Gilbert. Adult Probation Laws of the United States. New York, N.Y. National Probation Association. 1940.

Federal Offenders - 1939. Leavenworth, Kan. United States Dept. of Justice. Bureau of Prisons. Federal Prison Industries Press Inc. 1940.

Fifth Annual Report to the Governor of California, Board of Prison Terms and Paroles. 1935-36.

Gault, Robert H. Criminology. New York, N.Y. D.C. Heath and Co. 1932.

Gillin, John L. Criminology and Penology. New York, N.Y. D. Appleton-Century Co. 1935.

Gillin, John L. Taming the Criminal. New York, N.Y. The MacMillan Co. 1931.

Glueck, Sheldon. Crime and Justice. Boston, Mass. Little Brown and Co. 1936.

Glueck, Sheldon and Eleanor T. 500 Criminal Careers. New York, N.Y. Alfred A. Knopf. 1930.

Glueck, Sheldon and Eleanor T. Five Hundred Delinquent Women. New York, N.Y. Alfred A. Knopf. 1934.

Glueck, Sheldon and Eleanor T. Later Criminal Careers. New York, N.Y. The Commonwealth Fund. 1937.

Haynes, Fred E. Criminology. Second Edition. New York, N.Y. McGraw-Hill Book Co., 1935.

Haynes, Fred E. The American Prison System. New York, N.Y. McGraw-Hill Book Co. 1939.

Henderson, Charles Richmond. Penal and Reformatory Institutions. Vol. II of Correction and Prevention. New York, N.Y. Russell Sage Foundation 1910.

Kavanagh, Marcus. The Criminal and His Allies. New York, N.Y. The Bobbs Merrill Co. 1928.

Klein, Philip. Prison Methods in New York State. New York, N.Y. Columbia University Press, 1920.

LaRoe, Wilbur Jr. Parole With Honor. Princeton, N.J. Princeton University Press. 1939.

MacCormick, Austin H. The Education of Adult Prisoners. New York, N.Y. The Osborne Association Inc. 1931.

Mooney, Martin. The Parole Scandal. Los Angeles, Calif. Lyman House. 1939.

- Morris, Albert. Criminology. New York, N.Y. Longmans, Green and Co. 1935.
- National Commission on Law Observance and Enforcement.  
Report on Penal Institutions, Probation, and Parole. No. 9. Washington, D.C. Government Printing Office, 1931.
- Pamphlet issued to inmates at Rahway and Annandale Prisons in New Jersey.
- Prisoners, 1938. U.S. Department of Commerce, Bureau of the Census. Washington, D.C. 1939.
- Prisoners, 1939. U.S. Department of Commerce, Bureau of the Census, Washington, D. C. 1940.
- Report of the Judicial Conference, Washington D.C. October 1940.
- Robinson, Louis N. Penology in the United States. Philadelphia, Penna. John C. Winston Co. 1921.
- Ruth Commission Report of the Investigation of the Administration of Criminal Justice. Harrisburg, Pa. 1938.
- Sutherland, Edwin H. Principles of Criminology. New York, N.Y. J.B. Lippincott Co. 1939.
- Tannenbaum, Frank. Crime and the Community. Boston, Mass. Ginn and Company. 1938.
- Tenth Annual Report of the Division of Parole, New York State. Albany, N.Y. Legislative Document 1940.
- Vold, George B. Prediction Methods and Parole. Hanover, N.H. Sociological Press. 1931.
- Wallack, Walter M., Kendall, Glenn M., Briggs, Howard L. Education Within Prison Walls. Kingsport, Tenn. Kingsport Press Inc. 1939.
- Wilson J. D. and Pescor, M.J. Problems in Prison Psychiatry. Caldwell, Idaho. The Caxton Printers. 1939.
- Wines, Frederick H. Punishment and Reformation. New York, N.Y. Thos. Y. Crowell and Co. 1910.

## ARTICLES

- Bennett, James V. Of Men Who Failed. Federal Probation. Department of Justice. Washington, D.C. Vol. IV No. 3 Aug.-Oct. 1940.
- Bennett, James V. The Present Status of Parole. Proceedings National Parole Conference. Washington, D.C. April 1939.
- Bixby, F. Lovell. Probation and Parole: A Career Service. Federal Probation. United States Probation System. Washington, D.C. Vol. IV, No. 2. May 1940.
- Brown, B.W. Parole an Institution of the Future. Journal of Criminal Law and Criminology. Vol VI. May 1915.
- Burke, John C. The Function of the Prison of Today. Proceedings of the American Prison Association. Cincinnati, Ohio. 1940. Mimeographed Sheets.
- Canavan, Joseph J. Parole Is A Success. New York, N.Y. Proceedings American Prison Association. 1939.
- Canavan, John J. Parole--Past and Future. The quarterly Bulletin. New York State Conference on Social Work. Dec. 1935. Vol 7, No. 1.
- Cass, Edward R. Parole Can Be Successful. Journal Criminal Law and Criminology. Vol XXXI, No. 1. May-June 1940.
- Doty, Madeleine Z. Maggie Martin, 933. Century Magazine. October 1914.
- Ellis, William J. Practical Results of the Classification Program. Proceedings American Prison Association. Cincinnati, Ohio. 1940. Mimeographed Sheets.
- Glueck, Sheldon and Eleanor T. Predictability in the Administration of Criminal Justice. Harvard Law Review. Vol. XLII, NO. 3, Jan 1929.
- Glueck, Sheldon. Individualization and the Use of Predictive Devices. Journal of Criminal Law and Criminology. Vol. XXII, 1932.
- Hart, Hornell. Predicting Parole Success. Journal of Criminal Law and Criminology. Vol. XIV, 1923.

- Hurwitz, William and Peterson, Elizabeth. Federal Parole Prediction. Attorney General's Survey of Release Procedures. Washington, D.C. Department of Justice. Government Printing Office. 1939.
- Hutchins, Robert M. The Legal and Social Concepts in Parole, Proceedings National Parole Conference, Washington, D.C. April 1939.
- Lane, Winthrop D. Democracy for Law Breakers. New Republic. March 8, 1919.
- Lane, Winthrop. A New Day Opens For Parole. Journal of Criminal Law and Criminology. Vol. XXIV. 1933.
- Laune, Ferris F. A Technique for Developing Criteria of Parolability. Journal of Criminal Law and Criminology. Vol. XXVI. May 1935.
- Laws, Lewis L. The Parole uestion. Harper's Magazine. May 1938.
- Lehman, Hon. Herbert H. Conserving Human Resources Through Parole. Proceedings of The First National Parole Conference. Washington, D.C. April 1939.
- Lehman, Hon. Herbert H. Parole in a Progressive State. Proceedings of the New York State Conference on Social Work. 1937.
- Miller, Justin. Evils of Existing Confusion Between Pardon and Parole. Proceedings American Prison Association. 1938.
- Murphy, Frank. Keynote Address. Proceedings National Parole Conference. Washington, D.C. April 1939.
- Roosevelt, Hon. Franklin D. Proceedings National Parole Conference, Washington, D.C. April 1939.
- Saltonstall, Leverett. The Public's Stake In Parole. Proceedings National Parole Conference. Washington, D.C. April 1939.
- Slocum, William F. The Prison as a Great Charity. Proceedings American Prison Congress. Hartford, Conn. 1899.
- Spalding, Warren. Parole. Proceedings American Prison Association. 1916.

- Stokes, Harold Phelps. Sing Sing, Class of '34. The New York Times Magazine. April 16, 1939.
- Thomas, George and Jensen A.L. A Study of the Indeterminate Sentence, Probation and Parole in Utah. University of Utah Bulletin, Vol. 21. No. 7. 1931.
- Tibbitts, Clark. Success or Failure on Parole Can Be Predicted. Journal of Criminal Law and Criminology. Vol. XXII. May 1931.
- Vold, George B. A Review in the Journal of Criminal Law and Criminology. Vol. XXVIII, May-June 1937 of Ferris F. Laune's "Predicting Criminality".
- Warner, Sam Bass. Factors Determining Parole From the Massachusetts Reformatory. Journal of Criminal Law and Criminology. Vol. XIX. 1928.
- Weihsfen, Henry. Pardon: An Extraordinary Remedy. Rocky Mountain Law Review. Univ. of Colorado. Vol. 12, No. 2, Feb. 1940.
- Wilcox, Clair. Parole, Principles and Practice. Journal of Criminal Law and Criminology. Vol. XX., No. 3 Nov. 1929.
- Wilcox, Clair. The Open Door. The Annals of the American Academy of Political and Social Science. Vol. 157, Sept. 1931.
- Woltman, Frederick. No More Lock Step. New York World Telegram, April 17, 1939.
- Dickinson, Edmund C. and Colson, Clyde L. Probation and Parole. West Va. Law Quarterly, Vol. 44 (1937-8).
- Lindsey, Edward. Historical Sketch of the Indeterminate Sentence and Parole System. 16 Journal of Criminal Law and Criminology (1925).
- Note 50 Harvard Law Review 679 (1937).
- Note, Minn. Law Review, Vol. 24 pp 584-7 (1940).

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