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President's Address

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THE PRESIDENT'S ADDRESS.

QUINCY A. MYERS.¹

Science stands constantly at attention and challenges every fact, every symptom, every characteristic, every variation, every sequence, every differentiation, every effect, in its search for causes and exactness. It takes nothing for granted which lacks certitude. When the domain of the human mind is entered, one at once encounters such a mass of suggestive and related facts and phenomena, such a correlation of conduct and mentality with respect to crime and its punishment and the treatment of the perpetrator, as to bewilder him. Few have the opportunity, and still fewer the ability, to view these matters in their true relations, and yet they lie at the very root of society. Tireless and patient investigation through years, such as comparison of individuals and classes of individuals, as to heredity, environment, congenital conditions and traumatic effects, present us with rational solutions as to the causes of many crimes, and thereby lead to provisions for the practical administration of criminal laws and efficient treatment of criminals and defectives. Such investigations deserve the greatest support as the most valuable aid to this complicated and most important aspect of social economy. It is daily becoming more evident that the public is becoming better informed and is coming to understand that the subject is of vital importance to the welfare of the race. The opportunities consequently are being multiplied and the funds are being provided for these investigations and for such practical demonstrations in the penal and correctional institutions as promise present relief and ultimate rational procedure in the administration of the criminal laws, and in the correction of individual cases. The same scientific movement prompts due observance of insanity, inebriacy, feeble-mindedness and other deficiencies in the causation of crime.

Investigations in penology promise much and have advanced the science along many lines, both practical and theoretical. Art may bind and shackle the hand; it may become conventional, as is frequently disclosed in architecture and allied arts, but science must distinguish, especially when we come to deal with the human mind and the human being in his relation to the social compact and the obligation of that compact to him, since both involve moral, social and economic questions of the highest and gravest importance. To the investigation of these questions, as involving the welfare of society,

¹Justice of the Supreme Court of Indiana. This address was delivered at the Washington meeting of the Institute on Oct. 22, 1914.

this Institute is pledged, and for that purpose it exists and invites all who may see in its purposes and endeavors an opportunity for advancement of the social order to join its forces. It furnishes no place for platitudes, fads or fanciful theories; it stands for scientific tests of our practical relations to a very complex civilization. The alienist, the economist, the psychiatrist, the sociologist, the psychologist, psychopathist, the criminologist, the public administrator and the public at large are alike interested in the ultimate results which must flow from our observations in their different fields of labor.

The courts themselves, as related to the final drama in the career of the criminal or defective, are too engrossed with administrative features to be able, if they were competent, to deal justly, by which we mean intelligently, with each individual case; but present the data and reliable information upon which to base its conclusions and the court may, and will, deal justly with society and with the individual; but it cannot in the very nature of things, in our complex civilization, and in the face of the swift changes in our social order, give the attention which the individual cases ought to receive—for that is a work of specialization in itself—for lack both of time and opportunity, and this work, if done at all, as it must be, must be done by others. This lays special emphasis upon the field of work and the duty of this Association. It has been the frequent inquiry, if not the conviction, of those charged with the administration of the criminal laws, whether the accused is not often one who requires treatment rather than punishment. If courts are to be directed by legislative enactment, it is important that the enactment itself be not merely legislative empiricism, but scientific deduction from reliable sources of information. In other words, it is not exclusively a legal science. The premises become totally dissimilar when we are confronted with mental phenomena, whether of pronounced psychosis, or weak-mindedness, from those which obtain in the world of physical phenomena. This is exemplified in the modern treatment of criminals with respect to employment, notably with respect to the occupation of criminals on the public roads. The plan has been bitterly opposed for years on many grounds. Now it so happens that the plan has been adopted in a number of the states and the result has been so strikingly at variance with many preconceived notions, that many men who were opponents have come to be firm adherents of the system. It only demonstrates that mental attitudes may be largely controlled by physical conditions, and the apparent truth of yesterday is the contradiction of today by the very fact of trial and experimentation. That the era of understanding, and consequently of rational investigation into,

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the case of the individual misdemeanant and the criminal has set in, and that we have come to the point of distinguishing maliciousness from diseased mentality, and to recognize the subject as one for the specialist on many lines, is demonstrated by the increasing interest, the marked development of the allied sciences bearing upon the subject and the humane provision made at public expense to permit exhaustive study by capable persons to ascertain the true and just relation of the individual to his offense, and consequent invaluable aid to courts and administrative officers, with justice to the individual and society at large. It comes to the question of subjective treatment of the individual as against the purely objective question of placing offenders in jails or prisons.

We are informed by the last census that in the year 1910, 493,934 persons were committed to prisons, county jails and municipal prisons in the United States. It is a startling revelation. By the same census we are informed that there were in that year 187,791 persons in hospitals for the alleged insane in the same territory. The total number of persons in prisons, penitentiaries, jails, work houses and juvenile delinquents, January 1, 1910, was 136,472.

Committed in 1910.....	493,472
Discharged or paroled.....	468,277
Died in durance.....	1,505

Those in custody in 1910, charged as criminal offenders, were classified as follows, with respect to grades of offence:

Grave homicide	6,904
Lesser homicide	7,412
Major assaults	7,172
Minor assaults	2,870
Robbery	4,937
Burglary	18,307
Larceny	27,817
Fraud	1,518
Forgery	3,317
Rape	4,572
Prostitution and fornication.....	2,003
Vagrancy	6,956
Violation of liquor laws.....	2,153
Malicious mischief	718
Drunkenness and disorderly conduct.....	13,914
Other offenses and two or more offenses....	25,623
Not classified	279

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Among juvenile offenders in reformatories, consisting of 24,974, there were committed for:

Grave homicide	14
Lesser homicide	45
Lesser assaults	321
Minor assaults	2
Robbery	208
Burglary	2,039
Larceny	6,420
Fraud	37
Forgery	172
Rape	107
Prostitution and fornication.....	1,178
Drunkenness and disorderly conduct.....	210
Vagrancy	952
Violating liquor laws.....	5
Miscellaneous mischief and trespass.....	240
Other offences and two or more offenses....	12,958
Not classified	66

The relation of offenses to the years of the offender is not yet classified, but the relation will readily be seen from the character of the offenses as they are classified, to the ordinary experience, as to the years of life of their most ordinary occurrence.

The total number of persons enumerated as insane January 1, 1910, in the United States was 187,791, classified as follows:

Under 15 years of age.....	341
Between 15 and 19 years of age.....	2,212
" 20 " 24 " " " 	7,801
" 25 " 29 " " " 	14,083
" 30 " 34 " " " 	19,091
" 35 " 39 " " " 	22,856
" 40 " 44 " " " 	23,321
" 45 " 49 " " " 	22,874
" 50 " 54 " " " 	20,855
" 55 " 59 " " " 	16,383
" 60 " 64 " " " 	12,729
Over 65 years of age.....	21,881
Ages unknown	3,234

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Total admissions in 1910:

Under 15 years of age.....	327
Between 15 and 19 years of age.....	2,539
" 20 " 24 " " " 	5,701
" 25 " 29 " " " 	7,027
" 30 " 34 " " " 	7,295
" 35 " 39 " " " 	7,495
" 40 " 45 " " " 	6,469
" 45 " 49 " " " 	5,681
" 50 " 54 " " " 	4,877
" 55 " 59 " " " 	3,068
" 60 " 64 " " " 	2,872
Over 65 years of age.....	6,161
Ages unknown	957

The feeble-minded enumerated in institutions January 1, 1910, were in number 20,731, classified by age as follows:

Under 5 years of age.....	98
Between 5 and 9 years of age.....	1,443
" 10 " 14 " " " 	3,649
" 15 " 19 " " " 	4,593
" 20 " 24 " " " 	3,574
" 25 " 29 " " " 	2,483
" 30 " 34 " " " 	1,729
" 35 " 39 " " " 	1,099
" 40 " 44 " " " 	707
" 45 " 49 " " " 	414
Over 50 years of age.....	567
Ages unknown	375

Admitted to institutions for feeble-minded in 1910, 3,825, classified as follows:

Under 5 years of age.....	139
Between 5 and 9 years of age.....	798
" 10 " 14 " " " 	1,086
" 15 " 19 " " " 	815
" 20 " 24 " " " 	370
" 25 " 29 " " " 	189
" 30 " 34 " " " 	174
" 35 " 39 " " " 	98
" 40 " 44 " " " 	66
" 45 " 50 " " " 	37
Over 50 years of age.....	94
Ages unknown	69

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The comparison of these tables with reference to the disclosed ages of greatest percentage of mental disorder, as related to the percentage of crime, during the same relative years of life, cannot but impress one with their possible relation to crime, more or less heinous, according as it takes place in the years of the greatest percentage of mental disorder and functional disturbance. The consequent tendency toward irresponsible offenses are clearly matters for the psychopathist, and not for judges and juries.

What relation the number of offenders not classified as insane (which is probably a misnomer) bore to mental infirmity cannot be known under previous systems, or even speculated upon, with any degree of exactitude. Certain it is, however, that in a marked percentage these offenders were proper subjects for medical treatment rather than for commitment to jails. No observing person can have failed to be convinced of the unjustness and the evils of indiscriminate commitment of all ages and conditions together in the common jail. There is no more efficient teacher of crime and indolence than the common jail. There the inexperienced, and perhaps irresponsible, are thrown with the depraved and hardened criminals, to be taught vice, immorality and crime at the expense of the tax payer, and destruction or abasement of whatever may exist of correct and acknowledged principles. They become educated as criminals and they degenerate both physically and mentally. Habits of idleness are formed without any compensation to the public; the class grows with the idleness on which it feeds, and to the great injury of the individual. Idleness is in itself probably as great a factor in the destruction of the individual as any other one factor of jail life. It is a forerunner of mental decay and moral degeneracy, whether in or out of prison. A large task and duty is therefore set before the public, and its conscientious and efficient discharge must depend upon such labors as this society and its kind bring to the problem; constant research and interchange of thought and experience, by which orderly, and efficient and permanent results may be obtained.

At the last session of this Institute a special committee was appointed on the subject of sterilization of criminals. Since that time the Supreme Court of New Jersey has held a statute on the subject invalid, as applied to the subject before it, viz.: epileptics as an unauthorized classification. The District Court of the United States in Iowa has held an Iowa statute in violation of the Federal Constitution, primarily on the ground that due process of law is violated in the matter of *ex parte* examination and for denial of trial by jury, and secondly, as an invasion of the right of entering the marriage relation.

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A law of Washington was upheld as against an attack on the ground of its being cruel and unusual punishment. In Indiana, after the application of a statute for sterilization in something like 690 cases, the practice was discontinued on the advice of the Governor, owing to doubt as to its constitutionality. We have had no legislation in any of the states on this subject since the Montreal meeting, except that Virginia enacted a statute authorizing and directing the Board of State Charities and Corrections to continue investigation of the question of the weak-minded other than insane and epileptics, and to report at the next session (1916) a comprehensive and practical scheme for the training, segregation and prevention of procreation of mental defectives. Asexualization laws of recent enactment also exist in California, applicable to cases of hereditary, insane or incurable chronic mania or dementia; also recidivists in state prison for rape or assault with intent to commit rape or seduction, after two convictions for other crimes, where the person gives evidence of being a sexual or moral degenerate or pervert, and in case of prisoners for life, whether there have been previous convictions or not. Idiot minors may also be asexualized without expense to parents but only with their consent, and idiot adults may be made to undergo the same operation with the consent of the guardian, the consent being in writing.²

Connecticut also has an act, enacted in 1909, applicable to persons with an inherited tendency to crime, insanity, feeble-mindedness, idiocy or imbecility, and there is no probability of improvement so as to render procreation advisable. The act applies to inmates of the state prison and state hospitals for the insane.

The Iowa act applies to all public institutions intrusted with the care and custody of criminals, rapists, idiots, feeble-minded, imbeciles, lunatics, drunkards, drug fiends, epileptics and syphilitics, moral and sexual perverts, and diseased and degenerate persons. The act is exceedingly drastic, providing even for asexualization of those convicted of prostitution or two convictions of other sexual offenses, including soliciting, or two convictions of a felony. Provision is made in the act for those affected with syphilis or epilepsy to have the operation of vasectomy and ligation of the fallopian tubes, and marriage of such persons is allowed. Heavy penalty is imposed for the performance of the operation other than for the reasons defined in the act, or for the purpose of destroying the power of procreation. This act has been held unconstitutional.

Kansas, Michigan, North Dakota and Wisconsin have like acts,

²Chap. 363, Code, amendment of 1913.

enacted in 1913, and Nevada, New Mexico and New York, enacted in 1912. The statutes vary in the boards, courts or authority to determine the cases in which the operation should be performed, but generally apply to habitual criminals, idiots, epileptics, imbeciles, mental defectives, insane and rapists. Similar proposed laws have been defeated in Arizona, Illinois, Minnesota, New Hampshire, Pennsylvania, Vermont and Virginia in the legislature. A sterilization act passed by the legislature of Oregon in 1913 was defeated by a referendum vote of the people. It is a far stretch of power, and great caution should be exercised along such lines. What the concensus of opinion may ultimately be or what the courts may generally hold may be conjectural; certain it is that very decidedly contrary views are entertained by many persons.

At the Montreal meeting there was also created a special committee, D, on the "Classification and Definition of Crimes." This committee, and special committee, E, charged with the "Investigation of feasible methods (1) of simplifying pleadings in criminal cases, (2) eliminating unnecessary technicalities in the procedure of appeals and reversals in criminal cases, to my mind present the most important work of this body now in hand. Whatever may have in the past been thought necessary or advisable in the charging part of an indictment or information, in its circumlocution and repetition, these archaic forms ought to be discarded. Whatever purpose, if any, they have served, growing out of the revulsion of the English race to former methods of criminal procedure, they should have no place in modern criminal procedure. They have only tended to protect the guilty from punishment upon technicalities which have led the lay mind to regard the system with suspicion, if not just contempt. They have furnished the inexcusable opportunity for many a man to be let loose upon a wondering and outraged public. There is no good reason why an indictment or information should not charge directly the fact that A. B. killed or murdered C. D., or that E. F. stole the property of G. H. It would be direct and certain to a common intent and understanding. Such is the present procedure in Canada, and it works admirably and without injustice. If John Smith kills or murders John Jones it is wholly immaterial by what means this was accomplished. If John Smith wants a bill of particulars let him have it on motion, but let the indictment stand with the direct and specific charge of the accomplished act, and we should have very much less complaint of criminal miscarriages of justice than we now have.

In many of the states there has already been much accomplished in the way of classification and definition of crimes, but much may

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still be done in many, if not all, the states. This is particularly applicable to the subjects of larceny and embezzlement, which especially should be respectively classified and defined. The failure of legislatures and the courts to mark the real distinction which exists between the two offenses has led to many escapes from justice.

Virginia in 1914 enacted a law for the commitment to insane hospitals of persons charged with or indicted for crime and found or believed to be insane at the time appointed for the trial. The court or the Commonwealth Attorney, believing any person charged with crime to be irresponsible, the court may commit to a hospital for the insane and appoint experts to examine him, pending the determination of his mental condition,³ and those found insane on trial, or becoming so after trial and conviction, may be committed to the hospital for the criminal insane.⁴ It also established an institution for the treatment of the feeble-minded.⁵ An act was also passed by that state for the voluntary admission of persons to the state hospitals for treatment, excluding those temporarily deranged by the use of drugs and alcohol,⁶ and those in urgent need of treatment and care as dangerous insane and a menace to the public, except those suffering from delirium tremens or drunkenness or delirium from fever.⁷ It is to be regretted that the characterization of these unfortunates by these beneficent acts should be as "insane."

New Jersey in 1914 provided for an indeterminate sentence law and board of parole⁸ and for a wage system of employment of prisoners and the administration of the wage⁹ (a) for the care of dependents of the prisoner, (b) for the benefit of prisoners after discharge or parole, and (c) for certain limited costs of his prosecution. This act is of a kind with the acts of 1911 and 1914 in Massachusetts, authorizing payment of wages to persons incarcerated, but discharged or acquitted, and shows a marked trend.

Vermont in 1913 and Virginia in 1914 enacted most stringent laws respecting delinquent, dependent and neglected children, and in defining a delinquent child. Both acts cover every phase of association, living, housing, presence of and conduct of others, and conduct of the child, conceivable, as detracting from the moral advancement

³Acts 1914, 242.

⁴Acts 1914, 542.

⁵Acts 1914, 665.

⁶Acts 1914, 424.

⁷Acts 1914, 665.

⁸Acts 1914, 562.

⁹Acts 1914, 562.

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of the child, such as associating with criminals or being about them, or vicious or immoral persons, or those addicted to the use of deleterious drugs or frequenting saloons, brothels, gambling places, billiard and pool rooms, and many others.¹⁰ A similar act has been in force in Indiana since 1905. (Burns, 1914, 1641.) A new and far-reaching probation law was enacted in Virginia in 1913 with many new features of administration and subjects of commissions jurisdiction.

A parole board was created in Maryland in 1914 for the purpose of advising the governor as to pardons and paroles, while Massachusetts provided for an indeterminate sentence, the power of parole; and a parole law in operation in Maine is reported as giving good results in its effect on prisoners, and a like law is recommended for passage in Maryland.

A compensation law is now passed in Louisiana for the benefit of dependents of the prisoners and for the prisoner on his release or discharge.

Zeal for aid and reformation and interest in the weak, vicious and criminal must not warp from the duty to society, for, however much the state is interested in developing the best there is in humanity, it owes quite as high a duty to its citizenship and society to protect them, and the difficulty, as well as the importance in their last analysis, lies in discrimination and well-balanced application of trained minds and experienced investigators to particular cases in order that really responsible persons may not, by simulating irresponsibility, escape just punishment. For it is undoubtedly carried to the extent of bringing the law, or rather its administration, into disrepute and generating in the public mind a disregard which is well calculated to destroy its efficiency as a public agency, and dulling that sense of public obligation so essential to its supremacy and observance.

At the same time that we are bound to recognize the startling number of morons of society, it does not by any means follow that they are not morally and legally responsible, and the problem is to determine responsibility or irresponsibility in individual cases. What shall be done with the subnormal and the borderland cases? Extremists both ways are likely to be found on all such questions, but there is a practical midway in dealing with criminals in courts, if happily we may find it.

The psychopathic laboratory, the testing house, at once suggests itself, and the results of the experimentations in the laboratory, in connection with the Municipal Court of Chicago, has astonished all

¹⁰Acts of Virginia, 1914, 696; Acts of Vermont, 1913, 150.

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who have taken the time and pains to study them and have attracted wide attention. The reports of Dr. Hickson, superintendent of the Psychopathic Laboratory, and Dr. Healy, director of the Juvenile Psychopathic Institute of Chicago, furnish data of inestimable value and food for grave reflection. One of the common notions which fastens itself upon the mind disordered is that society is organized against it, and the consequent result is that it creates the conditions on which it feeds. This is peculiarly true with respect to the discharged criminal; he is rarely extended a helping hand, he grows morose, sick at heart and hardened toward society, and frequently prefers the oblivion of a prison to contact with the outer world. Another powerful factor in the making of criminals is the failure of the state to see to it that every alleged crime, however impecunious or poor the alleged culprit, be investigated by competent and impartial attorneys. The result is that the cases of the poor are not properly presented. This begets a hatred and distrust of organized society and of courts and produces anarchists. If the state owes to society the duty of ferreting out and punishing the guilty, it owes no less a duty to see to it that the poorest man, woman or child shall have his, her or its rights fully and fearlessly and capably protected. To this end, in accordance with the constitution of this Institute, I recommend to its careful consideration the subject of the Public Defender of equal grade with the public prosecutor. Personally I regard it of the highest importance and am convinced that not only is it a duty the state owes its citizens, but my opinion is that it will go far to restore confidence in the administration of the law and respect for it, and to impress on the mind of the really guilty the justness of their punishment. On the other hand, it will be a long step in removing the distrust of the law among the people at large, for there can scarcely be a thing more calculated to make bad men than unjust and inappropriate punishment. It stirs every fighting fiber in any man who has red blood in him, and that man is bound to become an enemy of society. As an economic question I apprehend that it would be a paying proposition for the public.

While not strictly within the objects of this Association, it is cousin germane, and I therefore recommend investigation of the subject of payment of wages to prisoners, both from an economic and humanitarian standpoint. Possibly there should be gradations as related to the character of the crime, so as to exclude offenders guilty of heinous offenses and protection against the malignerer, and those who have means of providing for their dependents. I suggest also as worthy of serious consideration the question of reimbursement, so far as pecun-

iary consideration can do so, of those who, after prison service, are found to be innocent. The cases are comparatively few, and the charges on the state would be a negligible quantity, but the practice of such provision may well challenge attention. It appears to me to be as little as should be done for an innocent man and those on whom the blight of a prison career may be unjustly cast.

I venture also to suggest the advisability of eliminating from constitutions and statutes the provisions which prevent comment on the fact of a defendant refusing to testify. Are we not too tender of him. He is not in the situation he was in former ages, and why should the fact that he is able to throw light on the question and refuses to do so not be the subject of reasonable and just inferences as to the truth. Perhaps he ought not be required to testify, and yet on the Continent of Europe he is so compelled, and I am not sure but they are justly leading us in that particular, and am inclined to the opinion that they are, but in any event silence ought to amount to a waiver of the inferences which it may, and frequently does, indicate. Akin to this wide difference in procedure is that of the admission of hearsay evidence and conclusions. As related to both these wide departures from Anglo-Saxon procedure, it is not to be overlooked that the Continental views of fact are themselves purists and trained deductionists and capable of proper estimate of the force of such evidence and of the inferences to be drawn from it. The acknowledged conservatism of lawyers can be safely relied on to protect human liberty and rights of persons and property. I am not prepared to say that one charged with crime or an offence should be compelled to testify, but we are doubtless a long way from the time when the public mind will be prepared for such a departure. But it is apparent that there must be some more practical and efficient and less archaic methods applied in the courts, where, under present system, a guilty man has more than an even chance, and it is not going too far with the natural tendency to secrecy as to crime and its actual secrecy as a rule to say that the state is put to too great a disadvantage and that there is too tender a regard for the criminal, for the greater, and more astute criminal he is, enables him under present conditions to exploit himself as a martyr. He is entitled to no such protection in this age by organic law, and much less by technical construction and rules of procedure, which have no real relation to the question of guilt or innocence, and they should be swept aside in all cases where the offense is clearly shown.

The broadest possible opportunity for education of criminals, both

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in manual arts and in a general way, ought of course to be maintained, to the end that inducement to good citizenship may be held out and hope spring up in their breasts for the coming of a better day, with a wider horizon and a broader and more just view of their relations and duties to societies, to themselves and to those who should be the objects of their care and the subject of the solicitude of men worthy of the liberty of freemen.