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## CRIME AND ITS PUNISHMENT IN CHICAGO.

WILLIAM N. GEMMILL.<sup>1</sup>

Webster defines crime as the omission to do that which the law commands, or the doing of that which the law forbids. Sociologists define it as a disease, and say that the criminal belongs to a class separate and distinct from the normal individual. They tell us that in order to determine the punishment for one who has violated the criminal laws the judge should hold a judicial clinic—examine his ears, the color and shape of his eyes, the height of his brow, the form of his head, and inquire somewhat into the morals and idiosyncrasies of his ancestors. Given this data, they will tell you to a certainty what will be the prisoner's conduct in the future, and what will be the conduct of all his progeny, even to the third and fourth generations.

If crime is the doing of that which the law forbids, then we make or unmake criminals just as we make new laws or repeal old ones. Crimes of one age and country are the dominant virtues of another age and country, and the virtues of other times are the crimes of to-day.

John Huss, a Bohemian professor in the University of Prague, was burned at the stake because he insisted on teaching and preaching according to the dictates of his own conscience. Captain Kidd, flaunting the black flag in the face of the world, was the hero of his time; Cotton Mather at Salem, preaching and hanging witches, was believed to be the special agent of Almighty God! John Brown died a felon's death, but the most popular refrain to-day is, "His soul goes marching on!" The heroes of one age have been the criminals of another, and the criminals of one age have been canonized in the next! Captain Kidd would be a pickpocket to-day, and Cotton Mather a Wall Street broker! Crime is the ineffaceable birthmark of humanity. There are no criminal classes. The differences between virtues and vices of men are differences of degree only. No man is all virtuous, none all vicious. All men are both virtuous and vicious. What is it that makes one man more virtuous or vicious than another? Some men are impelled to do right by reason of a controlling conscience which will not permit of offense toward

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any man. Others refrain from violating the law by reason of a fear that their property will be taken as a forfeit for the law's violation; but by far the greater number of men and women obey the law because they fear the disgrace and the punishments which the law provides for those who violate it.

It is hard for a sane man to distinguish between the street gamin who throws dice in the alley at a nickel a throw and the prince of the boulevard who takes a fling in the wheat pit at a thousand a fling. Both are actuated by the same motives. I find it difficult in my court to distinguish between the man who daily sells the Masonic Temple to his fellow countryman for one hundred dollars and the man who daily sells to his fellow church or clubman a thousand shares of mining stock in a twenty-million-dollar gold mine. The purchasers in both instances receive the same. The woman who goes into a department store and steals fifteen yards of lace is impelled by precisely the same motive as the owners of that store who daily raise the price of their goods one hundred per cent, then reduce it fifty per cent and advertise in the public press a great reduction sale of fifty per cent.

Drawing indictments against classes is a foolish pastime. There are burglars who are models in all other respects, ministers who are degenerates, lawyers who defraud their clients, doctors who deceive their patients, bankers who speculate with their depositors' money, butchers who sell tainted meat, and bakers who sell fourteen ounces for a pound. There are rich women who are modest and poor women who would bankrupt a Wall Street millionaire. There are drunkards who are moral reformers and cigarette fiends who are leaders of progress. Does this mean that the criminal codes should be repealed and the penalties prescribed for punishments withdrawn? The greatest deterrent force in the world is the fear of punishment. It was the fear of hell that made John Bunyan, Martin Luther and Charles Wesley preachers of faith! The same fear has started millions upon the road to Heaven. If this fear has made men better citizens, it has accomplished a useful purpose. Every criminal code bases the measure of its punishments upon the offense committed. For petty larceny it may be a year in the House of Correction; for grand larceny ten years in the penitentiary; for burglary twenty years. The law takes no account of the thief or the burglar but of his crime. What a man intends to do determines his guilt. If his punishment is to be apportioned according to his guilt, the law and its administrators must take an account of the individual. To do

that you must know every environment that has entered into the life of the man up to the hour of his arraignment. Every man should be held responsible only for what he is by his own making, not for what he might have been.

The great majority of the men and women who violate the criminal laws do so because of some moral or physical weakness. I do not mean insanity nor disease, so-called; I mean the inability to quickly and firmly decide the issue between right and wrong. The same weakness emphasized, which causes men and women to hesitate to speak the truth when self-interest is upon the side of a lie. Long dallying with any problem makes uncertain the issue.

We have in the Harrison Street Court from four to eight shoplifters every day. Most of them are women, wives and mothers who come from respectable, happy homes. They beheld something upon the counters which they desired, but could not buy. They debated with themselves the questions of right and wrong, and were lost. Not until the hand of the officer was laid upon their shoulders did they dream that they would ever be classed with thieves and robbers and burglars. Then a blackness and darkness that was worse than death settled down upon them. Some of them have been found cold and silent the next morning. The papers said the gas had been turned on. For such the laying on of the officer's hand was a punishment too severe.

If the value of the goods thus stolen is less than fifteen dollars, the penalty may be fine or imprisonment in the House of Correction for a year, or both. I am glad that there are more "mays" than "shalls" in our criminal code. They make it possible for a judge to be just and humane and still execute the laws both in letter and spirit. Not one of such women has ever been sent to prison from my court. There are professional shoplifters. Some kindly disposed persons call them kleptomaniacs. Their disease is the same as that of the professional pickpocket and their treatment should be of the same character.

It has been asserted that criminals are punished in our courts out of revenge for the wrong done to society or to the individual. I am sure there is no ground for this complaint. Recently a wealthy State Street merchant appeared before me to prosecute for larceny a young man who had been a confidential employee of his store. After the young man had pleaded guilty, I asked the merchant what he had to say about it. He said that this was the first time in twenty years of business in Chicago that he had appeared in court to prose-

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cute an employee, but he desired to make an example of this young man, and urged that I inflict the maximum penalty. Just at that moment the young man's mother gave a wild scream and fell in a dead faint at the merchant's feet. The boy stooped and kindly lifted his mother and began to weep. I turned to the merchant and asked him what further he had to say. He replied, "For God's sake, let him go! I will take him back and give him another chance."

The conduct of this merchant is not unusual. Almost every inducement is offered to one who has made a false step to retrace his step. In doing this, however, punishment of some sort has been found to be the most efficacious remedy. I am convinced, however, that severe punishment neither tends to reformation nor to strongly deter others from the commission of crime. Criminal statistics prove beyond any question that capital punishment for murder has not lessened the crime of murder, nor has brutal treatment for any offense contributed to the decrease of crime.

A few years ago the writer was a witness in the trial of a young man in Springfield, Mass., charged with forgery. In the center of the court room was an iron cage about six feet square, extending from the floor to the ceiling. When the case was called for trial, the prisoner, a poor, emaciated fellow, was brought into the court room, handcuffed to another prisoner and placed in this iron cage at a distance of about fifty feet from the judge's rostrum. During the entire trial, except while he was testifying, the prisoner remained in this iron cage chained to his fellow-prisoner. The curious people in the court room gazed through the bars of the cage at the prisoners just as they would look at the tigers in their cages in the Zoo. Such is the practice to-day in many of the Massachusetts courts.

Last summer I attended a session of the police court in San Francisco. At 10 o'clock a door was thrown open and two officers entered, pulling upon a chain about ten or twelve feet in length. To this chain were handcuffed nineteen prisoners. In this way the procession proceeded from the rear of the courtroom to the prisoners' dock in front, when the officers unlocked the handcuffs and allowed the prisoners to enter the dock. When the court opened, I expected to hear something of the desperate deeds of this desperate chain gang. What was my surprise when the first case was called to find that the only charge against the prisoner was that he had allowed his horse to stand in the street for ten minutes without a weight being attached to him. The second prisoner was called and his

offense consisted in driving a peddler's wagon without a license. A third prisoner didn't move fast enough to suit the officer. A fourth had sold some decaying fruit. A fifth had driven his horse on the street faster than the ordinance permitted. I listened until the nineteen cases were disposed of; none of them were for offenses greater than those I have mentioned and all of them were discharged by the judge with a remark, "Go home and don't do it again." Such examples of imbecility as these justly merit severe condemnation. They breed disrespect for the officers of the law and bring contempt upon the courts. California has a larger percentage of criminal population than any other state in the Union, and Massachusetts ranks third in crime.

Criminal statistics clearly prove that crimes have increased or decreased just in the proportion that the punishments therefor have been swift and certain. This law is as true in the social world as it is in the natural world. A child puts his hand in the fire but once. If it lives a hundred years this one lesson will suffice. It is not necessary that the hand should be burned off to teach the lesson, but a little blister upon one finger will make an impression that will never be effaced. Why is the lesson so effective? Because the punishment is always instant and certain. In order, however, that punishments shall be most effective they must be both swift and certain. A fiendish and horrible death is sure to follow the regular and constant introduction into the human system of opium and cocaine. But this death while certain is not instant; hence we have several thousand cocaine and opium fiends in this city who have the forms and figures of men and women, but here the likeness stops.

The habitual taking of strong drink into a man's system is certain to result in his becoming a drunkard, a vagabond and an outcast. The time when this result will follow is uncertain, depending upon the extent of the indulgence. Consequently we have sixty thousand vagabonds, vagrants, beggars and outcasts, living in or passing through Chicago every year, many of them stopping only long enough to beg a few cents to enable them to hold soul and body together until they reach the next stopping place; many others, shivering, starving, friendless, hopeless, some with maggots already eating into their putrid flesh, are waiting for their last ride in the police patrol to the county morgue.

The time was when the black flag was supreme upon every sea. To-day it is but a relic, and commerce unafraid goes out from every port. Piracy came to mean instant and certain death for the pirate.

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Raisuli, the last of the banditti, now pursues his victims on the wildest coast of the darkest continent. Highway robbery is almost a lost art. Criminal statistics show a marked decrease in the number of such robberies within the last half century. The reason is not far to see. If the robber escapes death at the hands of his victim, he becomes an outlaw and is chased and hunted like a wild beast. In Chicago, arrests for robbery have decreased from 1,200 in 1905 to 730 in 1909, a decrease of 39% in five years. Twenty-five years ago the burglar was more feared by the public than any other criminal. Then, with gun and bludgeon in hand, he stole upon his sleeping victims at midnight, bent upon robbery but prepared for murder. To-day house-breaking in the night time is almost unknown. I have not had a single case of such house-breaking in the eight thousand criminal cases heard by me during the last three years. We still have the burglar, but he is a tame sort of individual. His offense usually consists of breaking into a cigar store and stealing a pipe, falling through a plate-glass window while drunk, or breaking into a butcher shop to steal weinne-wurst. In Chicago, arrests for burglary have decreased from 1,780 in 1895 to 1,263 in 1909, a decrease of 34 per cent in five years.

What has brought about the change? It is not that the burglar has become more honest, but it is because he has found the business more dangerous and its punishment more certain and swift.

Certain crimes, however, are on the increase. We have in Chicago not less than five hundred professional pickpockets. If the criminologists could examine their heads they might be taken for bank clerks. They are of the best dressed and best looking young fellows in the city. They travel in groups of three and four; they haunt the crowds and ply their calling with a skill scarcely equaled in any other profession. They hire their lawyer by the year and send him a Christmas present at Christmas time. Their number is constantly increasing. Why? Because they know that they have nine chances out of ten to escape punishment. Seldom do their victims discover the loss of their pocketbooks before they have made good their escape. The faces of many of the members of this fraternity are as familiar to some of us as are the faces of our best friends. Several are arrested daily and brought before the court. The only evidence against them is that their faces adorn the rogues' gallery, and they were seen walking upon the public street in the day time. If you attempt to hold them

for vagrancy, a dozen friends will testify to their arduous labors as bartenders or waiters in some saloon or restaurant. They never get drunk nor carry concealed weapons. If they did we could send them to jail on these charges.

When the Republican Convention was about to assemble in Chicago two years ago, the police were ordered to arrest every known pickpocket in Chicago. In three days the cells of all the jails in town were filled with the light-fingered gentry. Instead of trying them the next day, we continued all their cases for a week until our unsophisticated Republican brethren had returned safely to their homes. Then we tried them. Of course all were innocent, and there was a general gaol delivery. We had the satisfaction, however, of knowing that not a single picked pocket was reported at police headquarters during the Convention.

Counterfeiting the coin of the realm was once the most besetting crime of the nations. The counterfeiter has gone, but in his place has come the smooth confidence man, whose glory is that he lives by his wits. He usually signs somebody's name to a check, takes it to one of the seven thousand saloons in the city, and has it cashed. It is quite immaterial to him whose name is signed to the check or to whose saloon he goes—he gets the money just the same. The number of these fellows arrested has increased in Chicago from 535 in 1905 to 804 in 1909, an increase of 50% in five years. It is the safest business known outside of that of the pickpocket. The confidence man knows to a dead certainty that he can get the money without any danger of personal violence to himself, and he also knows that he will have time enough to spend it before he is in any danger of punishment. The same rule is true in forgery, and the number of arrests for forgery in Chicago has increased 46% in the last five years. There have been reformed burglars and robbers, but so far as I have been able to learn, there has never been a reformed forger or confidence man.

The criminal law of this state should be amended so as to include within the purview of the confidence game, the smooth and cunning church hypocrite who daily allows his church or lodge brother to get in on the ground floor by selling him a thousand shares of gold mining stock in a twenty-million-dollar gold mine that never had a ground floor. These crooks have learned how to evade the law which requires that a false representation must be the false statement of an existing fact. It is hard to understand

why a fabulous lie based upon the certain happenings of to-morrow should be less criminal than a lie based upon the facts of yesterday.

We are sometimes told that the way to prevent crime is to forgive everybody who has done wrong and turn them over to the churches, the schoolhouses and humanitarian organizations. No fact is more demonstrable than that the punishments prescribed by the criminal code are greater preventives of crime and wrongdoing than all the churches, schoolhouses and reform organizations in the land. Most men and women are creatures of their environment. If one hundred Methodists, Baptists, Scotch Presbyterians or Episcopalians, take a month off and go to Atlantic City, most of them will violate every rule of discipline of their several churches before they return, and some of them will forget most of the ten commandments. The Scarlet Letter is but a tragic story of Puritan life in New England. Let it be known that on the first day of May, 1910, the operation of every criminal law of this state would be suspended for twenty-four hours, and that all persons shall be forever immune from punishment for any act done during these hours. What would be the result? Every honest man, the night before, would gather his family within his home, barricade the doors and windows and stand guard through the twenty-four hours, gun and saber in hand, ready to defend his life, his home and his property against, it may be his next-door neighbor, or perhaps the man or men across the street.

When the head of Louis the Sixteenth fell from the block and the power of the Imperial Army of France was paralyzed, there ran such a stream of blood through the city of Paris as had not before been seen. It was friend against friend, neighbor against neighbor. It was indeed a reign of the lawless. When the fire in San Francisco took up the work of destruction begun by the earthquake, the police department joined all others in stampede and panic. Then it was that out from the shadows of the burning buildings came men and women who had never before been seen in the byways of darkness, to pillage and plunder.

How many of you know that in the heart of this city to-night, and every night, three hundred policemen are sleeping upon their arms, ready for an instant alarm? When the shadows of night fall upon this city, these guardians of the law leave their families and take their places as watchmen upon the towers, not to protect you and me against the criminals within our gates, but to guard us against some sudden calamity when all of us need to be

protected against ourselves. The church and the schoolhouse are the most powerful agencies in the world for the building up in the lives of men and women that power of resistance which overcomes evil. But with all their influence for good we would have a reign of terror were it not for the punishments which the law imposes.

The problem that confronts the judge sitting in our criminal courts is not that of determining the guilt or innocence of the prisoners arraigned! In nine out of ten cases the guilt of the prisoner is confessed. The problem is to suit the punishment to the offender. That punishment only should be inflicted which is the most likely to produce the best results. A large per cent of the 75,000 persons brought into the criminal courts of this city each year, are arrested for drunkenness. There is seldom any dispute about the fact of the drunkenness, for the police of this city never arrest anyone upon that charge who is not "helplessly drunk." The question presented is—What to do with them. In order to answer this, we must know who they are. They are not thieves, pickpockets and confidence men, nor do they belong to the 60,000 vagrants and outcasts who infest the city during the year. The first of these never find it safe to get drunk; the second is composed of human wrecks who never can beg enough to fill them up.

The men and women arrested for drunkenness come from every walk of life. They are employed at some gainful occupation. For the most part, they are honest and law-abiding citizens who at some unguarded moment drink to excess and lose control of themselves. An average of one hundred men and women are picked up by the police in the streets and alleys of this city every day and night of the year. Substantially all of them are in an unconscious or semi-conscious condition when found. Most of them are found in the night time, and I am sure that were it not for the most efficient work of our Police Department at least fifty per cent of these would perish from cold and exposure during the long winter nights.

Something has recently been said about requiring the police to take these drunken people to their homes when found, instead of taking them to the police station. If such a course was advisable, it would be impossible. In seventy-five per cent of these cases the person arrested is unable to tell his name or where he lives. Sixty per cent of the balance come from Evanston, Oak Park, Hammond or perhaps Kalamazoo, or some other place far remote from the scene of their troubles. It would take three hundred policemen and fifty patrol wagons with drivers to take these drunks home, and

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when they got them there the insane wrath that usually follows a drunken spree would be visited upon the wives and children of the households. While these officers were engaged in taking the drunks home, a large part of the city would be left unguarded.

After these men are permitted to sleep off their drunks upon the floor of the police station, they usually come into court the next morning with a pretty full realization of the humiliation and disgrace they have brought upon themselves. Many of them weep for shame. All of them, with uplifted hand, promise that they will never drink again. Here the problem for the court begins. To inflict a small fine only means to take from their hard earnings what their families so much need and to add to the sorrows they have already suffered; to inflict a large fine and imprison them for failure to pay, could serve no good purpose. They are not criminals; ninety per cent of them have never been in court before; nearly all of them are employed somewhere; to imprison them would mean loss of employment, and loss of support for their families.

To inflict a large fine and then parole them to someone, if the law permitted it, would, in my judgment, be still more galling to them and less effective than either of the other two methods. They are men and women who, like ourselves, live amidst their friends and neighbors. Some are young men seeking to gain a foothold in a great city. All have the pride of independence that goes with every American citizen; all are keenly sensitive upon the subject of their moral standing in the community. To place over them someone who is paid to watch over their movements, someone to whom they must report their goings and comings, someone who has power to hale them back to the court to be punished for the old offense, is to wound their pride and destroy their ambition, and drive them to repeat the offense.

I confess to no solution of the drunk problem; it has given me more concern than any other. Whenever I have been able to learn that the offender is employed at some decent occupation, that he has a family dependent upon him for support, that he is heartily sorry and ashamed of his mistake and promises not to repeat it, I have allowed him to go to his home without punishment of any sort.

Out of over five thousand cases of drunkenness heard by me, not over one hundred have been fined, and these were upon the verge of delirium tremens and needed immediate care. I am sure that of these five thousand cases, not over one hundred have ever been

brought back into court for a similar offense. To me, this means that nine out of every ten of the men and women who get drunk and are arrested for it and are compelled to sleep off their drunks in the police station, have been punished sufficiently and will never repeat the offense. What has been my practice in this regard I am sure has been the very general practice of nearly all of the judges of the Municipal Court. The story, often repeated, that drunkards are sent to prison and their wives and children are left at home to starve, is untrue. So far as I have been able to learn, not a single drunkard has been sent to jail during the last year and a half, who had a family dependent upon him, unless it was done at the instance of the wife or the members of the family, and for their protection.

Much that is hopeful has been accomplished in this city during the last few years. Of the 202,924 criminal cases brought into the courts of this county in the last three years, eighty per cent were tried within twenty-four hours from their arrest and ninety-five per cent within ten days from the arrest. While crimes based upon fraudulent business transactions have increased, all of the more serious crimes have decreased. This does not include homicide, which has remained almost stationary. The number of homicides in a city is no criterion of the crime of a city. They are usually committed by men and women who had hitherto been useful and law-abiding citizens. In the last ten years there has been a decrease of thirty-five per cent in the number of prisoners at Joliet over any other ten-year period since 1868. From July 1, 1899, to January 1, 1910, the prisoners at Pontiac, where all persons between the ages of ten and twenty-one years, convicted of felonies, must be sent, has decreased from 1,397 to 745—almost fifty per cent in ten and one-half years. The number of prisoners sent to the John Worthy School for delinquent boys has decreased from 913 in 1900 to 272 in 1909—a decrease of seventy per cent in nine years. It is true that in 1904 the St. Charles School for delinquent boys was established, and on January 1, 1910, 441 boys were there confined. This institution, however, has not been more than sufficient to take care of the natural increase in the population of the city of 70,000 per year since that time.

Credit for this great work of reducing crime in this city and state must be given in large measure to our Juvenile Court, which early gets hold of the young offender before he has had time to develop into a hardened criminal. If the Municipal Court has any

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special function in this city, it is to promptly arrest and punish the criminal, and just to the extent that it has accomplished this work has it contributed to the decrease of crime within the city.

I am in favor of a parole law, not for drunks, but for a certain class of first offenders who may thereby be given an opportunity to make recompense for the wrong done and to change their course of conduct. But I am sure that any parole law which advertises to the world that every violator of the criminal laws shall have at least two chances to commit crimes before he is in danger of punishment, will increase crime rather than decrease it.

Massachusetts has the oldest and best parole law in the United States. In 1908, 143,777 persons were arrested for crimes in that state and 90,852 of these were paroled. Of those paroled, 78,642 were drunks, and of these, 23,105 were not even required to go to court but were released to a parole officer immediately upon their arrest. Notwithstanding, however, this parole law, drunkenness in Massachusetts has been constantly upon the increase. In 1907, 20,023 persons were sent to prison in that state for drunkenness, and in 1908, 20,779 were sent to prison for the same offense. More than three times as many people are sent to prison in Massachusetts for drunkenness than are sent to prison in Illinois for the same offense, although the population of Illinois is twice that of Massachusetts. In 1904, 4,503 women were sent to prison in the United States for drunkenness. Of this number, fifty-one per cent were sent from Massachusetts. The population of the city of Chicago is three times that of Boston, yet last year almost as many persons were arrested in Boston for crimes as were arrested in Chicago. Forty-one thousand seven hundred and sixty-seven persons were arrested in that city in 1908 for drunkenness alone, while we did not arrest over 30,000 for that offense.

In 1904 the prison population of Massachusetts was 187.2 persons for every one hundred thousand of her population, while the same year the prison population of Illinois was but 60.8 for every one hundred thousand of her population. In other words, Massachusetts, in proportion to her population, has three times as many criminals in her prisons as has the state of Illinois.

No law, however humane, will take the place of a criminal code which warns men and women that for the doing of wrong against either an individual or against society, certain punishments will follow as night follows the day.