CHAPTER II

Failure of Punitive Treatment

I. FAILURE OF PUNITIVE TREATMENT TO PREVENT REPEATED CRIME

Despite all the theories of how punishment for crime operates to prevent crime, the fact is inescapable that on no theory does it accomplish that purpose with any reasonable degree of satisfaction. It is not an effective preventive either of first crime, or of repeated crime.

It is true that a great many persons never do commit crime, and also true that many who have been punished for crime do not thereafter offend again. How much of this abstention from wrongdoing can be attributed to the process of punishing those who do offend and are caught, there is no possibility of determining. Influences other than the use of punishment are also at work—all those imponderable factors of religion, of training in the home and in the schools, of conduct habits developed from early childhood, and of other conditioning forces by which conduct is controlled. To what extent a life of obedience to the precepts of the law is attributable to these latter, and how far it is produced by the infliction of punishment upon those who depart from the law's requirements, is at best a matter of speculation.

But if one were to attribute all abstention from crime to the effect of punishment of offenders who are convicted, the record would still be shockingly unsatisfactory. From the studies of Thorsten Sellin for The American Law Institute it appears that one man is now actually in jail out of every 225 over sixteen years of age who are free. Obviously many who now are free have been in jail and others will eventually be impris-
Hence criminologists estimate that sooner or later from one to two per cent of the population commits a crime serious enough to call for punishment by imprisonment. If this be true, the prevention of crime through the use of punishment is scarcely to be considered satisfactory.

But what is still more serious, because even more definitely a failure to accomplish its assumed objective, is the demonstrable ineffectiveness of the merely punitive process in preventing repetition of crime by the very individuals who have been subjected to it. Again the fact that some people who have been subjected to punishment do not thereafter commit further crime is undeniable, whether their conduct can be properly attributed to the punitive treatment or not. But it is equally undeniable that an appalling number of those who are punished do repeat their criminality, time and again, despite that treatment. Whatever of good the punitive process may possibly do in prevention of repeated crime, the extent to which it fails in its purpose is so widespread and so commonplace as to leave no room for doubt that it is not a satisfactory method of treatment of discovered criminals.

In the verse of Ogden Nash:

“Experience is a futile teacher,
Experience is a prosy preacher,
Experience is a fruit tree fruitless,
Experience is a shoe-tree bootless. . . .

“The burnt child, urged by rankling ire,
Can hardly wait to get back at the fire,
And, mulcted in the gambling den,
Men stand in line to gamble again. . . .

“He who has never tasted jail
Lives well within the legal pale
While he who’s served a heavy sentence
Renews the racket, not repentance. . . .”

18 From “Experience to Let,” I’m a Stranger Here Myself (1939) p. 51.
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Regardless, at the moment, of the reason, the fact exists.19

This, be it repeated, is not an assertion that punishment fails completely to prevent repeated crime. On the contrary, it must have some effect, slight though it be. Certainly many persons who have once been punished do in fact thereafter abstain from crime, and it is possible that this abstention is the result of the punishment. To what extent those who have been punished do so abstain, the collected data leaves in a cloud of uncertainty and dispute. Sheldon and Eleanor Glueck, who followed the careers of 422 young men for five years after their release from the Massachusetts Reformatory, found that 333 had committed new offenses to a total of 1,014 times, a third of them serious crimes—"89 were successes;" in the job of abstention from crime "71 were partial failures; 262 were total failures."20 On the other hand, Mr. E. R. Cass, secretary of the American Prison Association, reports that out of 2,257 parolees from New York penal institutions, "the record of five years shows a total of 82 1/2 per cent who were not convicted of any crime whatsoever while they were on parole."21 He does not say how many reverted to crime after the parole supervision was ended, and the "unknown factors" involved in Mr. Cass' figures make them less persuasive than the carefully checked data of the Gluecks. But despite all such uncertainties as to how much preventive

19 There is, of course, nothing original in this assertion by the present writer. Compare, from many essentially similar references, William Healy and Augusta Bronner, Delinquents and Criminals (1926) p. 229:

"There still seems to be a lingering notion among those who are poorly informed that punishment such as can be given under modern conceptions of humanitarianism forms an adequate program for older offenders. The hard facts of recidivism completely disprove this. Whether we speak of the juvenile or the adult offender we may fairly state that punishment in very many cases is no more reformative or deterrent than when it is used in family life. And there can be no doubt on the part of those of us who have occasion to study many instances of family life that where punishment is the only corrective the most unfortunate delinquent trends and mental attitudes are created."

20 Sheldon and Eleanor Glueck, Later Criminal Careers (1937) p. 11.

21 The Prison World, July–August, 1941.
effect punishment does in fact show, the larger fact still remains that its total effect falls far short of anything that could be considered reasonably satisfactory.

Specific instances are of little worth as proof, but they do have a modicum of value as illustration of what is indicated by data of broader scope. Those which follow are picked casually, without pretense of study to ascertain how far they are precisely representative. Because misdemeanants are imprisoned for shorter periods than felons, they have opportunity for more rapidly repeated wrongdoing and, as might be expected, their records of convictions run numerically higher. In the Detroit area one finds these:

W. E. 12 punishments for tampering with an automobile, 9 for larceny, 4 for other offenses.
F. R. 17 punishments, 6 of them on felony charges.
C. S. after 30 years in prison for 4 sex offenses, sentenced a fifth time at 59 years of age.
Kate R. 50 convictions in 30 years, a total of 9 years in jail.
J. W. T. 50 convictions for crime ranging from petty misdemeanor to felony.
F. E. 76 convictions carrying a total of over 4 years in jail.
Eddie M. 100 successive convictions. As he is now 61 years old and his latest offense was one for which he was sentenced to from 5 to 10 years in the penitentiary, his record may be at an end.

These individual records of persistence in felony despite punishment are from Chicago:

C. O'N. 1912, fraud, 1-10 years; 1919, fraud, 5-10 years; 1927, fraud; 1933, fraud, discharged February, 1940; July, 1941, fraud, 1-14 years.
E. C. 1930, robbery, 1-20 years; 1936, robbery armed, 1 year to life, paroled July, 1940; February, 1941, attempted robbery, 1-5 years.
O. D. 1922, robbery, 5-40 years; 1932, attempted murder, 1-14 years, discharged August, 1940; March, 1941, robbery armed, 1 year to life.
T. O. 1901, burglary; 1902, burglary, discharged January, 1909; February, 1909, burglary, 4 years; 1912, burglary, 10 years; 1910, burglary, 2–14 years; 1940, burglary and attempted murder.

J. N. 1907, burglary, 2 years; 1908, burglary, 2 years; 1910, burglary, 5 years; 1914, homicide, 10 years to life (escaped); 1915, rape, 12 years; 1923, burglary, indeterminate sentence; 1929, assault; 1933, burglary, 1 year to life.

G. W. 1918, concealed weapons; 1920, larceny, 6 months; 1921, larceny, 6 months; 1922, larceny, 1 year; 1923, larceny, 1 year; 1924, burglary; 1929, malicious mischief, 6 months; 1931, larceny, 15 days; 1931, mail theft, 2½ years; 1940, robbery armed, life.

C. N. 1933, burglary, 18 months; 1935, burglary, 5 years; 1937, burglary, 3 years; 1940, burglary, 1 year to life.

C. McC. 1925, burglary, probation; 1926, auto theft, 1–10 years; 1930, robbery armed, 1 year to life; paroled October, 1939; December, 1939, robbery armed, 20 years.

The particular localized search from which the foregoing eight illustrations resulted produced in a relatively few hours a total of 95 similar cases, in none of which had less than three punishments been actually inflicted, with a median of approximately five times in jail. The futility of mere punishment as preventive of repeated crime could be thus exemplified by specific instances many thousands of times.

That such cases represent the rule rather than an exception is demonstrated by the data of wider scope. Thus, in an attempt to find out which of two Pennsylvania penal institutions was preferred as a place of sentence by state judges, an investigator happened on the fact that, out of 12,370 persons committed, 12,028 had already served terms in one or the other and 342 had been confined in both. Moreover, 1,235 of the group had been previously confined from two to five times each in those two institutions alone. That these were not cases of little social importance is indicated by the fact that
two-thirds of the commitments were for larceny, robbery and burglary, and half the sentences were for terms of more than five years.22

So commonplace, indeed, is the repetition of offenses despite punishment, that the population of state penitentiaries is more than half composed of persons who have been in penitentiaries before. Thorsten Sellin, in his studies for the American Law Institute, found the following percentages of prisoners in penal institutions who had already experienced previous punitive confinement—and it must be remembered that because of inaccurate reporting of prior penalties the figures are somewhat less than the truth:

<table>
<thead>
<tr>
<th>Institution</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal prisons and camps</td>
<td>45.2%</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>64.8</td>
</tr>
<tr>
<td>Connecticut</td>
<td>56.2</td>
</tr>
<tr>
<td>New York</td>
<td>55.6</td>
</tr>
<tr>
<td>New Jersey</td>
<td>56.0</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>59.8</td>
</tr>
<tr>
<td>Indiana</td>
<td>58.1</td>
</tr>
<tr>
<td>Illinois</td>
<td>49.5</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>56.6</td>
</tr>
<tr>
<td>Iowa</td>
<td>44.1</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>70.9</td>
</tr>
<tr>
<td>West Virginia</td>
<td>59.3</td>
</tr>
<tr>
<td>Kentucky</td>
<td>48.7</td>
</tr>
<tr>
<td>Arkansas</td>
<td>21.3</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>38.1</td>
</tr>
<tr>
<td>Colorado</td>
<td>44.2</td>
</tr>
<tr>
<td>Washington</td>
<td>54.8</td>
</tr>
<tr>
<td>Oregon</td>
<td>46.5</td>
</tr>
<tr>
<td>California</td>
<td>58.7</td>
</tr>
<tr>
<td>Total of all institutions</td>
<td>50.5%</td>
</tr>
</tbody>
</table>

The proportion of prisoners who had committed particularly serious crime despite previous punishments was, he

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found, even higher than that of the prison population as a whole:

<table>
<thead>
<tr>
<th>Crime</th>
<th>Previous commitments</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(not necessarily for same type of crime)</td>
</tr>
<tr>
<td>Homicide</td>
<td>61.7%</td>
</tr>
<tr>
<td>Robbery</td>
<td>61.9</td>
</tr>
<tr>
<td>Burglary</td>
<td>65.1</td>
</tr>
<tr>
<td>Embezzlement and fraud</td>
<td>75.5</td>
</tr>
<tr>
<td>Forgery</td>
<td>77.7</td>
</tr>
<tr>
<td>Rape</td>
<td>58.0</td>
</tr>
<tr>
<td>Violation of drug laws</td>
<td>90.3</td>
</tr>
</tbody>
</table>

Other reports read similarly. For example, the official report of the West Virginia Penitentiary, 1936–1939, shows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Commitments</th>
<th>2d</th>
<th>3d</th>
<th>4th</th>
</tr>
</thead>
<tbody>
<tr>
<td>1936–7</td>
<td>1005</td>
<td>255</td>
<td>107</td>
<td>31</td>
</tr>
<tr>
<td>1937–8</td>
<td>1121</td>
<td>254</td>
<td>105</td>
<td>51</td>
</tr>
<tr>
<td>1938–9</td>
<td>1167</td>
<td>248</td>
<td>110</td>
<td>44</td>
</tr>
</tbody>
</table>

In addition to this number who were repeating penitentiary experience, there were in the penitentiary on June 30, 1939, 425 persons who had previously been punished by imprisonment in a state reformatory.24

The Prison Industries Reorganization Administration found that this recidivism is not confined to crimes of serious character. On the contrary, "an analysis of the Jail population on a flow basis shows about 75 percent to be repeaters who have been in the Jail or the Workhouse again and again for petty offenses. Five percent of the men released in April 1937 had each served over fifty previous commitments under sentence."25

The unhappy conclusion to which a student of such data is almost necessarily driven is thus expressed by Mr. Sellin:

23 Thorsten Sellin, The Criminality of Youth (1940) pp. 73, 85.
“There is no doubt that once a person has been brought to justice, the causes that brought him there, the social stigma of conviction, and the frequently harmful instead of corrective punishment contrive to increase the likelihood of his committing a later crime; i.e., a person once punished for a crime is from a statistical point of view much more likely to commit a crime than one who has never been punished. In other words, a person is more likely to become a second offender than a first offender.” Indeed, he concludes, so definitely not preventive is punishment that one who has been punished for crime is seven times more likely to commit repeated crime than one who has not committed crime at all.

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26a Cogent data to the same general effect appear in Sheldon and Eleanor Glueck’s publications—*One Thousand Juvenile Delinquents* (1934); *Juvenile Delinquents Grown Up* (1940); *500 Criminal Careers* (1930); *Later Criminal Careers* (1937).

It goes without saying that this failure of the punitive system is by no means characteristic only of the United States. So widespread is it that data from other countries would be supererogation. But the first few paragraphs of the Report of the Departmental Committee on Persistent Offenders, presented by the Secretary of State for the Home Department, London (1932, Cmd. 4090), is an effective statement.

“The need for an enquiry into the methods of dealing with persistent offenders arises not because the number of criminals in this country is large, but because a large proportion of the persons convicted of offences have been repeatedly guilty of previous offences and are neither reformed nor deterred by the sentences passed upon them. . . . In all there were 39,000 imprisonments of persons convicted of offences, but 12,500 resulted from failure to pay fines, leaving only 26,500 cases in which imprisonment was imposed without the option of a fine. . . . In 20,384 cases the offenders had been previously in prison. . . .

``4,740 had served 1 previous sentence
2,952 " " 2 " " sentences
1,949 " " 3 " " "
1,499 " " 4 " " "
1,115 " " 5 " " "
3,382 " " 6–10 " " "
2,622 " " 11–20 " " "
2,125 " " over 20 " " "

“The probability of relapse increases with the number of previous sentences, and a substantial part of the prison population consists of a ‘stage army’ of individuals who pass through the prisons again and again. . . .

“That the present methods of dealing with persistent offenders are unsatisfactory is the general burden of all the evidence we have received, whether from witnesses who have judicial or magisterial experience, or from representatives
So, what? Assuming that the punitive process of treatment is a lamentable failure, is there reason to suppose that some other method of treatment would be a more effective preventive? Before that question can be answered one must consider particularly why the punitive method fails.\(^{27}\)

2. REASONS FOR THE FAILURE OF PUNITIVE TREATMENT

Punishment necessarily fails in satisfactory prevention of repeated crime for the simple reason that while punishment may possibly beget a desire to refrain, it is not designed and, of the police, or from prison administrators, or from social workers and philanthropists, or from medical experts and psychologists.\(^{27}\)

\(^{27}\) In anticipation of what follows, obviously suggesting that “punishment” for crime is one thing but that equally unpleasant, equally undesired consequences to the convicted criminal are something other than “punishment,” it seems wise to define that term as this writer uses it.

The imposition of suffering is punishment, or something else, depending upon the purpose with which it is imposed. Neither the wounded soldiers whose limbs were once amputated without anaesthesia, nor the “insane” persons who today are forcibly confined in “hospitals,” are thought of as being punished thereby. The unwilling school-child may be punished with the birch, but he is not being punished by his compelled attendance at school. No more is the convicted criminal necessarily “punished” if, because of the fact of his offense, he is subjected to segregation from society, to compulsory education of some sort, or to corrective medical and surgical treatment. If the purpose of the treatment is primarily to cause him suffering and thereby, through its reformatory effect on him, ultimately to protect the public, it may fairly be called punishment. But if its purpose is primarily to protect the public by his segregation or education, then, though incidentally it may cause him suffering, it is no more lexicographically punishment than the enforced segregation of a smallpox victim during the period of his infectiousness is punishment.

If this be elaboration of the obvious, the explanation is made because some writers have assumed that any unpleasant, or undesired, treatment following conviction of crime is *ipso facto* “punishment” regardless of why the treatment is utilized. Thus Jerome Hall, “The Youth Correction Authority Act,” 28 A. B. A. J. 317, 318 (May, 1942), “We may accept the pragmatic test that punishment is the deliberate infliction of unpleasant consequences by state officials after conviction for crime.” His context makes clear that in his connotation of the word, what would not be punishment if done by state officials to an ascertained paranoiac would be punishment if done in the same way, *for precisely the same purpose*, to an ascertained criminal.

It is true that the consequences imposed on ascertained criminals have heretofore been primarily for the purpose of causing suffering and have, therefore, been punitive. But it does not follow that every unpleasant consequence must be called punitive no matter how different its purpose. At any rate, the distinction between consequences imposed for the purpose of causing suffering—which is the present treatment—and consequences which, though unpleasant, are im-
so long as it remains punishment, cannot be designed, to foster an ability to refrain.

Neither is punishment, as such, suited to the protection of the public against criminals who are known to be undeterred and undeterrable by punishment.

a. Deterioration of Character

As it has been traditionally executed and is still commonly applied, the punitive process is not calculated to strengthen even the desire to live in conformity with law. Theoretically speaking, punishment might be individualized in its application, as well as in its character, but the dictates of practical necessity have made it in fact a mass procedure in which whole groups of persons subjected thereto are dealt with in a body. But mass punishment inevitably tends to the deterioration of character, rather than its improvement. When innocence is contaminated by wickedness, when unsophistication is educated by experience, or when casual wrongdoing is encouraged by evil association to the point of a pervading viciousness, the very desire to abstain from criminality may be utterly destroyed. Fear, perhaps, may be instilled; but not a wish to conform with righteousness. And fear, without willingness toward law-abiding conduct, is proved by history a futile weapon of protection.

That character degradation as a consequence of prevailing mass methods of punishment is no mere remote possibility, but a very real actuality, is the opinion of every thoughtful investigator. "Among all environmental conditions which tend to create anti-social conduct none is better known than those which surround the offender during custody. The very individual whom society would turn into the paths of rectitude is often made much worse by experiences forced upon him." 27a posed primarily for other purposes, is what the writer has in mind in suggesting that treatment other than punishment must be considered.

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This smothering of instincts toward proper conduct by the overlay of close association with evil and viciousness of example may not be an unavoidable concomitant of punishment for crime. Conceivably, such individualization of treatment might be possible as would evoke all the desirable responses without at the same time counteracting them with destructive influences. But as a practical matter, that process has not been put into operation. Save in occasional institutions, neither actual practice, nor the law itself, makes more than a pretense of protecting potential rectitude of conduct from the destructive association of penitentiary existence. Thus even in its hope of begetting a wish to live within the law, the merely punitive process defeats itself.

b. Neglect of Rehabilitation

Obviously, no system of treatment which aims at prevention can even theoretically be of satisfactory effectiveness so long as it returns its subjects to society no better fitted to live a law-abiding existence than they were before the treatment began. All the alleged causes of crime boil down in the ultimate to two types—either the individual has yielded to wrong doing because he was subject to pressures not affecting those who do not commit crime, or else his resistance has been less than that of others who do successfully resist similar pressures. Although no method of treatment of the individual can alter the external pressures by which he will thereafter be driven, a properly designed treatment can effectively influence his reaction to those pressures. It may create in him an ability to evade certain influences which he lacks the capacity to resist; or, in the alternative, it may beget in him an increased capacity to resist the influences which he cannot evade. If either is accomplished, the likelihood of his abstention from repeated crime is increased. If both these
ends are attained, his abstention is still more probable. Conversely, if neither his facility for evading dangerous pressure is developed, nor his capacity for resisting pressure to which he may be subject is increased, then certainly his capacity to abstain from crime will not be strengthened, whatever his desire thereto may be.

The system now relied upon, the punitive process, does not even in theory pretend to develop its victims' capacities for law-abiding self-support, nor does it create in them a facility for avoiding the conditions which normally make for crime. As a punitive process it does not attempt to discover and remedy the physical or mental abnormalities which drove the individual into crime; it cannot, as a punitive proceeding, seek to improve his capacity for self-support without recourse to crime. Though it may in theory create a will to refrain, it does not create a capacity to refrain. It relies upon one thing, and one only. It presupposes that all that is necessary, or at least all that can be done, to prevent repetition of crime is to strengthen the desire to abstain.

Unfortunately, this basic assumption is fallacious, as experience has proved and statistics demonstrate. Not only are other procedures imperative, but other methods are possible. It may be quite true that we cannot generalize about the causes of crime. It does not follow, however, that we cannot determine and correct the cause in a particular case. We may concede with Messrs. Carl Murchison and A. A. Hartman that neither crime nor its repetition is usually the product of subnormal intelligence. Nevertheless, in particular instances, that may be clearly the precise reason for the wrongful conduct. So, too, we may agree with Healy and Bronner that the older idea of criminals as the mal-nourished, the physically undeveloped members of society, is no longer maintainable. Yet, beyond question in particular cases, some mal-nourishment or undevelopment may be the obvious cause of particular
criminality. Granting, too, that Messrs. Schlapp and Smith fail to prove their thesis that most crime is the product of glandular abnormality, still no one would have the hardihood to deny that in some particular cases glandular abnormality is the cause, and a curable cause. The crime-productive influences of poverty, or of a sense of inferiority, can be minimized by training in the skills of earning a living.

Yet as a counter-measure to so many and so variant possible causations of crime, the punitive system offers only punishment. At most it sets up a counter-incentive. It does not and cannot, so long as it remains a punitive system, search out individual causations and eliminate them.

c. Lack of Assistance Following Punishment

A third reason for the failure of punishment to prevent repeated crime is the neglect of government actively to assist those whom it has punished in leading law-abiding existences. For a man who has been released after punishment to live in obedience to law is more difficult than for one who has never been convicted. The stigma of a recorded conviction precludes his enlistment in the army; during a state of war it bars him from work in many "defense" activities; even in time of peace and prosperity, it seriously limits the number of employers who are willing to hire him. Those are consequences which perhaps cannot effectively be avoided by wise legislative enactment. But even if the fields of opportunity were as free to the released convict as they are for a man who has never been convicted, the obstacles facing an ex-convict who

28 Max Schlapp and Edward Smith, The New Criminology (1928). A vigorous argument to the effect that much repeated crime could be prevented by appropriate surgical and medical treatments—which would, of course, include psychiatric methods—and that such treatments are practicable even within the penal system and should be utilized, is set forth in the Report of the Departmental Committee on Persistent Offenders, presented by the Secretary of State for the Home Department, London (1932, Cmd. 4090).
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wants to go straight are peculiarly hampering. Some wealthy malefactor may find employment after release as superintendent of a friend's estate. Another may be met by a delegation of old associates who banquet him in honor of his release. But the average offender is handicapped from the moment of release. In the words of a prison administrator: "When prostitutes are sentenced to my institution, we cure them of disease; at the end of their terms we turn them on to the streets, with no money, no job, no home, no place to sleep. Is it strange that they come promptly back to us?"

For an unemployed man, or woman, to get work takes capital—money for food and a place to sleep while hunting employment; money for transportation; money to keep oneself presentable; money, often, for the tools of his trade; money for admission to a union, without whose card no one will dare to hire him. The released and out-of-work ex-convict, often frightened by the world from which he has long been excluded, needs guidance, sympathy, the intangible assistance that only humanity can give. What he cannot get from one group, he will inevitably seek from another. If the law withholds what he needs, crime may seem to offer it.

Punishment cannot furnish what he must have to keep him from crime. Some other institution can be set up for the purpose, but it will be an agency of assistance, not punishment.

d. Return to Freedom of Persons Known to Be Dangerous

If punishment itself is thus insufficient for the effective prevention of repeated wrongdoing, neither can the punitive system, after it has punished a man, keep him out of society merely because it is evident that he will commit another crime as soon as released. Eddie Murphy, for example, was sentenced, punished, returned to freedom—and promptly re-sentenced for further crime—one hundred times. After his
first half score of repetitions no one could have supposed that he would not promptly offend again when released. The only possible protection of society against his repeated depredations would have been his continued segregation from society. But Murphy could not be detained for more than a short period following each offense because he was only being punished for the offense, and a penalty of long duration would have been undeserved and outrageous.

The records are filled with instances where known offenders, sentenced to years of imprisonment for heinous crime, have eventually been returned to society, not because anyone believed their release would be safe, but because the term of reasonable punishment had expired. Enforced segregation for ends other than punishment is commonplace. “Typhoid Mary” was held in a New York institution year after year because she was a continuing danger to public health. Insane persons are confined for life to protect the public safety. But “punishment” is limited not by what the public needs, but by what the crime will justify. Here, again, punishment is found wanting as a means of social protection.

The case of Dominick Piccone is illustrative. Sentenced to 3½ to 4 years in the Michigan penitentiary for attempted rape of a negress, he was kept out of society as long as the law permitted. Before his release the prison psychiatrists reported that release would be definitely dangerous. “He is not frankly psychotic,” they said, hence “not committable” to an institution for the insane, but he is “definitely assaultive and potentially homicidal.” Yet, because his term of punishment had expired, and he was not what the law calls “insane,” the prison authorities had no right to hold him longer. He was released. Within two weeks he had murdered three persons. (Associated Press, April 3, 1942).