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“THE ESSENTIALS—MINNESOTA’S EXPERIMENT”¹

OSCAR HALLAM²

The past year has shown some progress in the contest between the great mass of people we call society, as one contender, and the predatory individual we call the criminal, as the other.

Such a game is not to be won by chance. It is to be won only by intelligent activity. Those who have interested themselves in the matter officially and otherwise, have had to encounter: the man alarmed, who has the notion that the danger overwhelms us, and that our handling of it is a disgrace, but who brings no remedy; the sensationalist, who exploits such facts as may be necessary to make a good story; the man who conceives that the problem has been solved somewhere and that the solution here is to transplant a remedy already found; the man of smug content, who insists there is nothing wrong, no crime wave as he puts it, and no crime problem. Perhaps all these serve some useful purpose to the extent that they keep public interest from flagging, but the real service will be rendered by those who see a real, present, home problem, who search for the plain and unvarnished facts as a basis for action, and who calmly study plans, not for sensation, but for progress. These will not always get front page headlines, but after all, their efforts will, in the long run, contribute much to real, constructive progress.

There has been in the past year a great amount of work of this character, and it has brought its result. Specific review of the efforts of organized groups, official and otherwise, will be given by presentation that will follow me. They embrace the work of legislatures, crime commissions, bar associations and other civic groups. These pronounced activities are not the pursuit of a fancied problem. It is no battle with windmills. They are the result of a confirmed opinion of thoughtful men, based on facts, that we are confronted with a sizable problem, that there is too much crime in the country, that too many criminals go unwhipped of justice, and all in all, that we are not coping adequately with the problem.

¹Read at the meeting of the Section of Criminal Law of the American Bar Association at Buffalo, August 30, 1927.

²Chairman of the Section of Criminal Law of the American Bar Association.

All this is nothing new. Nearly 50 years ago (1878), the statement was made at the annual meeting of the National Conference of charities that "statistics show that crime is constantly increasing, that prisons of all kinds are everywhere crowded, that nearly one-fourth of their inmates are re-committable." and that "since the Civil War crime has everywhere rapidly increased, and in some states it is estimated that it has doubled."

Figures Unsatisfactory

It is difficult to get any close analysis of the situation from figures. Statistics of crime are always unsatisfactory. The best records of crimes committed are but an approximation. There may be difference of opinion for example as to whether a particular violent death was due to homicide or some other cause.

Federal statistics of homicide for about 90% in population of the country indicate nearly 10,000 a year. Mr. Frederick L. Hoffman, a recognized statistician, compiling his figures on a different basis, estimates the number at 12,000. We can be reasonably sure of this, that there are in the United States an average of about 30 homicides every day, probably 10 times as many in proportion to population as in England. It is common, however, to find wide variation in localities. It often puzzles us to determine the cause of these variations. Difference in methods of administration of justice does not explain, for often there is no substantial difference. For example, it is hard to explain why there should have been 2 homicides in Jersey City and 26 in Newark in the same year—less in Jersey City in proportion to population than in London; or why there should be 1 in Grand Rapids and 26 in smaller Youngstown; or why there should be 20 among the combined populations of Fall River, Grand Rapids, New Bedford, Lowell, Yonkers, Springfield, Mass., and Worcester, and 208 in Detroit with about the same population; or 11 in Milwaukee and 73 in smaller Cincinnati; or 13 in Seattle, 30 in Minneapolis, 34 in Omaha, 131 in Kansas City; or 50 in Wisconsin, 223 in Indiana, 445 in Tennessee and 553 in Georgia; or 21 in Maine, New Hampshire and Vermont, with a combined population of one and a half million, and 355 in Florida with a population of about a million.

If we had statistics of other crimes committed, we should probably find similar variations. Differences in race and national origin may account for some of the variations, but they are entirely in-

adequate to account for all. But with all this confusion we return to the undisputed fact that we have a grave crime problem.

The Agencies Dealing with Crime

We have three classes of agencies in dealing with crime. *First*, those relating to detection and arrest; *Second*, those relating to legal procedure embracing the courts and the prosecutors; *Third*, those relating to punishment.

Of these three the second is the best organized and most efficient. I do not mean that courts have no problem of improvement. They are handicapped by many freakish and antiquated laws. There is room for pruning in procedural methods. There is room for elimination of a good deal of tedium and wastefulness in drawing juries and receiving evidence. A delay of six years between the verdict and the close of the case, as in the Sacco-Vanzetti case, is a calamity. But none the less, as an average proposition, the process of trial better fulfills its purpose than the process of capture or the process of punishment. The number of guilty men who escape prosecution is much greater than the number who escape through the meshes of inefficient legal procedure.

Our Greatest Shortcoming

Our greatest shortcoming is in the matter of detection and arrest. This problem has been made increasingly difficult by high speed cars and hard roads as means of escape, and also by the modern habits of up-to-date criminals. Instead of frequenting the old-time haunts of criminals, they live in residential districts of cities and assume an air of every day respectability.

The problem of detection is a far more difficult one than the problem of apprehension. Of course, there are many identified criminals at large who are in the "wanted" class: that is, whose crimes are known, but who have managed to escape arrest. But the number of those who escape detection altogether is much larger. This difficulty is not peculiar to the United States. In England the statistical branch of the Home Office in 1924 reported that "it seems that the proportion of persons practical and skilled enough to avoid detection is increasing."

It is impossible to tell what percentage of criminals escape arrest and hence escape prosecution, because we keep no adequate records of crimes committed. Our Chief of Police recently told me

that he estimated that about 25% of the major crimes are solved. Governor Hadley is authority for the statement that during one year approximately 13,000 serious major crimes were reported to the police of St. Louis; that of these only 9% resulted in criminal prosecution. The Federal census statistics show 415 homicides in Chicago in 1924. During that year there were 252 arrests for murder and manslaughter, but of these 83 were discharged, not indicted; or the indictments were nolle, indicating that there was no sufficient evidence against them to warrant trial; 50 were acquitted; 63 were punished. In Michigan the census statistics show 547 homicides in 1923 and 1924. The Attorney General's report for the biennium ending June 30, 1924, showed 292 charges of murder and manslaughter, 83 of these dismissed, 69 were acquitted, 140 convicted. In Minnesota the census statistics show 79 homicides in 1924. The Attorney General's report for 1924 shows 42 charges of murder and manslaughter, 8 of these were dismissed, 15 were acquitted, 19 pleaded guilty or were found guilty. These figures are not very conclusive or satisfactory. It is impossible to know the merits of the acquittals or of the dismissals. But they do indicate that a very large proportion of the persons guilty of major crimes are not brought before a court for trial.

The problem of detection and arrest is in most states altogether a local problem with usually a wholly inadequate number of local police. A sheriff for each county and a police department for each municipality, without any provision for concert of action, is the rule. Only a few have any organized force of peace officers, or any co-operative action.

Minnesota's Bureau of Criminal Apprehension

Minnesota has recently established a bureau of criminal apprehension. The bill establishing it creates a bureau attached to the office of the Attorney General, but under the full control of a superintendent appointed by the Governor. The functions of the bureau are:

To install a system of identification of criminals, including finger print system and the Bertillon measurements, photographs and other methods. All sheriffs and the police in cities of the first class are empowered under certain conditions to take such finger prints—this information to be available to courts and county attorneys in disposing of criminal cases, as well as to peace officers; to furnish assistance to county sheriffs in co-ordinating their work with other

peace officers, in promoting greater efficiency in detecting and apprehending criminals, and, in enforcing the criminal laws of the state; to require of peace officers the keeping of records of all felonies reported or discovered and of all warrants of arrest for felonies; the making of reports of the same upon such forms as the superintendent may prescribe; and the making of reports to the bureau of all such crimes as the superintendent may require, to require of clerks of courts reports in regard to the prosecution of criminal cases, to require from officials of state penal institutions finger prints, Bertillon measurements and criminal records of all prisoners in their charge, and to require of the Board of Parole and Pardons information as to discharge and period of service of prisoners; to broadcast by mail, wire or wireless to peace officers such information as to wrong doers and other intelligence as may help in controlling crime; to provide police schools from time to time and at convenient centers for training peace officers in their powers and duties and in the use of approved equipment and methods for detection, identification and apprehension of criminals. This legislation is supplemented by another passed by the same legislature, giving county sheriffs the power to pursue a criminal and make arrest in any county in the state.

Steps have been taken to carry this legislation into effect. The central bureau has been organized by appointment by the Governor of an efficient superintendent. The details of the organization are in progress and are well in hand. A bureau of identification has been established under the supervision of a finger print and Bertillon expert of long experience and wide reputation, and it will be a clearing house for all police records, finger prints, Bertillon records and photographs of criminals captured all over the United States. The Department has taken steps to provide expert investigators stationed at the Capitol, who will be dispatched to the scene of any robbery or murder in the state to assist the local peace officers in apprehending criminals: steps have also been taken to provide a school for sheriffs and police officers where they will be instructed in Bertillon and finger print methods, the science of police photography and modern police methods. On discovery of a murder or robbery, local police may call the central bureau over long distance phone and immediately a description of the bandits and their automobiles will be broadcast to every peace officer in the state. In a short time local officers will cover roads leading from the town in which the robbery occurred, Twin Cities' police will place guards on all avenues leading into and out of the cities, and officers from other counties will search high-

ways on which the bandits may have travelled in making their escape. Expert detectives, with photographs of known bandits and other identification data, will, if necessary, be rushed to the scene of the crime. They will arrive while the details of the crime are fresh in the minds of eye-witnesses and they will bring to bear their ability and experience in running down the perpetrator. The bureau will especially take care of the cases where criminals with records are arrested in towns which have heretofore had no means of identification of the person arrested.

The Bureau will have very limited authority over local officials and much will depend on the will to co-operate. The Minnesota Police Association, composed of more than 1,000 police and sheriffs throughout the state, has pledged the State Bureau its utmost support. In fact, this Association has for some years recommended some of the plan embodied in the act. The system organizes previously unorganized units, insures advanced methods of dealing with crime, and greater publicity and better records and statistics of crime and criminal prosecution. The legislation will need perfecting from time to time, but it should develop into an effective system which will substantially aid in handling the problem of detection and arrest of criminals. This legislation was part of a program recommended by a Crime Commission appointed by the Governor. Reference will be made to the balance of the program by a later speaker. Nebraska has employed a similar system for several years with very worthwhile results.

The Function of Punishment

The function of punishment was formerly vested in judges; when the jury convicted, and when the prisoner pleaded guilty, the judge fixed the term. Now, in all but seven states, some form of indeterminate sentence is in vogue, and in four of these there exists what amounts to the same thing, the power of parole. This means that the judge no longer fixes the punishment. The sentence is determined, that is, the punishment is fixed by a non-judicial official or board.

Both probation and parole have been largely extended in recent years, although not to the same degree as has been the case in England. In 1924 in England the courts of summary jurisdiction released without imprisonment or fine more than one-half of the persons found guilty of indictable offences. The superintendent of the statistical branch of the Home Office in 1924 attributed the increase

in the number of persons skilled enough to avoid detection to the fact "that persons of this type when convicted receive nowadays more lenient sentences than formerly."

I would not say that in the United States the process of probation and parole has, as an average proposition, been overdone, but I would say that these processes have not been scientifically worked out, and that there is not enough discrimination between grave offenders and minor offenders in the amount of punishment imposed. We sometimes deal too harshly with the mild offender while too gently with those guilty of atrocious crimes. As to the former, it has been well said that "punishment swift, sure and light is far more effective than punishment long delayed and unduly severe."

The repeater presents a grave problem. It has been estimated that only 25% of all prisoners are habitual criminals, but that they commit 75% of all crimes. This estimate is doubtless a rough approximation but we know the facts are ominous. Figures show that in Massachusetts in 1922, out of 9,219 inmates of the jails, 59% had served previous sentences. In 1923, out of a total of 10,818 commitments in Pennsylvania, 4,423, or 40.9%, admitted previous commitment, with 15% admitting ten or more commitments. The confirmed repeater has become a professional who regards imprisonment only as an interruption of an established business, and the protection of society requires that he be segregated or kept under surveillance.

I would say also that not enough attention has been paid, in the matter of probation and parole, to the mental condition of the prisoner. The criminal insane are perhaps the most dangerous menace to society. Many prisoners are on the border line, with increasing tendency toward both insanity and crime. There is the utmost necessity for the detention or supervision of those who by mental deficiency are liable to continue in a criminal career.

The Indeterminate Sentence

The indeterminate sentence is the product of the thought of the best students of the subject, and the experience we have had demonstrates its value as a system. The system carries with it the necessity of some official or body vested with the power to end, that is, to fix, the sentence and to administer at the same time the powers of probation and parole.

There is no uniformity of system. Usually the function is a side issue imposed upon executive or administrative officers who have

other full time duties to perform. In sixteen states the Governor exercises the power; in nine others the power is exercised by a board of which the Governor is a member. In ten the power is exercised by a board made up of various officials with other full time duties; for example, in one case the Attorney General, Secretary of State and State Auditor, and in another the Superintendent of Public Instruction, Attorney General and a third member chosen by these two. In eleven the power is vested in the Prison Board. In only three is the power vested in a board with no other function to perform. In ten others one or more members of the board are citizens, with no other official duties.

By vesting this power in a state official board of punishment and parole we can get the advantage of greater uniformity and equality of punishment for offenders of the same class and the advantage of affording ample time for investigation before the term is fixed. But we cannot expect to get the best service by committing this important judicial function as a side line any more than we could expect to get best service by so committing other judicial functions to a board with no other duties and at least one member of which shall give to this most important work his undivided time and attention. I concur fully in the recommendation recently made by the crime commission of New York state, which reads as follows:

“In order that the parole system may be freed from its present defects, we recommend that a sharp distinction be made between true parole of a man on indeterminate sentence and the release of hardened second and third offenders prior to the serving of their full time by commutation of sentence.

“In order that parole may have a fair trial, we strongly recommend that the legislature appropriate a sufficient sum of money to pay for a full-time parole board, equipped with a sufficient staff of parole officers to entirely and satisfactorily handle every man released on parole on an indeterminate sentence.”

The Making of Criminals

No legislation and no system of procedure or mode of punishment will altogether prevent crime. Its existence depends upon many tendencies and conditions some of which we cannot control. I have mentioned things which seem to me to be essential in dealing with crime after it is committed. We are only beginning to give practical consideration to the prevention of the commission of crime.

Heretofore we have given attention to the juvenile who has become delinquent. We should start earlier. The State has given little attention to crime until the criminal is at least partly made. It pays little attention to the things that might prevent the making of criminals. It could do more. Civic and religious organizations have demonstrated that a great deal can be accomplished by the teaching of plain morals. We would do well to adopt courses of training and study sound organized moral codes. It is an old saying, "As the twig is bent, the tree is inclined." We could well pay more attention to the twig before it is bent.