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PRESENT DAY AIMS AND METHODS IN STUDYING THE OFFENDER.¹

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Present day studies of criminalism aim at the development of a science—a science of adjustment of human relationships. The offender is out of line with the requirements of society; he presents himself as a social problem; the question arises how to get him to conduct himself within required bounds. The solution of the problem involves adjustment between social possibilities and individual tendencies. For rectification of anti-social conduct there must be self-developed or environmental control—in either case an adjustment.

It is quite fair to speak in this matter of developing a science because there is hardly a suggestion of its existence in the measures of adjustment which are offered under the auspices of the law. By its simplest terms a science implies delving into causes, and correlation of modifying activities thereto. Without such fundamentals there can be no science.

In dealing with criminalism by the canons of the law, attempt at regulation of conditions is based on standard *a priori* conceptions of the effectiveness of a scheme of social salvation which offers certain retributions for certain offenses. Adding to this the range of powers of judge and jury, and pardoning and parole agencies we have in vogue a system which can be characterized only as very largely using a hit or miss method in the prescription of treatment as related to the desired end, namely, the protection of society. When personal judgment on the part of officers of the law is allowed play it is exercised without anything like full knowledge of the foundations of conduct in the individual. Indeed it is exercised by those who have not prepared themselves for judgment by study of the causative factors which lie back of anti-social behavior in general. So neither in the formulæ of criminal law nor in the personal judgment of officials do we recognize that knowledge of antecedents and consequents which we always find at the foundation of any science.

¹Read before the Illinois branch of the Institute, May, 1913.

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It is not only from consideration of methods that we come to realize the unscientific aspects of our dealing with the offender. Nothing is any easier than to produce living evidence of the absence of an applied science in that field. Is it necessary to do more than call attention to the fact that if some intrinsic condition of mind or body predisposes towards delinquency, as frequently is the case, still no cognizance is taken, as a rule, of this important truth? Or need we mention the well known fact that the offender after incarceration is turned back most often into the world not only no better equipped to avoid misconduct, but often because of his imprisonment so warped in mind and so socially helpless that commission of new offenses becomes at once the compelling idea. Why, the very deprivations and mental vacuities of cell life can readily be calculated by the principles of the most easily understood psychology viciously to strengthen in certain types the very obsessions which previously led to criminalistic deeds. Five years for crime against the person, the person of a child, a couple of months of freedom without surveillance and with several commissions of like offenses, another sentence of eight years—to view only one such case as this, in the light of what we know about abnormal psychology, gives something of the picture of the weakness of our unforesighted treatment of the criminal.

The notorious failure of both the past and present in dealing with the individual offender, evinced, save in the days of hanging for sheep stealing, by the astounding annals of recidivism, clearly demonstrates both the non-existence of any such science and also the need for its development. The point can hardly be made clearer than by the fact that out of 168,000 offenders convicted in England in 1910, 104,000 had been convicted previously, and 65,000 of these had been convicted more than two times before, and 12,000 of them had been convicted upwards of twenty times previously. Taking the major offenses in that same year, tried at the assizes and quarter sessions, we find that out of 11,300 convictions no less than 8,000 had been previously convicted. One instinctively asks, why this failure of adjustment? Was the prescribed treatment unsuited, or are a large number of the offenders innately impossible, or did the environment after release recreate criminalistic impulsions? Unfortunately in the Blue Book of criminal statistics we find no trace of these important facts having been inquired into.

I said the proof of the non-existence of an applied science in the adjustment of criminal affairs could hardly be made clearer than by the citation of the above figures, but after all even that is not nearly

so startling as is the fact that we in America have no figures at all to offer on recidivism. This means that the most vital knowledge, that knowledge which can give the only basis for self-criticism, is not even gathered. If we do not know whether the end aimed at by the law really is accomplished or not, what then do we know that can lead to any possible betterment of a situation that is universally recognized as altogether deplorable? In every progressive field of activity, in the development of every science that is making for man's welfare there is constant measurement of the relationship between endeavor and result. Not so in dealing with criminalism.

A general summary of present methods of handling offenders could be made in simple terms. The law with its cut and dried formulæ and its prescription of certain punishments for certain offenses has long ago decided the whole procedure. The word of the fathers prevaieth and the efforts which have made in every other field for the vast progress of the present are here quite neglected. There is not even inquiry into how much success or failure there is in the endeavor of the law, to say nothing of the differentiation of the causes of those failures or successes. As its own interpreters put it, the law judges all men alike. Whether he be made of steel or clay the same method is invoked to straighten a man's moral defects, and all are presumed to react in the same way to legal punishments or to other environmental stresses.

Fair analogy might be found in the sister profession, medicine, if the teachings of the professors or the discussion of cases had to do wholly with the restrictions under which one must practice medicine, and were not devoted to study of etiological factors and the effects of various possible treatments. Not but that plenty of legal rules will always be necessary for the safeguarding of the innocent, but the trouble is that the study of the matter ends there, and it is a fact that treatment is prescribed without reference to the causes of the offense, to the nature of the individual, nor to the moral prognosis. Altogether considerable note is being taken of this state of affairs nowadays by the legal brethren abroad. In Germany, judges and other officials hold conferences and take courses on the scientific aspects of their problems of criminalism. The responsibility for the absence of such sources of instruction here rests largely on the shoulders of the legal profession which has not laid under contribution what other sciences could offer in explanation of the criminalistic phenomena which the law has under its observation.

The aim of present day methods of studying the offender is to

work with the material now presented to the law for solution and show such relationships between causes and results that a science shall be produced which shall deal first and foremost with predictabilities—the same as any other science of dynamics. Ranging anywhere from agriculture to pedagogy this type of knowledge is considered most desirable; what will this and that organism do in this and that environment; to what extent are the proclivities of the organism modifiable? In the field of human conduct there exists an amount of predictability that has not heretofore been recognized. For this practical purpose a thorough-going study of the offender should be undertaken and altogether a different point of view, involving a much deeper search of truth, is to be maintained than what is now carried out under the bare formulæ of the law, where there is little insistence on any of the causal facts. Yet the definitive aim of the law, namely, the protection of society, is the chief end of this science, too.

The end is, first and foremost, to render aid in the solution of the problem of the individual. It is always the individual himself, however dependent his career may have been upon the existence of baleful general forces, who is under consideration before the law. Secondly, carefully made investigations and statistics should throw much light on general social situations, such as are provocative of criminality. The present loose talk about some of these influences shows clearly the absence of those complete investigations which, working by the scientific process of elimination, would not jump at conclusions without taking into account at least all of the obviously possible causes of misconduct in the individual. In the long run these safer conclusions will serve as the best foundations of some of the larger measures of social reform.

Coming now to the methods of the science to be developed we may first insist that they are worth careful consideration because to be convincing and to stand the criticism of those whom the science seeks to have as allies, the reasonableness of the methods must be apparent. The results, to compare with predictions, one must often wait long for—to be sure, they, too, must stand scrutiny—but the steps by which one arrives at the prediction should themselves give evidence of rationality.

In the first place we may observe that this developing science is intensely empirical. It seeks to learn facts, to deal with facts, and from facts to deduce conclusions for the individual case. The theorizing peculiar to a preceding criminology is to be discarded. The everlasting combat concerning free will and determinism, the insoluble

metaphysics of responsibility, the generalizations from superficial surveys are all to be avoided. The time has quite gone by for characterization in swelling terms of crime as being due to some great casual phenomenon, or as being a disease, and we may hope nowadays for no further philosophizing about "the criminal" (strange phrase, as if offenders formed a distinct human species) as an atavistic or any other conjectural type.

Then the newer method of studying the offender perceives clearly the great scientific necessity for a well rounded contemplation of its material, the human individual. The work of the externalists, the anthropometric school, can already be relegated to a minor place because all have concluded that human conduct has much deeper springs than may be tapped by the measurement of cephalic diameters or the sensibility of finger tips. The danger of a too rapid pigeon-holing of human beings according to alleged explanatory types—a very real danger if a clamor for premature scientific verdicts should be set up in any quarter, say in court work—also is to be met by the insistence on thorough-going studies before prognosis is offered.

This newer and deeper study will be inevitably time consuming, even for the well trained. In this one fears the source of much objection but no one doubts the complexity of criminalistic genetics and no one cares for unsafe conclusions. Above all the profession which spends days and weeks in preparing for court trial of just one aspect of a criminal case should be the first to uphold intensive work in this wider investigation.

The roots of misconduct may be found in (a) outer circumstances or influences, past or present; (b) in physical make-up, discernably structural or as thought of in terms of function or inherited or congenital conditions; (c) in mental defects, aberrations or peculiar traits; (d) in mental habits, imageries, conflicts and repressions—or in any combination of these various prime sources. A one sided study of the offender is not to be thought of as fruitful of the best results, except in cases of well marked mental defect or aberration, or where physical disease or defect stands in strong causal relationship to mis-doing. It must be acknowledged, however, that there are many indications that mental defect forms the largest cause innate in the individual and we know full well the role that a single disease, epilepsy, plays in criminalism—our group of a thousand young repeated offenders showing about seven per cent certainly epileptic. So investigations carried out far enough to discriminate these human disabilities would be of vast service, especially since the very worst crimes

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are committed by these types, that is if society could then see the necessity for treating the offender in the light of accurate diagnosis and prognosis. But even here why should we be content without going farther and ascertaining the causal background for these two important infirmities and deliberating measures of prevention.

Detailed accounts of a modern scheme of studying offenders have been offered in the two reports issued by Committee A of the American Institute of Criminal Law and Criminology. These show separate items of information and groups of facts for investigation. These again can be classified into sociological, medical and psychological data. Which class is of greatest importance it would not be easy to state. But ascribe as we may the main cause of delinquency, either in the individual or in environmental conditions, we can never logically or scientifically get away from the fact that all conduct, good or bad, is an attribute of mental life. Every factor influencing conduct works *via* the mind. That not all action is controlled by the higher consciousness does not militate against the truth of this. Just as surely as all volitional power is aroused in the cerebral cortex, just so certainly is all action a function of mind and is directly dependent on the integrity of the central nervous system. In evaluating the relative importance and the effect of various causal agencies, even environmental, he reckons ill who leaves out the world of mental processes with their most direct relation to misconduct. Even brief consideration of this point will make it stand out clearly.

In general the study of mental quantities and qualities may be spoken of as a differential psychology. In this investigation of roots of criminalism one is looking for those mental states which act as driving forces of conduct. We must include estimation of mental defects, aberrations, obsessions, instabilities, impulsions, irritations, repressions, worries, conflicts, imageries, grudges and suggestibility. We are bound to become involved in a study of what John Stuart Mill and several German authors call characterology. Of course it is necessary to look farther and record and combat every possible condition which aroused the activity of these driving forces. But the most immediate point of contact with causes is to be gained by employment of the knowledge which has been developed, a good deal of it quite recently, in the field of abnormal psychology.

Survey of this rational investigation of the offender leads at once to the conclusion that not half of the facts necessary for explanation of the individual career were sought for under the older criminology. The development of mental tests alone has done more to awaken real

understanding of the bases of criminalism than whole volumes of philosophic generalizations. Many a so-called born criminal is merely a mental defective influenced towards crime by his environment. Similar but unoffending types are to be found segregated in any large institution for the feeble-minded.

We are brought now to one big consideration concerning the present day methods of studying the offender. They are not proceeding, as formerly, along the lines of the natural history sciences. The inner life is now perceived to be perhaps of more importance than anything else. Sizing up a man's reaction to his environment without knowledge of what may be going on within him which directs that reaction is no longer scientifically allowable. Even in mental defectives the mental life, for instance, the peculiar suggestibilities and lack of powers of moral inhibition which are found in varying quantity, are of great interest and importance in predicting the outcome of a career. It all comes to the point, as Devon says in his admirable book on "The Criminal and Society," that we can not study the criminal as a man studies a beetle. We have rather to study him as a man studies his neighbor.

There can be no doubt that the application of these outlined methods will lead to much criticism of the treatment and procedures now in vogue. But why not? Why should one hesitate any more than the modern agriculturist hesitates to declare his judgment of last year altogether wrong in the light of recent researches? Has the past proved itself infallible in any other human endeavor—why should we believe that the law has had the last word on effectiveness in a scheme of adjustment? One benignant feature of this whole newer work will recommend itself highly and that is that through this logical method of inquiry into why there is social failure, one finds an astonishingly easy path of approach to the problem. Not to the same extent in other courts as in the Juvenile Court, but nevertheless everywhere, the plan of scientific inquiry, in contradistinction to the police and court room attitude, wins friendly co-operation.

The practical ends achievable by careful study of the offender are, as hoped, mostly in the way of predictabilities. One can see definitely that there are certain individuals who must inevitably be segregated for their own happiness and for the peace of society—these are the mental defectives and the insane and epileptic criminals. One discovers the existence of physical defects without the remedy of which one can definitely say there can be no social success. One can discover specialized mental defects and peculiarities which

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have brought about great social irritations through the endeavor at fitting a square peg into a round hole. One comes to know of various hidden habits of mental life which stand in an immensely causal relationship to delinquency. One can find unsuspected vocational aptitudes through which the delinquent can only hope to gain that first requisite for moral life, namely, healthy mental interests. And then there is the field of mental conflicts and repressions which has only begun to be explored. Knowledge of these and of many more factors in criminalism, to say nothing of environmental conditions, is practicably achievable through careful study, and through this study can be seen to form the only safe foundation for predictability and social treatment.