

1911

Criminals and the Law

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Recommended Citation

Archibald Hopkins, *Criminals and the Law*, 2 *J. Am. Inst. Crim. L. & Criminology* 68 (May 1911 to March 1912)

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CRIMINALS AND THE LAW.

ARCHIBALD HOPKINS.¹

The fundamental mistake of most reformers seems to be in not realizing that the only way to regenerate society is to reform the individual, that labor for adults is largely thrown away, and that to accomplish anything, effort must be concentrated on the children. If every growing child were put in a wholesome environment, given a sound education, physical, mental and industrial, and trained assiduously and constantly in hygiene and morals, in two or three generations most of the social problems calling for reform would disappear. It would not need the expenditure of as much money and energy as are now largely wasted on machinery and futile methods, to accomplish all this, and there are indications that its importance is being seen. The establishment of juvenile courts and the segregation of young offenders who have been indiscriminately herded with the criminal class, the movement against child labor, compulsory education and truant officers, the securing of playgrounds, and the attention given to the physical defects and needs of children, all go to show that a realization of the true basis of reforming society is dawning.

While it cannot be too much insisted upon that it is with the rising generation that the most telling uplift work can be done, and that it is impossible to reform mankind as to intemperance, dishonesty, crimes of violence, divorce, or any other of its shortcomings and faults, by legislation, there is no doubt that when it comes to dealing with the criminal classes, the character of the legislation we adopt is of great importance. The power and authority of the state to punish for moral guilt has been abandoned, and the basis of dealing with the offender has come to be the right of society to protect itself from crime, with the duty attached of reforming the criminal if possible.

The purpose of law and of discipline is deterrent, protective and reformatory. From having attached the death penalty to numerous minor as well as serious offenses, and treated criminals worse than beasts, we have nearly done away with execution for any crime, and on a theory carried much too far for the benefit or safety of any one concerned, that crime is a disease, we have come in some states to deal with criminals as a privileged class. In a recent number of a leading British periodical

¹Washington, D. C.

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an Oxford graduate who had been subjected to a short term of imprisonment says that he found the life altogether too easy and comfortable to be a deterrent from crime, and that numbers of the vagabond class got themselves purposely incarcerated. There should be neither cruelty nor barbarism towards criminals, nor sentimental pampering of them.

There is enough truth in the theory that crime is a disease to indicate what the general method of its treatment should be. As has come to be the case in medicine, it should be primarily preventive. Of course the most effective preventive treatment possible would be to deal with children. Pending the adoption of such measures in their entirety, which it will take a long time yet to bring about, there are some beneficial steps which might be taken. There has been much discussion lately of criminal law and its administration, an influential conference on the subject has recently been held, numerous suggestions, some of them doubtless useful and wise, have been made, and the President has brought to the attention of the country existing defects. I venture to put forward two suggestions of which I have seen no mention.

(1) The head of Scotland Yard in London said not long ago that nine-tenths of the serious crimes there were committed by men who had served one or more terms of imprisonment, and who might be regarded as belonging permanently to the criminal class. His judgment was that if they could be eliminated from the situation, violation of the law would be diminished to less than a third of what it has been. Why cannot this be done? Let the courts be clothed with the power, after two or more offenses, in its discretion to pronounce a man an incorrigible, who shall be sentenced for life, to whom no pardon shall issue. By an arrangement between the General Government and the States a colony could be established, say in the island of Guam, where escape would be impossible, and where under military guard the convicts could be made to earn their own living. Surely society has the right to protect itself from these incorrigibles, who are only released to again prey on it. They also are the class who reproduce their kind, and at present society puts no obstacle in the way.

It is exactly as if instead of forming colonies to which all lepers are compelled to go and remain, we permitted them after a brief term in the hospital to go where they please and to marry and produce more lepers. The incorrigible criminal is worse than the leper because he deliberately and purposely defies society and spreads his contagion. It can hardly be questioned that the permanent segregation of the professional criminal class would very greatly diminish crime, nor can it be

questioned that society has the right to adopt such a measure of protection, nor that it would be entirely practicable.

(2) There is also a change in the present method of administering the criminal law which while it may be open to objection can hardly fail if tested to insure ameliorated conditions. Society is interested in apprehending, convicting and punishing the criminal and holds itself responsible for doing so. Is it not equally interested in and responsible for the protection of the innocent? What greater wrong or injustice can be imagined than the arrest, indictment, and trial of a perfectly innocent person? It constantly happens. The whole power and machinery of the state is turned against a single individual who is often without means to defend himself or has to sacrifice all that he possesses to do so. The least that the state should do when it has mistakenly accused a man, is to assume the expense he has been put to. No one can compensate him for the distress he has suffered. But why should the state not do more than that? Why should it not have sworn officers of high character to defend as well as to prosecute? Whatever the objections, the benefits would be clear and immediate. The accused would be sure of a fair trial from which all subornation of perjury would be removed, and which would be conducted without the legal pyrotechnics and sensationalism which now prevail. Objectionable personalities of counsel, unreasonable delay in obtaining juries, groundless objections to questions, misleading statements to the jury and chicane, trickery, and bribery in influencing them would all disappear. Government counsel for the accused would be just as sincere and earnest in their defense as the district attorney in prosecution, but the scales would be held evenly, and not as now, as has been said, with the entire power and weight of the state on one side. Not only would it greatly improve the character of criminal trials and promote the ends of justice to have Government defense, but it would bring another very great benefit, it would put the criminal bar out of business. Doubtless it comprises some honorable upright men, but it has as a whole always been a reproach to the profession, and an ally to crime, shielding criminals by perjury and fraud, and necessarily living off the proceeds of their wrongdoing. It is safe to say that there would be fewer crimes committed were not criminals everywhere aware that clever, experienced, wholly unscrupulous lawyers, who will stop short of nothing save their own incarceration, are always to be found to defend them by every expedient which trained ingenuity, deceit, false swearing, and jury bribing can compass. Is it not worth considering whether society as a whole would not be benefited by so changing the method of criminal trials

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that the Government shall be charged with the defense as well as the prosecution of accused persons, far beyond any additional expense that it might involve? If it be said that an accused person has the right to select his own attorney, it might be conceded that he should be permitted to call in assistance, but the directing of the conduct of the trial should be left in the hands of the Government attorney, insuring the elimination of the worst evils that disgrace the existing system.