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CRIME: MODERN METHODS OF PREVENTION, REDEMPTION AND PROTECTION¹

WILLIAM G. HALE²

The obligation of society to the individual who is given to criminal practices, or who possesses criminal tendencies, or who, whether innocent or guilty, has been accused of crime, is no longer debatable. Indeed, in a country where government rests upon the shoulders of the governed, and is for the governed, in a very real sense, the duty which society owes to the individual is only another name for the duty that society owes to itself. Each member of society faces not only the possibility of being accused of crime, but also the potentialities of becoming himself involved in criminal practices. Digressions from the most rigid codes of righteousness, lead by almost imperceptible gradations into the dark fields of criminality. Even so earnest a well-doer as the Apostle Paul said to the world that the good that he would he did not, and also the evil that he would not, he did. It is obvious, therefore, that the safeguards and helps with which we surround our neighbor (and is not he who has fallen among thieves our neighbor, indeed?), we at once surround ourselves and our sacred firesides. Verily, with what measure we mete, it shall be measured to us again.

Moreover, society's fight is not with the individual, but for the individual. Man is not born a criminal. The innocent babe born in the vilest dive is not a criminal. If in later life his footsteps lead him into the mire, it is because the mire is there and the allurements of the ensnaring marsh-lights of evil are flashed about him during those impressionable years when his gaze should be directed to the mountain peaks of honor and honest toil, and when his hours of play should be spent in the sunlight of virtue and love. Probably nowhere in the whole gamut of human endeavor is the maxim "that an ounce of prevention is worth a pound of cure," so true as it is in our dealings with the problem of crime. Our duty is plain, our goal is clear; but the steps by which we can best discharge the duty and attain the desired end are not always obvious, nor the construction of the ma-

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chinery therefor easy. It is always easier to map out the larger plan of campaign than it is to evolve and fit into the proper places numerous and essential details. Moreover, in our attempts to realize our aims, we find at times that the moral sense even of the better element of society is not sufficiently aroused to give active support to the enterprise; whereas, the depraved sense of society stands in vigorous and united opposition to us, fighting, indeed, with the vigor of one who knows that his time is short.

In dealing with the problem of crime in an adequate and complete way, the campaign must be waged through three stages: First, attention must be given to preventive measures; second, to redemptive or reformatory measures, and, last, to protective measures. In a very real sense, of course, that which prevents the individual from embarking on a life of crime and that which redeems and restores to his rightful place the one who has committed his first offense are at once protective, but there will always remain a certain residue who must be dealt with chiefly from the standpoint of society's protection. In spite of all we can do, the habitual criminal we shall long have with us.

What, then, of preventive measures—those measures calculated to keep evil influences from seizing the individual during the formative years of his life and leading him deeper and deeper into a life of crime, until at last it is almost impossible to penetrate the hardened crust and find the innocency of childhood and the glory of manhood that lie beneath it? Such measures are numerous. Some of them have been taken; for example, laws and ordinances are common against the selling or giving of liquor or tobacco to children of tender years, say under sixteen or eighteen years of age; laws against employing children in places and in kinds of employment that bring them under questionable influences; laws against taking indecent liberties with children, or in any way contributing to their delinquency; likewise, laws against the printing and distributing of obscene literature, and provisions for the censoring of motion picture films. Both of these latter steps could very well be carried further. Evil suggestions are a prolific source of evil actions. No effort should be spared to bring up our young people with clean minds. It is not the blatantly vile picture or book or play alone that should be prohibited. Such pictures and books should be condemned as a matter of course. The real effort should be rather to rule out the more subtle suggestions of evil and crime. In this connection some censoring of the daily press would not come amiss. The glittering recital of the details of all manner of

crime played up on front pages of daily papers and cried out by newsboys rivals the stories in Nick Carter and the Police Gazette. Even the adult mind can well afford to feed upon something other than the offal of human experience. And of like, or still better, effect are the efforts that have been made to keep children occupied in wholesome activities, such, for example, as the effort to keep them in school longer than formerly (an effort, by the way, that will bear a larger fruitage when more attention is given in school to teaching the lessons of true patriotism and good citizenship, even though at the expense of a few sums); the equipping in various parts of the large cities of playgrounds suitably supervised, and the encouragement of systematic gardening by children. Every encouragement should be given to the further development of each and all of these activities. They, indeed, make more for the upbuilding of character than a thousand "don'ts."

It is impossible in the time at my disposal to even touch upon, much less to develop, all of the things that may and should be done to prevent the formation of criminal habits. They are numerous and varied. Juvenile court and probation officers, charitable and social workers are more familiar with them than most of us, and have striven energetically to carry them out. Every one knows, for example, that there is a clear relation between poverty and crime. Every step, therefore, toward the alleviation of poverty, toward the improvement of tenement house districts, toward the keeping of mothers at home with their children are steps toward the prevention of crime. All of the efforts which are today being directed at these sources of criminality are worthy of the active support of such an organization as ours. If our Society of Criminal Law and Criminology were fulfilling its full duty it would be bringing together in large numbers representatives from every organization and agency that touches the problem of crime at any point, with a view to co-ordinating the various efforts and to giving tangible, concrete and dynamic expression to them. The great weakness in all efforts at reform is a lamentable lack of co-operation; a failure to appreciate the value of concerted action among those who are interested in reform. The forces of evil are always organized and active. They cannot be defeated except by the organization and well-directed forces of righteousness.

The most important single crime-preventive step that can be taken is the total nation-wide abolition of the liquor traffic. That this vicious business has been a most potent factor in the production of criminals and in giving added momentum to those already started on

the highway of crime, is today beyond debate. The saloon and its boon companions—the gambling den and the brothel—have been the crime-breeding cesspools of human society. They have borne their evil fruitage a hundredfold in the weakened will and broken manhood of the drinker himself, and the consequent unchaining of his vicious propensities, and a thousandfold again in ruined homes, abandoned wives, and neglected children. It requires no vivid imagination to picture the crime-laden streams that have been issuing through the years in a hundred directions from these sources. Moreover, it is not alone because of such evil fruitage that the liquor business is to be condemned. It has never stood for law and order—indeed, its organized opposition to law enforcement has been, for years, a by-word. It is the brazen embodiment and political representative of practically all the forces that stand in opposition to decent government. The political influence of the liquor business has been evil and only evil. From beginning to end it has not only repeatedly and effectively blocked the enforcement of wholesome laws, but what is even worse, has bred contempt for law in a land where the lax enforcement of law is all too prevalent. From the standpoint of law enforcement, if from no other, the whole institution should go. Let us hope that the great State of Illinois will resolutely set itself to secure at the next session of the Legislature the approval of the amendment to the Constitution of the United States providing for national prohibition. And may I also express the wish that this society, recognizing as it must the relation between the liquor business and crime, will take active steps to aid in the campaign.

Second—Of redemptive measures: If our first duty is so clearly to keep the individual from committing his first offense, it is quite as true that our second duty is to redeem, if possible, the person who has started upon the path of waywardness, and to help him plant his feet again on firmer ground. The establishment of the Juvenile Court, the passage of our probation and parole laws, and the establishment through private enterprise of prisoners' aid societies, bespeak a clear recognition of this duty and constitute efficient steps in its discharge. But many things remain to be done. There is still a crying need for better prisons, especially in the towns, cities and counties. While serving to deprive a man of his full freedom, our prisons should still, as far as possible, express the humanity of man to man. New hopes are not born in dark and musty cellars. No system of penal institutions is complete today without prison farms. Besides their regenerative influence upon the prisoner, they can be

so managed as to constitute a good pecuniary investment by the state. Apology should be made for suggesting a "pecuniary" reason in behalf of the prison farm. I should not suggest it were it not for the lamentable fact that there are still some people who are willing to barter manhood and womanhood for a few paltry dollars.

"Ah! money, and the evil lust for gain;
'Tis this that ruins cities, drives a man from home,
Perverts the best of men to basest deeds,
And teaches all to play the knave."

So speaks the voice of Socrates from the ancient days.

As redemptive measures, our probation and parole laws have added vital wheels to our machinery of justice. They have gone far toward enabling us to deal with the individual as an individual and not as mere human grist, to be fed into an unthinking machine, and have thus made possible more ample provision for his reformation. In every case where a person is charged with crime, there are two wholly distinct questions presented: First, was the crime committed by the accused, and, second, assuming that it was, what should be done with him? Moreover the considerations that should enter into and the machinery for the determination of the one should be as distinct from the other as the questions themselves in kind and purpose are distinct. The two questions have always to some extent been recognized, but that recognition has been unofficial and the machinery for dealing with them hopelessly inadequate. Jurors, where given the necessary information, have long been disposed to take cognizance of them, but have been forced, by restrictions of the law of evidence, to act upon incomplete information, and by other phases of the law of procedure to translate this recognition into action by indirection. They have usually resorted to the unfortunate alternative of an arbitrary verdict of acquittal, in cases where the defendant was clearly guilty of the offense charged, in order to extend mercy where mercy, in some measure, has been due.

Probably no one thing has been more responsible for the so-called "miscarriage of justice" through the alleged foolishness of jurors than this attempt to combine in one proceeding and by a single one or two-word verdict the trial of the crime and the trial of the man—one involving a question which is wholly formal and which may be determined by rules applicable alike to all cases; the other involving individuality and depending for its proper solution upon considerations as varied as human life and human experience itself. Probation

and parole laws, as they exist today, are a step in the right direction, but only a step. We should go further. The complete segregation of these two questions seems to offer the only final and satisfactory solution of the problem.

Fair treatment of the accused paves the way for his reformation. We must do all in our power to disabuse his mind of the feeling that the state is his enemy and in no sense his friend, and thus prevent the development in him of an unfortunate spirit of revenge. This can be accomplished, at least in part, by a more adequate provision for his defense. In this connection it would seem appropriate to mention the need in this state of provision for a public defender; that need being particularly urgent under our present procedure. It is the function of the state not only to convict the guilty, but also to acquit the innocent, and, as already pointed out, to deal justly even with those in fact guilty. Moreover, it is desirable that tangible expression should be given to this dual function. In theory we recognize it today. The public prosecutor is sworn to uphold the law, not to convict and hound the accused; but a short-sighted public measures the efficiency of the prosecutor by the number of notches on the stock of his official gun. His continuance in office depends upon his efficiency determined by this measure. Moreover, he is aided and abetted to this end by police officials and public or private detectives, who are equally anxious to hold a victim up to the public gaze. It is already recognized that every person accused of crime is entitled to counsel to defend him. If he cannot employ an attorney, the court will appoint one. But attorneys appointed by the court are either young or inexperienced or indifferent because of serving without pay. If, moreover, the trial is in the police court and the attorney is even employed by the accused, he is usually a mere police court vulture, bent only upon getting his client's few cents or dollars, and then bluffing him into thinking that he has done something for him by a little blatant pettifoggery. It is as true that the poor and unfortunate are under-defended as it is that the rich and powerful are over-defended. This evil has been met very satisfactorily in a few places, notably in Los Angeles, California, through the creation of the office of public defender, carrying ample financial provision to place a capable official in charge with an adequate corps of assistants. The function of this official is, of course, to help only those who are too poor to employ competent counsel. The need of such an official in this state is obvious, and the success with which this work has been

crowned in Los Angeles is sufficient to challenge our serious and active attention.

I have but one more need to present. It relates to the problem of the habitual offender. In spite of every good influence with which we may be able to surround the infancy and developing years of the lives of young people, and in spite of all the efforts we can make to redeem those who have taken their first wayward steps, we shall find that some individuals are immune to all such efforts and are bent with an unyielding will upon a life of crime. Against such as these society must be protected. The attempts that have thus far been made to deal with this class of individuals have been hopelessly inadequate. We have on our statute books at present only one provision relating to this large problem. By a statute enacted in 1883 [Criminal Code of Ill., section 473 (1)], it was provided as follows:

"That whenever any person having been convicted of either of the crimes of burglary, grand larceny, horse-stealing, robbery, forgery, or counterfeiting, shall thereafter be convicted of any one of such crimes, committed after such first conviction, the punishment shall be imprisonment in the penitentiary for the full term provided by law for such crime at the time of such last conviction therefor; and whenever any such person, having been so convicted the second time as above provided, shall be again convicted of any of said crimes, committed after said second conviction, the punishment shall be imprisonment in the penitentiary for a period not less than fifteen years; Provided, that such former conviction or convictions, and judgment or judgments, shall be set forth in apt words in the indictment."

It will be observed that after the lapse of a certain length of time, of longer or shorter duration, even under the provisions of this statute, the hardened and confirmed criminal is turned loose to prey upon society. Moreover, no provision is made under this statute to take care of the individual whose offenses are not of the most serious character, and yet who is a real menace to society not only by reason of the crimes that he himself may commit, but by reason of the influence he may exert over others. Also, no provision is made for taking an individual into custody or retaining him in custody on the sole ground that he is an habitual offender. If, as often happens, his past record is not known when he is indicted for a specific crime, all opportunity, so far as this statute is concerned, to refer to his past life or to deal with him in the light of his past life, is lost. As a seeming satisfactory solution of this problem, I should like to lay before the society a measure drafted and presented a few years ago to the State Legislature of the neighboring State of Wisconsin. In that measure

all of the shortcomings just pointed out in our law are adequately cared for. The provisions of the law there proposed are as follows:

Sec. A. "Any person who has been convicted within the United States of two or more felonies or of five or more misdemeanors or of one felony and three or more misdemeanors, and who is reasonably certain if free from enforced restraint to commit further criminal offenses, and whose continuance at large is seriously detrimental to the good order of society, is hereby declared to be an habitual criminal.

Sec. B. "The continuance of criminal habits and practices in such manner as shall constitute the person an habitual criminal, as defined in Section "A," is hereby declared to be a felony and may be prosecuted in the same manner as are other felonies, and any person convicted of being an habitual criminal shall be sentenced to permanent detention in the state prison of the State of Wisconsin at Waupun, Wisconsin, or in such other institutions as may be provided therefor. If any person complained against as being an habitual criminal shall have had a fixed place of abode within this state throughout the year next before his last previous conviction, the county of such residence shall be the place of trial; but if such person have no fixed place of abode within this state, the prosecution may be maintained in any county of this state. The provisions of law respecting change of venue in criminal cases shall apply to such prosecution.

Sec. C. "All persons in detention, after conviction of being habitual criminals, shall be subject to parole by the State Board of Control, but shall become eligible to such parole only upon earning the right thereto by meritorious conduct in compliance with such rules as may be prescribed by said board. In the event that after a parole has been granted the person shall by meritorious conduct become in the opinion of the State Board of Control, able to maintain himself as a law-abiding person out of restraint, said board, with the approval of the governor, shall have power to finally discharge such person from detention and custody."

This law would seem to meet a vital need.

Finally, may I say that the great need in our society, as in most such organizations, is for action. We meet year after year and talk. Talk is cheap. It amounts to little unless it is translated into action. Action can, however, be secured only through efficient committees. Provision should be made in our society for a number of committees, including particularly a legislative committee, charged with various specific duties. This practice was established and pursued to advantage in the early history of the society. I recommend that it be revived.