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Editorial Comment

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EDITORIAL COMMENT.

MEMORIAL TO LOMBROSO.

Cesare Lombroso was born in 1836, and received a medical education at Turin. His first services to human progress were rendered in the investigation of the causes of the *pellagra*, a fatal disease which had become the curse of agricultural labor in Italy. By 1870 he had begun his inquiries into the anthropological data of criminals. From that time onwards, criminal science in all its aspects became his field of research. By 1890 these researches had influenced all Europe, and had created a world-wide interest in a reconstructed criminal science. Many of his specific conclusions have since been doubted or disproved; but his beneficent influence as the father of the modern methods and spirit has been universally conceded. What Herbert Spencer was to natural science in general in the 19th century, Cesare Lombroso has been to modern criminal science. The world should unite in honoring his memory, and in perpetuating that spirit and method of research for which future generations will always remain indebted to his influence.

Lombroso died in December, 1909. An International Committee has been formed to collect funds for an international monument or memorial in his honor in his native city of Verona. The precise form to be given to it has not been decided upon, and will depend somewhat on the total amount of money collected. Suggestions as to the form are invited, and subscriptions to the fund.

Subscriptions (with or without check) may be sent to the undersigned at 31 West Lake street, Chicago. When the list is finally closed, the subscribers' names will be published (without amounts) in the Journal of the American Institute of Criminal Law and Criminology.

Amounts anywhere between \$1 and \$100 will be appreciated.

Committee for the United States of America.

JOHN H. WIGMORE,

Dean of the Law Faculty of Northwestern University, and Former President of the American Institute of Criminal Law and Criminology.

ITALIAN COMMITTEE OF ORGANIZATION.

Mr. Gallizioli, Maire de Verona, Président d'honneur.

Prof. Leonardo Bianchi, Député, ancien Ministre de l'Instruction Publique, Président du Comité promoteur.

THE POINT OF VIEW

Prof. Augusto Tamburini, Président de la Società Freniatria Italiana, Vice-président du Comité promoteur.

Prof. Enrico Ferri, Député, Professeur de Droit criminel à l'Université de Rome, Secrétaire général du Comité promoteur.

Prof. Sante de Sanctis, Professeur de Psychologie expérimentale à l'Université de Rome.

Prof. Antonio Marro, Direct. de l'Asyle des aliénés à Turin.

Prof. Giovanni Mingazzini, Professeur de Neuropathologie et Directeur de l'Asyle des aliénés à Rome.

Prof. Enrico Morselli, Professeur de Clinique des maladies nerveuses et mentales à l'Université de Gênes.

Prof. Salvatore Ottolenghi, Professeur de Médecine légale à l'Université de Rome.

Prof. Mariano Patrizi, Professeur de Physiologie à l'Université de Modène.

Prof. Giuseppe Sergi, Professeur d'Anthropologie à l'Université de Rome.

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Vice-Secrétaire du Comité. J. H. W.

THE POINT OF VIEW.

The address of Nathan William MacChesney, Esq., of Chicago, the retiring president of the American Institute of Criminal Law and Criminology, was one of the features of the recent third annual conference of the Institute at Boston. In this address, Mr. MacChesney discussed the new science of criminology, the prevalence of crime, and the progress toward uniformity in state codes of criminal law and procedure.

After drawing a comparison between the prevalence of crime in England and the United States, much to the disadvantage of our own people, he points to the fact that many of our writers and public speakers "are accustomed to salving our pride in this matter by referring to unrestricted immigration as an explanation." Statistics, however, as he says, does not support this contention, and here Mr. MacChesney comes, I think, happily to the heart of the science of criminology as it stands to-day. "We must," he says, "find some other explanation than unrestricted immigration to account for the wave of crime in this country. With the lack of discipline among American-born children, the breaking down of home life in many of our centers, and the absence of respect for law everywhere apparent," we Americans are confronted by a serious situation. To extricate ourselves is our problem. Our

high resolve to find its solution must not be dampened by prepossessions or misconceptions of any extant theory. Nothing must be allowed to "retard the present public interest in furnishing proper environmental conditions for our children, and, by every educational and reformatory means, preventing or ameliorating the tendency toward criminality."

This leads directly to the point of view in criminological science. It is set forth again with distinctness and accuracy in an admirable chapter by Harold Höffding, a translation of which under the title, "The Right of the State to Punish," will appear in a subsequent issue of the JOURNAL. The ultimate problem of society is to secure an individual and a group whose responses to the situation in the environment—which responses taken together constitute behavior—shall measure up to a certain standard. This standard is determined by the social group, and deviation from it is recognized as crime, if, at any rate, survival is adversely affected thereby. Determined by the social group—yes, but not through statutes without exception, however many of us would like to believe it. After much fitting and trying, some of our statutes in the long run may receive recognition as definitions of standards of behavior. But, for the most part, these standards become defined, little by little, through the give and take among individuals who live in approximately the same situation. As situations differ, therefore, and human needs with them, according to geographical location, economic conditions, etc., the standards of human behavior must differ. Hence it is that what is proper on one side of the line may be questionable on the other; what is criminal here is innocent there. We have, therefore, no uniform standard of behavior, and as Mr. William M. Ivins, of the New York bar, said so well in his address at a conference on reform of criminal law and procedure at Columbia University, on May 13, 1911, "we have no satisfactory definition of crime" and we cannot possibly have one that will be valid universally—to the infinite confusion of legislation and procedure and, we may say, of society's greatest function, moral education. Yet, in spite of the confusion, society strives to bring forward sub-groups and individuals who will conform to a more or less local standard of behavior. This is education; and we may therefore describe the point of view of society with reference to the prospective and realized behavior of the members by the term, "educational."

"Education," therefore, in the science of criminology is a large word. The community, when it sends a group of its wards to an educational institution, saying to the official in charge, "Take these youths and make men and women of them, having regard for social conduct in addition to

the other usual acquisitions," gives him a place of influence as a practical criminologist, whose duties are chiefly preventive. Now, the official who is awake to his opportunities will know the points of probable inherited strength and weakness, the economic and social status, especially of the troublesome youth, and daunted by no idea of the fatalism of heredity and no theory of "economic determinism," he will carefully and patiently arrange the stimuli (factors in the environment in the broadest sense) day by day and year by year, in such a way as to bring about under his direction the desired modes of response. It is a case of establishing primary habits of behavior where none hitherto had existed. Frequently failure marks the way and then it is that we have the delinquent to deal with. Here is the reformatory function of society, and various officials such as teachers in reform schools, probation officers, etc., are created to accomplish her ends in this sphere. Strictly, however, this is not an "other function." It, too, is educational, but here the emphasis is rather upon *breaking* old habits obtrusively or unobtrusively and substituting others for them. This work requires a more specialized arrangement of stimuli in the environment, and a more intensive examination of the individual's physical and mental ability to react to the situation with which he is confronted. This view of the whole matter makes the policeman, the court, the juror in the box, the probation officer, the jailer, the superintendent of the institution for the care of the juvenile or the adult delinquent, and every other officer who has to deal in any way with the breaker of the law—an educator. At the worst, he is where an educator ought to stand.

This is an illuminating point of view. It is no less worthy because it fires the imagination. How bare of possibilities was the old "retribution" point of view which would simply give a knock-out blow to the criminal who happened to be caught red-handed, and the unmodified "protection" viewpoint which would simply insulate society against her rebellious members. To-day, every official is, ideally, an educator with all that the term implies in the way of equipment, temperament, and ideals. This means that, from the ground we have taken, we are looking forward to a day when the delinquent in both his physical and mental nature, and as a product in part of various external factors, may be understood with at least approximate thoroughness by every agent of society who is in touch with him.

This is an ideal which will not be realized fully in our own generation nor in the next, nor in the next following. Educators of normal children in the schools are far from realizing a parallel ideal in their sphere. But it is none too high and we must be after it. The Institute

and the JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY must, without flagging, stimulate investigation. Their problems must be viewed from every angle. Thus, in their own light, they may from time to time prove themselves reformatory agents, not on haphazard but on strictly scientific grounds in the fields of law, procedure, and penology..

In our special corner and in the educational field at large common sense has, here a little and there a little, dictated forms of procedure. But it is one thing to stake out our territory and to identify our methods and our point of view, and still another to affirm on the basis of a scientific knowledge of the nature of man and his functions, individually and collectively, that our processes and outlook should be what they are or that they should or should not be different. In general, it may be said that our practice is ahead of our theory. We are working along the line of trial and error. Experts disagree in their valuation of our educational methods because guiding principles are lacking. In such a case our system will fail at many points and sacrifice our material. It is doing so daily. *The Catholic Educational Review* justly charges that we Americans in our public institutions fail lamentably in the development of self-control and respect for the rights of others. We must have more light from the sciences of medicine, anthropology, economics, sociology, and psychology. It is from these sources that the practical worker must learn better than he knows now what he has to deal with in the particular instance; how to diagnose his case; what will be the reaction to this or that method. Diagnosis properly precedes treatment. As we become able to set forth this light, our educators—prison officials, judges, or what not—will use it.

The best means for making this scientific data available is through coöperation rather than individualistic research. A few years ago the neurologists, at the suggestion of Professor His, of Leipzig, organized the "Brain Commission," composed of widely separated investigators, to stimulate the *co-operative* study of the anatomy of the brain. So advantageous has this movement proven that the embryologists have recently adopted a similar plan. The JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY would be glad to receive suggestions with reference to co-ordinating individual efforts at research within its own special field.

The writer is very well aware that the point of view as described above does not fully take into account the responsibility of society in the matter of crime. It will be said that there is a considerable group of criminals whom the educational purpose does not fit—the class of born criminals, so-called, one of them has been minutely described by Dr. Hoeve in a recent article in the *Illinois Medical Journal*, and which

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is reviewed in the present issue of this JOURNAL. Ignorance at this point cannot be hidden under words. We do not know whether, as a matter of fact, there are *born* criminals, who, if recognized at a sufficiently early day, may not by fitting treatment be inclined toward social conduct. Perhaps this is one point that investigation in the future may make plain. But certainly it is true that there are individuals in our prisons and, very unfortunately, abroad in the land, upon whom our best educational or reformatory measures are bent in vain. One of these, perhaps, is the self-confessed murderer of Annie Lemberger, whose case is cited on another page. The educational must be supplemented by the protective point of view. There are criminals who remain uninfluenced in the face of the best treatment that we can apply. For the safety of all, the sooner they are recognized the better, and when once discovered the only sane policy to pursue with respect to them is isolation from society.

One point more. The criminal is the exceptional case to whom our social theories and practices do not apply. In science, generally, it is universally true that the vexatious exceptions are the source of suggestions of new hypotheses, which in due time have changed the face of a considerable body or the whole of science. It may not be too much to expect that the inter-action between social institutions on the one hand, and the exceptional misfits on the other, will eventually be the means of correcting both, here a little and there a little. There is profit in everything, and time and wisdom will bring it to light. R. H. G.

PROBLEMS FOR THE PRISON ASSOCIATION.

I wish to indicate here what I believe to be the most essential principles approved by the various resolutions of the International Prison Congress at Washington and to propose certain problems which have vital significance for us in America. The Congress at Washington was divided, for purposes of discussion by specialists, into four sections: criminal law and procedure; penitentiary administrations; preventive methods; treatment of children and youth. The central and dominant principle which came up in each of the four sections may be thus stated:

The community seeks to protect its interests through criminal law, correctional institutions, preventive measures and care of morally imperiled children and youth, by deterrent penalties, by reformatory treatment in institutions, by supervision of convicts free on parole, and by improvement of conditions which affect the character of the young. The interests which society thus seeks to guard are order, security of life

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and property, respect for valuable institutions, and the general welfare and progress of all members of the nation.

In the first section, on Law and Procedure, the specific conclusion reached was thus stated:

"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 be applied also 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 weakness of this statement is that it fails to define what is meant by the vague phrase "indeterminate sentence."

Those who are working on the problems, therefore, which are presented by our prison population should formulate and discuss a series of propositions such as the following:

1. A disclaimer and explanation. When we use the term "indeterminate sentence," *we do not mean to ask any indefinite, arbitrary, irresponsible power for the prison administration; we do not ask that legislatures and courts should be excluded from control over the penalties for crime and the methods of treating offenders.*

The discussions of the "indeterminate sentence" at Washington, in the papers, and in European journals show that the word "indeterminate" is widely misunderstood and that it suggests to many legal minds something capricious and arbitrary. Apparently many of our European friends have made themselves believe that we would be willing to deliver up a convict to the prison administration to be deprived of liberty indefinitely at the absolute discretion of the executive and administrative branch of government; that we would limit the power of the legislature to the definition of criminal actions, and the courts to the declaration of guilt, while all the rest would be left to the arbitrary control of prison authorities, without legal or judicial limitations or directions.

Against such indefinite and arbitrary power the legal mind everywhere revolts. I do not understand that our representative leaders on behalf of the so-called "indeterminate sentence" have ever advocated anything so essentially contradictory to our legal beliefs and principles. What they have asked is rather the abolition of the irrational and arbitrary laws of the past, based originally on vengeance and compensation, and the substitution of a sentence based on social defense and reformation. But we have not yet made sufficiently clear to ourselves what is the best

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kind of organ for carrying out this principle in practice. The Congress at Washington voted that the board of parole should be substantially a judicial body, with powers like those of our Juvenile Courts, capable of carrying out the purpose of the law by modifying the treatment of a prisoner from time to time as indicated by the conduct of the convicted person.

2. *A positive demand. We do insist that the legislature provide sentences sufficiently prolonged for effective educational methods in the case of educable persons who are capable of reformation and control, sufficiently prolonged in the case of habitual, professional, dangerous criminals to afford protection against them and to be deterrent in general society.*

From both standpoints time is an essential factor; the period should be fixed, not by some arbitrary guess at what certain acts "deserve," but by a scientific study of the measures necessary to prevent crime and to reform those who have formed anti-social habits.

3. In carrying out the measures of reformation, education and social protection, we ask that the necessary modifications be made in judicial methods.

(a) That—under the present laws—the sentence given by judges should be such as to give time for the working of the discipline of the parole system.

(b) That the period of parole (or "conditional freedom" under supervision) be fixed by a *special court* or board, at the time of parole, and not in advance of the period of observation during the serving of the sentence inside the institution. The conduct of the prisoner is one of the considerations which make a wise decision possible. And parole itself should be made dependent, in great measure, on good conduct in the prison itself. This is a powerful aid to the reformatory efforts of the prison administration.

4. *Advanced legislation is desirable to make effective the advanced ideas of punishment and reformation; and this legislation should be based on modern knowledge of the difference in the character and requirements of various classes of offenders.*

Already this demand has been accepted by legislators in respect to juvenile offenders. The establishment of institutions for the care of various classes of defectives illustrates the influence of modern psychology and scientific education in respect to this group of offenders. It is true that the legislators of some states are slow and backward, and that the administrative methods are often imperfect; but the victory of

modern principles is fairly won, and legislation will not move backward from the ground that has been gained.

We have the beginnings of a rational and effective method of dealing with the incapable, morally weak, habitual drunkards, and those wrecked by drugs and vicious indulgence. But legislators and their legal advisers should learn how futile, even damaging, are the methods of treating persons of this class under present legal conceptions. A prolonged period of medical control, with steady labor, much of it in the open air, is absolutely essential to any degree of success with this discouraging group of offenders. The short jail sentence has been demonstrated by thousands of cases to be worse than useless, costly to society, destructive of what little physical and moral stamina may remain. The farm colonies of Belgium, Holland, Switzerland, and similar experiments in the United States, point the new way. Legislators and their legal advisers are under moral obligation to devise a more rational and just method of dealing with habitual offenders of the more dangerous and obstinate type, such as professional thieves, burglars and potential murderers. Present laws often encourage a treatment of these classes that is a mockery of justice, and that tends to make lynch law and riots respectable. When it is morally certain, as judged by past conduct and repeated crimes, that a criminal will attack peaceable citizens, it is monstrous to let him go merely because he has served a definite time to expiate the guilt of a single specific act.

Legislators and their legal advisers are under moral obligations to the community to make adequate legal provision for the payment of a sufficient corps of parole officers of the right kind to supervise the conduct of convicts out on parole. It is an injury to the cause of the parole system to set a large number of convicts even conditionally free without proper supervision. Experience proves beyond doubt that many of them will be tempted into their old ways if they are left to their own devices. When once the state has taken possession of an offender it ought to do thorough work with him. It is childish to inflict on him a definite sentence of suffering and loss and then let him go as if he were a normal citizen. His conduct shows he is not a normal citizen, because the vast majority of persons in the same circumstances do not act criminally. The court, in pronouncing sentence, declares a public judgment about the man as well as about his deed. If the state is logical, consistent and wise, it will follow up the authorized condemnation with a treatment which will give full effect to the discovery and decision of its courts, by surrounding its paroled convicts with all the

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help necessary to accomplish the end of protecting life, property, decency, order, and respect for social institutions.

To summarize some of the more important and urgent demands which the discussion at Washington has forced anew upon our attention:

1. The supreme purpose of prisons and preventive measures is to protect and promote social welfare, including, so far as possible, the real interest of the offender.

2. The treatment of the convict must be more thorough, prolonged and determined than it has been, or can be, under the system of "fixed" sentences.

3. The administration of the treatment must never be arbitrary nor in contradiction with the modern constitutional division of responsibility between the legislature, courts, and administration.

4. A state central board, with judicial powers analogous to those of Juvenile Courts, should be invested with the authority to administer the parole system. It should be constituted in accordance with the principles approved by the International Prison Congress at Washington.

5. The different methods of dealing with youth, morally enfeebled and perverted adults, improvable younger offenders, and habitual or dangerous criminals, should be given a permanent legal basis; and state institutions should be provided for affording treatment adapted to the character of each group, with large opportunity for individual treatment.

6. That such treatment may be guided by thorough knowledge of the character of the offenders, persons of training should be employed by the state to assist the administration by observation and study of the life histories of convicts; and a scientific record should be kept of the conduct of paroled persons to show the actual results secured.

7. The parole system should be made effective by provision for an adequate number of competent and trained parole officers.

8. The probation system should be developed and administered so as to avoid, as far as possible, prison treatment for non-criminal offenders.

9. All institutions for dealings with offenders, and especially county jails, should be brought under central state control. Jails should become places solely for detention awaiting trial, and all persons convicted of crime should be transferred at once to state institutions, established in convenient districts in large states, and adapted to the needs of various classes of offenders.

C. R. H.