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Editorial

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EDITORIAL

ADMINISTRATION OF CRIMINAL JUSTICE IN RELATION TO REPEATERS

In court procedure there are several indicators of an enlightened judicial system. One of the most important of these is to be found in its operations with respect to the repeated offender. It is well enough known that if our municipal and higher courts could subtract from their total labor all that is involved in handling the repeater, they would experience an immense relief.

When offenders are repeating not only five or ten, but even twenty, fifty, eighty and more times, and when the total number of individuals who repeat runs into the hundreds and even thousands in a given city each year, it will be seen that the grind of the administrators of justice upon this class of cases is heavy. I believe it will be apparent that the expenditure of energy and funds in the repeated prosecution of these cases is altogether out of proportion to the social advantage to be gained thereby. I have here in mind the fact that those who have repeated as many as four times only are, up to almost 100 per cent of certainty, beyond the possibility of correction. This is indicated by Austrian statistics, and by a report from the Michigan City prison in Indiana. The secret of the matter in Austria and Indiana lies in the fact that these oft repeaters are in such a status mentally (they are not all incurably insane, though many are) and physically that they cannot adjust themselves to a normal mode of life. Fear of incarceration for them is dulled and the public is protected against their depredations only whilst they are in confinement.

Obviously, in the light of our knowledge of this sort of case, we have a right to expect our systems for the administration of justice to provide specialized treatment for the repeater. Indeed, we have statutes that recognize the situation in a way and authorize and require specialization, in certain respects, at least. For example, in Ohio (G. C., Secs. 13740 and 13741), is the following:

"Cumulative Sentences to the Workhouse.—When a person is convicted of a misdemeanor under the law of a state or an ordinance of a municipal corporation, and the tribunal before which such conviction is had is authorized by law to commit him to a workhouse, and a previous conviction for any such offense in this state or elsewhere, is proved against him, the sentence for the last offense shall be not less than double

the penalty imposed for such previous offense. When two previous convictions for such offenses are proven against the offender, the sentence shall be not less than double the penalty imposed for the last of such previous offenses. This section shall not impose a penalty greater than the maximum now provided for such offense."

(Section 13741.) "Sentence of 'Habitual Offender'—Whoever having been three times convicted and sentenced for offenses under the law of the state or an ordinance of a municipal corporation, in this state or elsewhere, and the tribunal before which such conviction is had is authorized by law to commit the offender to the work house, shall be an 'habitual offender' and may be imprisoned in a work house not less than one year nor more than three years. In such cases the court may order that such person shall stand committed to such work house until the costs of prosecution are paid, or he is discharged as hereinafter provided. Such repeated misdemeanors as provided in this section and the next preceding section, shall be charged in the information or complaint made against such offender and, if proven, shall be stated in the commitment to the work house."

It is undoubtedly true—and this judgment is based upon interviews with hundreds of prisoners in many places—that a person who has been incarcerated as many as even two times is not much troubled by the prospect of an additional imprisonment. In fact, many repeated offenders become so institutionalized that they gladly go through the mill again if only by so doing they may find access to a reformatory or prison. The superintendents of many work houses recognize that it is desirable to keep the first offender out of the work house if it is at all possible to handle him in any other way. A certain wholesome, deterrent fear of prison, they believe, is broken down by even a week spent behind the bars.

It will be remembered that a reference was made above to the estimate of Austrian statisticians that there is almost 100 per cent of certainty that prisoners who have been committed as many as four times cannot be restored to usefulness in a normal community. A survey of Michigan City, Indiana, four times repeated prisoners, made by Dr. Bowers, suggests a reason—in all probability *the* reason—for this condition. Mentally and physically, says Dr. Bowers, these prisoners are in such a state that there is nothing for educational and reformatory influences to work upon.¹

There is no ground for an assumption that any considerable differences could be discovered between the general population of any municipal work house and that of the Chicago House of Correction. A report by the neurologist of the Chicago institution,² covering the

¹*Bowers*, *The Recidivist*, Jour. Crim. Law and Crim., V. 3, 404, ff.

²*Kuh*, *A Psychopathic Clinic at the Chicago House of Correction*, Jour. Crim. Law and Crim., VIII, 6, 837, ff.

years 1909-1916, shows that of 5,639 prisoners who had received hospital attention in the prison for all causes during the year 1916, 223 were actually committed to institutions for mental diseases. From 1912 to 1916, 1,822 cases had been examined by the neurological department and 635 committable cases had been found. The remainder were victims of hysteria, neurasthenia, chorea, chronic alcoholism, paralysis agitans, and acromegaly: of the last two, four and one cases, respectively. The great mass of repeaters in Chicago, Dr. Kuh thinks, are problems for hospitals and for colonies in which they can be detained for indefinite periods.

The cost of the grind upon repeaters is enormous.³

Another aspect of the case. Reference has been made above to the Ohio statutes (G. C. 13740 and 13741) with respect to "Cumulative Sentences in the Work House" and "Habitual Offenders." Such sections provide, stated briefly, for a sliding scale of penalties applicable to repeaters, and they were doubtless enacted either under the theory that punishment should fit the *persistence* of the offender in crime, or upon the theory that punishment is merely for deterrence and social protection, or both.

I repeat that there is justification for the proposition that the many times repeater is by nature or by acquired and firmly fixed habit a peculiar individual as compared with the mass of first offenders: that there is by no means good ground for expectation of correcting his ways by a short sharp jolt, but that the protection of the public against him, as well as his own interest, requires that he be removed from the normal community and placed under restraint for a prolonged period, such as is contemplated by the Habitual Offenders Act. Our municipal courts make no attempt, apparently, to enforce this statute in application to persons convicted of misdemeanors. They continue adherence to the old and worn out dogma that punishment should fit the offense rather than the offender.

It was intimated above that the court could point to a lack of facilities for enforcing the Habitual Offenders' Act. It has practically no means of knowing the full misdemeanor and criminal record of every individual who comes before it. It is largely a matter of chance when a repeater is recognized. Furthermore, there is little or nothing

³A Study of the Chronic Drunkard, published by the New York State Charities Aid Association several years ago, showed that one "Rounder" had cost the City of New York more than \$1,300, another \$2,500, another \$2,800, another \$737, etc. (See Bulletin of the Committee on Criminal Courts of the Charity Organization Society of the City of New York, on "Finger Prints in the Magistrates' Courts of New York City"—1912.)

for prisoners to do once they are incarcerated in the usual municipal house of correction, or work house, and an enlightened and sensitive citizenship would justly revolt against shutting up hundreds of men and women for a period of one or two or three years without occupation. It is often the part of wisdom to refuse to attempt enforcement of a statute when not even half way opportunities are available for that purpose. If enforcement is a desirable end in this case—and I believe it is—means therefor must be provided.

The identifying of repeaters is of primary importance. This cannot be done with the accuracy we require by consulting an index of names. Names are frequently changed in the underworld and duplications are frequent. There is only one adequate simple means of identification to suit our purpose, and that is the fingerprint. There is successful precedent of long standing in New York City, at least, for finger-printing misdemeanants, and a more recently developed precedent in Detroit. There is no valid objection to it. Whatever prejudice against it may have been entertained by the public should have been dissipated by the wholesale finger-printing of the war period. In the light of the ultimate results we are aiming at, many classes of offenders could justifiably be excluded from the finger-printing program—such as traffic violators (excepting those convicted of reckless driving and of driving while intoxicated), and violators of the building code, at least.

The method of operation that is required for our purpose is as follows: Immediately upon conviction of any offense (with such exceptions as those mentioned above)—or even before conviction, with the consent of the defendant—the impressions may be made. Thereupon, by reference to the files in the central record, the court may in a few moment have before him positive knowledge as to whether the defendant has suffered earlier conviction, together with other pertinent data relating to him, in the light of which he may intelligently pass sentence.

As has already been suggested, occupation must be provided if these repeated misdemeanants, convicted of trivial offenses, are to be incarcerated for a long period under an Habitual Criminals Act. It would be wholly impossible to enforce the act without such provision. How can it be made?

There are the work house buildings and grounds in most cities that are of doubtful present utility. The experience of Mr. John L. Whitman, who was for many years superintendent of the House of Correction (work house) in Chicago, and who is now state superin-

tendent of prisons in Illinois, encourages us in the following proposals:

Equip the work house plant with a printing press for manufacturing all official forms that are used in the various departments of the city government; with a bakery of sufficient capacity to provide bread for its own population and such other institutions as can conveniently make use of it; with devices for making brooms, brushes, carts, boxes, and other implements for the street cleaning department; with tools and machinery such as can be employed in repairing school and other furniture for public institutions and for the manufacture of new furniture of certain types; with such implements as are needed for making clothing for the use of public wards. It is possible, too, that brick making and other industries for city uses could be established. Once the equipment is provided a working capital of \$10,000 would be sufficient to carry on the business and not only so, but year by year to refund the principal and to provide its own capital. At any rate, this sum was sufficient for the purpose in Chicago.

Such a plan as this is economically sound only if a market is assured. To meet this condition the city council must make it obligatory upon departments of city government to purchase their supplies from the work house plant to the extent of the capacity of the plant to supply the needs of such departments, respectively.

"The mayor of Buffalo cannot order a desk or a chair for his room unless he has first made a requisition on the manager of prison products in the State of New York. If the prisoners make what is required, he is under obligation to purchase from them. If he purchases furniture elsewhere the controller will not honor the bill unless accompanied by a letter from the sales manager of prison products, that such articles are not in stock."⁵

Some such system as that in New York must be established wherever persons are engaged in manufacturing for state or for city use.

The following extract from the report of the house of correction in the City of Chicago for the year 1920 shows receipts from industries operated under capital account amounting to \$119,301.96 and expenditures for these industries less than half of that sum, or \$56,119.10. If we add to this outlay the items for machinery, dry goods, clothing, shoes, leather, building and repair material and tools, we have a sum, \$103,436.33, that is still more than \$15,000 short of receipts from the industries operated under capital account.

⁵See the Economics of American Penology as Illustrated by the Experience of the State of Pennsylvania, by Harry Elmer Barnes, *Jour Polit. Econ.*, XXIX, 8, Oct., 1921, 617-642.

RECEIPTS, JANUARY 1 TO DECEMBER 31, 1920

I. Sales of Products—	
Bricks	\$21,575.65
Crushed Stone	14,408.35
Other Products (not capital account).....	2,566.67
	\$ 38,550.67
II. Laundry Work (Police, Health and other City Departments)	3,682.70
III. Boarding Imates (Cook County, U. S. and outside towns) ..	101,293.67
IV. Inmates' Labor (Furnished Other City Departments).....	5,638.70
V. Receipts from Industries Operated under Capital Account (Street Brooms, House Brooms, Brushes, Sheet Metal Ware, Bread, Printing, Flowers and Potted Plants, Sale of City Junk, Repairing Furniture, etc.).....	
	119,301.96
VI. Miscellaneous Receipts	276.41
	\$268,744.11

EXPENDITURES OF 1920

Salaries	\$189,318.68
Provisions (Groceries, Meats, Flour, Vegetables, etc.).....	66,565.46
Fuel and Power.....	76,766.11
Machinery	14,652.75
Drugs, Medicines, Surgical Instruments, Hospital Supplies.....	1,163.48
Furniture	1,335.35
Dry Goods, Shoes, Clothing, Leather.....	19,992.95
Stationery, Printing and Stamps.....	628.21
Building and Repair Material.....	12,175.92
Outside Labor and Repairs.....	858.42
Tools	495.61
Personal Services (other than salaries), etc.....	1,101.46
"Houses of Shelter" (Boarding Female Offenders).....	30,436.00
Impersonal Services	2,562.16
Miscellaneous Material	9,588.84
Expenditures for Industries Operated Under Capital Account (in- cluding 2 new auto trucks).....	
	56,119.10
Total	\$483,760.50
Excess of Expenditures Over Receipts.....	\$215,016.59
Ratio of Receipts to Expenditures, 55.55 + %.	

Basing our judgment upon the Chicago record it is perhaps fair to estimate that in any city that yearly spends as much as \$35,000 on its work house, more than \$16,000 could be set off by a well conducted industrial system.

In the third place, as has already been stated, a large proportion of habitual offenders, especially, are suffering from mental disorders. In many instances a return to health is beyond the range of possibility so far as psychiatric science is at present able to express an opinion. Even the maximum term of commitment under the Habitual Offenders' Act is inadequate in such cases.

There is provision in General Codes of many states for transferring to the state hospitals for the insane any convict in the penitentiary, or the state reformatory, or other state institution, whom

the penitentiary or reformatory physician may certify as insane. Similar legislation should apply to the work house, and furthermore, in order that there may be adequate facilities for handling the insane amongst habitual offenders in any city, there must be hospital equipment upon the work house grounds, or preferably a farm colony in the vicinity of the city. This equipment could be shared both by the insane and normal classes of offenders. Commitment of insane to this place should be as to any other institution for the mentally diseased.

ANNUAL MEETING

The next Annual Meeting of the Institute will be held in Detroit. Announcements will be sent out later.