Journal of Criminal Law and Criminology

Volume 4 | Issue 5 Article 1

1914

Editorials

EDITORIALS

PREVENTIVES OF DELINQUENCY.

One of the most important addresses before the World's Purity Congress, recently in session in Minneapolis, was that by Judge Harry Olson, Chief Justice of the Municipal Court in Chicago, on November 9. The contributing causes of vice and methods of prevention comprised the subject matter of his discourse. What he had to say was based upon statistics contributed by a sub-committee of the Chicago Vice Commission, records collected by Dr. Hastings Hart for the Russell Sage Foundation, a report of the attending physician in the Morals Court of Chicago, and from superintendents of various women's reformatories relative to the percentage of feeble-minded women in their respective institutions. Judge Olson believes, on the basis of these sources, that about fifty per cent of the women who enter prostitution are mentally defective, or feeble-minded in the sense that they are unable to compete on equal terms with their normal fellows and to manage their affairs with ordinary prudence.

The data from the Morals Court includes a statement relative to the stage in school life that had been attained by those charged before the court with addiction to the social evil, and this is assumed, justifiably, to have a bearing upon the prevalence of crime and prostitution. I quote here from the address:

"When the Morals Court was established in Chicago, where all the cases of prostitution, in which arrests are made, are brought to trial, I caused the attending physician, Dr. Anna M. Dwyer, to inquire of as many of the defendants in that court as she could, who were charged with being public prostitutes, as to the ages at which they had left school.

"Since April, 1913, when the branch court was established, 3,546 cases have been handled by that court. Dr. Dwyer put her inquiry to 564. Among these there are no repeaters. She reports that fifty-four girls passed through that court in the month of April, of whom only two had passed beyond the fifth grade; in May eighty-seven, one of whom had passed beyond the fifth grade; in June ninety-four, of whom three had gone beyond the fifth grade; in July forty-eight, one of whom had gone beyond the fifth grade; in August fifty-eight, only two of whom had gone beyond the fifth grade; in September ninety, four of whom had gone beyond the fifth grade; in October sixty-three, four of whom had gone beyond the fifth grade. Dr. Dwyer found only one high school graduate among all those women who passed through the court in a period of seven months."

It is this phase of the address in which we are chiefly interested at

present. The above statistics furnish, of course, no indication of the percentage of mentally defective among those who leave school at or before the completion of the fifth grade—in the sense in which we used the term defective above.

Judge Olson is quite right when he says that we should look to the public school to identify the defective before he becomes delinquent. But there is where the difficulty enters. Failure to secure promotion in the regular schools, even when conditions are favorable, does not indicate that one is unable to compete on equal terms with one's fellows as a carpenter's apprentice, nor in business, nor as a full fledged mason, nor what not. By mental tests alone we may discover most of the mentally defectives in the schools. We may in many cases confirm our judgment that those who are below grade are mentally defective, but we are liable to many errors. Some day we may by such means be enabled to forecast whether or not one who fails in one environment may succeed in another. We cannot now do so with satisfaction. We are likely to commit many a tragedy if we stand by the data of mental tests alone, applied before the completion of the fifth grade, for our judgment as to prospective life histories. Furthermore, casual observation would suggest that a not negligible percentage of youths who rightly pass as definitely normal up to the beginning of adolescence suffer arrest of development shortly thereafter, are subsequently rated as defectives, and are a source of danger to the community. There is no statistics on this point available. Such cases, mental tests, of the sort that are in general use today, can hardly discover. Indeed, those human qualities that enable one to compete successfully with one's fellows, etc., succeed in being very elusive when we go after them armed with scientific tests. An unpublished report by Dr. Bernard Glueck, suggests this observation: a certain Italian, forty-five years old, appeared at Ellis Island for entrance into the United States. According to the Binet intelligence tests, he was mentally but nine years old. By the officers who applied the tests he was pronounced defective. As a matter of fact, however, this same Italian had lived in America earlier, accumulated a fortune of 6000 lires, returned to Italy, where he purchased a farm, and now he had recrossed the ocean to repeat the process. It is stretching a point to call him defective. He has stuck persistently to a definite purpose and has managed his affairs admirably on the plane on which he lives.

Judge Olson understandingly recommends industrial schools for the segregation of those who are found to be defective. Into such institutions he thinks we can deflect defective youths whom he estimates at fifty per cent of our prospective criminal and prostitute population,

where they may be kept at any rate until the danger period is over. There is considerable doubt among experts as to whether so large a proportion of these classes are defective in the sense in which the term is used here, so that even if our mental tests should let none slip though their meshes we should still have an ugly majority to handle in other ways. Grabe, for instance, whose investigations into the relationships of prostitution, criminality, and psychopathy are well known in Germany, (see this JOURNAL, Vol. V, No I, p. 101) finds in fully two-thirds of cases no indication of psychopathic conditions. Indolence and inordinate love of pleasure seem to him to be the greatest determining factors, together with moral indifference and moral degeneration of the individual or family. On such a basis, he thinks, the external influences upon adolescence build the character of the criminal and the prostitute. Dr. Max Kauffmann, also, in *Die Psychologie des Verbrechens,* (pp. 119, 129) expresses the same view with respect to the most potent factors in the causation of prostitution. Frivolity and aversion to labor are the most effective causes in his opinion. On the other hand, Aschaffenburg quotes Bonhöffer, who reports that his examination of 180 cases revealed only one-third without psychic anomalies. (Crime and its Repression, p. 95.) Other reports of similar character are available. The contradictory nature of this data, if nothing more, makes it impossible to forecast whether mental tests applied in our public schools before the end of the fifth grade can be the means of accomplishing as much as many anticipate toward the elimination of crime and prostitution, for this frivolity, this dread of work, this low moral tone are not revealed by specific tests. There is required a close observation of the whole individual in action in a variety of situations.

I am inclined, therefore, to suggest a supplement to Judge Olson's plan which, I believe, together with the methods proposed, will make more remote than otherwise the last resort of segregation in special schools. The supplement commends itself the more strongly in view of the probability that, as Kauffmann, among others believes, a very large percentage of criminals and prostitutes are characterized by no other defect than indolence and frivolity. To the extent to which this is true, a regime that aims at the development of methodical habits of life in association with normal individuals is a prophylactic of the first order.

My first thought, then, is this: that an effective barrier against crime and prostitution may be found in the rigid enforcement of our truancy and compulsory education laws. These laws require attendance at school up to the fourteenth year of age, in Illinois, e. g., and thereafter to the sixteenth year unless the youth is employed at a suitable

occupation. We must desist from that persistent complicity in juvenile crime which we indulge when we allow our children to go from schools to streets at twelve or fourteen years of age. In the enforcement of compulsory education up to the fourteenth year of age (in Illinois) the court may commit the truant to the Parental School, under the Parental School Law. There is immediate need for such an amendment to that law as will enable the court to commit to the Parental School any youth who is neither legally employed nor in school from the fourteenth to the sixteenth year of age. All that will help somewhat to dissipate the problem of vice in which we are interested.

But legislative acts are weak agents after all. And here is my second thought. We must arrange situations in such a way that children will *want to go to school,* and so that their parents will *want to support the laws.*

Cincinnati and Cleveland and many other cities are blazing the way toward this goal. Mr. W. E. Roberts, Supervisor of Manual Training in the Cleveland public schools, read an illuminating paper entitled, "Activity in Education a Preventive of Delinquency," before the National Conference on the Education of Dependent, Truant, Backward, and Delinquent Children at Buffalo, on August 26. Here he described the Elementary Industrial School that was opened four years ago in Cleveland. It is equipped for vocational education. The selection of pupils for the new school was made *pro rata* by the principals and teachers of more than seventy grammar schools throughout the city. The 143 boys and girls thus selected were of an average age of fourteen years, and most of them were of the sixth grade. They were rough riders; inapt in academic studies; discouraged; irregular in habits; measured by traditional grammar school methods, they were decidedly weak. The seventy odd principals and teachers had contributed their worst. There was cowed indifference and aggressive insolence. Inability to express themselves in the simplest way was a striking characteristic of the group. Here our mental tests would discover a liberal percentage of "defectives." The whole group would have eagerly seized an opportunity to get away from the control of the state as represented in the traditional school; away to the streets. Then in due time some of these defectives would occupy the attention of the Juvenile Court. But in the Elementary Industrial School they saw a new light; confidence was restored, and with it came self-respect, frankness and poise. Withal there was a remarkable development of power in academic studies. Mr. Roberts says that as great a proportion of these formerly tag end pupils entered the high school and went on their way creditably as from

the grammar schools on the average. The same story can be duplicated in every city in which much is made of vocational or of industrial education.

Here is grist for the criminoligist's mill. Thousands of children are at an early age leaving schools that are unfitted for them and tumbling into temptation. Let every city follow the lead of Cleveland et al. Extend the principle of democracy in education. Develop in the system of public education ample facility for vocational instruction. Throw it open to election by any one with the consent of his guardian. Especially encourage those who are seriously behind grade to select the new environment, and, as a last resort but one, require those who are defective, as measured by scientific tests, to enter here, and if improvement does not insue, isolate them in special schools, as Judge Olson proposes. In cases in which there can be no shadow of doubt of the defective mentality of the subject, let the last resort of all, isolation, be immediately accepted.

Thus, I believe, we will materially relieve the situation that is so strikingly illustrated for us in the statistics from the Morals Court of Chicago and elsewhere. Thus many so-called defectives will be found to have been only misfits who are entirely capable of making headway in a modified academic scheme.

Through the extension and enforcement of compulsory education; the modification of parental school laws; the development of vocational education systems for misfits in the traditional grammar and high schools; the establishment of special schools to which to commit those youths who are proven mentally defective and beyond the reach of the regular agencies, and by sane attention to hygiene, we may attain the eighty per cent elimination of crime and prostitution that Judge Olson foresees.

ROBERT H. GAULT.

SHALL THE LEGAL PROFESSION BE REORGANIZED?

On the mighty wave of radical thought, now surging upon the legal profession, it was inevitable that we should find proposals to reconstruct the profession itself. Three types of these proposals are found in Mr. Gray's and Mr. Adelman's symposium in the present number of this journal. Another variety is found in Mr. Wesley W. Hyde's articles in the November number of the *Illinois Law Review*, entitled "Reorganization of the Legal Profession."

The coincidence in time of these published proposals is not a mere accident. Much more such radical thinking is going on than most

lawyers suspect. The time is at hand when there will be still more of it. What does it signify?

One thing signified is that the profession is not giving satisfaction to the best ideals of the day. We may as well acknowledge this. Whether standards have changed, or the profession has changed, the fact remains that its work, judged by present best standards, is to a considerable extent wasteful and misguided. It is wasteful in that it expends time, labor, and money on needless controversies. It is misguided in that this waste is due to a faulty direction of energies. Nothing less than some sort of reconstruction of methods will suffice to prevent the waste.

Whether any of these proposals represents the solution depends on (1) whether it perceives the precise nature of the present shortcomings, (2) whether it gauges correctly the human nature involved in the problem, (3) whether it offers a remedy that fits these shortcomings and this human nature.

All of the proposals thus far published offer one feature in common, viz., the status of a salaried official for the advocate. They differ in the extent to which this status is to be given, whether to a portion or a whole of the bar. The only one which does not go so far is Mr. Kales' proposal to restore, in a new form, the English distinction between advocate and attorney; but his proposal is founded mainly on the need of the greater skill to be gained by specialization, and not on the grounds advanced in the present articles.

The thought of placing the bar upon an official salaried status will be for many the subject of derisive incredulousness. No doubt, in its radical entirety, it could be only feasible after another generation of change. But in the meantime it need not be laughed at, for the simple reason that we ourselves have already in part done it. As Mr. Hyde points out in the *Illinois Law Review,* the official prosecuting attorney is unknown to the English common law. Invented in France five centuries ago, he remained unknown in England, and America reinvented him nearly a century ago. (Just when, nobody seems to know; we need a history of the public prosecutor in America.) Thus, we have already officialized the bar on one-half of the criminal side; and in some states the law does not even permit the appearance of a counsel privately retained on the side of the prosecution. It is at least not a radical step to officialize the criminal bar on the other half. The public defender (a measure first proposed by Clara Foltz, of the San Francisco bar, now thirty years ago, in the *American Law Review*) has at last come in sight, and will soon be here to stay.

But in the meantime, in civil cases, is there not a field in which the public-salaried official advocate may play a modest part? And is it not a part which would go far to remove some of the worst reproaches of present-day justice? We refer to a public legal adviser for the poor.

The largest law office in the United States is the New York Legal Aid Society, to which come some 40,000 new clients a year. The next largest is the Chicago Legal Aid Society, to which come some 17,000 new clients a year. Judged by the money amounts at stake, and the means of the clients, this legal business is of course only a small affair. The average amount of a collection, for example, in the Chicago Society's office is only $7.50. That is, these thousands of clients represent only a minute fraction of the litigation or legal advice which furnishes a living for the 50,000 American active practitioners who follow a legitimate legal career. Hence, the business and duty of taking care of these persons' legal troubles does not substantially interfere with the legal profession as a whole. In fact, the legal profession *can not afford* to take care of them.

But if the legal profession can not afford to, *who will? Who does?*

Partly charity does, viz., the legal aid societies. Partly, but only a little, relatively well-off practitioners do. Partly, and a good deal, shysters do. And partly, and a good deal, nobody does.

And now we come to the point: Why should not the state take care of them? Why should not a body of public-salaried practitioners take care of all poor persons' litigation? The state has a duty to administer justice; and legal advisers, consulted prior to trial and acting at the trial, are an essential part of justice's machinery. Why blink the facts? And the facts are that private charity and private shysters, between them, are taking care of most of these people, and that an unknown mass of needs is not attended to at all.

Why should not the state step in and do this work, or a part of it? The state maintains public hospitals; but these do not drive out private endowed hospitals nor destroy the private medical practitioners. Justice has been a state function long before health was. And yet, the state blunders complacently along, ignoring the terrific fact that it is not providing the necessary means of justice at all for thousands and thousands of people every year.

All I wish to emphasize is that there is a part of the field, small in relative scope, but large in the intensity of its suffering and need, in which the state today can and ought to officialize the bar, without any radical change of method, of ideals, or of human nature.

JOHN H. WIGMORE.

THE MISSOURI PENITENTIARY.

The Missouri penitentiary situation illustrates well the difficulties which the old fashioned type of prison creates in the administration of the criminal law. For a long number of years the Missouri penitentiary at Jefferson City has been conducted upon the basis of "the contract system," and has been a paying institution, as a rule turning into the state treasury thousands of dollars in earnings every year. As a great factory, utilizing compulsory convict labor, the institution as a whole has been humanely and efficiently managed; still its very success has been an impediment to all progress in penal institutions and in criminal law reform in the state of Missouri. The fact that it is a self-supporting institution has made the taxpayers of Missouri too satisfied with present conditions, and has strengthened the hands of reactionary politicians. All attempts to reform Missouri's penal system radically have thus far failed. The present writer as early as 1900 presented a paper before the National Prison Association, which met that year in Kansas City, on the need of an industrial reformatory in Missouri. Since then a number of attempts have been made to enact a law establishing such an institution; but thus far all have failed, owing to the opposition of the penitentiary warden and board of inspectors and a few reactionary politicians. All attempts even to secure radical investigation of the institution and its needs have failed in recent years, owing to the feeling that giving full publicity to such facts would be unfair and even disloyal to the state.

Thus Missouri, like a number of other states, finds itself still burdened with an institution conducted according to ideas which are at least twenty-five years behind the time. It is not to be wondered at that such an institution finds itself out of adjustment with the best thought and ideals of the people of Missouri. Recently, there has been very much discussion in the press of the state of penitentiary conditions, owing to the punishment of several convicts for distributing "dope" (opium) to their fellow prisoners. The punishment in such cases has consisted in handcuffing prisoners to rings in the wall, forcing them to stand for many hours with their hands above their heads. In the case of one prisoner, who was especially judged guilty of such practices by the prison authorities, the punishment was greatly prolonged until a confession was secured from him. The excuse offered for this by the prison authorities was that they might put down the traffic in drugs and whiskey which goes on within the prison walls.

It may be added that the practice of using "dope" among the prisoners in the Missouri penitentiary is very extensive, as it is in many prisons of the older type. A former chaplain of the Missouri penitentiary told the writer several years ago that he estimated that as high as seventy per cent of all the long term prisoners in the institution used opium in some of its forms while in confinement as a substitute for alcohol. He added that it was impossible to suppress the traffic as long as "the contract system" prevailed, because with over a hundred contractors' employees within the walls of the penitentiary it was impossible to stop the smuggling of opium into the institution. The presence of the contractors' agents was, in other words, the demoralizing element in the situation. The system, and not individuals, was what was at fault. It would seem that under such circumstances any attempt to suppress the traffic in drugs and alcohol by punishing individual prisoners, no matter how severely, would be futile; and that the thing to do would be for all friends of prison reform in Missouri to pull together for the abolition of the contract system in the penitentiary and the simultaneous establishment of an industrial reformatory for first offenders between the ages of sixteen and thirty years.

The only successful impetus in recent years in this direction has come from the laboring men of the state who have been a unit in demanding the abolition of the convict labor system in the penitentiary. Several years ago a law was passed formally abolishing the contract system in the penitentiary to satisfy the demand of the labor vote. Thus far, however, the law has not been put into effect. At the meeting of the last Missouri Legislature, the cry was raised that if contract labor were abolished within the penitentiary nothing could be found for the prisoners to do and practically all of them would have to be supported in idleness at great expense to the state. The legislature thereupon passed a bill authorizing the penitentiary authorities to renew contracts for the labor of the prisoners at seventy-five cents a day for each prisoner. The same legislature failed to pass a bill establishing a state industrial reformatory for Missouri. Thus the present system seems fastened on the state for several years to come, at the least.

The existence of contract labor in the Missouri penitentiary is not, however, the most serious fault of the institution, though the contract system seems more or less bound up with all of its other faults. In the Missouri prison, first offenders and hardened criminals still freely intermingle. No school exists within the institution, and punishment, not reformation, is its dominant note. Several of the cell houses are old and antiquated in their arrangements. One cell house allows no less

than four prisoners in the cell, and there is no attempt at the separation of the prisoners by night except as such separation is used as a punishment. Herein lies the explanation of the use of "dope" and other stimulants among the prisoners. One penitentiary physician once remarked to the writer, "You may be surprised to know it, but as much dissipation goes on within as outside these walls." Of course, under the conditions it is impossible for officials to put an end to these dissipations. The system is wrong, rather than individuals. Yet the result is that the whole aim of the criminal law is defeated in Missouri by the existence of such an institution. Years ago a warden was bold enough to say that he never knew any man to be benefited from his confinement in the Missouri penitentiary. The general knowledge of this fact on the part of the public, even though conditions are not as bad now perhaps as they used to be, has led many juries and judges in Missouri to show undue leniency toward accused and convicted persons, to a wrong use of our probation and parole laws, and to acquittals where there should have been convictions.

We said that the system, not individuals, was to blame. This, however, needs to be modified to the extent of saying that the Missouri penitentiary authorities for the last dozen years, instead of leading in the work of prison reform, as they might reasonably be expected to do, have been content to defend their institution. They have, indeed, considered every attack upon the institution to be an attack upon themselves. This situation contrasts unfavorably with the situation in Kansas, where likewise an antiquated institution exists, but where the warden and his coadjutors are now leading in a reform movement to entirely abolish their old penitentiary.

CHARLES A. ELLWOOD.

EXECUTIVE NULLIFICATION OF JUDICIAL DECREES.

A particularly brutal murder occurred in the bar of the Briggs House, Chicago, March 22, 1911, in the shooting of Vincent Altman. For some time the police seemed unable to apprehend the murderer, although at the time the crime was committed there were many people in the room. A shift was made in the governing police officer of the "loop" district, and soon thereafter one Maurice Enright was charged with the murder, arrested, brought to trial and on October 28, 1911, convicted and sentenced to life imprisonment. Enright was business agent for Local 520 of the United Association of Steamfitters, an organization at war with the International Association of Steamfitters. The murder was one incident in several months of fighting between these

organizations during which period sluggers and gunmen in automobiles fought in the streets, killing and maiming their own and intimidating and endangering lives of citizens not concerned in their quarrel.

The conviction of Enright was fought bitterly. All the tactics known to clever criminal lawyers were used in his defense and it was deemed necessary during the course of his trial to detail a special guard to protect the person of the public prosecutor. An appeal from the verdict of the jury was taken to the Supreme Court, and after reviewing carefully all the evidence offered in the lower court, the judgment was affirmed. On December 16th, 1913, about two years after commitment, Enright was granted an unconditional pardon by Governor Dunne. In issuing the pardon, the Governor is reported to have said:

"My attention was directed to the Enright case by Mr. Stevenson, chairman of the pardon board. I considered the board's findings and I agree with them completely. For that reason I pardoned Enright. That was the only consideration possible and the consideration that affected my action."

The Board of Pardons made its recommendation to Governor Dunne in a five thousand word statement, containing a private expression of their sentiments. One paragraph of this statement is said to read:

"We are of the opinion that Enright is probably innocent of the crime for which he was convicted, and that in any event the doubt as to his guilt is more than reasonable, and is so weighty of character that executive clemency should be exercised."

To the public at large there was no intimation given of the proposed action of the Governor or his Board of Pardons, except that some six months previous to the granting of the pardon there was a hearing in the matter before the Board, at which time an employers' organization in Chicago caused an attorney to appear before the Board and argue against Enright's release.

The only reasons given the public for issuing the pardon are those above stated.

Apparently the time for granting this pardon was carefully selected. The holiday season being the psychological moment, and the issue of a pardon at the same time to a man convicted of a minor offense, and having the sympathy of the populace, seemed to tend to detract attention from this most recent act illustrating the danger to the public of placing the power to set aside the decrees of courts in the hands of a Board appointed by a Governor who may not always be a strong man and may be actuated by politics, fear, or sentiment rather than a sense of justice. At any rate the press contained little or no comment further than to furnish

sentimental pictures of the joy in Enright's family at his release in time for Christmas, and while no normally constructed being objects to sentiment sometimes governing conduct, in dealing with matters of this sort, sentiment often becomes twaddle, and action based wholly upon sentiment only shows weakness and failure to perform duty.

Whether Enright is guilty or innocent is really a small matter, but the advisability of continuing to leave it possible, within a short period, or within any period, after the solemn judgment of a court fixing a life sentence has been pronounced, for a body of men appointed by a Governor, after hearing such evidence as they desire to hear, to set aside the judgment of that court is a serious question.

This may result in a *real* "break down of the law."

F. B. CROSSLEY.

PRIZE-ESSAY COMPETITION ANNOUNCED BY THE HOLTZENDORFF FOUNDATION.

The Holtzendorff Foundation, an endowment founded by the late Franz von Holtzendorff, of Berlin, the famous jurist who edited the German Legal Cyclopedia, announces for international competition an essay-prize of 1200 marks ($300) on the subject, "The Progressive System in Punishments." The official interpretation is: "An exposition of the progressive application of punishments (or penalties) in those states which have already introduced the system, with an explanation of the system *de lege ferenda.*"

The conditions, as set forth in the "Mittheilungen der Internationalen Kriminalistischen Vereingung" (or, "Bulletin de l'Union Internationale de Droit Pénal"), vol. XX, pt. 2, p. 365 (1913), bear the date Oct. 1, 1913, and are as follows:

1. The competing essays may be composed in German, French, English or Italian, but must be written with the Latin form letters; and must arrive not later than Oct. 1, 1914, in the hands of the Secretary of the Foundation, Justizrat Dr. Adolf Halle, Berlin, W. 8, Kronenstrasse 56.

2. They must bear a fictitious name, and a sealed enclosure bearing the same name must accompany them, containing the author's true name and his address.

3. The essay adjudged to be the best and to be the most worthy of the prize will receive the 1200 marks; the judges reserving the liberty to divide the prize between two essays of equal merit.

4. The prize essay will, upon payment of the prize, become the exclusive literary property of the Foundation; its President, with the con-

currence of its Executive Committee, will determine as to the publication and translation of the essay.

5. Essays not receiving the prize will be returned to their authors, for disposal as they see fit.

6. The award of the judges will be published in the above-named periodical.

7. Correspondence concerning the competition should be addressed to the above-named Secretary.

8. The judges will be:

(a) Professor Dr. J. Simon van der Aa, of Groningen, Netherlands.
(b) Prof. Dr. Count Gleispach, Prag, Austria.
(c) Prof. Dr. Kriegsmann, Konigsberg, Germany.

In case of the disability of any one of the above, his place will be filled as follows:

(a) Prof. Dr. Freudenthal, Frankfurt am Main, Germany.
(b) Prof. Dr. J. A. Van Hamel, Amsterdam, Netherlands.
(c) Prof. Dr. Lenz, Graz, Austria.