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## THE CLASSIFICATION OF CRIMINALS.

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The classification of criminals is not simply a matter of theoretical interest; it is also a matter of great practical importance for the proper treatment of criminals in our courts of law and in our correctional institutions. Some classification of criminals there has always been, as it has been a juridical necessity. But the legal classification, based on the nature of the crime committed, and its greater or less social opprobriousness, is not so much a classification of criminals as of criminal acts. While such classification is a practical legal necessity, it has been found inadequate for that scientific treatment of the criminal which is now generally recognized to be socially desirable; for a scientific classification of criminals must be based, not on the nature of the crime committed, which may be quite an accidental matter, but upon the nature of the criminal himself.

The evident inadequacy of the legal classification of offenders has led criminologists during the past thirty years to propose other classifications, not with a view to supplanting the legal classification, but with a view to supplementing it, so as to enable courts and prison officials to better understand the criminal and to better individualize treatment. Such a classification, in order to be sound and practical, must manifestly be based upon assured scientific knowledge, be simple, and be comparatively easy of application. It must, in other words, clearly distinguish the main types of character in the criminal class, and so make clear the different social policies which society must adopt towards the various elements which make up the criminal class.

It is not the purpose of this paper to review the many classifications of criminals which have been proposed in the name of science. It is sufficient to say that most of them are suggestive rather than clear and easy of application; while not a few of them seem to have been made with utter disregard for the logical principles of classification. Thus Mr. Havelock Ellis, in his work on "The Criminal," tells us of the political criminal, the criminal by passion, the insane criminal, the occasional criminal, the instinctive criminal, the habitual criminal, and the professional criminal. It would be difficult to determine what the basis of Mr. Ellis's classification is. There is no

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clear principle of division between the various classes, and some of them overlap. Professor Ferri's classification of criminals as born criminals, criminal madmen, criminals by contracted habits, occasional criminals, and criminals by passion, has the merit of being somewhat simpler and perhaps easier, therefore, of practical application; but even in Ferri's classification one can discern no clear principle upon which it is based. Criminologists generally seem to have followed the empirical method of picking out certain marked types in the criminal class and to have regarded this as a satisfactory classification.

An American writer, Mr. August Drähms, in his book on "The Criminal" (1900), was the first to propose a simpler and clearer classification. Drähms concluded that all types of criminals could be classified under three main heads: instinctive criminals, habitual criminals, and single offenders. It is the purpose of this paper to show that this classification is at once thoroughly scientific and easily applied in courts of law and in other institutions dealing with the criminal class; and that the practical recognition of these three main classes of criminals is a necessity for scientific criminal jurisprudence.

Crime is essentially an anti-social act and hence is a matter of the conduct of the individual in society. Now, conduct is a psychical matter having to do with the conscious motives, aims, and habits of individuals; hence, conduct refers to the psychical adjustment of the individual to society. Any classification of criminals, therefore, in order to be scientific, must be a psychological classification. Inasmuch as the adjustment of the individual to society is essentially a psychological matter, we can have no biological criterion of conduct, nor any classification of criminals upon purely biological grounds. The psychological classification of criminals should, however, be of such a nature that it will include the biological element. Such a classification can, unquestionably, best be made upon the basis of habit. In other words, the conception of the nature of criminal habit is the key to criminal character. If we use habit in the very broad sense of persistent activity, then habits in this sense, psychologists tell us, are of two sorts: inborn or instinctive, due to the preorganized activities born in the organism; and acquired habits, due to the modifying influence of environment. There are also, of course, unformed habits, incipient in a single act. If we classify criminals, then, upon the basis of habit, we shall have three clearly marked classes: First, born or instinctive criminals, persons who cannot adjust themselves to the social order on account of hereditary or inborn defects.

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Second, criminals by acquired habit, persons who have taken on criminal tendencies through the influence of their environment. Third, single offenders, socially normal persons who have not yet formed any criminal habits, but who have committed single offenses.

This classification calls forcible attention to the three-fold nature of the criminal class, made up in part of physical and mental degenerates, in part of unfortunate victims of environment, and in part of accidental offenders. Strictly speaking, of course, only the first two classes (the instinctive or born criminal and the habitual criminal) belong to the criminal class in the narrow sense, but the single offenders constitute, nevertheless, a very considerable proportion of the total who come before our courts. In the picturesque language of a recent English writer, the criminal class, in the narrow sense, is composed of "degenerates" and "derelicts," the degenerates being the "bad mental machines" and the derelicts being "those who have lost their way" in society.

It may be pointed out that this psychological classification of criminals upon the basis of habit gives ample room for the recognition of all other classes that it is practically or theoretically necessary to recognize. The instinctive criminals, the habitual criminals, and the single offenders may be each subdivided into several classes for various purposes.

Thus we may recognize within the group of instinctive criminals, or those predisposed by hereditary defect to crime, the class of moral imbeciles, who, perhaps, best represent the group as a whole; and the criminally inclined among the insane, most of whom owe their condition to hereditary predisposition. Again, in the group of habitual criminals, one may easily recognize the weak type of habitual criminal, the person who drifts into crime, is too weak to resist temptation, and is unable to break criminal habits. One may easily recognize, also, in this group the strong type of habitual criminal, the person who chooses a career of crime and remains in it from choice, taking the risks of his trade. This is, of course, the type which we know as the professional criminal. Finally, among single offenders we find a weak type, the person who yields once to some temptation to commit a criminal act and regrets it ever afterward, and also a strong type, the criminal by passion, the good citizen who, under stress of some great wrong, takes the law into his own hands to redress his grievances.

These subordinate classes of criminals are, however, of no great importance for criminal law or for the administration of correctional

institutions. They are pointed out merely in order to acknowledge that the three main classes of criminals, upon which we shall insist, are themselves more or less complex. Let us note, however, a little more closely the characteristics of each of these several main classes.

The instinctive criminal is, as we have already said, the person who is unable to adjust himself to the social order on account of hereditary defects. In him, therefore, the criminal tendencies may be rightly said to be inborn or instinctive. In a sense, of course, all crime rests more or less upon instinct. All of us, as has been pointed out by many psychologists, have instincts which, if not checked and controlled by the standards of our social environment, would hurry us into a life of crime. We do not mean, therefore, by an instinctive criminal a normal person whose natural animal instincts have not been controlled by the environment, but rather we mean an abnormal person who is insusceptible, in part, at least, to the influence of his social environment. The instinctive criminal is, then, the criminal by hereditary defect, the degenerate, who, on account of his defectiveness, is incapable of adjusting himself to our complex social life. The studies of criminologists and psychiatrists have removed all doubt that such a class of hereditary degenerates exists among the criminal class. Passing by the insane criminal, who, as we have already said, undoubtedly owes his condition in general to hereditary predisposition, but whose degeneracy expresses itself only incidentally in the form of crime, the most marked type in the instinctive criminal class is, undoubtedly, the moral imbecile. Lombroso, in his studies of the born criminal, tended strongly to assimilate the born criminal to the epileptic, but experts are now practically agreed that instinctive criminality is more closely allied to imbecility or feeble-mindedness than to epilepsy. The instinctive criminal, if we exclude the class of criminal insane, must be regarded, then, as but a subclass in the larger class of high grade imbeciles or feeble-minded persons. Dr. Martin Barr, in his work on "Mental Defectives," describes very clearly the characteristics of the marked moral imbecile, and they are evidently the same as those which had often been attributed to the born criminal. The instinctive criminal or moral imbecile is distinguished by his congenital lack of capacity on the moral side, his inability to distinguish between right and wrong. This inability is to be ascribed, in part, to lack of normal development of the intellect, but also probably in part to lack of those social instincts and moral sensibilities which are, without doubt, hereditary in the normal person. Though the instinctive criminal must be regarded as defect-

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ive, as mentally undeveloped in some respects, this does not prevent him from being a genius, as Dr. Barr says, along certain lines. High intellectual ability in certain lines is, therefore, not incompatible with moral imbecility, neither is it incompatible, we may remark, with the more ordinary types of imbecility; for mathematical geniuses and the like have often been notorious imbeciles in other respects. The characteristic of the imbecile as distinguished from the idiot is that he is defective in only one or more respects. The moral imbecile or instinctive criminal is, therefore, a type entirely in accord with all that we know of abnormal psychology.

As the definition of feeble-mindedness or imbecility is extended, it is impossible to say how many of our criminals may ultimately be brought within the limits of this class. Lombroso and others of the Italian school have estimated that from ten to fifteen per cent of the major offenders in our state prisons belong to the class of the instinctive or born criminals; but we may note that recent investigations among the inmates of Elmira seem to show that about thirty per cent are more or less feeble-minded; that is, defective along some mental lines, and presumably owing their criminal tendencies to this mental defect. While it would be unsafe to ascribe so high a percentage of crime to hereditary mental defects as this would seem to indicate, yet there can be no doubt that a large per cent of our prison population, if carefully examined, would be found to belong to the mentally defective class. The slight degree of mental defect involved in instinctive criminality can be recognized, of course, only by experts, and hence the necessity of expert psychiatrists in connection with all our criminal courts and correctional institutions. A recent warden of the Missouri state penitentiary was fond of saying that eighty-five per cent of his prisoners were abnormal men. He doubtless did not mean that eighty-five per cent of them were congenitally abnormal, but even if we allow a very large per cent for those whose abnormality was acquired, it would still be probable that congenital or hereditary defects were responsible for the abnormality also of a considerable per cent.

The physical characteristics of the instinctive criminal class have been dwelt on at such length by Lombroso and the Italian school of criminologists that it is unnecessary for us to consider them at length. It is well known that Lombroso and his school make much of the anatomical stigmata of degeneracy as indicating the born criminal type. They admit that these stigmata can be found more or less in the normal person; but if above five of the stigmata of de-

generacy are present, then, they say, the presumption is that the person is a born criminal. To this the French school of criminologists have very rightly replied that these stigmata of degeneracy which are described by Lombroso at such length are characteristic, not only of born criminals, but of other defectives. The insane, the epileptic, and the feeble-minded have been shown to have the same stigmata of degeneracy as the born criminal. There is, therefore, no such thing as a "criminal type" from a physical standpoint, but what there is, is a degenerate type to which we find belong some classes of criminals as well as other classes of degenerates. When numerous stigmata of degeneracy are found associated with criminality, there is little doubt that the person so afflicted may be classed as an instinctive criminal. It has also been shown by other investigators that the instinctive criminal class is characterized physically by low vitalization, defective nutrition, lack of normal muscular development and strength, and low resistance to disease. We may safely conclude, therefore, that when criminality is associated with frequent and pronounced functional and structural abnormalities of the body, we are dealing with the instinctive criminal.

The psychical characteristics of the instinctive criminal class have also been very fully described, not only by the Italian school of criminologists, but even more fully, perhaps, by German, English, and American criminologists, psychologists and psychiatrists. The distinguishing mark of the instinctive criminal is, of course, lack of moral sense, which characterizes him from his earliest childhood; but associated with this moral imbecility are usually certain other striking characteristics, such as extreme egoism; extreme cunning and shrewdness, associated not infrequently with extreme stupidity in certain respects; defective power of attention and concentration of thought, having as one consequence defective will-power, and as another, quick fatigue; defective power of associating ideas; hence defective imagination, lack of foresight, and other traits of mental undevelopment. Perhaps all of these psychical defects are more or less responsible for the person's moral defects or his inability to adjust himself to the social order. Another striking psychical characteristic of the instinctive criminal, as noted by Lombroso and now abundantly confirmed by other investigators, is his defective physical sensibility. All of his senses, with the possible exception of sight, are apt to be less acute than in a normal person. This is, no doubt, due to his defective mental development and degenerate physical organization.

There are also practical tests of instinctive criminality which aid

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in determining whether a criminal belongs to this class or not. One of these is early and persistent incorrigibility; the normal child in a normal environment is never incorrigible. This incorrigibility shows itself, when the career of crime has once been entered upon, by recidivism. While recidivism is equally a characteristic of the habitual criminal, yet when recidivism and incorrigibility are connected with early crime, psychiatrists and psychologists affirm there can be little doubt that the case is one of instinctive criminality.

Even if we reckon that only ten per cent of our prison population in prison on a given date belong to the instinctive criminal class, nevertheless if we allow the usual estimate of four criminals of a given class out of prison for every one inside of prison, this would give the United States a probable instinctive criminal population of from forty to fifty thousand. While the instinctive criminal is not the most dangerous type of criminal, it is desirable, nevertheless, that this type be recognized and that their tendencies be detected at as early an age as possible so that they can be segregated from society. There is, of course, little use in discussing the reformation of the instinctive criminal. From the fact that their criminal tendencies are due mainly to inborn defects, it would be idle to suppose that any very large per cent can be rendered normal. A small per cent, to be sure, might be rendered normal if their condition was recognized early enough, but inasmuch as feeble-mindedness of all sorts is a congenital condition, and inasmuch as we now know that all congenital characteristics tend to be transmitted to offspring, it would be unwise in any case to leave the instinctive criminal class at large in society, for they alone of all classes of criminals can, according to the now accepted Weismannian theory of heredity, transmit their criminal tendencies to offspring; therefore, the social policy toward the instinctive criminal class should be one of wise and humane segregation. Any person suspected of being an instinctive criminal should be sentenced to some correctional institution, upon indeterminate sentence, until his case can be passed upon by experts.

The characteristics of the second class of criminals, namely, the habitual criminals, are, of course, as well marked as those of the instinctive criminal class. The habitual criminal, as we have already said, is the normal person who has gone astray in society through the influence of his environment. The most ordinary example of the habitual criminal is the type of criminal produced in the slums of our large cities, where children grow up under exceptional temptations and where they early enter upon a career of crime. The habitual

criminal may, of course, in time acquire certain abnormal characteristics, but in general he shows clearly enough that he was in the beginning a normal person whose natural impulses to crime were not repressed by proper training and through social influences. In general, therefore, the habitual criminal lacks the stigmata of physical degeneracy, or at least he has not more of them than might be found in a normal person. He lacks, also, the psychical characteristics of the instinctive criminal; that is, the marks of mental incapacity which we have already noted above. Ellis says that the habitual criminal, in the early part of his career, shows more frequent returns to normality than the instinctive criminal. Be this as it may, the true habitual criminal has not his criminal tendencies born in him, but taken on from his environment. While he may, unless very carefully treated, show the incorrigibility and recidivism of the instinctive criminal, yet he is not by his nature incapable of reform. On the contrary, in the early part of his career at least, the criminal habits may be broken and permanent reformation effected.

The two marked types of the habitual criminal we have already called attention to. First, there is the ordinary weak person who is simply a victim of his environment and who takes up crime because of the example of crime all around him. He is a normal imitative person. He may perceive clearly the wrongness of his act, but he has not sufficient strength of character to break loose from his criminal habits. He may develop, however, under certain circumstances, into a professional criminal, who is simply an habitual criminal who more or less deliberately follows crime as a career because he finds its ways of life pleasing to him and its returns perhaps greater than that of any other occupation which he might enter. Because of the relative inefficiency of our police, our courts, and our prisons, it is possible for certain classes of criminals to largely escape punishment and to make more from their criminal career than they could from an honest calling. Hence, modern society has developed this sub-class of habitual criminals which we know as professional criminals. They are, undoubtedly, the most dangerous portion of our whole criminal class. Usually the professional criminal is somewhat above the average in intelligence and strength of character, but he is simply a person who has developed rather exceptional gifts of preying upon society. The professional criminal owes his existence not only to the defects in the machinery of our criminal law, but also to the defects in our education and in our social organization, which make it possible for a parasitic class to live by plunder.

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The number of habitual and professional criminals is, of course, very large. It is usually estimated that from forty to fifty per cent of those in our state prisons represent the habitual criminal class. Probably if their complete history could be known a much larger per cent of our major offenders would be found to belong to this class. Inasmuch as this class of criminals is in a particular sense due to our faulty social conditions, it is this class which reform in our criminal law and in our prison system should especially aim at. All persons who show by their history that they have been habitual offenders should be sent to institutions upon indeterminate sentence until they give satisfactory evidence of their reformation. Only in a few instances, in the writer's opinion, may the reformation of habitual offenders safely be undertaken without the aid of an institution. Children and young habitual offenders of good antecedents may, of course, often be reformed without the aid of an institution; that is, by the probation system. In any case the young habitual offender under thirty years of age may be easily reformed if dealt with properly. Abundant experiments of psychologists and others show that habits, and therefore character, may be easily radically modified under thirty. Habitual offenders who are past thirty years of age, however, must be dealt with not so much with the expectation of their reformation as with the idea of segregating them from society. Usually the habitual offender past thirty has been guilty of several felonies, and "an habitual criminal act," providing for life sentences for all who have committed their third felony or more, is a necessary means for dealing effectively with the habitual criminal class. With indeterminate sentences for all habitual offenders under thirty and life sentences for hardened habitual criminals, subject only to executive pardon, it ought not to be difficult to deal successfully with the problem which the habitual and professional criminal presents in society.

The third main class of criminals is also a large class. Statistics usually show that about fifty per cent of the major offenders in our state prisons are presumably single offenders; that is, persons who have no history of crime and whose first felony is not followed by other offenses. It may well be doubted whether such a large number of our major offenders belong to this class. It might be even reasonably contended that if the history of these persons regarded as single offenders could be known, it would be found that many of them had criminal records; moreover, prison statistics are untrustworthy on this point because they simply represent conditions at a given

moment and not the entire life history of the prisoners previous to and following their incarceration. Then, again, it is well known that between the different prisons of America there is no efficient way of tracing the records of prisoners. While one may doubt if the class of single offenders is as large in society as it is often represented to be, there is, of course, no doubt that in the work of the courts the class of presumably single offenders looms very large. Some of these presumably single offenders may, of course, become habitual criminals through the blundering work of the courts or the prisons. The judicial and institutional methods of dealing with single offenders to readjust them to society and to prevent them from becoming habitual offenders are, therefore, quite as important as the methods of dealing with the habitual or instinctive criminal.

The single offender, then, is a normal person, a reputable person who in a moment of moral weakness commits some offense which temporarily places him in the criminal class. Two distinct types, as we have already noted, are evident among single offenders. The first type are persons of somewhat weak will who yield to some overpowering temptation, such as the temptation to embezzle money, but who are, on the whole, so dominantly social in their character that they show keen and genuine remorse for their offense. This is the type which we might call the "accidental," sometimes called "occasional criminal." We may note here, however, that the phrase "occasional criminal" is used with great ambiguity by all writers employing it. Sometimes they evidently mean by it the single offender, sometimes the weak type of habitual criminal. Just what is meant by the "occasional" criminal is rarely made clear, and while there may be some objection to the phrase "accidental criminal," the term "occasional criminal" is certainly so ambiguous that it should be dropped.

The other type of single offender is the person of strong will, but who has strong emotions and passions and who, in some moment of weakness, allows his passions to momentarily overcome him. We should, of course, beware of using this category "criminal by passion" too freely, but there can be no doubt that a certain proportion of single offenders are such. Some allowance must, of course, be made here for the influence of the social environment. Certain individuals who commit single crimes of passion in certain sections of our country at the present time doubtless would not commit these crimes if they lived in a different environment, such as that of Europe; nevertheless, we must recognize this type as that of the relatively law-abiding citizen who takes the law into his own hands to redress some

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real or fancied grievance, but who in so doing acquires no particular tendency toward a life of crime.

The single offender, being a relatively socialized person, can usually be dealt with outside of institutions. While the single offender is not to be confused with the first offender, the treatment of the young single offender should be substantially the same as that now recognized for most first offenders. The single offender under thirty can, in other words, be reformed without institutional treatment. If the person is truly a single offender, that is, has no history of criminal tendencies, and is under thirty years of age, it would be safe to say from ninety-five to ninety-nine per cent of this class could be reformed with a proper probation system outside of prison walls. For this reason there should be probation officers attached to every court and central supervision of the system for the state as a whole. It is admitted on all hands that the class of single offenders is large; that they are the class who are most socialized and wish most to reform; therefore it is worth while for the state to have in connection with its courts adequate methods of dealing with this class.

Just how far, if ever, exemplary punishment should be employed in dealing with this class is a disputed question. The present standards of our civilization seem at least to require that those of this class guilty of homicide in the first degree suffer capital punishment; otherwise mobs are apt to exact summary vengeance. Disregarding this single case, which I think all must admit to be due to the deep-seated instinct for blood vengeance which civilization has as yet not been able to uproot, it would seem to me that the only case in which exemplary punishment might be socially desirable would be in the case of single offenders past thirty years of age. Society has a right to consider that persons above thirty who are guilty of single offenses have their characters relatively fixed and that what is needed is not opportunity to reform, but exemplary punishment. Taking the bribe-giver and the bribe-taker in American society at the present time as examples, it would seem that society in such cases can scarcely afford to dispense with exemplary punishment as a deterrent to others.

A common mistake made by some criminologists is to argue that because a single offender is a relatively socialized person no punishment is necessary in his case. This, indeed, seems to be the tacit assumption even of our courts in certain sections of the country. It need hardly be pointed out that the single offender should no more be permitted to slip through the meshes of the law than the instinctive

or habitual criminal. Acquittal of single offenders by judges and juries because of their previous good character is as demoralizing to society as the escape of habitual criminals. Therefore, conviction is as desirable in the case of the adult single offender as in any other class of criminals. Those under thirty should be reformed, if possible, by the probation system; and here it may be remarked that probation is not a species of leniency as some seem to believe, but is simply the scientific method of treating offenders who are relatively socialized and who are in a good environment. Single offenders past thirty years of age may, in some cases, as the laws of some of our states provide, be placed upon probation, but in general it would seem that this type of single offender is a fit subject, if any, to receive a definite sentence as exemplary punishment.

The three types of criminals which we have noted are clearly distinct. The instinctive criminal, characterized by a slight degree of feeble-mindedness and other hereditary defects, can scarcely be confused with the habitual criminal; and there is certainly no danger of confusing the single offender with either type. This classification shows, therefore, the great character types within the criminal class. It is based upon the clear, definite principle of habit and none of the three classes overlap. It conforms, therefore, to the logical principles of classification and is at the same time simple and easy of application. We must recognize these distinct types within the criminal class if we are to deal scientifically with the problem of crime. Steps have been taken already in this direction, to be sure, but only the beginning has been made. Is it not time in our criminal law to recognize explicitly the mentally defective in the criminal class, the habitual or professional criminal, and the single offender? Certainly we cannot have scientific treatment of the criminal in our courts until this is done. We have already a sufficient knowledge to make it possible, moreover, for experts to determine with practical certainty whether any particular offender belongs to the one or the other class. Our prisons or correctional institutions should also be organized so as to recognize these different classes and to give to each class its appropriate treatment.

The three classes of criminals, we may note in conclusion, show distinctly the three different sets of causes at work in producing crime: the biological, affecting the hereditary equipment of the individual; the social, affecting his social training and adjustment; and the individual psychological, affecting the person's moral decisions momentarily. It ought not to be difficult when we have traced crime

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to these three different roots to find ways of controlling, if not eradicating, it. None of these sets of causes are utterly unamenable to social control. To eradicate crime and the criminal from society only requires that man shall attain to the same mastery over the social environment which he has already practically attained over the physical environment.