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Public Defenders in Connecticut

EDITORIAL

PUBLIC DEFENDERS IN CONNECTICUT

Apropos of the article in our last number by Mr. De Forest we have the following letter from the Hon. William M. Maltbie, Justice of the Supreme Court of Errors in Connecticut.

The people of that state rightly have great pride in their Public Defender law. The more or less current opinion that the Public Defender there is a local officer is an error. *He is a state officer.* This is an important point and Mr. Justice Maltbie is giving it emphasis here.—R. H. G.

"In Connecticut Public Defenders are state, not local, officials. The law providing for their appointment was originally passed in 1917 and has been somewhat amended by Chapter 129 of the Public Acts of 1921 and Chapter 122 of the Public Acts of 1923. In June of each year all the judges of the Superior Court, which is the highest trial court in the state, have an annual meeting and the statute directs that they shall then appoint a Public Defender in each county, except New Haven, where two are appointed, and shall make such rules and regulations as may be necessary for the conduct of the office. This is the same method of appointment that is provided for the highest prosecuting officers in the state, that is, the State's Attorneys. The Public Defender must be an attorney of at least five years' practice. It is made his duty to act in defense of any person charged with crime in the higher courts having criminal jurisdiction in the county, if the accused is without adequate funds to employ counsel, and he is also authorized, under such rules as the judges may adopt, to appear for accused persons at preliminary hearings and before committing magistrates. If the accused has some means, he is required to pay the Public Defender what he can, the money so received being paid into court for the use of the state. If there is any reason why a Public Defender cannot or should not represent a particular accused, the presiding judge may appoint some other attorney to act in his place. At the close of each term of court, the Public Defender renders a statement of his services and expenses and the court makes him an allowance, to be paid from the funds appropriated for the conduct of the court. In actual practice the compensation allowed a Public Defender in the course of a year

ordinarily amounts to approximately one-half the salary of the State's Attorney in the same county."

"PUNISHMENT AND OTHER PENAL TERMINOLOGY"

The following has been received from Dr. George W. Kirchwey relating to an editorial in our last number R. H. G.

That was a vastly amusing exercise in logomachy in which Dean Wigmore indulged in his editorial in the February number of the Journal but it may be doubted if he was entitled to all the fun he got out of it. His point of attack is a passage quoted from Dr. William A. White's address before The American Bar Association last summer, which reads as follows: "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, Dr. White may or may not be right in his assumption that the argument for exemplary punishment is only a disguise for the vengeance motive but his most flagrant proposal is that punishment shall no longer be inflicted *from that motive.* And if we assume, what he doesn't say, that the current "penal terminology" of deterrence and punishment is equally abhorrent to him, what of it, so long as the "objective solid facts" of outlawry, imprisonment and suffering as a consequence of conviction of crime still remain? Sugar, under another name, would be as "saccharine" and pepper, under any other name, as "mordant." Punishment does or it does not deter potential offenders, and, if punishment, under whatever name, survives, whether for the avowed purpose of deterrence or, as Dr. White would have it, as "a definitely constructive" means "of conditioning conduct," will it not still and with the same effect teach the lesson that the way of the transgressor is hard?

But it would be doing injustice to these brilliant antagonists to take their word-play so lightly. This is, we must believe, only the "topmost froth of" their "thought." Moving beneath it we can sense a profound conflict of policy. The slogan of modern penology is the individualization of punishment—a parlous doctrine, *fons et origo* of the hopes and fears that underlie the controversy. Everyone accepts the doctrine in principle as a matter of justice and of

social expediency. Applied, as the principle, for the most part, has been, casually, sentimentally, ignorantly, it has nevertheless been accepted as a necessary mitigation of the stern justice of the law. But what will become of the stern justice of the law when the principle of individual treatment comes to be applied intelligently, systematically, in all cases? That, of course, is what Dr. White and his fellow-psychiatrists are after and it is betraying no secret to add that they are quite willing to undertake the job. And if they do, in fact, put their scientific knowledge and trained intelligence at the service of criminal justice, may they not end by persuading us all—all of us, at least, who have the courage to face the facts and the intelligence to apprehend them—that there is no crime without its extenuating circumstances and no criminal who is not, in a real sense, the victim of his fate? It certainly looks as though we were in for some such revolutionary change in our attitude toward crime and the criminal, with all its dire consequences to our cherished doctrine of individual responsibility—a disconcerting prospect to those of us who regard what Dr. White describes as "the present system" as the rock of our salvation. The method of frightfulness will certainly play a less important role under a system in which individual responsibility has been swallowed up in social responsibility. Perhaps it will have become superfluous. At any rate it will spare us the sentimentality which goes side by side with the cruelty of the present system. Under a system which regards the protection of society as the only aim and the "punishment" of the recalcitrant member of the community as only a means to that end, we may hope to embody in practice John Dewey's pregnant maxim: "Causes are not excuses." Count Guido's cry in "The Ring and the Book"—"Who taught the dog the trick you hang him for?" will have become irrelevant. This may be cold-blooded, it may not be "justice," but it should be far more effective as a social policy than our present system of "justice tempered with mercy."

The present writer admits that he doesn't know what to do about the disappearance of the Ten Commandments from our church chancels, "where," as Dean Wigmore tells us, " they used always to be displayed." The writer confesses, with shame, that he never noticed them when they were displayed and that he didn't know they were gone. Perhaps that accounts for the tone and sentiments of this communication. Probably it would not be out of place to refer this problem also to Dr. White and his psychiatrists.