

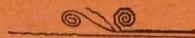
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INDETERMINATE SENTENCE

BY

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MEMBER IOWA BOARD
OF PAROLE



READ BEFORE AMERICAN PRISON ASSOCIATION
AT ITS ANNUAL MEETING HELD AT INDIANAPOLIS INDIANA

OCTOBER 11 TO 16 A. D. 1913

THE INDETERMINATE SENTENCE FROM THE
STANDPOINT OF THE
BOARD OF PAROLE.

Mr. President, Fellow Members of the association, Ladies and Gentlemen!

When I began the preparation of the paper to be read at this time on the subject just announced, I said to myself, what can I say to you people different from that with which you are already familiar; what illustrations can I use except such as would suggest themselves to your minds on the bare mention of the subject? I however remembered that the great public has given little thought to the question of the indeterminate sentence, and the judges and lawyers as a rule opposed it for the want of study of what is involved in it; hence I was encouraged in the hope that through the medium of the press and the publication of the proceedings of this meeting, I might contribute a small part toward, calling the attention of the public to this and kindred questions.

Book writers as a rule write a preface, and I give you a preface to what I have to say.

Boards of Parole having jurisdiction of prisoners confined in penitentiaries and prison reformatories deal with persons sent to prison because they have been found guilty of serious offenses.

This paper is prepared from the view point of a board whose experience has been with convicted felons; the men who are left after the juries have given the accused the benefit of all doubt, and sent only those found guilty beyond a reasonable doubt of the heinous crimes, and the judges have sifted out and given fines and jail sentences where they thought such sufficient, and suspended sentence in many cases of first offenders.

The Iowa Board of Parole has been dealing with many real live criminals, men who stole horses and got away with them, men and women who forged checks and notes and passed them to get money, men who broke into banks and dwelling houses in the dead of night, and would shoot men down if necessary to get what they want or to make their escape, men who killed for revenge or to get rid of a wife, or because enamored of some other man's wife, men who debauched women and girls and their own offspring to gratify their lust and brute natures. And of course there are among the number some mental deficient, boys and girls who were first offenders, accidental criminals, but a large percent were live wires in the business, up to date models; in fact I can point to men who use the latest improved methods in their trade, shrewd, keen of intellect, and who do not dull their faculties by the use of intoxicants, opium, cocaine or any other form of dissipation, who study their business and practice it to perfection.

Such men are to be found in all prisons provided for those convicted of the serious offenses.

In 1907 the General Assembly of the State of Iowa provided for the maximum sentence or that the sentence of the criminal found guilty of a felony, should be sent to the prison and he should remain in prison for the maximum term provided by statute, as punishment for the particular offense of which he was found guilty unless sooner released by the Governor or the Parole Board.

For nearly thirty five years I had been in the active practice of law in a typical agricultural county in Iowa with a fair share of the business done in such a county of that state, Probate, Law, Equity, Criminal. I had defended and prosecuted men accused of crime, doing my best in the one case, where I believed the accused guilty, to see that the facts showing his guilt were presented to the jury and persuading the jury to a verdict of guilty if I could; on the other hand representing the defendant if I believed the accused not guilty, doing my best to prevent a verdict of guilty, and if I thought him guilty preventing him if I could from being found guilty except in a legal and orderly way, ready to take advantage of the weak

places in the state's case and prevent if I could a conviction unless the jury could be satisfied beyond a reasonable doubt that the presumption of innocence had been overcome. When the trial was done and all had been said for or against the accused which it was my duty or privilege to do or say, and probably sometimes more than either duty or privilege warranted, and the sentence had been pronounced I gave little heed to the case of the guilty man thereafter, taking it for granted that the chief object was to punish, and punish so severely as that the man would not want to take chances again and that others would fear to do what he had done, long enough to give the prisoner time to reflect on his errors and resolve to mend his ways, taking it for granted also that the amount of the fine or the term of imprisonment fixed by the judge was as nearly what it should be as it was possible for human wisdom to determine. I had condemned alike the sudden determination of guilty by the public before the accused was tried, the writhings of an excited populace often aroused by ignorance or prejudice or both, and the sentimental mouthings of the people also the result of ignorance and want of good judgment, insisting on acquittal, or in case of conviction demanding release from penalties. I had not given attention to the study of crime, criminals and punishment. I believe this to be the experience of the average man practising law in this country. I began service on the Iowa Board of Parole with its organization July 1, 1907 and have been serving continuously on that board since. I have assisted since that time in the examination by personal interview of more than two thousand men eligible under the maximum sentence law, and the provisions governing the paroling of prisoners, to parole. I have listened to the claims of probably five hundred more who were serving a definite sentence at the time the law took effect. These examinations have included men and women of all ages, from boys of sixteen to men of eighty years, men and women guilty of all crimes known to the calendar except treason, men and women of all grades and conditions, socially, physically, mentally and morally, of all grades of education, habits, environment, possible for men to imagine. I have watched men in prison, and studied the record of their conduct out of prison and before they had committed

crime, from their own reports and the reports obtained from others. From these experiences and observations, from the facts obtained in this work I speak to you at this time on the subject assigned to me.

It is easy to theorize, and beautiful theories may be evolved from the study of imaginary facts or conditions read about, it is quite another to draw your conclusions from contact with the conditions. I know of no field in which there is greater opportunity for sympathy to run riot, and maudlin sentiment be given right of way on the one hand, or prejudice and vengeance on the other than in the managing of prisons and the handling of prisoners at long range; the determination of what should be done or not done with the convicted criminal from a theoretical standpoint and that point found by observations made in a few visits to prisons, listening to some prisoners tales, or the theories of some sentimental agitator with little or no experience, and six years experience is all too short to satisfy me that I am ready to reach conclusions on many matters.

The man who seeks to prey on the property of another, the man who violates the personal rights or privileges of another, the man who attempts to right his wrongs real or imaginary except in the manner provided by law, the man who harms the person or belongings of another, the man who so conducts himself as to injure or endanger his fellow man must be dealt with and prevented from repeating his unlawful acts. The penalties he must expect to pay for the doing of these wrongful things must be such as will deter him from doing them again, and the visiting of these penalties upon him must be so swift and sure as to exert a deterrent effect upon others. The man who has been guilty of wrong against his fellows, is in no position to complain because he is treated in a way to make of his case a warning to others. By his acts of wrong against his fellowman, man forfeits rights he once possessed. These penalties and these forfeitures can only be enforced against the wrong doer by his fellows; to permit one man to do this would be but to repeat the offense, the injured man becoming the wrong doer, hence to organized society or government must be entrusted the enforcing of these penalties; therefore law defining the

things that the individual man may do or may not do, providing penalties for wrong doing, and the rules by which it shall be determined whether or not the wrong has been done and who the wrong doer is. Cain slew Abel in a fit of jealousy and rid himself of his supposed rival in the esteem and affections of the Almighty. Families grew up and contended with each other for supremacy over pastures and fields and wells and to avenge their grievances; families enlarged into tribes and contended with each other over the same and many other things, the one often exterminating the other or taking it into slavery. This was savagery, the survival of the strongest, the swiftest or the most wily; tribes came together and organized to contend in the same way and for like reasons. From this organized people called kingdoms, republics, etc., under such organization it became necessary to organize to protect the individuals composing them against each other; laws were enacted and penalties for their violation fixed and civilization began. In the early dawn of civilization organized society seems to have been governed by the thought that an eye for an eye and a tooth for a tooth was the only adequate means for its own protection, either that or what was infinitely worse, torture for an example to others and punishment of the lawbreaker. Death was the favorite penalty and continued to be until in comparatively recent times. It is said on high authority that in 1805 there were two hundred capital offenses under the English law, that persons jailed, tried and found not guilty were not released if unable to pay the fees of the officers or the court and jailer. Down to most recent times little attention has been paid to the offender except to punish and indirectly use the punishment inflicted as an example to prevent others following in their footsteps. Civilization has advanced; though its steps are slowly taken and short, yet it does advance. In recent years attention is being given to the violator of law and the best methods of handling him, first to prevent his repeating, second to prevent others committing, third that he may be reformed and changed from a lawbreaker into a capable and upright citizen. I think there is a fourth object in enforcing penalties for wrong doing, namely the protection of the wrong doer against himself. These questions and these propositions are being studied by men in all civilized lands.

It is impossible to enforce penalties either imprisonment, fine or physical pain without deprivation, discomfort, suffering, mental or physical or both, hence in enforcing penalties there inheres punishment, but punishment should not be the object of enforcement of penalties, it is the indirect result. I thought when I began service on the Board of Parole and have said in public addresses within the last few years, that the time would not come when one object of sending men to prison would not be punishment and it should not come. My longer service and observation in the administration of the law, the study of the criminal and of the relations between man and man, remembering how at the best the judgement of man is faulty, have caused me to positively change my mind. No man can determine how much punishment should be visited on his fellow man as punishment for his offense. As said above there is punishment inflicted in the enforcing of penalties to prevent repetition, to deter others and become a willing observer of the law. Such punishment inheres in the enforcing of these penalties for the accomplishment of the other objects. The Almighty alone has a right to punish for punishment's sake.

I do not propose to go into discussion of the cause of crime, the subject assigned to me does not admit it; the thoughtful man, however, studying the so-called science of criminology is rightfully giving much attention to it. It is said by students of that science that degeneracy, want of proper home training, environment, mental or physical defects, heredity etc., are things some one or more of which cause a human being to violate the law. It is said that the right kind of discipline, training, education, work, medicine or the use of the surgeon's knife or saw are things one or more of them which, if properly used will effect a cure in many cases, such as will make a law-abiding citizen out of some law violators, and I do not doubt it. It is not possible, however, to effect a cure in all cases. The diagnosis may be wrong, there may be a mistake in the training or kind of education, the medicine may be taken out of the wrong bottle, the surgeon may not find the right organ on which to use the knife, or his auger may not be sent through the skull at the spot where there is pressure on the brain. I am equally persuaded that many men convicted of crime cannot be reached by

any or all of these remedies and for them there is no reformation.

I have no less doubt on the proposition, that there are many men who are guilty of crime and for the good of the state and sometimes for their own good the penalties of the law must be enforced against them, and yet, they are not criminals in fact and the state should as far as possible see to it that the laws are so enforced as that they will not be made into criminals and will be released at the earliest possible moment to take their places in the economy of honest endeavor. The judge of all the earth is the only judge who has the right to say that "the soul that sinneth, it shall die", it is, however, necessary to the existence of civilization that society should require that their convicted criminal should be dealt with in a manner that will protect it from his depredations, training him if it can be done into a useful citizen and, if not, preventing him from continuing his fight against it even to the quarantining of him for life, if that be necessary to its protection. While I believe it to be a mistake for mere man to say how much penalty should be inflicted on his fellow man because of his crime, yet man must determine when it is best for society and the man to release from confinement, the convicted criminal, and after using all the means possible and taking all the time necessary to be informed as to what should be done, the tribunal on whom the responsibility rests and not before should act, reserving the right to reverse its action whenever that is found to be the right thing either for society or the prisoner to do. To most successfully accomplish the things desired in the enforcement of the law, the indeterminate sentence in fact as well as in name I conceive to be a necessity.

First, because judges cannot fix intelligently the amount of penalty a law violator should pay;

Second, because the penalty one man should have to pay for an offense is no criterion from which to judge what another man should pay for a similar offense unless all the conditions are the same;

Third, because there are some persons convicted of crime who should by reason of the nature of the crime they committed

or the impossibility of reformation, and for the good of society be isolated indefinitely and possibly for life.

The average criminal is an unknown man to the grand jurors who indicted him, to the county attorney who prosecuted him, to the jury by whose verdict he was found guilty, and the judge who pronounced the sentence. As a rule the only facts revealed by the trial are those connected with the commission of the particular offense with which he is charged, no judge however learned, however just, however honest can tell how long that average man should be confined in order to accomplish any one of the objects of the infliction of the penalties of the law as stated above. The man before the judge and jury is presumed to be innocent, is entitled to that presumption until he has exhausted all the means provided by law to prevent his final conviction. No judge when he pronounces sentence on the prisoner has a right to demand of the prisoner that he shall reveal himself and his history for the reason that there are steps which may yet be taken that may result in his acquittal; to compel the prisoner to disclose his history and thereby give evidence against himself would be not only contrary to the law but a great injustice. How can the sentencing judge know or guess whether three or thirty years is what the prisoner before him for sentence should receive in order to accomplish his reformation or deter him from repeating or deter others from committing crime? How can the sentencing judge know whether the prisoner before him is a repeater or a first offender? Of course in a per cent of cases the accused is a man known to the officers, but not in the average of cases of men who have committed felonies. I have listened many a time to a judge pronouncing sentence of punishment by confinement at hard labor in the penitentiary for a definite period, six months, one year, two years, five years etc., and as I have heard the good advice given to the prisoner followed by the sentence fixing the time which in the opinion of the judge the prisoner should serve as punishment for the crime of which the jury had found him guilty—I have wondered by what method of reasoning he came to his conclusions. I practised before a judge for eight years who never sentenced a prisoner without bewailing the fact that he felt his utter helplessness when called upon to fix the

time the prisoner should serve in prison ; many, many times have I listened to this judge as he delivered his lecture and passed his sentence when at some point in the service he would pause to remark, "that if there ever was a time when man feels the need of divine aid it is when he is called upon to pass sentence on his fellow man," and I have often thought that the prisoner before him thanked his lucky stars that divine insight had not been given him. Man may exercise his judgement, after the fullest opportunity to learn the prisoners's life history, his habits, his disposition, his criminal record or want of it, the fullest opportunity to observe him with the aid of his disposition and temperament, as developed by his conduct and life in prison, with the information given by prison officers from their observation day after day and week after week, and may then approximate the length of the time he should be incarcerated both for his own and the good of society, but even then it is only approximation, it is the best, however, that man can do. I am aware that many judges, as stated by the distinguished jurist, Judge Foster, of the State of New York who addressed this association in 1912 on this subject, are not in sympathy with the law which deprives them of the right to fix the exact time of imprisonment. I am constrained to believe that this attitude in many cases results from the fact that they still retain the old idea of punishment of the individual foremost in their minds when they are imposing sentences of the law and cannot conclude that any other tribunal will have opportunity to become informed as to the man and his crime, as they have. They have not come in contact with the individual prisoner in sufficient numbers or under circumstances giving opportunity for comparison of man with man or the study of the causes that have led men to violate the law to enable them to fully comprehend what is included in fixing penalties which the law violator must pay. They have not had occasion to follow the convicted man to the prison door and study him in his prison life, the time to investigate his history and learn of his environments and temptations, and discriminate between the man who is a criminal because he wants to be and the man who just happened to be. They do not have time or means of finding out that one man who stands before them as a thief, apparently

sullen and crime stained is simply crushed, dazed into apparent indifference, is the first offender while the special pleader, the apparent penitent, sorrowing for his wrong doing and lost opportunities is recognized as soon as he enters the prison gates as having been but recently released and scarcely needs to have his picture taken or the Bertillion man trouble himself to re-measure and re-examine him before he makes out a new identification card.

John Doe is serving a seven year maximum sentence for the crime of obtaining money by false pretense. The amount obtained so small, the excuse given so plausible, that the good people of the community, though he was a comparative stranger, urged an early release and petitioned for his parole. The prisoner was educated, a professional man of ability, well connected in family and business. On investigation it was found this prisoner was an old offender, known to the police officers and bureaus of indentification and prison wardens of many parts of the union, a premeditated criminal, yet notwithstanding his ability he was a criminal in a small way; his own family while regretting his situation and hoping for his release yet admitted his history and said not a word in his defense. Richard Roe a happy-go-lucky good natured negro serving a maximum sentence of ten years for breaking and entering and taking two boxes of sardines when his stomach was burning from the effects of poor whiskey, without criminal record, not a man to speak in his own behalf, a comparatively harmless tramp. Had the same judge passed judgment on both of these men with authority to fix the time of prison service it would have been the perfectly natural thing for him to have given a longer time to the negro than to the white man. The injustice of such sentence is now apparent but could not have been to the judge sentencing him. I repeat, no judge can intelligently fix the amount of penalty the average criminal should pay for the violation of the law.

John Smith sentenced for five years for a minor offense, is found to be one of the worst of criminals, unfit to be permitted ever to be at liberty; under an indeterminate sentence even though his offense was a minor one he might have been kept indefinitely and such would no doubt have been for the good of

society and as well for his own good; when discharged his criminal career will be resumed and in all human probability he will die at the hands of some officer but also in all human probability some officer will lose his life at his hands. John Brown is a prisoner serving a maximum sentence of ten years for breaking and entering a dwelling house and taking a few small articles of jewelry and a few articles of clothing, he was a tramp who had fallen in with a criminal tramp and joined him in his crime, he did not conceive the doing of the crime, he really did not intend to commit it, he was a novice. Neither Smith or Brown were known in the community where the crimes were committed, the state was in duty bound to prosecute both, the one should be released early, the other should be kept indefinitely. John Smith number two is a plausible, smart, wily, good-looking, industrious, but an old offender; John Brown number two is a big burly boy not prepossessing in appearance, who like many a boy started out to see the world as a tramp, fell in with Smith number two and a team was stolen, both secure the same sentence. Brown could not keep prison rules as well as the experienced Smith yet he should be paroled early while Smith should be detained indefinitely. I repeat that the indeterminate sentence is the only one that enables the authorities entrusted with the execution of the law and the fixing of penalties to deal justly between men guilty of like offenses. Again, there are men guilty of crime so outrageous as that it evidences an evil heart, a criminal disposition, such as justify the conclusion that the criminal has forfeited his right to mingle with his fellows; such are murders and some sexual crimes. Some men are so premeditatedly given to crime and their hand has been so often against their fellows as evidences the fact that they only await the opportunity to repeat the offense.

John Doe number two was a prisoner serving a definite sentence of fifteen years for burglary. He had been a member of a bad house-breaking gang which had been operating in one city for sometime. The police not having succeeded in stopping the raids on the homes in the city much less catching the burglar the citizens organized with the result that this prisoner had been put under arrest, convicted and made a confession in which

there were connected several other persons as well as himself. The prisoner was a young man, possessed of much natural ability as well as criminal instincts; the citizens were very grateful to this man and were ready to accept with confidence in his honesty his profession of reformation and desire to quit criminal life. Notwithstanding his prior prison sentences and that he was only pretending, a parole violator from another state, on the earnest solicitation from the citizens many of whom had suffered most at the hands of his gang, the governor suspended his sentence after a comparatively short service and allowed him to go outside prison walls under strict rules the violation of which should cause his return to prison; notwithstanding he had the very best of supervision and encouragement from the good people who were interested in him he soon violated some of the conditions of his parole and was returned to prison.

After the serving of nearly all of his sentence the judge who sentenced him reported to the Board of Parole that at the time he was sentenced there was an understanding that because of the help he had been to the authorities in apprehending the other members of the gang he should not be required to serve his full time but he would favor his release and recommend same after a short prison service. Considering this man's good prison record and what appeared to be an honest profession of intention to quit his life of crime he was again paroled and placed under supervision with good surroundings, it was only a short time until for the commission of a minor offense and the general course of conduct which conclusively proved he did not intend to live an honest life until he was returned to prison and served out his time. During his last period of service in prison he was given opportunity to work for which he was well fitted and at which on the outside he could earn good wages. on final release at the expiration of his term he was employed by the man under whom he worked while in prison at the wage of \$5.00 per day and went at once to service in a city distant from where his former crimes had been committed. Those not connected with such matters thought he would make an industrious citizen from the first. In less than six months after his release he had left his employer, committed another crime in a state where he had once before done prison service

and is now serving time again. In the prisons of the United States are to be found hundreds of men belonging to the same class as this man. Prison discipline, the outmost kindness of wardens and officers, favors extended in providing for the earning of wages part of which shall be given the prisoner for his own use or for the benefit of his dependents, moral and religious training, none of these things are sufficient to reform men in the class to which John Doe number two belonged. For the man who has once served time in prison and again committed crime, who has once been released on parole and violated it so that he must be returned to prison service there is little hope of reformation. Do not understand me to mean that in no case will there be reformation. The oft heard remark that "there are exceptions to all rules" no doubt applies here. It is said there is some good in every man but I am convinced that in many cases it is not the good that will keep them out of crime. However, if the exceptions are found the indeterminate sentence comes to restore liberty to those prisoners and if the confidence is found to have been misplaced to return the prisoner and thus protect society and the prisoner. Liberty is of no benefit to the man intending to use it in the commission of crime. I repeat the indeterminate sentence is the only one that can reasonably be defended because there are some persons convicted of crime who should because of the nature of the crime committed or the impossibility of reformation, for the good of society, and for their own good, be quarantined for life. These are illustrations from actual experience in the work of the Iowa Board of Parole, familiar to most of you, but with such facts most people including judges and lawyers are not acquainted. Such illustrations might be multiplied many times in my experience of the past six years.

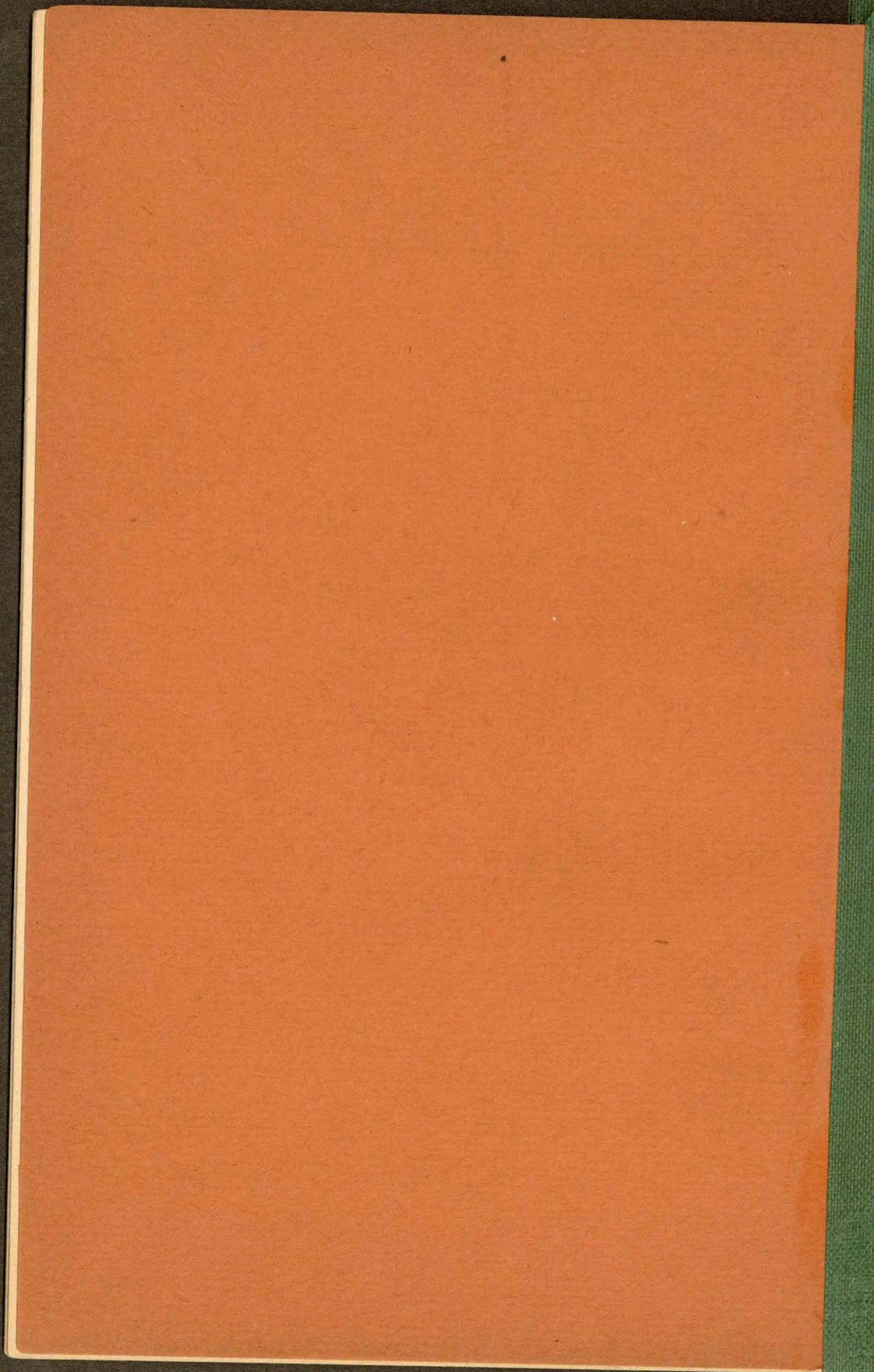
The courts of the land should after giving to an accused man all reasonable safeguards in the investigation of the charge of crime against him, determine his guilt and then sentence him to imprisonment, without limit as to time, then leave it to another tribunal to determine when he has served long enough to impress on others the seriousness of the offense and operate to deter others, when it will probably be safe to society to release him, to keep in custody indefinitely such as by their conduct

have forfeited all right to associate with their fellows and such others as do not give satisfactory evidence of repentance and reformation. The keeping of a man in custody for life is not necessarily punishment, it is the state protecting itself from the evil influence of a man who has proven himself a menace to it and in whom there is no such hope of reformation as would justify his release among his fellows. This is no severer or more drastic remedy than society uses for its protection in other ways. The state walks into the homes of its citizens and deprives them of their liberty for the protection of its people against physical disease; why should it not do so for the protection of its people and especially its youth against moral disease? The yellow card on your door means you cannot come out, that others cannot go in, for a week, for a month or for a longer time because disease lurks within that makes it dangerous for you to mingle with them, and until you have recovered from its ravages and purged yourself of its filth and contaminating germs you are imprisoned. You may be sent to the pest house and imprisoned with others who are physically vile like you; you may be isolated for life and compelled to forsake home and family and to die among those who are suffering as you from incurable physical or mental disease. Society may shudder at this drastic means employed to protect its physical well being, but society upholds it and has through all the history of man. Unclean, unclean, has been heard since the days of Moses. In these days serious consideration is being given by medical men and legislative bodies to the proposition to increase the number of diseases whose victims should be isolated from their fellows. Is there reason in the use of these means to protect the physical well being and then allowing the moral leper to roam at large contaminating the youth of the state and weakening its moral fiber? Are we justified in the use of such drastic measures to protect our people against physical and mental delinquents, yet turn loose among them those who are so vile and filthy morally as that they will spread disease which will destroy both soul and body? I repeat I believe in the absolutely indeterminate sentence, and the parole system cannot be administered for the highest good until it shall be the law. There are men in all prisons who have only moral whooping cough, others the measles, scarlet fever, diphtheria, tuberculosis,

leprosy, and neither patient nor society will be benefitted by paroling out the moral leper. Those suffering from the minor troubles should as soon as they have given evidence of recovery and been incarcerated long enough to impress them with the seriousness of their offense and to operate to deter others from like offenses, be allowed their liberty under safeguards which as best we can guard against relapses. While such as do not should, as in the case of physical and mental derangement, be kept in charge of the state and isolated from their fellows.

The indeterminate sentence of course contemplates humane educational and reformatory treatment of the prisoner, contemplates such organization of the prison industrially and work in prison, as will make him self-supporting and provide as much surplus as possible for the benefit of his dependents, (I would not apply any of that surplus to the repayment of the expense of his prosecution) contemplates educational and industrial training such as will tend to arouse interest in his work and ambition to succeed and excell, in all those who are willing to be aroused, contemplates organization by the tribunal whose duty it is to do so for the purpose of determining the single question of length of time a man should be required to serve in prison to accomplish the purposes for which the prison service is imposed on the law violator, contemplates release under parole and supervision and encouragement after parole and reincarceration if the paroled man cannot keep the conditions of his parole.

Modern civilization demands all these things whether the sentence be definite, maximum or indeterminate. These things are not incompatible with strict enforcement of discipline, teaching of obedience and submission to authority, without which there could be no reformation.



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