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OUR DUTY TO THE UNFORTUNATES

HON. A. C. BACKUS

During the past year over one million men, women and children stood before the bars of justice in this country, charged with an offence committed against the Federal, state, municipal and juvenile laws. What tremendous drain upon the nation; first, the loss of the citizen; second, the influence upon others in the community; third, the expense incident to the trial and his upkeep in the penitentiary.

More people have been condemned to death and sent to penitentiaries than have been killed and wounded in all the battles of the world. The problem is ever with us, and will be so until the end of time, unless we heed the voice of Our Creator, "For the law of God shall be the law of the land."

When Cain slew his brother Abel he defied his Maker and answered, "Am I my brother's keeper?"

When Moses found his people in the wilderness, desolate and discontented and suffering, there came the commandment of God from Mt. Sinai, "Love thy neighbor as thyself." As it was then—so it is today.

"Are you thy brother's keeper?"

"Do you love your neighbor as you love yourself?"

"For what does the Lord require of thee, but to deal justly, to love mercy, and to walk humbly with thy God."

If every one of the million had reckoned with the law of God the problem would have been solved; and if those who are charged with the administration of the law would deal justly, for the purpose of doing constructive work with the offender, I believe that crime could be reduced to the minimum.

Philanthropists, sociologists, criminologists and penologists differ as to how the law should be administered and what punishment should be inflicted upon the transgressor.

Is it the fear of punishment or hope of reward that has its deterrent effect? I admit at the very outset that the treatment of those who violate the law is one of the most difficult of the larger social problems. Law-abiding society from the very beginning has been a harsh keeper of its erring brother. The administration of the law, so far as the individual was concerned, in the past has been destructive and the system a failure. Modern

thought and humanity has moved rapidly from the spirit of the middle ages to a more tolerant understanding of the causes of crime and an expanding policy of conserving and reclaiming certain offenders to more usefulness in society.

For many ages past prison life was very dark. It was long and dreary, extending from the origin of civil society to the beginning of the eighteenth century. It will be enough to recall the name of the Tower of London, the Mammertine at Rome, the Bastille of Paris, the Spielberg in Austria, the Plombs of Venice, the mines of Siberia, as types of ten thousands of others less renowned but no less cruel, in all ages and parts of the world.

The terrific personification of punishment in the Hindu code was a living reality of them all; punishment was the inspirer of terror, with a black aspect and red eye it terrified the guilty. No sentiment of humanity towards the prisoner seems ever to have penetrated the breast of his jailer, no look or tone of kindness ever to have saluted the culprit's senses or soothed the misery of his incarceration. The inscription over the entrance of Dante's Inferno, "Let all who enter here leave hope behind," stood through centuries and cycles over all the prison entries of the world, crushing every aspiration and paralyzing every effort and hope.

The prison existed in China 2,600 years before Christ; Moses did not give the institution to the Hebrews. Prisons are mentioned in the sacred books; we read of the imprisonment of Saint John; of Joseph; we read in Jeremiah of the underground dungeons which were reached by means of ropes, the prisoner was sunk in mud and mire and exposed to lingering death. For many years, however, punishment for the sake of punishment and torture for the sake of torture, was very generally in vogue; it was practiced with horrible severity by the ancient Persians, Egyptians, Phoenicians, and Carthaginians. Prison was an awful abode, and as a writer has said, "Not short would be the narrative if I should here produce all the historical attestations of that cruelty and ferocity that characterized the treatment of prisoners among the nations of the East."

Until revised by Solon, the Athenian law was cruel, and this is to be wondered at, for Athens was the seat of learning at those times, and yet Dracon made capital every crime and attached the death penalty. The laws of Sparta as well were relentless to the last degree.

Throughout the sixteenth century reforms were attempted by

different individuals and societies; the Christian Knowledge Society was formed in 1699, but it was not until the beginning of the eighteenth century that any real effective work was done. Clement XI, Supreme Pontiff, was a guiding spirit, he established what was called the Juvenile Prison of St. Michael, for boys and young men. Howard, the great English philanthropist and prison reformer, visited this prison, and many of the reforms introduced in English prisons were adopted from this. There appeared on the door of that prison these words: "Clement XI, Supreme Pontiff, reared this prison for the reformation and education of criminal youths and to the end that those who when idle had been injurious to the state, might be better educated and trained to become useful to society." Inside of the prison printed on a slab, were these words: "It is of little use to restrain criminals by punishment unless you reform them by education."

In England from the time of the foundation of the Christian Knowledge Society, until 1728, the whole subject of prison reform was but little agitated, crime was on the increase and great numbers were becoming enemies of the state. In that year there was formed a club called "The Godly Club," under Wesley and Whitfield, and very efficient work was done by them. In 1765 Chancellor Blackstone published his commentaries and he was successful in bringing before the public the utter folly of awful and extreme penalties. His advocacy of more humane treatment met with public favor and approval and an improvement began from that time.

Sir Samuel Romilly, a great lawyer and statesman, did much in modifying the criminal code of England at the commencement of the nineteenth century. At that time the criminal code of England was inhumanly severe, the punishment of death could legally be inflicted for more than two hundred different offenses; for instance, it was a capital offense to pick a man's pocket, to steal five shillings from a shop, to cut down a tree, to harbor an offense against the excise laws, to steal a sheep, or an ox or a horse, or to commit larceny of almost any kind.

In the reign of Henry VIII, 72,000 thieves were hanged, being at the rate of 2,000 a year, and some offenses at that time were punishable by boiling to death.

In the reign of George III, at one morning before the rising of the sun in the city of London, twenty persons were executed for stealing from the person.

In the year 1785 no less than ninety-seven persons were executed in London, one morning, for stealing from a shop to the value of five shillings.

Sometimes the prisons were full of children who had been informed against for stealing, many being under the age of ten years.

In March, 1816, a bill was passed in Parliament repealing the death penalty for larceny. George Barnett, a boy of the age of ten years, had just been convicted of larceny and was lying in Newgate prison under sentence of death. It was through the untiring work of Romilly, who had aroused the public conscience, that the criminal code of England was finally revised.

An eye for an eye, a tooth for a tooth, and a limb for a limb, degradation, whipping, branding, hanging, maiming, chambers of torture, men's bodies broken on wheels, suspension by arms and legs with great weights attached, the flesh burned and seared by irons white hot, human bodies roasted at slow fires, and buried alive, thrown to wild beasts, molten lead poured into the ears, faces of men placed toward the flaming sun and their eyes blinded, tied by the sea to be drowned by the rising tide; all these have been tried and the victims gave up their lives by millions, and yet so-called criminals did not become extinct. It is a historical fact that crime increased rather than decreased with the imposition of these terrible penalties.

There have been some very dark places in prison life in America, for instance from 1777 to 1827, a period of fifty years, there existed in Connecticut an underground prison in an old mining pit, which it has been written equalled in horrors all that was ever related of European prisons; the prisoners were all crowded together at night, their feet and hands were fastened to heavy bars of iron, heavy chains placed about their necks and attached to beams above. These caves were said to have reeked with filth, which produced incessant and contagious fevers. During the early history of New York negroes were burned alive, sometimes with green wood to prolong their agony; women and children were hanged in iron frames, many to die of starvation.

During the early history of Virginia the faces of men and women convicted of crime were disfigured. The clipping of ears, or the chopping off the hand that committed the larceny was a usual proceeding after the jury brought in its verdict. In Massachusetts witches were burned at the stake.

During the eighteenth century the stocks, pillory and whipping posts were to be seen everywhere.

All these historical details shocked men of humane principles and finally led to the agitation of statutory and prison reform in the United States.

It is but in recent years, however, that new ideas and new thought and a new era of justice has been promulgated, so that men, women and children who have erred might be saved or reclaimed; reform schools, reformatories and juvenile courts have been established by the state, and the good results have been marveled at, even by its most ardent advocates.

Offenders may be classified under three heads; first, the instinctive offender; second, the habitual offender; and third, the occasional, or single offender. The instinctive or born offenders are persons who cannot adjust themselves to the social order on account of their hereditary or inborn defects. Offenders by acquired habit, or habitual criminals are persons who have taken on criminal tendencies through the influence of their environment. The occasional offenders are socially normal persons who have not formed any criminal habits but who have committed single offenses. With reference to the first class nothing can be done no matter what system may be devised, except to confine or restrain or treat them; it is utterly impossible for him because of hereditary defects to adjust himself with society. Under this group we find the criminal insane, the moral imbeciles and the degenerates. It is only with reference to the second and third classes that individuals can be corrected either by punishment, treatment, or probation. Courts and juries deal with more cases of the third class, that is the occasional offenders, than all the other classes taken together.

While district attorney of Milwaukee county, dealing with many offenders and criminals of all ages and classes, I was deeply impressed with the inadequacy and the utter failure of our system of punishing first offenders. Many citizens of the state who were interested in this work expressed the same view. In 1909 the legislature of Wisconsin passed an adult probation law, giving to the courts of the state power to place on probation first offenders where the maximum penalty did not exceed ten years in the state penitentiary, and placing such offenders in charge of probation officers for guidance instead of confining them to a cell.

This was a humane and merciful act of the legislature, it was a forward step for Wisconsin. Turn back the pages of history

for four thousand years, and nowhere in any land or country do you find a statute or law so far-reaching for the well-being and welfare of the unfortunates.

It should not be understood that probation is a species of leniency, as some seem to believe, nor a license for first offenders to commit crime; it is a scientific method of treating offenders who are relatively socialized and who are in good environment. It is the showing of the proper way, it is to protect him against himself, to aid him and not to crush him. The adult probation system is still in its infancy. In the nine years I have been on the bench I have placed 1,668 first offenders on probation, who have committed a states prison offense, and in that time but seventy-nine have been returned to the court for violation of the rules of their probation. When the probation law was first enacted, one of the members of the senate committee on judiciary told me that if one young man out of every ten would be saved, the intendment of the law would be fully carried out. Instead of saving ten per cent, we, as I believe, have saved ninety-seven per cent of those who have been placed on probation in the past nine years. Taking one hundred persons sentenced in 1907 before the probation law was in effect, I find that thirty-seven were returned to the court after service of their sentence in the states prison, reformatory, or house of correction, on second offense, and sent back to the penitentiary. How many more of that hundred were returned in other states or other jurisdictions, I am unable to state, but for argument's sake, let us assume that thirty-seven were all that committed another felony after serving their sentences, we find that thirty-seven per cent were returned to prison under the former system as against 3.2 per cent under the probation system. And further, we have taken away under the probation system, the stigma of a felon and convict, which always follows a young man, and have made a good and valuable citizen of him.

In my interviews with those who have been returned to court on a second offense, I find invariably the answer that when they leave prison the world was against them, that instead of receiving some encouragement from society, the people and often former friends avoided them. Without means and without encouragement they knock at the door for employment, only to find that their record of conviction has preceded them; branded as convicts and criminals, they are turned upon the streets to be left alone in their misery and shame. They naturally become bitter towards

society; no one has confidence to repose in them, even employment is denied them, and they become social outlaws. I say, in many cases society itself is responsible for the second incarceration of the man who has tried to make good. This evil should be speedily remedied. Prison labor should be reformed so that the prisoner may share in the earnings, in order that those dependent upon him for support may receive the necessaries of life.

The first person discharged after being on probation for two years and six months, received a bank account of \$1,015. This man was convicted of embezzlement; he now holds a trust position and receives \$1,500 per year. The second person discharged after two years probation was given a bank account of \$418. He was convicted of burglary. Another person discharged after one year and six months probation received a bank account of \$205. He was convicted of larceny.

The great majority of the first year probationers have bank accounts of from \$100 and over. These young men are full of industry, and all they need is a little direction. Go back to the former system, picture these young men coming from the penitentiary, depressed and disheartened, facing a new world, branded as convicts and criminals; watch them and you will see many travel the circle which leads back to the penitentiary on second offense, and then practically all hope is gone, and society has suffered a great loss, first in the loss of its citizen, and second the injury to others because of the crime he committed.

In our probation cases no probationer is turned back upon the community without first giving him employment; the probation officer assumes control of the young man's earnings; a heart to heart talk is had with him, his environment is looked into, he is sent to evening school and the library, his earnings are strictly accounted for, his habits of daily life are carefully noted, and of the 1,668 probationers now working in this city, every employer will be ready to give any one of them a recommendation, such as he never received before.

In the great majority of first offenders society can best protect itself by protecting the individual against himself. It should not be too ready to condemn, but the great state should step in in many cases as his guardian, and show him the way which makes for better and greater citizenship.

In many cases that are called to the court's attention, I find that the parents are many times more to blame than the child, sometimes it is the lack of proper training at home; often we

find the parent indifferent, again, I find mothers spending their time away from home, when nearly all their time should be spent in the home with her children. It is the mother after all who makes the nation strong and great.

I have discovered many instances where boys and girls have drifted into the criminal courts because mothers on account of their financial condition, were unable to properly care for them. In many instances the authorities have taken away the children from their mother and sent them to county or charitable institutions. This is not only inherently wrong, but it is cruel and inhuman. I am in favor of a mother's pension law. Sufficient funds should be appropriated by the council or county board to be expended by the courts, for the relief of needy and deserving mothers for the benefit of their children. I am credibly informed that it costs the county about \$4.00 per week to keep a child at the county institution, while it costs the mother about \$2.00 per week. Many mothers, splendid characters, are struggling along in the stormy battles of life, working from early morn till late at night, doing the very best they can, and yet there is not enough to feed the little ones at home. You can render no greater service to the community than when you provide the necessaries of life for a destitute mother and her helpless children. The mother is the natural and logical guardian. We should not permit the family to be separated. The very foundation of our state, the peace and happiness of our homes and that which brightens the fireside, is motherhood. Again, many times I have found that the father had deserted the family or cruelly mistreated them. I recall a case where a boy was brought into court for larceny; he said he stole that his mother, sisters and brothers might live. I was informed that the father had neglected the family, that he was shiftless and lazy, and a drunkard, and that he had been in and out of the house of correction nine times on the charge of vagrancy and drunkenness. I sent for the father; the mother was in court with a baby in her arms, and eight children. When the boy was called to the bar of justice, the father was called with him, and for a few silent moments the father looked at his son, and then came the awful awakening. It was not necessary for the court to say a word; the situation was clear; it was the father who brought on the boy's downfall. With full realization of what had happened, no one better appreciated its consequences than he. The father and son wept bitterly; new resolutions and promises were made; the boy was placed on probation;

employment was given to the father as well as to the boy, and the probation officer assumed control of their earnings. One year and seven months have passed; no longer is the family a county charge; the basement home in the alley which reeked with filth and vermin, is closed; a new home now with a hard-working father, a happy mother and fond children greet the pleasant rays of sunshine.

I cite this case not alone to show what the court did with the father and son, but to show that a great responsibility rests with the parent. The time will come in the near future when courts and juries will deal with the parents as well as with the erring youth.

During the past few years we have taken charge of the father who abandoned his family, with a view of reconstructing him and returning him to his home. I know of no class of cases which has given the department so much trouble as the abandonment cases. In many instances they have exhausted the patience of the probation officer. I am unable to describe the condition of most of these men as to appearance and state of mind when they are brought before the court. Dissipated, physical and mental wrecks, a class that would ordinarily be consigned to the human scrap-heap. I have no sympathy or mercy for the man who abandons his wife or children. To see innocent little children in a half-starved condition, suffering because of want and lack of care, is enough to induce the average judge to impose the maximum prison sentence.

Patience is a virtue; the judge should be tolerant. If the father can be returned home; if he can be made to understand that the fireside with his wife and children is the brightest and best place in the world; if he with the guidance of the probation officer will rebuild himself and the home, then we have not only reconstructed but we have added a unit which makes for the building of the community and state.

We have now over nine hundred men who have abandoned their families. At the present writing only seven are out of employment; the rest are working, and at home. The probation officer controls both his employment and earnings. In the past year the lowest wage was \$76 per month, and the highest \$300; a total earning capacity of \$960,000 per month, or \$1,800,000 per year.

I have often been asked the question, "Is it worth while?"—Yes it is. The result speaks for itself. To bring back nine hun-

dred fathers means to bring up four thousand children; it means better citizenship, and the saving of human souls. It is the story of the Shepherd renewed. He left ninety and nine good ones behind to go out into the wilderness to find the lost one, and when He had found him and brought him back there was great rejoicing. That is the greatest compensation after all. If any of you have not experienced the splendid and supreme satisfaction—try it. There are hundreds of lost ones waiting for you.

In my work on the bench it has always been an extreme gratification to have been able to assist and bring back the boy or girl who yields to temptation, to see them travel a straight path, to see them blossom into manhood and womanhood and making good—that brings a compensation beyond description.

Unwholesome environment and bad associates are the chief and immediate causes of crime. The state should not be revengeful or vindictive; the child is the nation's greatest asset. The citizen can do much in correcting the boy or girl who is doing wrong. We meet many in every walk of life who need advice. Do not shun them, but seek them, show them the way—it may be the turning-point of their lives. It remains for us to kindle the fires within the warm breasts of the unfortunate youths, which makes for a greater and better citizenship.

Let us then lead the way and inspire the child, which bears its fruit for a more splendid manhood and womanhood.