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THE CRIMINAL—WHY IS HE, AND WHAT WE DO TO HIM.¹

GEORGE T. PAGE.²

When I commenced my investigation for the purpose of preparing this paper, I hoped to gain much assistance from a study of the criminal statistics of Illinois, but found that there is no such thing. But I did discover that in the State Charities Act of 1909 and amendments effective July 1st, 1912, there is the following provision:

"The State Charities Commission shall establish a Bureau of Criminal Statistics, of which its Executive Secretary shall be the director. It shall be the duty of said Bureau to collect and publish annually the statistics of Illinois relating to crime and it shall be the duty of all courts of Illinois, police magistrates, justices of the peace, clerks of the courts of record, sheriffs, keepers of lock-ups, workshops and city prisons, or other places of detention, holding men, women or children under conviction for crime or misdemeanors or under charges of violations of the criminal statutes to furnish to said Bureau annually such information on request, as it may require in compiling said statistics."

I learned from Mr. A. L. Bowen, executive secretary of the State Charities Commission that there had been such a bureau established and an expert called in for consultation, and found further that the judges and clerks of the courts in Illinois had been communicated with as to their willingness to co-operate in the work.

About 50 per cent of the replies are characterized as satisfactory. Some judges and clerks made no reply whatever. Others were half-hearted in their offers to help. Some of the judges were decidedly hostile.

Up to this time no usable results have been obtained. But one thing, in this connection, seems to have been clearly demonstrated, namely, that officers of the law, charged by the law with the duty of co-operating in the doing of this work, have had no hesitation about disobeying this very important law. This latter is a feature in the making of criminals which I shall further discuss.

I am of the opinion that too much importance cannot be attached to the gathering of criminal statistics.

The man in business who does not keep a careful account of his transactions and supplement his accounting with a careful inventory of stock on hand will never know how he stands. Failure to do this

¹President's address, read at Quincy, Ill., at the Fourth Annual Meeting of the Illinois Branch of the Institute, May, 1915.

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in business has resulted in many unnecessary failures, and a state which goes on making laws from year to year for the avowed purposes of preventing crime, without periodically taking stock of the results of such legislation and the administration thereof, must, necessarily, fail of accomplishing the *best* results.

Disappointed in finding the desired statistics, I have had to make use of such as I could find, in connection with my own observations and experiences, in my endeavor to present to you the reasons, or some of them at least, why we have criminals, and their treatment under our system of criminal law, and under our methods of administration of that system. I have often wondered how many people have a clear conception of the purpose of a system of criminal law. It seems to me that the purpose of a system of criminal law should be:

First, and primarily, to protect the public from the evil influence of criminals and from their criminal acts, and

Second, to give the criminal such care and treatment under approved, restraining and reformatory methods as shall make him again fit to return to his forfeited rights and place in society.

The old idea of "an eye for an eye and a tooth for a tooth" is out of harmony with 20th-century civilization.

I presume that the very suggestion of a possibility of reforming many criminal offenders will provoke a smile from the seasoned criminal jurist, prosecutor, and police official, and the idea will probably be passed by as being the dream of a novice, and unworthy of consideration. Yet, Henry Ford, a man of large experience with men, has said that he can make a man out of any criminal in Sing Sing.

In their natural state, some persons are mentally, morally and physically normal, some are sub-normal and some are born with criminal instincts.

We cannot consider such persons as in classes by themselves, but we must consider them as mixed and mingled in society and subject to all of the conditions and influences of society.

A person born with criminal instincts need not necessarily become a criminal. The right sort of environment may save him from indulging his criminal propensities and make him a good citizen, in spite of the handicaps with which he was born. And it is equally true, also, that it is not necessary that those who are defective and sub-normal shall become criminal.

On the other hand, the normal person is, by no means, exempt from becoming criminal.

In addition to the ordinary influences of society produced by the co-mingling of all kinds and sorts of persons, there have been re-

turned from year to year into the social life thousands of unreformed persons who bear the stamp and stain of prison or penitentiary service, whose influence in making other criminals must be considered.

For instance, the *Chicago Tribune*, October 8th, 1914, published a list of 103 known pick-pockets in the west side police districts of Chicago. There probably were at the same time in that district, and throughout the city of Chicago, and throughout the state of Illinois, many other criminals with worse crimes than that of being a pick-pocket to their credit. Their personal influence for evil, apart from the crimes they commit, cannot be estimated.

It has been estimated that about one-third of the crimes are committed by persons who are born with criminal instincts. How, then, are we to account for the other two-thirds that are continually being recruited into the criminal ranks?

In his address last year, as president of this association, Judge Gemmill said:

"The passage of the Pure Food Law made 50,000 criminals.

"When the law was passed a few years ago forbidding employment of women for more than ten hours in any one day, many thousands of employers were instantly made criminals.

"Out of 106,369 persons arrested in Chicago in 1912, over one-half were arrested for the violation of laws that had no existence 20 years ago."

I do not know what percentage of crimes committed are chargeable to this character of legislation, but, from the influences which are at work in society, and which every one can see, there must be a large number of criminals to be accounted for upon other grounds.

There are many conditions created by our system of criminal law and its administration that must have the effect of creating criminals, instead of reforming them. Some of them are those created by:—

1. Failure to take into consideration the families and dependents of those charged with criminal offenses.
2. Imprisoning in county jails for months, persons merely charged with, but not convicted of any crime, along with old offenders, and oftentimes under the most humiliating and debasing conditions.
3. Permitting discretion in the administration of the law by police officers, prosecuting attorneys, and other officials charged with the duty of impartially administering the law.
4. Failure to make the term of imprisonment educative and reformatory.
5. Turning loose upon society, after service of a given sentence, men who are confirmed and hardened criminals—of whom it is known that they will, whenever and as often as opportunity presents, com-

mit the same or worse crimes than those for which they were originally imprisoned.

6. The open and notorious refusal and neglect of law officers to enforce certain laws.

7. Creating and permitting loose moral and social conditions, particularly in large towns and cities, that, while they in many cases do not actually violate any statutory enactment, yet, must result in creating a lawless and a criminal atmosphere, from which criminals must inevitably come.

While of late years there is considerable disposition and effort to modify these bad conditions, yet men and women who are drawn into the net of the criminal law come from every walk of life, occupy almost every known social position, represent every age from young children to old gray-haired men and women; some have had the benefits of education and some have not; some have lived in good environment and some in bad. To administer the criminal law so as to get right results for the state and to do justice to the accused (and the state is bound to do justice even to its criminals), calls for the highest efficiency and the greatest devotion to duty on the part of every official charged with the duty of the administration of the law; and yet, how inadequate have been the laws and how inefficient has been their administration was recognized and illustrated by Governor Foss in his address before the American Prison Association in Indianapolis in 1913, when he said:

"Let me add in all seriousness that the managers of my own shops and factories make a more efficient and intelligent sorting and reclamation of scrap metal, than the laws have generally made of the men and women that have been thrown upon the scrap heap of our jails and prisons."

I believe that any candid and fair judgment, after a critical analysis of our system of criminal law and of its administration, must justify this utterance.

As illustrative of almost all of the charges which I have made above, enumerating conditions in the law and its administration which have the effect of making criminals, let us take the case of the head of a family and trace him from his home into the hands of the police, into the city lock-up, before the committing magistrate, into the county jail, in the trial court, into the penitentiary, and back to his home, if he still has one, after the term of sentence has expired, and see what happens to him and those dependent upon him, charged with a penitentiary offense and unable to give bail. Sometimes he is arrested upon a warrant. Very frequently he is arrested without any warrant at all, if the police department or sheriff's force sees fit so to do.

After his arrest he is booked and searched and put in the city lock-up before he is taken to the committing magistrate, which may be the same day or the next day, or, if he desires witnesses, may be many days later. As a rule the committing magistrate requires him to prove himself innocent, otherwise he is sent to the county jail to await the convening of the grand jury, which convening may occur in one day or six months, during which time he has abundant opportunity to begin his education with experienced criminals, if he is a first offender, and to renew and advance it if he is an old offender. After the convening of the grand jury, if a true bill is returned against him, he again lays in jail with the blight of a criminal indictment hanging over him, and has further opportunity to pursue his education in crime and criminal methods among his associates, who are oftentimes seasoned and hardened criminals, until such time as his case can be reached for trial. After his trial and conviction, if he is not able to appeal his case to a higher court, or if he sees no good reason for doing so, he is sent to the penitentiary under what, in most cases in our state, is an indeterminate sentence. After he has served a time, if he has not been committed for murder, treason, kidnaping, or rape, he may be paroled. If he has been committed for murder, treason, kidnaping, or rape, he cannot be paroled. In either event, he goes back into the world; if on parole, under the restrictions of the parole system; if not on parole, under no restrictions whatever.

In the county jails there is no work at all. In the penitentiary, until recently, it has been all work and no play and no pay. In the last few years there have been improvements in conditions in the penitentiary. Many of the old degrading things are abolished. Men have been placed upon honor, and have been given some opportunity to develop the good that is in them, but all that has been done towards the betterment of the condition of the prisoner in the penitentiary makes only a beginning.

Let us consider the failure of the law to take into consideration the families and dependents of those charged with criminal offenses. In his paper before the American Prison Association, above referred to, Governor Foss considered the question of prisoners and their families, but chiefly from the viewpoint of economy. In concluding he said:

"When we beggar a prisoner's family, destroying the self-respect of his wife and children, we not only make them charges upon the public, but are in great danger of turning the man himself into an anarchist, a hater of God and of human society."

This would seem to be a sufficiently grave charge against a law which takes away the family head and the family support, but as a matter of fact the consequences which actually follow in many cases make not only mendicants and paupers out of the family, but often turn them into criminals as well.

What notice does the law take of the family, or of those dependent upon one charged with crime? Absolutely none, except those few cases where certain acts of the man towards his family, or the parent towards a child, are made criminal. In an act relating to the abandonment of wife and children, the legislature did show some wisdom when it provided, that instead of fining the husband or father for abandonment, the court might make an order whereby the husband or father should be required to pay a stipulated sum for the support of the wife or child, instead of being fined for the benefit of the state.

Under the Act of 1887, which deals with the question of the abandonment of a child under one year of age by its parents, guardian, etc., the provision of the statute is that there shall be a fine for the benefit of the state, but provides nothing for the benefit of the child.

The law is greedy for the purification of society by the punishment of the offender, who often has a wife, who is generally innocent, and children who are always so, yet it leaves the wife and children to tender mercies of private charity, or the public poor house on the one hand, or on the other hand, to the mercies of the many immoral and debasing influences that beset the pathway of the young and unprotected in cities.

Take a family of five—the husband, the wife, and three children—and there are thousands of such cases. The man has committed some crime. It may be that he is deserving of punishment. It may be that society is entitled to protection against him; but how is it possible to reach a conclusion that the State is to be benefited under our system of punishing the man, and casting the wife and children loose upon the world, where there is hardly a chance that they will come to any good end, unless the mother, which is all too rarely the case, is a strong-willed Christian woman with a high purpose and courage enough to cope with all adversities. The penalty provided by law for a crime is supposed to be the fine assessed, or the imprisonment imposed *after* conviction. To what account shall be charged that punishment which must come to the first offender through a public arraignment before a Committing Magistrate, public trial in the newspapers, weeks, and months oftentimes, of incarceration in idleness,

in unfit county jails among hardened and debased criminals, before any indictment is returned? To what account, I say, is this punishment to be charged?

It not infrequently happens, in actual practice, that a man is in prison longer on suspicion, than he is after conviction.

In what way does the State profit by the system that places the man charged with a crime, who may be (and oftentimes is) wholly innocent, or who, if guilty, is a first offender, in jail for months in perfect idleness, in company with others who are also idle, and who will naturally see the injustice of punishment before either indictment, trial or conviction.

The law is often brought into disrepute through permitting discretion in the administration of the law by police officers, prosecuting attorneys, and other officials charged with its impartial administration. In Judge Gemmill's annual address, as President of this Association in 1913, he decried the abuses created by the use of police discretion in the matter of arresting offenders, and also the practice of allowing prosecuting and state attorneys to non-suit and *nolle pros* criminal or *quasi* criminal cases. I have already herein called attention to the efforts of the Executive Secretary of the State Charities Commission to get results in the gathering of statistics and to the failure and refusal of officers of the law to co-operate with him in so doing.

Within a few days past the newspapers carried an article about a woman who had robbed a man of a diamond pin valued at \$40.00. After she was arrested, she confessed the theft, returned the pin, and thereupon the police released her, and the statement was made that no prosecution would follow. Some time since, the Chicago papers carried a story of the arrest of a citizen of Chicago and his detention for four or five days in a hotel, without being permitted to communicate with his family, friends, or attorney. All of this, it was said, was done under direction of the prosecuting attorney. If true, the action was not only without any warrant of law, but in direct and open violation of the law.

These are only isolated instances, but they are illustrative of hundreds of instances occurring in every city in this State, and they are repeatedly made public through the newspapers. How is it possible that there can be any respect for the law, or that it can be fairly administered without fear or favor, if such practices are indulged in by officers charged with the duty of enforcing the law?

Judge Gemmill in his address above referred to, in speaking of abolishing police discretion in the matter of arresting offenders, said:

"This can only be done by eliminating parties and politics in municipal elec-

tions and by insisting that all candidates for municipal offices shall pledge themselves to an impartial enforcement of the laws and ordinances of the city."

With all due respect for the opinion of Judge Gemmill, which I value highly, a pledge from a candidate to impartially enforce all the laws and ordinances of the city amounts to absolutely nothing. A pledge from a candidate in nine cases out of ten can be had, and is had, for the asking. What binding force will a pledge have upon a man who habitually violates his oath of office? All officers of the city or village are required to file an oath in which they say:

"I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Illinois, and that I will faithfully discharge the duties of my office according to the best of my ability."

A pre-election pledge is like a promise written in the sand on a windy seashore.

If there is to be punishment of prisoners, or correction of evil arising from the commission of crime, by imprisonment, that imprisonment should be under conditions that will make it educative and reformatory. It is said that the average age of criminals is 21 or 22 years. In actual practice imprisonment surrounds the man with bad influences and not with good. If the imprisonment is for a long term of years, it necessarily takes the prisoner out of touch with all social and business conditions, knowledge of which are necessary to enable him to make his way in the world, even though he does not carry upon his person the marks of a criminal, or the stain of prison service.

The fact that men are made worse, rather than better, by imprisonment under the methods and practices in vogue has become so notorious that prisons are denominated, "Universities of Crime." It is not by any manner of means necessary that this should be so. The little that has been done here and there goes far to show that by slight changes in the law and by radical changes in the methods of administration, penitentiaries and jails and other places of restraint can be made places of reformation, and that prisoners can be turned out of them not worse, but better than when they went in.

The practice of turning loose upon society confirmed and hardened criminals has been long continued. If we are to have any social standards, and we must have, why violate them by releasing into society a stream of unreformed and unreformable men, who fall below those standards.

There is another phase of official misconduct, namely, the too frequent failure, refusal and neglect of mayors, police officials, and prosecuting attorneys to enforce the laws relating to dram shops, commercialized prostitution, and gaming, that are habitually and notoriously violated.

No matter what may be our individual ideas about the reasonableness or unreasonableness of a law, the fact that we may think the law on a given subject ought to be different, or that there ought not to be any such law, is wholly aside from the question. Any law officer who does not obey his official oath destroys confidence in the law, and causes in the weak and vicious disobedience and disrespect for all laws. In disrespect for, and disobedience of, the laws are the seeds of revolution and rebellion.

All of the wrong conditions in our system of criminal law and in the methods of administration must necessarily help to produce grave moral and social disorders in the State.

When Judge Gemmill said the Pure Food Law made fifty thousand criminals, he probably meant to be understood as saying, that that law declared that the acts and practices of 50,000 people, in adulterating foodstuffs—were criminal. They were criminal, regardless of the state of the law upon that subject. The men caught in the Pure Food Law net were, for the most part, intelligent, educated, law-abiding business men who had put their consciences to sleep, while they went out to make money, by means that deceived, defrauded and injured the people.

Other similar laws have caught other men in the same way. Continually we find men trading upon the fact that there is no law to prevent a chosen line of conduct.

Continually, the question being asked of the legal profession by many men is not, whether a proposed course is right, but—"Can I do it without laying myself criminally liable?" Some humorously inclined person may say, no man would go to a lawyer with a moral question. May be so; but many do not go to any one else with it, either.

What we, as a people, need more than anything else, is an awakened public conscience, that will of itself, without the aid of police or courts or juries, condemn the acts and practices of all those who live and trade upon the very border of the Crime Zone. If this Association can help supply this need, many of the grounds for complaint against our system of criminal law, and the methods of administration, will be speedily removed.

What we, as a people, need to know is that a multiplicity of laws, and of courts to administer them, cannot be substitutes for right moral standards in the people.

"Righteousness alone exalteth a nation."