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EDITORIAL

DOING AWAY WITH "GOD AND OTHER RELIGIOUS TERMINOLOGY"

1. A recent marriage in New York City, exploited by the press and the parties as a "companionate" marriage, was solemnized (!) by a clergyman who omitted any reference in the ceremony to a divine sanction. When explaining to the reporter, the clergyman said: "It was genuinely religious, although there is no mention of God and other religious terminology."

God, and *other religious terminology!* Sugar, and other saccharine terminology? Pepper, and other mordant terminology? Punishment, and other penal terminology?

There are some thinkers who by thinking think that they can reduce objective solid facts to mere words, mere terminology, and thus brush them away. In current discussions of the crime problem, the psychiatrists tend to treat thus the solid facts of criminal law. A favorite attitude is, "Punishment is mere revenge, atavistically perpetuated in our law; all that mere terminology should be abandoned."

2. The error is due to the psychiatrists not having studied the history and philosophy of the subject they are attempting to criticize. They have limited their preparation to their own subject. Had they adequately investigated, they would have learned that the machinery of criminal justice no longer is justified by anybody on the antique theory of revenge, but that it serves five distinct purposes, viz.:

(1.) To *treat* the committer—thus if possible to cure or improve him;

(2.) To *segregate* the committer—so as to protect possible other victims from further harm by him, if incurable, or until cured;

(3.) To *reaffirm publicly the moral code* for the community—so as to keep alive the moral emotions of conformity to the social principles of good and bad; a purpose no longer served by religion, because the Ten Commandments have disappeared from our church chancels, where they used always to be displayed;

(4.) To *frighten other potential committers* of similar deeds—because there is not a single normal being in the community who would not commit one or more crimes every week or every day if he were not deterred by the unpleasant prospect of fine or imprisonment.

(5.) To *satisfy occasionally the crude public demand for revenge*—this in those few cases only where there would be danger of lynching if courts did not act; and as wise a judge as Sir James Stephen, after 30 years' of experience, summed up his observation by saying that the criminal law was "mainly a system of licensed revenge;" this was an exaggeration; but it shows that some concession must be made to this popular notion of justice.

3. Now the psychiatrist is apt to concentrate his thought on the first and the second above purposes, and to pooh-pooh the fourth. (We do not propose to stress here the third and the fifth.)

As to that fourth purpose, Deterrence, the psychiatrist dismisses it on the ground that the penalties have not in fact deterred the committer now in court. So far as that fact goes, it shows only that the penalties of a particular system have not deterred this particular individual. In other systems perhaps they do deter such persons; for example, the same kinds of penalties in England deter effectively a class of persons that are not deterred effectively in Illinois or New York. In other words, the inefficiency (freely conceded) of a particular system at a particular time and place, due to its imperfections, is no demonstration of the inefficiency, for such persons, of that system when perfected.

But the vital fallacy of the psychiatrists, at this point, is in looking at the offender in court only, as the object of the deterrence. The deterrence, however, aims mainly at the mass of *persons not in court*, who have not offended, but have been deterred by the fear of being brought into court. Critics constantly commit the scientific blunder of ignoring this, the main part of the deterrence function.

Search your own memory, Mr. Psychiatrist! Last time you took your car out in a hurry, being tardy for that appointment, as you careered down the avenue at 40 miles an hour, when you saw that motorcycle policeman just ahead of you, did you not slow up to the law's permitted pace? And why did you? Was it because of the still, small voice of conscience? Was it because of a cerebral inhibition due to perception of the anti-social consequences of your act? No, sir. It was not. It was because you *did not like the unpleasant consequence of going to court next morning and paying a fine* equal to the fee you were on your way to collect! It was the *fear motive*. It was the *Deterrence theory* working on your normal and respectable mind!

And as the thought perhaps occurred to you, "I can fix the cop with ten dollars if he stops me," did you not dismiss it? Yes, but

maybe not because you deemed bribery a moral wrong, but because you happened to know that the traffic policemen in your street are proof against bribery, and that the offer of a bribe to that particular officer would result simply in a hundred dollar fine instead of a twenty-five dollar fine, and perhaps in a prosecution for bribery also? Yes, *that* was your real motive—deep down in your Freudian sub-psyche. It was Fear! It was Deterrence!

And such was and is daily the motive of thousands and thousands of normal persons. Even so poorly enforced a law as the traffic law demonstrates the operation of the Deterrence theory on the *mass of potential offenders who never do get into court.*

4. To show that the psychiatrists often ignores the Deterrence theory of punishment, and to encourage those who still believe in it, let us contrast two recent utterances of leaders of thought in this field:

Dr. *William A. White*, Director of St. Elizabeth's Hospital, Washington, at the American Bar Association, August 30, 1927 (A. B. A. Journal, vol. xiii, p. 554): "One of the serious defects of the present system is that the vengeance motive still functions, but under a disguise, namely, the disguise of deterrence, which makes it seem like something else. . . . I will make the following concrete suggestions: . . . The elimination of punishment as a vengeance motive."

Now the other:

Chief Justice *William Howard Taft*, at the National Crime Commission Conference, November 3, 1927 (New York Times, Nov. 4): "We must never forget that the chief and first object of prosecution of crime is its deterrent effect upon *future would-be criminals* in the protection of society."

5. Some clergymen may hope to do away with "God and other religious terminology," and still keep people religious. And some psychiatrists may propose to do away with "punishment, and other criminal terminology," and still keep people from being criminals. But they are both mistaken.

JOHN H. WIGMORE.

AN OBSERVATION ON PUBLICITY RE NOTORIOUS CRIMES

Now that the Hickman kidnapping-murder case is before the country, men and women will be interested anew in the press as a possible causative factor in relation to crime.

What of the far and wide publication of details of notorious crimes such as the Leopold-Loeb case in Chicago a few years ago and the Hickman case of these days? Does it cause a repetition of similar offenses? Does it occasion a conventional disregard for law on the part of any section of the population, and does it thereby add to the sum total of violence? It is doubtful if any concrete evidence can be adduced to support either an affirmative or a negative answer.

But there is something to be said, nevertheless, for putting the brakes upon much publicity. Leopold and Loeb planned a "perfect crime." I do not know whether Hickman did so or not. Perhaps he did. At any rate there were one or more points at which the plans went awry. The more widely and thoroughly these plans and their weakness are known the better opportunity the crack-brained egocentrics over the country will have to improve upon them and their execution. Some of them, who are not too punctilious at best, may feel the stirrings of ambition and rivalry when the facts are before them in the press and they may go about it to do better (?). Nothing can be lost by keeping them in ignorance of campaigns that have passed into history—their points of success and failure.

ROBERT H. GAULT.