

THE INDETERMINATE SENTENCE

BY A PRISONER

DESPITE the fact that the indeterminate sentence is designed to benefit the criminal as well as the body politic, nearly every prisoner is opposed to its adoption. In the majority of cases this opposition is based on the belief that the chances for a 'square deal' would be very much reduced under the proposed plan. When asked what he thinks of the indeterminate sentence, the prisoner's reply is almost invariably a negative but none the less trenchant arraignment of the system which at present permits and countenances the employment of incompetent and irresponsible men as guards in penal institutions. Generally speaking, the only qualifications now required of an applicant for prison-guard duty are that he be an elector, and that he be of good physique.

For this reason — because there is always an element of uncertainty as to the nature of the men who are to control his life and destiny — the law-breaker prefers the five minutes' gamble with fate before a magistrate, to an indefinite, soul-racking jugglery at the hands of Jim-Crow political beneficiaries; nor can he be blamed for thinking that the guards of the future will not be any better qualified than are those of the present. Quite naturally he judges from what he sees and knows, failing utterly to apprehend that the adoption of the indeterminate sentence will necessitate a more capable and intelligent body of official prison subordinates, if the benefits which must accrue from a fair and impartial appli-

cation of the principles underlying it are to be realized.

The criminal class — the professional malefactors — oppose the indeterminate sentence for an entirely different reason. Collectively, they realize that its general adoption would ultimately result in their extinction; individually, they balk at the idea of being compelled to make a sustained and apparently sincere effort for self-betterment — the only 'open sesame' under the proposed reform.

These objections from prisoners, especially from professional criminals, constitute the strongest arguments in favor of the indeterminate sentence.

Under present conditions the prisoner's character and temperament is judged, where it is judged at all, by purely inverse methods. He is hemmed in by certain restrictions which he must not infract. He need not heed them in spirit. In short, he drifts along the lines of least resistance, the same as does the brute creation, and his fitness for parole, where the parole system is in practice, is, with one or two notable exceptions, based on his drifting ability. If, instead of merely being required to refrain from certain overt acts, the prisoner's release should depend upon his acquirement of certain knowledge and standards, coincident with a strict observance of the prison rules, we should soon reduce the number of indolent 'yeggs' and high-collared 'check-kitters,' not to mention even less desirable parasites.

Under the indeterminate plan an

offender would be sent to prison not for a term of years, but, if the case did not warrant probation, until cured, just as a person suffering from physical disease or infection is sent to a hospital or asylum, to remain for such period as may be necessary for his restoration to health.

In nearly every state where the indeterminate sentence has been adopted, its object and the good results which should come from it have been fatally circumvented by fixing a maximum limit beyond which the offender cannot be detained, no matter if he evidence criminal tendencies of the most pronounced character. This maximum is absurd. We do not predetermine the length of time a patient shall remain in a hospital or insane asylum, neither do we plough the ground and plant seed with the expectation of reaping an arbitrary harvest before the plant has matured. Why, then, should such predetermination obtain in the treatment of persons suffering from moral turpitude?

Many persons, and especially police officials, oppose the indeterminate sentence on the ground that it permits the criminal to get out of confinement 'too soon' — one year being the minimum prescribed in many of the states where the indeterminate sentence is in effect. They ridicule the idea of reform, and regard prisons solely as places designed for the punishment of those who commit crime. This view is held also by a surprising number of ratepayers.

Probably the time is not yet ripe for the elimination of the idea of punishment in dealing with those who violate the law, but a compromise may be effected pending evolution. This may be accomplished by fixing a minimum penalty based and graded on the specific nature, degree, or magnitude of the offense, by which the delinquent in each case may be kept in training a

definite period before becoming eligible for tentative freedom, or trial, on parole.

To illustrate: the person committing larceny to an amount not exceeding one hundred dollars, and without the element of cunning or premeditation, might be sent to the State Detention and Reformatory Institute, with the stipulation that he may, if he comply with the rules and regulations and evince the proper degree of improvement, be paroled at the end of one year. The person committing larceny by trick and device and premeditation might be committed with the stipulation that he be detained two years before becoming eligible for parole. The person committing robbery with violence might be committed with a stipulated minimum of four, or five, or more years, as the nature of the case might warrant; and so on up to offenses which are at present punishable by imprisonment for life, where a minimum service of eight, or ten, or fifteen years might be prescribed. This minimum determination might be left, with certain limitations, to the jury which hears the evidence and determines the guilt of the accused. The writer, however, believes that the officials in charge of institutions for the detention of criminal delinquents should not be hampered or restricted in any manner in determining when the subject is fit for trial on parole; which connotes that such officials shall be men of the highest character and qualifications.

If a prisoner sentenced as outlined above should remain refractory, or persist in criminal practices, he would remain in confinement for life if he did not change. It would be 'up to him.'

A number of extraneous arguments may be advanced why the indeterminate sentence should be adopted. Chief among these, perhaps, is the fact that the imposition of definite sentences by

magistrates of different temperaments and prejudices works many glaring injustices. Case-hardened criminals, familiar with court procedure and well versed in the weaknesses of human nature, wheedle judges into imposing 'light' sentences, while others, comparatively unsophisticated, perhaps accidental rather than deliberate offenders, get 'heavy' ones.

Two judges sitting in adjacent counties will sentence two men to prison on the same day and for the same character of offense and under circumstances practically parallel, one for two years, the other for ten. It is also well established that rural judges impose much severer sentences than do city magistrates. The explanation of this lies in the fact that the sparsely settled and remote communities, having few criminal cases, sacrifice each convicted person on the altar of that old and thoroughly exploded fallacy, 'an example.' As a result, hard-working laborers, capable miners, and good farmers are sent to prison for longer terms than are brutal 'yegg-men,' desperate 'prowlers,' and 'good' pickpockets.

The farmer or miner thus consigned to prison for an unconscionable term finds the place overrun with professional thieves, — many of whom are in for their third or fourth 'jolt,' — who are serving one quarter, or perhaps one half of the period he has been sentenced to serve. The farmer cannot help making comparisons, and before he finishes the long grind he determines to 'get even' with that society which has treated him so unjustly. Not only this, but being a farmer he does not become 'prison wise,' readily becomes

the cat's-paw for schemers against the prison rules, and undeservedly gets the reputation of being a 'hard man.' It is the professional thief who is a good prison drifter; he rarely gets into trouble — under the present slipshod methods. Naturally the farmer throws up the sponge, so to speak, and before the date of his release he is in reality a very dangerous and desperate man. He is purely and simply the victim of society's stupidity and indifference.

Men of the farmer class who return to the community whence they were committed, determined to redeem themselves, usually find all hands raised against them, and learn the bitterest truth of all — that the penalty for their offense was not paid when the prison gate clanged them into 'freedom.' It is your rural community that is steeped in self-righteousness.

A great many men in prison possess creative ability. Some one argues that this makes them all the more to be feared. Quite true, so long as they are not encouraged to turn this ability into legitimate channels, so long as it is considered insubordination for a prisoner to manifest initiative. Creative ability is at a premium in the world at large; in prison it is generally interpreted as indicating 'criminosity.'

Under the indeterminate sentence this, and all other injustices, would be eliminated, and each prisoner would be encouraged to direct his energy along the best lines for himself and for society. But to be effective, to be practical, the indeterminate sentence must be just what the term implies. The indeterminate sentence with a predetermined maximum is an emasculation.

HILL-FANTASY

BY FANNIE STEARNS DAVIS

*Sitteth by the red cairn a brown One, a hoofed One,
High upon the mountain, where the grasses fail.
Where the ash-trees flourish far their blazing bunches to the sun,
A brown One, a hoofed One, pipes against the gale.*

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I was on the mountain, wandering, wandering;
No one but the pine trees and the white birch knew.
Over rocks I scrambled, looked up, and saw that strange Thing,
Peakèd ears and sharp horns, pricked against the blue.

Oh, and how he piped there! piped upon the high reeds,
Till the blue air crackled like a frost-film on a pool.
Oh, and how he spread himself! like a child whom no one heeds,
Tumbled chuckling in the brook, all sleek and kind and cool!

He had berries 'twixt his horns, crimson-red as cochineal, —
Bobbing, wagging wantonly they tickled him, and oh,
How his deft lips puckered round the reed, and seemed to chase and steal
Sky-music, earth-music, tree-music low!

I said, 'Good-day, Thou!' He said, 'Good-day, Thou!'
Wiped his reed against the spotted doe-skin on his back.
He said, 'Come up here, and I will teach thee piping now,
While the earth is singing so, for tunes we shall not lack.'

Up scrambled I, then, furry fingers helping me.
Up scrambled I. So we sat beside the cairn.
Broad into my face laughed that hornèd thing so naughtily:
Oh it was a rascal of a wood-land Satyr's bairn!

'So blow, and so, Thou! Move thy fingers faster, look!
Move them like the little leaves and whirling midges. So!
Soon 't will twist like tendrils and out-twinkle like the lost brook.
Move thy fingers merrily, and blow! blow! blow!'