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## Criminal Law Reform

Frank H. Norcross

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## CRIMINAL LAW REFORM.

FRANK H. NORCROSS.<sup>1</sup>

The old adage that an ounce of prevention is worth a pound of cure is as applicable to the crime problem as it is to anything else. Under the very best possible system of criminal procedure, crime, in my judgment, will be reduced, only in a very small degree so long as the conditions which are mainly productive of crime remain unchanged, and so long as we do not apply to the crime problem a more scientific and humane treatment than that which has generally been in vogue for centuries. We are just beginning in this country to make a study of crime from anything like a scientific standpoint. We have gone far enough, I think, to realize that statutes and court judgments are not alone sufficient either to prevent crime or to reform the criminal.

If one will but stop to review a little of the history of the administration of criminal law, he will, I think, be convinced that the courts of this country, generally speaking, are to-day administering criminal law more justly than at any previous time in our history. While some of the criticism of court procedure is doubtless founded upon substantial defects, not a little is based upon error. It sometimes happens, when a case has attracted wide public attention and has been given great publicity, that the judgment of the court is diametrically opposed to public sentiment which has been built up upon a misconception of the real facts. Then a miscarriage of justice is proclaimed and defects in our judicial system, both fancied and real, are pointed out with renewed vigor. Miscarriages of justice will occasionally occur under the most perfect judicial system possible to be devised, and they will occur in the conviction as well as in the acquittal of those charged with crime.

It is a great deal easier to say that our system of criminal jurisprudence is defective and in need of reformation, than it is to suggest remedies that will prove effectual. It cannot be gainsaid that under modern criminal procedure many persons guilty of crime escape conviction, but, doubtless, in the majority of cases, this

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<sup>1</sup>Chief Justice of the Supreme Court of Nevada. In the preparation of this paper Justice Norcross has made free use of an address on "Criminal Law Reform," which he delivered some months ago before the San Francisco Bar Association.

is due to want of sufficient evidence to satisfy the jury beyond a reasonable doubt, or else the fault lies with those charged with the administration of the law, rather than to defects in the law itself.

We have derived our criminal jurisprudence mainly from the mother country. It was not until about the middle of the eighteenth century that the procedure in England afforded the person charged with crime any sort of adequate protection in his rights to life or liberty.

Sir James Fitzjames Stephen, Judge of the High Court of Justice, Queen's Bench Division, in his "History of the Criminal Law of England," referring to certain trials of important personages for treason, says:

"The inference suggested by studying these trials is not so much that they show that in the seventeenth century judges were corrupt and timid, or that juries were liable to party spirit in political cases, as that they give great reason to fear that the principles of evidence were then so ill understood, and the whole method of criminal procedure was so imperfect and superficial that an amount of injustice frightful to think of must have been inflicted at the assizes and sessions on obscure persons of whom no one ever has heard or will hear. \* \* \* What the political trials of the seventeenth century really did was to expose men of high rank and conspicuous position to the calamities which must have been felt by thousands of obscure criminals without attracting even a passing notice."

Yet with this awful indictment of seventeenth century procedure, it was a marked improvement over conditions which prevailed in preceding centuries.

The same eminent jurist and author again states:

"A whole series of prosecutions of the officers of the Fleet Prison for the murder of prisoners by barbarous ill usage throws light upon another dark side of the administration of justice in the eighteenth century."

The English prison system then was far worse than the court procedure. Relatively the same situation prevails in both countries to-day.

The lesson which I think is to be gathered from a study of conditions which prevailed in the mother country down to comparatively recent times, is that prison reform must go hand-in-hand with reform in criminal procedure. I am very strongly of the opinion that our present criminal procedure is not nearly so much susceptible to beneficial changes, as is our method of dealing with the lawbreaker, both before and after conviction.

Another fact which I think is evidenced from a consideration of English criminal history is that crime cannot be suppressed merely by the severity of the punishment. At the beginning of the sev-

enteenth century in England there was an average of about three thousand persons condemned to death per annum, of which number about three-fourths escaped the extreme penalty by claiming the benefit of clergy or by receiving clemency in other forms. But the number of executions was nevertheless appalling. Lord Coke, concluding his "Third Institute," remarked:

"What a lamentable case it is to see so many Christian men and women strangled on that cursed tree of the gallows, insomuch as if in a large field a man might see together all the Christians that, but in one year throughout England, come to that untimely and ignominious death, if there were any spark of grace or charity in him, it would make his heart to bleed for pity and compassion."

The fact that a man could be hung for stealing a sheep of a value less than a shilling, one would expect to abolish petit larceny, if severity possessed any special merit. But, about all that can be said in favor of a system in which there was such a wanton disregard for human life is that some who were executed for trivial offenses, doubtless, were saved a more lingering and cruel death in the prisons of those times.

The evolution in methods of dealing with crime, both as to procedure and modes of punishing offenders against the law, has shown great advancement in both England and America during the past century and a half. The crime problem, however, still remains and it is one of the biggest social questions with which we have to contend. We have succeeded very well in eliminating barbarous methods of procedure and have made some progress in prison reform, although it is difficult to read the description of the prisons of some of our great states and not conclude that we still maintain institutions that should have passed into history with the Dark Ages.

It is rather remarkable that while we hear so much about the necessity for reform in criminal procedure, in order that the guilty may not so frequently go unpunished, or may be tried and convicted with greater despatch, no one seems to give that same procedure credit for keeping the prisons of the country fairly well filled to capacity.

The very seriousness of the crime problem, in my judgment, is not shown so much by the number of failures of conviction, as it is by the large number of commitments to penal institutions. It may be that there are not so many convictions as there should be under prevailing conditions, but, if this is so, it might be just as well to take a serious look at the conditions. If there are a hundred thousand convicts in the prisons of this country, it is a great deal more important to the general welfare to know the great underlying

causes which brought so many men to prison, than it is to figure out ways and means to get more in.

Recent years, particularly the last decade, have witnessed the inauguration of a movement that may be regarded as revolutionary in character, but which I believe will do more to accomplish a solution of the crime problem than all the amendments that can be added to our code procedure, excepting as they are in line with the new methods of dealing with crime.

Criminal law should not be considered a local state question. In so far as it is possible, which includes the essentials, we should have a uniform system throughout the country both as to criminal procedure and as to methods of dealing with offenders against the law. Uniformity is of the highest importance, and until all of the states and the Federal Government inclusive adopt some practically uniform system of dealing with criminals and delinquents, there will necessarily be a vast amount of wasted effort.

In attempting any sort of improvement in our methods of dealing with crime, the very first essential is accurate and comprehensive information. This is difficult, if not impossible, now to obtain. Congress should provide, if it has not already done so, for the collection of criminal and judicial statistics covering the entire United States, so that it will be possible to determine the causes of such widespread crime. When we can obtain a more comprehensive knowledge of the causes, than is now possible, we can the more intelligently apply some effective remedies to the root of the evil. Laws supplementary to national legislation should be enacted by the states and a uniform system of collecting and disseminating information established. The wisest and most efficient legislation will not be enacted until the country at large is better informed than it is now upon criminal matters. For example, it is figured that ninety per cent of the confirmed criminal class commit their first serious offense before they are fifteen years old. This indicates that there is something radically wrong in the way many juveniles are permitted to grow up during the formative period of their lives. This suggests the possibility that a rigid system of compulsory education, the suppression of places and things which tend to poison the youthful mind, might accomplish a great deal—whether much or little, can best be told when resultant crime is positively traced to its causes. When we know more of the real causes which produce the criminal class we may, and I believe will, ascertain that some very simple remedies will accomplish some very wonderful results.

For centuries the world has proceeded upon the theory that the

## CRIMINAL LAW REFORM.

way to deal with crime was to impose severe punishment upon the offender. Long sentences to be served out in prisons where only

laws for the probation of juvenile offenders, and ten have similar laws for adults.

As illustrative of what may be accomplished by extending the helping hand to the man who at some time has violated the law, take the parole system as administered by the Board of Prison Directors of California. Of about eight hundred men paroled since the law went into effect in 1893, more than seven hundred, according to official reports, have made good. Only about ten per cent have violated their parole, and most of these only to the extent of entering places where liquor is sold. Such a percentage of success warrants, in my judgment, the exercise of even a larger degree of clemency, though the percentage of those who fail to keep their parole should in consequence somewhat increase. Suppose seventy-five per cent only make good, the state and society at large is better off, and the men and their families, if any they have, immeasurably so benefited. Those in whom confidence has been misplaced soon find their way back, to remain. When all penal institutions are working in uniformity, it will be very much easier to conduct the parole system.

Take another point of view: The men paroled from the California prisons, while on parole, have earned over a half million dollars, and of that amount have actually saved over a hundred and fifteen thousand; these paroled prisoners are now earning at the rate of about a hundred and fifty thousand dollars per annum and actually saving fifty thousand of that amount. Suppose these men had not had the benefit of the parole system even, but had been kept in prison the full limit of their sentences, the chances are fairly favorable that the results would have been about reversed; that about ninety per cent would have become worthless members of society, and ten per cent have been able to overcome the heavy odds under which the unaided ex-convict labors. "It is claimed that this country spends annually five hundred millions of dollars more on fighting the existing crime than on all its works of charity, education, and religion." If this is so, and we know the amount must be stupendous, we can well afford to try most any experiment that offers indications of relief.

A considerable portion of those who find their way into our prisons and jails are but the natural product of their environment, and so long as the state permits conditions to exist which are productive of crime, it must expect the natural and inevitable harvest. Gradually, more and more, civilization will attack the causes which are largely responsible for crime.

## CRIMINAL LAW REFORM.

The most practical way of dealing with existing conditions, in my judgment, is to extend the probation system both to juvenile and adult offenders. For those whom the courts are not satisfied to intrust with probation, or whose crimes are of such a character that probation could not appropriately be applied in the first instance, I believe the indeterminate sentence the best remedy. Under the indeterminate sentence plan the convict is confined for a term which may be not more than the maximum fixed by law. The court and all officials interested in the enforcement of law furnish the prison authorities with all information in their possession relative to the particular offender. The prison authorities then determine from previous knowledge concerning the convict and from personal observation of him after he has been incarcerated the time that he should be kept confined. If he is a hardened criminal, such that there is little, if any, hope of his reformation, he can be kept confined the full limit, and thus prevented from preying further upon society. On the other hand, when there is reason to believe that he can safely be permitted to go at large, he is paroled and given a chance to redeem himself with the aid of the prison officials.

Under the old system there is great inequality and frequently great injustice in the sentence imposed for similar grades of offenses. The personality of the individual judge is the controlling factor. For substantially the same offense, one judge may impose a maximum sentence upon the theory that severity of punishment is the best way to deter others from committing similar offenses, while another judge may be equally impressed that leniency is the better method to deal with those who have not become hardened criminals. Such inequalities cannot help but produce dissatisfaction and discouragement among many. The majority of men sent to prison are bound to be discharged sooner or later. It is a great deal better for society that a large percentage of them should go out encouraged to begin life anew as honest, industrious and law-abiding citizens, than to discharge them simply as ex-convicts with little chance to do anything other than to return to the life of a criminal.

It will take some years before the newer and saner methods of dealing with crime may be fully realized. Every juvenile offender, who has by well-directed kindness and consideration been turned from a life of evil, will make a vacancy some day in the ranks of the habitual criminal. Every adult offender who is reformed by probation is a far more valuable unit in society than he would be if he received the added disgrace of imprisonment in some penal institution. Every paroled prisoner, who by encouragement has regained



a standing in his community, becomes an aid instead of a hindrance to society. Under such a system, those who are not of the criminal class but who in some unfortunate moment have yielded to the temptation to violate the law, if their offense is not of too serious a character, will be given another chance without the disgrace of imprisonment.

If the offense is of a grave character, or if there be good reason why imprisonment should be imposed, such imprisonment would be only for a time sufficient to warrant a belief in the minds of the authorities that the prisoner may, with safety and propriety, be trusted at large. That time may be long or short, depending upon the seriousness of the offense and the character displayed by the offender. The confirmed criminal is less apt to escape a longer confinement than he is now. Whatever mistakes are made, under this system, may be soon discovered and quickly remedied.

Under a system of this kind, convictions can be the more readily secured. There will be a saving in the time of the courts in dealing with the lesser grades of offenses, and more careful attention can be given to those of a more serious nature. There will be less miscarriages of justice, less of injustice to the prisoner and less expense attached to prosecutions and in the maintenance of penal institutions. Under such a system, we may reasonably expect, I think, that crime itself will be diminished.