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THE FUTURE ATTITUDE TOWARD CRIME.

GEORGE W. KIRCHWEY.¹

We are met at a fortunate time. The moral atmosphere—in which we live and move and have our being—is electric with impulses toward a better understanding and a better ordering of the relations of society to the individual.

In our peculiar field of criminology and criminal law reform, we are apt to think of the forward movement of which we are a part as the result of a definite humanitarian impulse of recent birth, or perhaps of the scientific spirit which has in so many ways become the keynote of the time in which we live. But I venture to believe that our cause is being borne along by deeper and more enduring influences than these. We are the heirs, not of a few decades, nor of a few generations, but of the ages. And the process which we are witnessing is the age-long process of the constitution, the integration, the incorporation of a society out of the individual integers of humanity. The change that has come about is that we have—partly as a result of the new sciences of man—partly as the result of experience in a world-wide social life of unexampled complexity—suddenly become conscious of the fact that we are “members one of another,” that each is bound to all, that the suffering of one is the injury of all, and that each and every one of us is implicated—as an accessory before or after the fact—in the wrongs of every other.

This conception of the social order furnishes the key to the central problem which confronts those who are concerned with the position of the criminal in an ordered commonwealth, by disposing once and for all of the antithesis between Society and the Individual. We can no more think of society as arrayed against an external group of “enemies of society.” The criminal is a part of society, just as the injured limb or the offending eye is a part of the body, and the end to be aimed at is not war, but peace; not destruction, but healing—the healing of the body politic by such methods of cure or prevention as an enlightened statesmanship can devise.

The motive power that must direct the energies of the criminologist,

¹[The Annual Address at the Third Annual Meeting of the Institute, September 1, 1911, at Boston. The author is professor of law in Columbia University, director of the New York Prison Association, and was at the above meeting elected Vice-President of the Institute.—Eds.]

the penologist, the criminal law reformer, is, therefore, not humanitarianism, still less sentimentality, but a passion for the betterment of society as a whole, a passion controlled and directed by a realizing sense that society falls short of completeness and of soundness—that is, of wholeness—so long as one of these, her little ones, “shrivels in a fruitless fire.”

To what extent does the Institute of Criminal Law and Criminology, to what extent do the agencies of reform, summed up in this organization, meet the demands of this new conception of society and the individual? That is the question which it is the aim of this paper to bring before you.

From the illuminating statement of the activities and aims of the Institute, which the president has set before us this afternoon, it will be seen that its labors fall into three distinct classes:

1st. The removal, through legislation and the progressive improvement of the bench and bar, of the abuses which now attend and hamper the judicial administration of the criminal law in the United States.

2d. The amelioration, through legislation and better administration, of the penal law to the end (a) that punishment for crime shall not as heretofore involve the further degradation of the criminal, and (b) that the offending member shall, so far as possible, be redeemed from a life of crime; and

3d. The study of the conditions, “hereditary and environmental,” of delinquents, with the view of determining the causes that lead to crime.

Now, it will be noticed that the first of these aims—the reform of criminal procedure—may be achieved without the slightest reference to the principle of social solidarity above set forth and without any attempt to effect a cure of the disease affecting the body politic. It contemplates the substitution of quick and expert surgery for awkward and bungling surgery—this and nothing more.

It will be further noticed that the second of the aims above indicated—the reform of the penal law—can be completely achieved without materially lessening the amount of crime which festers in the social body at a given time. It is not only nor mainly in our penal institutions that crime is bred and, these once redeemed from the bad eminence they have gained in this respect, there will yet remain a pretty constant supply of criminality to tax the resources of our civilization.

It is only in the third of the aims of the Institute that we find a hint, scarcely yet a beginning, of dealing with the problem of crime in a radical and far-reaching way. It is true that all that is attempted

(enough, some will say) is to trace out the influences that have led convicted criminals to offend against the social order, but the data thus gathered will furnish a basis for inductions of wider scope and more general application. It is here that we find ourselves for the first time in the field of sanitation, of preventive medicine, and there is every reason to believe that to the body politic as well as to the natural body "an ounce of prevention is worth a pound of cure."

Surely no one will believe from the foregoing analysis that I have any purpose of disparaging the aims of this body. The reform of our criminal procedure—now a standing reproach to our civilization—and the amelioration of our penal system are indispensable prerequisites to any successful dealing with the problem of social disease in its wider aspects. What I am aiming to do is merely to place these several aspects of the reform movement in their proper relation to one another and to keep before your minds the larger problem which lies back of them and envelops them. And this problem is that of anticipating and preventing the social cancer of criminality.

To show how this problem may be solved is beyond my power—beyond the power, I venture to say, of anyone now living. But I may, perhaps, hope to indicate some of the principles which, in my opinion, must govern any attempt at a solution.

The first of these principles I find adumbrated in the new institution of the Juvenile Court. Not so much in the fact that in numberless instances the children's court checks criminality at its source and turns wayward feet into the straight and narrow path of good citizenship, but rather in the fact that it recognizes in the juvenile delinquent the victim of a bad heredity or of bad social conditions, or both, and seeks to apply the appropriate remedy—for mental and physical disease, such curative agencies as medical science affords; for moral disease, rigid supervision or segregation; for bad environment, a decent environment.

The state is not ashamed to avow itself the guardian of the delinquent as of the dependent child. May we not hope that it will in the not distant future realize that there is no distinction of age among her erring children, and that all must—in the interest of society—equally feel her wise, firm, parental hand resting upon them?

But the Juvenile Court throws another ray of light farther down the broad avenue of crime. Why limit the guardianship of the state to the delinquent and the dependent child? It is not only from these that the ranks of adult criminality are recruited. The seeds of criminal tendency lie deep in human nature, but not too deep to be detected by the penetrating eyes of wisdom and sympathy. Through the school,

public and private, the children can be reached and examined and known and their mental or physical or moral defects, whether congenital or acquired, ascertained, if not in all, at least in all but the more obscure cases—and, as in the case of the delinquent in the Juvenile Court, the appropriate remedy applied.

Nay, I will go further. Our Anglo-Saxon notion that the state has nothing to do with the individual except as a taxpayer or a law-breaker must give way to the conception that society as a whole is responsible for the acts of all its members, and that it may, in so far as its interests require, exercise an effective supervision and guardianship over each and every one.

The doctrine that "a man's house is his castle" has received some rude shocks in these days of compulsory education and tenement house and health inspection. It is destined to be relegated to the lumber room of the law when we come to realize that the most contagious, as well as the most mortal, of all diseases is criminality and moral degradation. The sacred institution of the family cannot permanently be used as a shelter for profligacy and vice. The inalienable right of the individual to be free in his person and his property will yield more and more to the demand of organized society for an ordered life.

Other remedial agents—the abolition of the poverty that so often leads to crime, the elimination of the degrading conditions due to overcrowding in our great cities, the education of all classes of the community in self respect and in civic responsibility, the growth in all of us of that larger manhood and womanhood which will tolerate no injustice, nor inflict any—all of these lie outside the scope of this paper. But apart from these, which will also be the fruits of the social consciousness to which I have made my appeal, may we not hope that the new conception of the individual as part and parcel of society, and of society as one in aim and in destiny with every individual member, will in due time do much to check the stream of criminality at its source!