

1912

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Recommended Citation

Warren F. Spalding, Treatment of Crime Past Present and Future, 3 J. Am. Inst. Crim. L. & Criminology 376 (May 1912 to March 1913)

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THE TREATMENT OF CRIME—PAST, PRESENT AND FUTURE.

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The older methods of dealing with crime were based upon false assumptions in relation to offenders. The legislature prohibited certain acts. Some of these were wrong in themselves; some of them had no moral quality, but were forbidden in the interests of the public. The legislature dealt with crime, not with criminals; with offences, not with offenders. It had in mind a burglary, a larceny, an assault, etc.—abstract things. Having forbidden these, it became necessary to prescribe penalties for violating the laws. It did not inflict the punishment. It said what should or might be inflicted, and created courts to apply the laws.

In devising penalties, lawmakers dealt, again, with abstractions. They aimed to "make the punishment fit the crime"—not to make it fit the criminal. The average legislator knows little about the criminal. He shares the feeling of the average citizen that the criminal is a man of great physical power, whose liberty is a menace to the safety of others; that he is liable, at any time to attack peaceable citizens who will not allow him to do as he pleases; that he delights in violence, almost for its own sake; is shrewd, calculating, plotting the injury of his fellow-men, and captured with great difficulty—a public enemy who, at all hazards, must be fought and overcome. The fact is that there are very few men of this type. The ordinary criminal is likely to be found lacking in physique, in physical vitality, in will, in initiative, in power to make plans, either against others or for his own protection. Even if not below normal in brain power, he is deficient in self-control, in sense of proportion and in balance, and he does not appreciate the relation between causes and effects. Legislation based upon these misconceptions regarding the criminal is sure to be full of absurdities and of errors, as it is.

SOME FALSE ASSUMPTIONS.

The old assumption was that there was but one thing to be done when a law was broken—the lawbreaker must be punished. It was assumed that two things would follow: (1) The man who was punished would not repeat his crime; (2) others, seeing the punishment, would be deterred from committing crime. These assumptions were based upon theories, not upon facts. They seem reasonable, but the

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criminal does not think and act as other men do. Court records and prison records prove that there are people who do not learn by experience. They repeat their offences, over and over again, once, twice, a dozen times. Punishment does not deter them from crime. The average criminal has two defects which prevent his learning by experience. He lacks foresight. He lives in the present. He lacks imagination. He is sure he shall escape detection. This is not due to optimism, but to his incapacity to imagine what the policeman will be doing. These defects account in large measure for the failure of punitive measures to deter from crime.

But it is said that punishment of the criminal deters others. Perhaps it does to some extent, but its value is overestimated.

It was assumed also that a judge could tell what punishment should be imposed upon an offender—that he could “make the punishment fit the crime.” Perhaps he could, if crime were in his view an abstraction, as it is to the lawmaker. But it is an embodied, concrete thing, called a criminal. The judge must inflict the pain of punishment upon him. How much? It was comparatively easy to answer when the *lex talionis* governed. “An eye for an eye.” It was a very inexact sort of justice, for a sensitive man might suffer a hundred times as much as his victim suffered from the loss of an eye or a tooth.

But when the state undertook a system of commutation, the difficulties became innumerable. How many months of imprisonment should be required? He must “pay” the penalty. The phrase suggests commercial valuations. There is no scientific basis for the imposition of penalties. No two judges agree; no judge agrees with himself. Ask him what he wants to see accomplished; how he expects imprisonment will accomplish it; whether he knows what happened in each of the last ten cases in which he took the same action? As a rule he will have no satisfactory answer. He should not be blamed. He has done the best he could.

The old system considered only one act of the criminal, instead of making character the basis of punishment. True, there was some inquiry as to previous offences, and a habitual offender might receive a severer sentence than that of a beginner; but it was true also that many a recidivist was punished less severely the second time than the first, because his second offence happened to be, technically, less serious.

THE MODERN SYSTEM.

The modern system, as far as it has become a system, is based upon propositions fundamentally different from those underlying the

old ones. It does not accept the proposition that a man who has committed a crime is thereby put into a class by himself, separate and apart from those who have never broken the laws. The assumption that all men who commit crimes are criminals at heart, is unfounded. There is no "criminal class," composed wholly of bad people. There are classes of criminals, but that is a different matter. Law-abiding citizens become lawbreakers; lawbreakers become law-keepers. Each criminal is an individual, and should be treated as such. His one criminal act may or may not show his real character. He may be far better or far worse than his worst deed. Character and not conduct is the only sound basis of treatment.

Fundamental in the new scheme is classification; individualism. In the old system the main question was, What did he *do*? The main question should be, What *is* he? There can be no intelligent treatment until more is known than the fact that a man did a certain thing. It is as important to know why he did it. Diagnosis is as necessary in the treatment of badness as it is in the treatment of illness.

The recognition of the fact that many who commit crime are not criminals at heart, and that many who are criminals at heart may "cease to do evil and learn to do well," marks the distinction between the old methods and the new. The aim of the latter is to provide for the discovery of the reformable, and for their reformation. It was found that criminals may be divided into two classes—those who would reform (themselves) and those who must *be* reformed. To make reformation, instead of punishment, the main purpose in dealing with offenders was novel, almost revolutionary. There are many who still believe that punishment is essential to reformation.

THE FIRST STEP IN CLASSIFICATION.

If arrested offenders are to be classified, some one must provide the information which will enable the court to decide to what class an offender belongs. Hence the necessity for a probation officer. His first duty is to obtain information. The policeman proves what the prisoner did; the probation officer must find out why he did it, what he really is and needs, and whether he is or is not likely to reform without punishment. If he is, he might be set free by the court; but it is unwise. The average probationer needs supervision. He must be made to realize that though at liberty, he is not free, and that if he relapses he will certainly be surrendered and punished. But he needs more than this. Ordinarily, men of this class are weak; they need counsel, and the support of one who is stronger; they need friendly care. To give this is one of the probation officer's functions. His duty is to watch over the probationer, rather than to watch him.

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One of the principal duties of the Massachusetts probation officer is to sift those arrested for drunkenness. The work is done carefully. The officer does not depend merely upon his memory. Every "drunk" case is a matter of record. The arrested person makes a written statement, giving his name, and address, setting forth what persons, if any, are dependent upon him for support, his place of employment, if any, and whether he has been arrested previously for drunkenness within the past twelve months, and requesting to be released. The probation officer investigates the record. If he believes that the prisoner has given his true name and address, has not twice been arrested for drunkenness during the preceding twelve months, and will appear upon a summons, if wanted, he may direct the officer in charge of the station to release him.

The advantage of the proceeding cannot be overestimated. In many cases drunkenness is unintentional. The arrest is in the interest of public order, and frequently is for the protection of the arrested person.

When he is sober, the probation officer, before releasing him, tells him that a record has been made, which will be used against him next time, and warns him of consequences. There is a fair chance of saving him, if he is a beginner. One great advantage is that he is spared public exposure in court, and saved from a record of conviction. Also, he is able to return to his work in the forenoon. It is of especial value on Sundays and holidays. In Massachusetts 37,746 were released in this way last year.

In some cases the probation officer cannot complete his investigation before the court opens, or is in doubt as to the expediency of an early release, or of any release. (His power to direct a release is discretionary.) In such cases the prisoner is sent to the court. He is questioned by the court in the dock, before the complaint against him is read, before he is asked to plead. The probation officer's record is before him, and the probation officer gives what information he has. The court, in its discretion, may release the prisoner without arraignment, sparing him the stigma of a conviction. Twenty-six thousand and fifty-eight were so released in Massachusetts last year.

HABITUAL INEBRIATES.

It will be seen that these proceedings result in sifting those who are arrested for drunkenness. Most of those who are held for trial have records. For those who have, the law makes severe action possible. Formerly there was a cumulative-sentence statute, with heavier penalties where there had been previous convictions. But the courts held that it was necessary to allege and prove those convictions. This

was so difficult that the power was rarely used. Many years ago a law was passed giving the courts power to sentence any man or woman to imprisonment for a year for drunkenness, even for a first offence. It was believed that they could be trusted to use this enormous power wisely, and that trust has not been abused. It is not necessary to use records of previous convictions in the trial, as the complaint contains no allegation of such convictions. On the question of sentence, however, anything which will enable the court to act wisely may be put in.

Several results have followed the use of this system. Perhaps the most important is that "drunk" cases are tried as thoroughly as other cases. A second result is that the policeman's conception of his duties and of his relations to the court have changed. Formerly his main thought was to convict his prisoner, and to secure his punishment, especially if he had had a tussle with him. He has come to see that his duty is done when he has given his testimony. The disposition of the case is a matter for the court.

Again, the new method affects arrests. When a policeman knew that an arrest meant that he must spend two or three hours in court, he was reluctant to make it. There was the same reluctance when he realized that his prisoner might be sent to prison for the non-payment of a fine. Now, knowing that the occasional offender will be released, he takes him into custody, for the benefit of the public and of the individual.

NON-SUPPORT; RESTITUTION AND REPARATION.

The probation system has revolutionized the treatment of men arrested for non-support also. Formerly, a man arrested for not supporting his family was sent to prison, making it impossible for him to do what he was punished for not doing. Now he is put into the custody of the probation officer, required to work and to pay his money to his family, or to the probation officer for their support. In Massachusetts last year, probation officers collected more than \$45,000 in non-support cases.

Under the old system, if a person injured another, or damaged his property, or stole from him, he was punished by the court, sometimes by a fine, sometimes by imprisonment. If a fine was paid, it increased the public revenue. The person who was injured bore all his own losses, and the public profited by every offence. Under the new system, the wrong-doer may be required to make reparation or restitution, being released on probation and paying to the probation officer, in installments if necessary. This has the great advantage of securing for the injured person what belongs to him; of compelling the injurer to do what he should do, and, most important of all, it teaches

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property rights. Last year, more than \$10,000 reparation and restitution money was collected by Massachusetts probation officers.

Probation is especially valuable in the prevention of imprisonment for the non-payment of fines. Imprisonment of private debtors by private creditors was abolished many years ago, but the state still coerces its creditors in that way. It is unnecessary, expensive and ineffective. The probation officer is a better collector than the jailer can be. If the person fined is put under the supervision of the probation officer, he can keep his work, earn money and pay the fine. Last year the probation officers of Massachusetts courts collected nearly \$28,000 in this way.

THE SECOND STEP—REFORMATORY TREATMENT.

Probation, in its various operations, is the first step in classification. It keeps from prison those who appear likely to reform (themselves) without imprisonment. Next, in order, come those who must *be* reformed. Imprisonment of itself will not reform them, but it makes possible the application of reformatory treatment. Modern reformatories aim to do for their inmates what was left undone in their earlier life. Crime is the result of definite causes, ascertainable and removable. Their removal requires time, and therefore a long term. There must be an appeal to the man, to the best there is in him. If he knows that he is to be released on a certain day, fixed beforehand by the court, there is little inducement to reform. He will be content to endure. The indeterminate sentence, with its appeal to the love of liberty, is a large factor in securing the results. The reformatory system emphasizes the future, not the past.

The ordinary prison has but one message—"You are a very bad man." The walls say it; the presence of armed guards says it, even if they do not say it in words; the grated door of his cell, strong enough to detain a wild beast, says it. There is no suggestion that he ought to be better; no help to become better. He will go back to the world just as quickly as the law allows, without reforming. The reformatory says, not, "You *are* bad," but, "You *were* bad; you are going to be better," and it gives all the help which reasonably can be expected.

The most serious handicap of the reformatory is to be found in its buildings. They are an inheritance. There was a time when it was supposed that the criminal (every criminal) was a dangerous animal, to be restrained by force. The strong masonry cell, with its heavy bars, was built upon that supposition. It may have been necessary, because there was no classification of prisoners. The buildings were made to fit the very worst men. Reformatory buildings

were constructed upon the same plan. They contradict all that the reformatory itself is saying. The inmate is told, when he enters, that the administration has confidence in him and great expectations for him and of him; that he must win his way; that he will have his liberty when he has shown that he deserves it. He works hard; disciplines himself; wins promotion; but everywhere, to the last day of his confinement, the buildings are telling a different story; the walls, the gratings, tell him that he is not trusted. The psychological effect is injurious. Some day some one will build reformatory buildings which are consistent with the purpose and scheme of the institution. The physical restraints in the upper grades will be greatly reduced, for if a prisoner cannot be trusted out of a cell in the weeks immediately preceding release, he is not fit for liberty.

PENITENTIARY PUNISHMENT.

But reformatories deal with only a small percentage of the criminals. The penitentiaries deal with another small percentage. Great progress has been made in their administration. Their most serious evils grow out of the ancient theories respecting criminals. Legislatures, with no special qualification for such work, say that certain offences shall be punishable by imprisonment in the state prison. These offences are all "felonies"; the men who commit them are "felons." Felons and felonies are not all alike, yet only one place is provided for their punishment. In it are gathered men of all kinds. There are brutal men; dangerous men; habitual criminals; professional criminals; vile, debased men, and men who are of low grade, mentally and morally. With these, in the closest contact, are put men who, though they have committed serious crimes, are not criminals at heart. Intellectually they are capable; morally they are decent; but because they have committed "felonies" they must be confined in a penitentiary, in the most intimate association with men whose very presence is contaminating. One of the worst results of the unclassified penitentiary is that its administration and discipline must be adapted to the worst men.

THE GREAT PROBLEM—MISDEMEANCY.

But penitentiaries and reformatories, together, deal with only a few of the criminals. The problem of the felon is a simple one, compared with the problem of misdemeanant. Misdemeanants outnumber the felons many times, but receive little attention, except from the police. The county prisons are filled with an ever-shifting population, for whose reclamation and restoration nothing is done. What can be done? First, classify the misdemeanants. The drunkards should be

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put by themselves. They should not be treated as criminals, or with criminals. They need light, air, sunshine, hard work in the open, and much longer sentences than they would receive on the penal basis. Other misdemeanants should be classified on the basis of character, and then their needs supplied. Prominent among these is education. This should not be confined to illiterates. It has been proved that intellectual improvement is attended by moral improvement. The warden of the Massachusetts state prison says that no man who has learned to read and write in his prison has returned. Yet, in most county prisons, the minds of prisoners are ignored. Many misdemeanants have no skill. Those who are capable of acquiring it, and whose terms are long enough, should receive instruction in the use of their hands, partly to increase their earning capacity; partly to give them new impulses and ambitions.

Prisons for petty offenders should be in the country. A considerable portion of the inmates will not need cellular confinement. Large farm colonies must supplant "prisons" for misdemeanants. In those colonies the reformation and restoration of inmates must have the first place.

CARE OF PRISONERS' FAMILIES.

The reasonable treatment of prisoners will provide for the relief of their families. The defect of most plans is that they are based, to some extent, upon the idea that the family of a prisoner should have a share of his "earnings." But this makes the family dependent upon conditions which he cannot control. The prisoner has nothing to say about his own employment, and few prisoners earn even their own support. The claim of the family of the prisoner; the obligation upon the public to aid in its support, to the extent, at least, of preventing suffering, rests upon a different basis. The state has taken the wage-earner from his family for its own purposes. The prisoner's dependents are innocent. The state feeds, clothes, houses the guilty husband and father. Why should it not aid the innocent dependents?

Recent workmen's compensation acts compel the employer to assume a part or the whole cost of accidents, even though he did not cause them, directly or indirectly. It is made a part of the cost of production, and so is distributed among consumers. Application of the same principle would distribute the burden now falling upon prisoners' families. The cost of supporting a prisoner during his imprisonment being incidental to the protection of the community, is borne by the taxpayers. The distress of the family is incidental to the protection of the community also, and the cost of its relief should be borne in the same way.