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THE INTERNATIONAL PENAL AND PENITENTIARY CONGRESS (1910) AND THE INDETERMINATE SENTENCE

Negley K. Teeters

The author is Professor of Sociology in Temple University, Philadelphia. He will be remembered as the contributor of "Early Days of the Maine State Prison at Thomaston"—this *Journal* Vol. XXXVIII, 2, July-August, 1948. The present article is a portion of a chapter in Professor Teeters' forthcoming book which will deal with the work of the eleven International Penitentiary Congresses.—EDITOR.

It has been almost forty years since the Eighth International Penal and Penitentiary Congress was held in Washington, D. C., the only one of the eleven ever to be assembled in the United States.

Some seventy-five years ago Dr. Enoch Cobb Wines, then secretary of the Prison Association of New York, issued a call to penal lawyers and prison administrators throughout the world to sit down to discuss problems mutually interesting to them all. Wines received his inspiration from the Russian, Count Wladimir Sollohub, director of the Moscow prison, who had written suggesting that an international forum be developed to discuss penal and penitentiary matters. After a great deal of hard preliminary work on the part of Dr. Wines the first London Congress convened in 1872. Subsequent Congresses have been held at Stockholm in 1878; Rome in 1885; St. Petersburg in 1890; Paris in 1895; Brussels in 1900; Budapest in 1905; Washington in 1910; London in 1925; Prague in 1930; and in Berlin in 1935. The traditional five year interval was broken during the two world wars. A Congress had been called for Rome in 1940 but had to be abandoned.

While the United States took the lead in establishing the International Penal and Penitentiary Commission, composed of one official commissioner from each country, it was a long time before actual official recognition was granted. Great Britain shared in this tardy policy since both countries waited until 1895 to give their official blessing to the movement. However, prior to that date this country sent Dr. Wines as its representative until his death in 1879, and then Caleb Dwinell Randall of Coldwater, Michigan and still later, Samuel June Barrows of New York. Randall represented this country at Stockholm, Rome and St. Petersburg unofficially and Barrows moved for official recognition at Paris in 1895. He continued in his official capacity until his death one year prior to the Washington Congress in 1910.

The present United States Commissioner is Sanford Bates of New Jersey. Mr. Bates is also president of the Commission having been elected to this office in 1947.

The Washington Congress, held between October 2 and 8 of 1910, was presided over by Charles Richmond Henderson, sociologist and social worker affiliated with the University of Chicago. Dr. Barrows' distinguished wife, Isabel Chapin Barrows, was present and contributed much to the success of the meetings. Following the usual custom of the various Congresses, the Washington meetings were divided into four sections: I. Penal Legislation, presided over by Professor Adolphe Prins of the University of Brussels, Belgium; II. Prison Administration, Dr. Simon van der AA, University of Gronigen, Holland, president; III. Prevention, Sir Evelyn Ruggles-Brise, president of the Prison Commission of Great Britain, president; and IV. Care of Children and Minors, Dr. Katherine Bement Davis, superintendent New York Reformatory for Women, president.

Preliminary Work and Hospitality

Perhaps the most significant feature of the Washington Congress, aside from the resolutions adopted, was the extensive tour of inspection of some of the prisons and reformatories of this country which was arranged by the entertainment committee headed by Frederick H. Mills. The tour included visits to Elmira Reformatory, Auburn prison, the Industrial School at Industry, N. Y., the George Junior Republic at Freeville, N. Y. and several institutions in Indiana, Illinois and Kentucky.

It is of interest to note some reactions to this tour by two of the foreign delegates, Count Ugo Conti of Italy and Adolphe Prins of Belgium. Both Messrs. Conti and Prins were loud in their praise of American reformatories but were sharply critical of our county jails. Both also denounced the practice of sterilization of criminals which they witnessed at the Jeffersonville, Indiana reformatory. Indiana had passed a sterilization law in 1907 and its chief protagonist, Dr. Harry C. Sharp, was quite enthusiastic about it as a crime deterrent. Count Conti also deplored lynching. While on the inspection trip he read of the lynching of two Italian boys in Florida. Both practices—sterilization and lynching—seemed to this visitor most incongruous in a country proud of its democracy, penal progress and concepts of liberty and equality.¹

¹ See *Journal of Criminal Law and Criminology* Vol. 2, 1911-12 pp. 195-215 for accounts by Count Conti and Prof. Prins. Also, *Survey*, November 5, 1910 (Vol. 25) pp. 237-240, for another account of the tour by J. Simon Van der Aa of Holland, "An Excursion into Reformatory America."

Aside from the tour of inspection the visitors were entertained with several dinners and a tour of Mt. Vernon. President Taft received the official delegates at the White House. The American Prison Association held a sumptuous dinner at the Willard Hotel. Each guest was presented with a silk American flag in a leather book. Attorney General George W. Wickersham tendered another dinner at which occasion each delegate received a set of four volumes setting off the status of prison reform and public charity in the United States. Three of these books were edited by Dr. Henderson, and the fourth by Dr. Hastings Hart.²

The various sessions of the Washington Congress were held in the Pan American Union building, referred to in the official French *Proceedings* as the Bureau of the American Republics. The first meeting, held on October 2, was presided over by Attorney General Wickersham who welcomed the delegates to the United States. The response was tendered by the retiring president, Jules Rickl de Bellye from Hungary. The closing speeches of the Congress were made by Dr. Henderson and Sir Evelyn Ruggles-Brise, newly elected president, from Great Britain.

Since this is the only meeting of the International Penitentiary and Penal Commission to meet in this country it is of some interest to comment on some of the high-lights that materialized, aside from the routine deliberations of the assembly. In the *Survey* magazine for November 5, 1910, Paul U. Kellog has presented much valuable material concerning this distinguished series of meetings. While it is doubtless true that few issues provoked much heat, all of them were accompanied by stimulating expression of opinion. The delegates were authorities on prison matters as well as penal and criminal law and were thus articulate and even vociferous in their convictions.

The status of the Russian prisons and more especially, the Siberian exile system, was attacked in the American press during the period of the Congress. However, this matter was scrupulously avoided in the sessions. Etienne de Khrouleff, head of the Russian prison system, was "ill-pleased" at this criticism by the newspapers. Mrs. Isabelle Barrows, widow of the first official Commissioner sent to the Congresses by the United States, familiar as she was with Russia prisons, made this comment regarding de Khrouleff:

Mr. de Khrouleff is not ignorant of Russian conditions. He has served in many parts of that vast empire, and made visits to the penal settlements to Siberia. He has seen European and American institutions and

² Vol. I, "Prison Reform"; Vol. II, "Penal and Reformatory Institutions"; Vol. III, "Preventive Agencies and Methods"; Vol. IV, "Preventive Treatment of Neglected Children"; all published by the Russell Sage Foundation, 1910.

marked their results, and if in his great field he does not adopt the best means of treating criminals he will sin against the light. He has it also in his power to lessen the sufferings of political offenders, and will command the gratitude of civilized countries if he takes advantage of his power and undoubted ability to lighten the hardships of prisoners of every kind. Such work is needed in Russia.³

Russia was also represented by an unofficial delegate who was obviously opposed to the Siberian exile system. This was a Kiev attorney, A. S. Goldenweiser. He had written an essay on Tolstoi's great work, *Resurrection*, which, translated by his son, E. S. Goldenweiser, an American citizen, was distributed to the delegates of the Congress. Thus, in this unique manner, the Siberian exile system stood condemned before the Congress.

Coming to the defense of the Russians, the Britisher, Sir Evelyn Ruggles-Brise, dryly remarked that Americans were in no position to criticize Russia when, at that very moment, many southern states were shackled with the "chain gang" with all its brutalities.

The Washington Congress and the Indeterminate Sentence⁴

Traditional penology yields slowly. The indefinite, or indeterminate sentence was not new in 1910. In theory the principle goes back to the dim past. It was put into practice, so far as children were concerned, in the early Houses of Refuge in New York, Boston and Philadelphia in the years following 1824. Alexander Maconochie strongly advocated it, as opposed to the fixed sentence, on Norfolk Island off the coast of Australia, in 1840. Archbishop Whately suggested the indefinite sentence for adult prisoners as early as 1832 and the great phrenologist, George Combe, urged it in his *Moral Philosophy*, in 1835. Both Georg M. Obermaier commandant of the prison at Kaiserslautern and later, the Munich prison, and Col. Manuel Montesinos of the Valencia prison in Spain, advocated modifications of the indeterminate sentence. In fact, the colonial penologist, Dr. Benjamin Rush, advocated a break with the fixed sentence as early as 1787. Wrote the Philadelphia physician at that early date:

The nature, degrees and duration of the punishments should all be determined beyond a certain degree by a court properly constituted for that purpose, and whose business it should be to visit the receptacle for criminals once or twice a year. . . . Let the various kinds of punishments that are to be inflicted on crimes be defined and fixed by law. But let no

³ *Survey*, Vol. 25, p. 232.

⁴ Some of this material is taken from a summary appearing in the *Survey* for November 5, 1910 and written by C. W. A. Veditz, professor of sociology, George Washington University.

notice be taken, in the law, of the punishment that awaits any particular crime. . . . Punishments should always be varied in degree according to the temper of the criminal or the progress of his reformation.⁴

But tolerance of the indefinite sentence for adults evolved slowly even in the United States. It was adopted in sentencing young adult prisoners to the reformatories following the opening of the Elmira, N. Y. institution in 1876 and during the first decade of the present century to adults in penitentiaries through the minimum-maximum sentence laws.

The caution with which the Washington delegates handled the indeterminate sentence proposal is understandable as we view its deliberations today. The same proposal had been repudiated in no uncertain terms at the Brussels Congress in 1900 and was not even presented for discussion at the Budapest Congress in 1905. But it was an issue that could not be pushed aside for long. Thus the stand taken by the Washington assembly on this issue represents one of the most revolutionary departures from traditional penology ever taken by this conservative body. And, as we shall point out, it was accepted here only in principle and only after a bitter struggle.

For three mornings at the Washington conclave the merits and shortcomings of the indeterminate sentence were vigorously debated. Reports on the issue were submitted by the following delegates:

- Adolphe Prins, Professor, University of Brussels, Belgium
- Count Wenzel Gleispach, Professor, University of Prague, Austria
- Ruestem Vambery, Professor, University of Budapest, Hungary
- Paul Lublinsky, Professor, Imperial University, St. Petersburg, Russia
- Gordon E. Sherman, Professor, Yale University, New Haven
- John H. Wigmore, Professor, Northwestern University, Evanston, Ill.
- Ugo Conti, Professor, University of Rome, Italy
- A. Schrameck, Director of French prisons
- Etienne de Khrouleff, Chief of Administration of Russian Prisons, St. Petersburg, Russia
- Gustave Spech, Member, *Societe Generale des Prisons*, France
- Demetrios Castorkis, Chief of Greek Prisons
- H. C. Dresselhuys, Director General of the Central Prison of The Hague, Holland
- D. O. Engelen, President of the Tribunal, Zutphen, Holland
- J. A. Leonard, Superintendent, Mansfield, Ohio Reformatory
- R. W. McClaughry, Warden, Leavenworth Federal Prison, Kansas
- Frederick Howard Wines, Superintendent of Welfare, Springfield, Ill.

⁴ *An Inquiry into the Effects of Public Punishments upon Criminals and upon Society*, Philadelphia, 1787.

The reports were summarized by Professor Gordon E. Sherman of Yale University. He maintained an entirely conservative view in his summation. He called attention to the fact that the absolute indeterminate sentence without minimum or maximum limits had not, up to that time, been adopted nor even contemplated in any state, either here or abroad. He furthermore contended that the reform was not consistent with the principles of criminal jurisprudence. He urged the retention of the principle of determinate punishment but favored indetermination as a means of regenerative treatment in the case of youthful offenders and as a measure of security applied to those who form a continuing menace to public order.

The ensuing discussion made it immediately clear that many of the foreign delegates, notably those from the Latin countries, regarded the indeterminate sentence with skepticism. D. O. Engelen of Holland thought it applicable only as a measure of safety in dealing with dangerous criminals. His compatriot, H. C. Dresselhuys, considered it unwise and inexpedient to replace the penal judge by a penitentiary judge; the former does his work in the full glare of publicity and usually uninfluenced by improper considerations, whereas the prison authorities are not subject to the same publicity and are more likely to be unduly influenced.

Senor Eugenio Silvela y Corral (former deputy and attorney in the supreme court of Madrid, Spain) considered the principle inapplicable save in Anglo-Saxon countries. It must not be forgotten, he said, that in Latin countries it has taken centuries to establish the principle of determination and to substitute for the whim of the executive, a clearly defined, definite penalty for offenses against the law. Indefiniteness as to the gravity of the crime, as to the rights of the accused, and as to the term and variety of punishment, were characteristic features of a tyrannical and unhappy epoch. To reintroduce indefiniteness would be running counter to popular notions of penal justice that are now a part of the public conscience in the Latin countries.

Demetrious E. Castorkis (fellow of the National University, deputy from Cephalonia, Greece) accepted the principle of the indeterminate sentence, provided sufficient precautions were taken to make the board of conditional liberation competent and honest. Said the Greek delegate:

The theory is that the criminal is a patient; he needs to be cured of his antisocial tendencies. But it is imperative to make sure that the physician is not a quack and that the patient will not be discharged until really cured. Upon this point the success or failure of the indeterminate sentence ultimately depends.

Most of the foreigners were laudatory and some of them enthusiastic in their references to the American institutions in which the indeterminate sentence is applied—such as the Elmira Reformatory [Mr. Zebulon R. Brockway, its first superintendent, attended the first and second meetings of the section] but they were apparently loath to accept the principle as a basic feature of penal law. Said one foreign delegate:

In the minds of the people everywhere the idea of imprisonment as a penalty, as a retaliatory movement on the part of the community against which the criminal has offended, is too natural and too deep-seated to be lightly brushed aside. There are, moreover, a number of offenders who are not really bad, who commit some minor offense as the result of exceptional circumstances which may never recur (*criminels d'occasion* or *criminels passionnels*). For such offenders it would be absurd to apply a system of reformation; they have violated a rule of social conduct and should be made to pay a definitely prescribed penalty.

An ingenious attempt was made by Count Ugo Conti, of the University of Rome, to graft certain indeterminate features upon the system of determinate punishments: "Recognizing the merits of indeterminate punishments, Section I should refuse to accept indetermination as a fundamental principle, but might accept it as a means of public security to be applied in the case of dangerous criminals and of habitual recidivists as a sort of supplementary penalty to be added, if necessary, to the fixed period of imprisonment."

At this stage of the discussion the section appeared to be evenly divided between two apparently conflicting views: (1) That of accepting the indeterminate sentence as a basic principle, but circumscribing it by a series of limitations and qualifications; and (2) that of refusing to accept it as a fundamental principle, but grafting it upon the present system as a modification applied to specific, rather exceptional groups of offenders.

Whereupon Professor Adolphe Prins, of Belgium, president of the section, declared himself an advocate of the "scientific principle of the indeterminate sentence," and asked for a vote for or against its acceptance—as applied to certain classes. He declared, "Either we will have nothing to do with it in any form, or we would accept it for certain classes of offenders and with certain modifications. If a majority rejects it entirely, there is no need for further discussion." Put to a vote the "scientific principle of indetermination" was then accepted. A majority also voted in favor of its application "to mental and moral defectives."

But how much further should its application be carried? A long debate on this question resulted in the designation of two

committees—one, consisting of Count Ugo Conti of Italy and Professor Gordon E. Sherman of Yale University, favoring a very slight further extension of the principle of indetermination (to dangerous and habitual offenders in the guise of a sort of traditional penalty); and the other, headed by Count Wenzel Gleispach, of Prague, and Professor Rueztem Vambery, of Budapest, Hungary, going considerably further. The latter, contrary to the expectations of many of those present, won the day, after some changes in its propositions. Count Gleispach stated it to be his belief that public opinion is ripe in many countries for making a big breach in the present system of penal law. The resolutions finally adopted were:

The Congress approves the scientific principle of the indeterminate sentence.

The indeterminate sentence should be applied to moral and mental defectives.

The indeterminate sentence should also be applied, as an important part of the reformatory system, to criminals (particularly juvenile offenders) who require reformation and whose offenses are due chiefly to circumstances of an individual character.

The introduction of this system should be conditioned upon the following suppositions:

1. That the prevailing conceptions of guilt and punishment are compatible with the principle of the indeterminate sentence.
2. That an individualized treatment of the offender be assured.
3. That the board of control or conditional release be so constituted as to exclude all outside influences and consist of a commission made up of at least one representative of the magistracy, at least one representative of the prison administration, and at least one representative of medical science.

Although Commissioner Etienne de Khrouleff (chief of the administration of the prisons of Russia), and others urged that a maximum and minimum period of detention should always be stated in the sentence, it was concluded that to fix a maximum is inconsistent with the principle of indetermination. As Senor Silvela stated: "The whole theory is that the offender shall be held until he is reformed, and no one can tell in advance how long that will take. In fact, there is good reason to believe that many of those who are released are not really reformed, but only pretend to be." He quoted several authorities to the effect that the supposedly "best" inmates at Elmira Reformatory, for example, are not the best but the "foxiest"—those who are most successful in deceiving the authorities. But once this principle is accepted, it is illogical to fix a maximum period of detention in the indeterminate sentence, nevertheless, a final clause was adopted by the section to this effect:

It is advisable to fix a maximum penalty during such a period as it may be necessary, because of the novelty of the institution and lack of experience with it.

The Gleispach resolution in the form in which it was finally adopted was thus tantamount, as its principal author himself declared, to the acceptance of the indeterminate sentence as a part of the general criminal law applied practically to all classes of criminals.⁵

Ruggles-Brise and the Indeterminate Sentence

The British Prison Commissioner, Sir Evelyn Ruggles-Brise, in his work *Prison Reform at Home and Abroad*,⁶ makes several remarks about the plight of the indeterminate sentence in the various Congresses which are well worth setting down in this paper. It is valuable to see ourselves as others see us. First, Ruggles-Brise gives us an analysis of the attitude of the Brussels Congress. He says: "It is to the credit of the Brussels Congress that it approached the question of "indeterminate" with great sobriety and good judgment. It was not misled by the mischievous plausibilities of the American, or the fatalistic doctrines of the Italian, schools. It gave full credit to the idea that in certain cases, strictly defined, the principle of "indeterminism" might be usefully applied, but held strongly that for ordinary crime (*les crimes proprement dits*) it was to be absolutely rejected."⁷

He continues: "The discussion was characterized by a hardly veiled hostility to what is known in Europe as the 'Elmira System' . . . which the Americans claim to have originated and which they invite other nations to adopt, as an essential feature of a good penal system. No formal resolution was voted for or against it; but there was merely an expression of opinion that the Congress was not in possession of sufficient data to enable an estimate to be formed of the value of the system. Statistics were called for, but the figures were not forthcoming, and the rather bulky pamphlets supplied by the United States Commissioner [Samuel J. Barrows] failed to convince the European reader that any new thing had been discovered, which was not already in existence under another name in old Europe except, perhaps, that the system of technical instruction in trades had

⁵ This set of resolutions is significant since an earlier Congress—Brussels (the Sixth) in 1900 insisted that "the system of the indeterminate sentence is inadmissible." Thus, in ten years a complete about-face was registered.

⁶ Sub-titled *A short History of the International Movement since the London Congress, 1872*, Macmillan, London, 1924.

⁷ See p. 92.

been more fully and deliberately adopted in some of the State reformatories than is the case in corresponding institutions in Europe.

A certain irritation was apparent throughout the discussion, that the American delegates should force upon the attention of Europe, which had been devoting itself to the study of penal science for the last hundred years, a new form of institution dealing with crime, which, if the claim made in its behalf can be justified by results, has at any rate not yet been long enough in existence to furnish a certain proof that a new discovery has been made, etc. In short, the Congress declined to give a vote of confidence to a system which, though abounding in specious theories and promises of reform, was not fortified by statistical data, which alone can justify prudent men, engaged in the repression of crime, from embarking upon new designs."⁸

Commenting on the action of the delegates at the Washington Congress, Ruggles-Brise continues: "The endorsement of the principle of the 'indeterminate' sentence in the general assembly of the Congress was loudly acclaimed and described in the American Press as a triumph over European ideas. The resolution affirming the principle was carefully framed and was, in fact, a compromise between conflicting opinions. It did not do more than affirm the value of the principle for reformatory purposes, and restricted its application to 'moral and mental defectives . . .' It is possible to gauge from this limitation to what extent the affirmation of the principle was a triumph for American ideas. What is a 'moral defective'? The 'moral defective' is a species of the genus 'mental defective' but the difference is this, that his mental deficiency is expressed in the sphere of impulse and feeling, and only slightly in that of thought. This so-called 'moral defective' constitutes only a fraction of the inmates of our convict prisons, but the type is well known to all those who have the opportunity of practical observation. . . . For such a 'moral defective' as I have said, the Americans have invented the 'indeterminate sentence' and the Congress has approved the proposal. Logically, this means that where a prisoner is declared by competent authority to be a 'moral defective', he shall not be released from prison."⁹

As was the practice of all preceding Congresses, other very important matters were discussed at the Washington Congress. It is not the purpose of this paper to consider these since we are concerned primarily with the temper of the delegates re-

⁸ *Ibid.*, p. 95.

⁹ *Ibid.*, pp. 162-163.

garding the indeterminate sentence. An International Congress is a comprehensive affair as may be seen by perusing the voluminous proceedings prepared in the French language by the secretariat which at present has its headquarters in Berne, Switzerland. It is regrettable that much of this valuable material is so inaccessible to American criminologists and penologists. Few libraries have even the French proceedings and only a few of these have been translated into English. For example, the proceedings of our own Washington Congress were never translated into English. All we have available in English of what transpired are a digest prepared by Charles R. Henderson for the 63rd. United States Congress,¹⁰ and the account previously mentioned, by Paul U. Kellog in the *Survey Magazine*. However, it was approved by the International Commission at its meeting in 1946 that all Congresses hereafter will accept English as one of the two official languages. The Proceedings of a few other Congresses have been published in English but even these are difficult to obtain since, as was stated above, few libraries have them in their holdings.

¹⁰ First Session, House Document No. 52, Gov't. Printing Office.