

PROBATION AND REFORMATION OF CRIMINALS.

ADDRESS

OF

HON. J. FRANKLIN FORT,
Rt

JUSTICE OF THE SUPREME COURT OF N. J.,

Before the New Jersey State Charities Aid Association
Convention,

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THE PROBATION SYSTEM AND PENAL REFORM.

HON. J. FRANKLIN FORT.

Mr. Chairman, Ladies and Gentlemen—It is indeed a pleasure to have an opportunity to speak a few words, in a somewhat informal manner, before a body of people who have no interests of their own to promote, and who are laboring solely for the welfare of others. It is rare in the life which we live, and particularly in this "strenuous life," to find people who have a purpose that is solely in the interest of some one else. There is very little difficulty in finding plenty of people who have no interest in anybody or anything but themselves.

The secretary, in inviting me to speak at these exercises, has placed upon the program a very long subject for me, giving about all there is to be said or needs to be done along the lines of criminology and reform, starting with primeval man and coming down to the present time.

Crime is on the increase, it is said. You will hear that remark every day. It is not true. The fact is that the *making of things a crime* is on the increase. Hardly a session of the legislature convenes in any state that does not create from one to a dozen new crimes, until we are in such a condition in the community that it is almost impossible for the most honest man to be sure that he will not have committed some crime by the time the legislature adjourns. If you were to go back to the common law and count only those things criminal which were crimes under that law, not one-half of the people now incarcerated in this state would be found in penal institutions. The legislature provides by statute that it shall be criminal to do a hundred things that our fathers, in their day, never thought of as crimes.

Why do I mention this? To accentuate the importance of taking hold of the man at the first suggestion that he has been guilty of a crime.

Two things enter into crime—heredity and environment. Some add a third. The medical officer of Sing Sing has said, and it was gravely discussed by the Medical Jurisprudence Society, of New York, that crime is indicated by our physical constitution. I shall not discuss that proposition. I do not believe that an ugly man is more likely to be a criminal than a good-looking one; nor do I believe that, by looking at the face, you can tell whether a man is a criminal any more than that, by looking at the knobs on a safe, you can know the denomination of the greenbacks inside.

Mr. Havelock Ellis tells us that there are five kinds of criminals—political, passional, insane, occasional and habitual or professional. The first of these (political criminals) we will not discuss, because a man that is a political criminal to-day is sometimes a patriot to-morrow; and the man who may be a political criminal to-day is in control of his government to-morrow; and there are times when it is patriotic to be a political criminal.

A passional criminal is one who, on the spur of the moment, incensed at some reflection upon his wife, sister, brother, or father, strikes the blow. He is not a wrong-doer. He has done merely that which his inborn nature taught him to do. Our law makes him a criminal, but he is not the kind of criminal that I propose to consider.

The insane criminal I will not mention, because I cannot conceive that he exists. Insanity and crime cannot go together. If a man is insane, he is not responsible, and, hence, he is not a criminal and cannot be.

Occasional criminals are the class to which I propose to refer together with habitual criminals. An occasional criminal is a man who now and then commits a crime, sometimes keeping on until, by and by, he graduates into the fifth and last class.

The criminal is here, and he has been with us in all the ages, and the question is, what are we to do with him, whether he be an occasional or an habitual criminal. Shall we imprison him? Shall we punish him? Well, yes, in some cases we should; but punishment, and punishment alone, never has prevented and never will prevent crime. The old idea that you punish a

man for stealing a horse to prevent all the rest of the community from stealing horses, is absurd. Such a theory of the criminal law does not now enter into the mind of any intelligent criminologist. That is not the object of the law. We punish the individual with a view to reforming him. That is the only purpose in the modern idea. No matter how severe the penalty, punishment alone does not prevent crime. Look at the early days of our country. Take the colony of Massachusetts. Prior to the Declaration of Independence there were seventeen crimes for which death was the penalty, and in our own state there were a number of crimes thus punished.

We are improving on this state of affairs, and we are trying to mould our laws to meet the conditions of individual men. We are coming to treat crime as a disease, in many respects, and trying to cure it; not by dosing the man with medicine, as the doctor does, but by taking his particular case and providing a cure that will meet it so that the man may become a good citizen—be a man. What good is it to the state to confine a man in the penitentiary? It does no good to the man. It does no good to his family. It does no good to the community except in the one case—that of the habitual criminal.

What has been the result of this idea that has been growing in the public mind in the past twenty years?

First, we have established the parole or conditional pardon. Some of the states call it conditional pardon. We started with parole. That is so well known that it would be an insult to the intelligence of this audience to discuss it. It simply sends the man out of prison after he has been there a little while. That is good just to the extent of the little while it keeps him in prison, because it is a little while. The longer he is kept there, if he is a man who should be discharged, the worse it is for the state that keeps him there. Conditional pardon is the same thing. Governor Atkinson, of West Virginia, wrote to me that he never granted a full pardon; that he always gave a conditional pardon. If the man remained a good citizen, all was well. If he failed to observe the conditions of his pardon he could be remanded to prison to serve out his term. He found that it had resulted in great good.

Different criminals must be differently treated. The man that I am most interested in is the first offender, taken at the very beginning of crime. He may be brought there through

hereditary influences, for which he is not responsible, and which came to him through the order of nature; but he stands on the threshold of crime and at the doorway of the penitentiary. That man at that point is the problem of the criminology of the age. What would you do with him? Would you put him in prison for a little while and then parole him? If not, what can you do? The only remedy that seems available is probation. Probation started in Massachusetts for juveniles about twenty years ago. They applied it to adults in 1891. Vermont followed two or three years after that. A few other states have adopted it in a modified way. New Jersey followed in 1900, and I want to say that we adopted in this state the most liberal law on the subject of probation that exists in any state in the Union. Our law is practically without restriction on the judge. It does not apply to any who are not under an indictment or accusation for crime.

A young man comes before the judge for the first time to be sentenced, and the judge can inquire about him, ascertain what his habits of life have been, what his associations have been, who his ancestors were—what kind of people—and then say, "Here is a young man facing crime for the first time, a man who can be saved." Probation, like anything else, is of no force and value unless the machinery that operates it be good. If it is turned over to manipulation, to political control, then it will be an utter failure. But if it is left in the hands of the judges and of men appointed by the judges, subject to instantaneous removal if they abuse it, then it is safe and invaluable.

One step further. The probation officer himself must be a man of the highest personal character, a man whom every man placed under his control will respect, who, as he goes through the streets where he is seen by the men under his charge and is talking with those men, will be exemplary in life and habit. If he is, he will mould largely the character of those men during the time they are under his control. They are committed to him for three years, under our law, and are liable to be re-arrested during that period by a system that is simple and effective. Nothing but the act of the judge and the probation officer, who has the power of a constable, is needed to take the man at any time. The man realizes this, and goes about with that knowledge.

What is the effect of this? The prisoner, or the man charged

with crime—I hate to use the word prisoner for a young man—goes out. He knows that, so long as he does well, he will be free, but if he goes back to his old associations, to his bad habits, he will be taken again and may be punished. There is no judgment that can be used against him in court—no judgment in the sense of a conviction, that is. He is committed to the probation officer in lieu of judgment. I drew the statute and meant just that, so that no man, ever in the future, should be able to say of anyone who had been lifted up by this law, that he had been convicted of crime. The man goes forth and he must keep free from evil association. If he is a married man he will be found home evenings. That is the safest place for any married man, whether he is under the probation officer or not. I do not know but it is the safest place for boys, *not* married. I believe it is. He will be found there and he will see the needs of that home and his money will be kept there. Send the man to prison for six months and what would be the result? The man may be poor, but he has earned money to support himself and family. When he goes to the penitentiary, he leaves his family a public charge for the time he is there, and he becomes a criminal through the associations he has there. When he comes out he has lost his place and he cannot probably get work, so he is almost sure to remain a criminal. Everything tends to make him so.

Probation comes in, and the judge says to this man, “None of these things shall occur to you. You shall not go to the penitentiary and you shall support your family; and so long as you do that and behave yourself, you shall not be regarded as a criminal, and the court will protect you. Keep away from your evil associations, attend to your duties, live as you ought to live, and you can be a man. Do not lose courage and hope.” Half the battle of this life, especially for those men who have the most to do to bear the burden of this life, is won if you give them hope. Give them hope. Hope is the guiding star of humanity; always has been, always will be. Crush it and any man will go down. Let the light of hope illuminate the man’s whole being, and the man will go up and stay up, and be able to face the world and do for himself and others.

Now, as to another subject incidentally connected with this. I know that my distinguished friend who sits behind me [Dr. Lewis] is a firm believer in the indeterminate sentence. If I

am a convert to indeterminate sentences, it is of late origin, but I confess I am beginning to be a convert to indeterminate sentences. I was half converted a year ago, and I am not sure but that I am all the way over to-night, because of the fact that the indeterminate sentence should apply, not so much to the man I have been talking about as to the habitual criminal. Probation is no method for him and should never be employed in his case. His condition is just as much a disease as is insanity; and the man who is a confirmed criminal, bred in the bone, so to speak, from heredity, if you will, with many convictions against him, with a tendency to return to crime every time he has the chance, that man has no place in modern society and he should not be allowed at large. If it be true that men, in propagating their species, hand down to their offspring the criminal tendencies which inhered in them, then such men should be taken and confined, not permitted to marry, but kept precisely as we keep a lunatic—as a dangerous man. So the indeterminate sentence—that is an inexpressive word for it; I do not know who started it—applies to such men. Statutes, which they call interminate sentence acts, usually determine the sentence very definitely. They say “not less than one nor more than ten years.” My rule would be no minimum and no maximum for professional criminals. They should be committed to an institution under the charge and government of men who are beyond the influences of political control, expert men, such as should govern such institutions. They should remain in penal institutions until cured. And when they are cured, some one must determine it. The doctors tell you when you are well, and the man who is skilled in criminology—who has studied it a lifetime, who is kept at the head of a penal institution all his life, as he should be—such a man can say when these habitual criminals are cured and when they shall go. We have reached that time.

You say that treatment is harsh; that you are kindly to first offenders, but severe toward a man who is an habitual offender. Yes, that is true and that is the correct rule. That is the modern idea and that is the proper thing to do. The man who is a criminal by profession, who lives by crime, has no right to be at large, to prey upon the community in which we live, or to bring into the world other criminals to prey upon society.

I understand that you had an address this afternoon, in which some reference was made to juvenile offenders. We have not applied the probation system to them in this state except when indicted for crime. The time has come when we should face this problem. To make good men we must make good boys. If you want to prevent a man from being a criminal, you must start with him as a boy and educate him in the right way. In Indiana they have adopted, lately, a law upon this subject, and I notice in the current number of the "Forum" [February, 1902] an article by Mr. Wm. B. Streeter, on the care of children; the most valuable thing I have read for a long time upon this subject. He says that, under this law, they are not only caring for the blind, the mute, the insane dependents, and the epileptics, but are caring for the child that has no care at home. Taking the children who have no care and putting them into separate county institutions, under county officers, with authority to put them out in homes all over the State. That is a magnificent work. They provide in the law that you cannot put a boy under sixteen in the almshouse for more than sixty days without that being a public offense, and that is right. You ought not to put one into an almshouse, or a lock-up, or a penal institution, under any circumstances. You, who are fathers and mothers, know that almost a straw will turn your boy from rectitude to wrong action. You have seen it a thousand times in your own children—their need of advice and control and direction in helping them to distinguish right from wrong. The best boy will get under bad influence at times—and the young life responds to influences as the open flower drinks in the dew. He must be helped to distinguish between right and wrong, and when the parent fails—when the mother is a drunkard, and the father a criminal—the State should step in and be a father to that child. That is the Indiana system. Just how many children there are of that class in the different cities of this state, I have no way of knowing. I have learned more about statistics with reference to criminals and charitable institutions in this state from the admirable report of the secretary of this association—which he sent to me three days ago—than I ever knew before. It may be that in that long report there is something on this subject of the fugitive child—shall I call him that?—just floating around through the streets, no home at night, no mother to care for him, just that wandering

boy we used to hear sung about—no mother to ask where he is. I want the state to find out where that boy is and to put him in a home that he may be cared for, educated, brought up morally and saved from a life of crime.

Two or three things must be done. First, there should never be any possibility that a boy under sixteen would be put behind bars. He should never be permitted to look through the bars of any prison, or any cell, or any place of that kind. In the cities where they are arrested they should be kept in a room, with screens, if you think necessary, strong enough to keep them, but no bars—nothing to indicate a prison, nothing to humiliate the boy, nothing to stamp upon him a condition which, when he goes out upon the street, will make the other boys say, "Johnny, you have been in jail." Do not do that. This human nature is a wonderful thing. It is moulded and controlled by unseen influences and things that we know little about.

The boys then, if they must be arrested, should be put in some place that is not a prison. Never let them come in contact with a prisoner. If they are to be punished; if they must be sentenced, then never let them come before the judge when anybody is there who is a criminal—*never*. We must have a separate court for the trial of juvenile offenders, some say. I do not care for that. It may be done by the judge in his office. Let him leave the court-room to try the boy. Let him hear the boy in an informal way. Let him put his arm around him and say, "Here is a charge against you, Johnny; what is it that you have done?" And in many cases the boy will break down and cry as if his little heart would break, and will tell all about it. Then, if you must send him away, send him to such an institution as the City Home, at Verona, Essex county. Such an institution should exist in every city wherever it is necessary. Keep him from criminal influences; bring him up in the right way, and he will be able to hold his head up and make his way through life.

We have reached a time where the problem is, not how to punish men, but how to save them.

Perhaps I ought to say something about the cost of the probation system. It is a system that cares for itself. It pays its own way. It does not cost the taxpayer a dollar. It turns money into the treasury of Essex county, and it does another

thing—it saves the man. It is a very good thing from an economic standpoint, irrespective of the moral side. We have another statute, drawn with the idea that it should be a counterpart—to run alongside the probation law. This act provides that the judge, in imposing a fine, may provide that it be paid in installments, and that the costs may be paid in the same way. We have acted upon this rule in Essex county. The judge sentences a man to pay a fine, with permission to pay it by fifty cents or a dollar a week, just as he can manage to pay it. That is far better than to have him work it out in the penitentiary at fifty cents a day. These fines and costs, thus collected by the probation officer, which were never collected before, more than pay his cost to the county.

I saw in the paper that Judge Strong, of Middlesex, had sentenced a man to pay \$250 and costs, and had taken his note for the amount. That was exactly right. He was criticised all over the state, but he did right. He need not have taken the note, because he could bring the man back, if necessary, under the statute. That is better security than the note. He could pay one or two dollars a week. Suppose he had fined this man \$250 and sent him to the county jail to work it out at fifty cents a day; that is five hundred days. That would have been his punishment and the county would have supported him for five hundred days. His family might have been a charge upon the poormaster for five hundred days. As it was, he went home, cared for his family, paid the fine in installments, and was punished more than if he had been sent to jail; and he did not lose his self-respect and was not made a criminal by staying in jail for five hundred days. That law should be used all over the state. I am one of those who believe that fines against people are a debt they owe to the county or state. They are inflicted for punishment. That is the idea of the statute, and you expect the man to pay the fine. He pays it just as much out of jail, at fifty cents a day, as if he paid the whole amount at once. The best statement of this subject is in a report made by a committee to Mayor Quincy, of Boston. The question was what to do with the men sent to the penal institutions for drunkenness and disorderly conduct. They reported that at times the arrests for drunkenness in Boston equal each year seventy-five out of every thousand, and that they could not account for it except upon the theory that the same person

is arrested over and over again. I do not think that helps them any, but they recognize the problem. It is an enormous expense upon the poor fund to support the families of men sent to prison ten times a year, and they ask, how shall we stop it? The man should be sent home to his family and allowed to pay his fine at a dollar a week, and anyone selling such a one liquor should be held responsible in damages. This report says that of those paying 90 per cent. are women, the wives of these men, the money being earned by washing and other hard work, starving themselves to pay their husbands' fines to get them out of jail. Any system of law that does that sort of thing is cruel and wrong, and I do not wonder that these gentlemen reported another system. The New Jersey Fines act of 1900 was drawn from that report. I hope that the judges of this state, in the various courts, will discover the benefit of this statute and apply it.

In the counties and cities wherever probation has been tried it has worked well. In the county of Essex, of the 193 men committed to the probation officer during twenty months, only fifteen broke probation. But for this act, many of these men might have been in the penitentiary, and thus sent on the road to crime by contact with the criminal.

The probation system takes the young man at the threshold of crime and leads him into a better and more ennobling life and to more honorable action. It is a grand law. The greatest problem of the age is how to care for the young man. The probation law is the one thing to lift them up by right influences and right control. Shall we not enter into that with a hearty spirit? Shall not all the judges of the state, with all the humanity that must be in their hearts, carry its spirit into court in dealing with the boy? What an awful thing it is of a Monday morning—a sentence day in Essex county—to see ten young men, under nineteen years of age, standing in the dock together. They have never been there before. I used to say to myself, "Shall I send them to the penitentiary?" and I answered "No." I usually suspended sentence upon the first offender. I used to say to them, "Go, but if you come back again, you cannot count upon another chance." I felt, as a criminal judge, that, in committing to prison for a first offence, I was committing a greater crime against the youth than the crime for which he stood charged was against society. To put

such a man in association with men hardened in crime, to send him among habitual criminals, I would not do it, and I did not do it. I would sooner resign a judicial position than commit the ordinary youthful first offender to the penitentiary. Let us take hold of these boys, the first offenders, and put them in homes or on probation as far as we can. If the law needs additions, go to the Legislature. Only one vote was cast in either house against our probation law, though the proposition was new. The question was whether they would vote against the boys, and they would not vote against the boys. I believe in the Legislature. I am not one of those who think that you cannot get anything there. If you make them see that what you want is right, you can get it ; and if you want legislation, draft your bill, show that it is right, advocate it with earnestness, and you will accomplish your purpose. May God speed you in all the good work that you have before you.