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OBSERVATIONS BY AN ENGLISH WOMAN

Margery Fry, LL.D.¹

A visitor from one to another of the great English-speaking democracies finds much, if he is interested in the prevention and treatment of crime, to notice and to compare. Like a horticulturist in an unknown country he considers new growths with a double attention, a scientific interest in their family resemblances, as well as a practical hope of finding some that may, favorably transplanted, enrich his native land. For it is a curious thing that, in an epoch when the smallest inventions of daily use spread like wild fire, the devices of human government are but slowly adopted from one country to another.

In the field of penology the period of separate life led by England and the United States has not sufficed to obliterate the common origins of our theory and practice, but adaptations of method have taken place, some of which might well bear transplantation across the Atlantic, whilst others display differences between the two countries which have now become fundamental.

The classic case of successful importation is the borrowing by England of the system of probation which, although a somewhat similar plan had been suggested in England, was first developed as a definite legal method of treatment in the United States of America. Perhaps the great success of this import might encourage a close comparison of our likenesses and differences with a view to further adoptions. A complete survey of this kind would need a high degree of competence, and a long period of collation (since methods of dealing with crime and criminals vary so widely from state to state) but a few of the matters which would form its subject may be suggested here, since they come to the mind of even the casual visitor. Inevitably, since the writer is English, they will be seen from that point of view.

In England then, almost as soon as a suspect is arrested he is, if not released on bail, lodged in a prison under the direction of one central authority, the Prison Commissioner, who from the Home Office controls all places in which accused or convicted persons can be detained throughout England and Wales. (It is regarded as axiomatic that he must not remain in the custody of the police authorities whose duty it is to ascertain the case against him, for more than the few hours necessary to obtain his committal from

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a magistrate.) In general, (though London has one prison for men awaiting trial), he is lodged in a special wing of a local prison, where sentences up to two years are served. He is confined under somewhat special rules, may wear his own clothes, need not work, may have food sent in, and have more frequent visitors than the convicted man, but his bare cell with its little windows and Spartan furnishing gives him fair warning of what he has to expect if the trial goes against him. It is indeed often said, with some plausibility, that the regime of an English remand prison is almost too stern to conform to the theory that every man is considered innocent till he is proved guilty.

The multiplicity of prison authorities then, the four types of jail or prison—city, county, state and federal—are among the first contrasts with his own system which strike the English visitor.

The problem of assuring the fair presentation of the case for the accused can hardly be said to have been solved in practice in England. On paper the Poor Persons' Defense Act offers a solution, but the granting or withholding of free legal aid to indigent persons lies in the discretion of the magistrates to whom the accused must make his application for it. The small percentage of cases in which it is actually given seems to show that either the means taken to acquaint the accused of the provisions of the Act are inadequate, or that the magistrates are very chary of granting aid except in cases of great gravity. Perhaps, too, the interpretation of poverty is rather narrow. The French provision that a man should have free defense if he cannot pay for it without entrenching on his ordinary mode of life might perhaps be advantageously borrowed by England.

The fact that in some of the United States a Public Defender is an established official suggests that the way in which his services are used, and the contribution which they are found to render to the cause of justice might well deserve the attention of English lawyers. There might prove to be here a useful device to be borrowed.

After conviction there are three principles of action on which penologists on both sides of the Atlantic would probably be agreed: that prisons should be used as sparingly as is consistent with the maintenance of law; that treatment in prison should aim at the return of the offender to orderly social life; that on his release the path of that return should be made easy to him.

Though these principles are all far from being completely put into action by English penal administration as yet, some noteworthy steps toward their fulfillment have been made in recent years.

The prison population has decreased rapidly in relation to that of the country as a whole. In the year just preceding the last war,

1913 to 1914, 555 persons above 16 were received into prison for every 100,000 of the population above that age. For the last year for which figures have been published, 1938, the corresponding number was 101. A greater care in the use of imprisonment as alternative to fines was responsible for much of this diminution.

First, it was made legal to allow time for payment (surely an obvious enough measure!). Later it was enacted that before a person could be imprisoned in default of payment of a fine he must be brought back again before the Court in order that the reason of his failure may be ascertained and considered before committal. But the decrease of certain offenses, such as drunkenness, must also be taken into account in explaining the dwindling prison population, which gave a daily average of under 10,000 prisoners for the whole of England and Wales for 1938.

With regard to treatment in prison, this, too, leaves much for the reformer in England to desire. For example, our buildings, many of them built in the first half of the 19th century, accord ill both with the requirements of modern civilization and the spirit of modern penology. But great efforts have been made by the Prison Commissioners to reduce recidivism, particularly by a close attention to the offender who appears for the first time between prison walls. That these efforts have not been in vain the following record shows. A close scrutiny has been made of the subsequent prison history of all the men received for the first time on conviction from 1930 to 1936 for "finger-printable offenses." (What an ironical light on the lack of classification in English law that this should be the only way of defining offenses of some seriousness!)

Of these men, by the end of 1938, 80% had not been again received. If those who, though not previously imprisoned, had been previously convicted, are omitted from the survey, the number who have not returned rises to 86.2%.

These "successes" are higher than those of the special institutions for young men and women known (after the first of the class) as Borstal Institutions. But to qualify for a Borstal sentence an offender must be no novice. It is often urged that the special forms of treatment which do on the whole produce good results at the Borstals should be applied earlier in short term centers.

Perhaps a further useful borrowing might be in the introduction of boys' camps for a few months of hard work, such as may be seen in southern California. But the English countryside offers few remote mountain sites, and hardly any forest fires to fight.

The third principle, that of easing the path back to honest citizenship, presents perhaps the hardest problem of all. It is attacked, but cannot be said to be solved, in different ways for different types of prisons in England.

The Borstal lads and girls, whose sentence of three years plus a year's supervision, may be shortened by release upon license after six or three months respectively ('though the supervision period remains unchanged) are sent out to the care of Associates, whose duty it is to help them in obtaining employment and to give friendly aid and counsel in the difficult first months and years. The Association arranging for the work of these, for the most part voluntary, helpers, is supported by the government, as is also the organization for aiding convicts upon discharge. (A convict, it must be explained, is a prisoner who has been sentenced to penal servitude; in plainer English to a sentence exceeding three years. Their number is comparatively small, the daily average (for 1938) being under 1,500.) "Local" prisoners with sentences of not more than two years, are helped on discharge by voluntary bodies: Discharged Prisoners' Aid Societies, recognized by the Prison Commissioners, and receiving a small contribution per prisoner from them. An enormous amount of hard work is put by all these agencies into the rather discouraging business of "finding jobs." Too often the jobs that can be found match rather with the prisoner's tarnished past than with his fresh resolutions.

In times when unemployment is rife the problem seems almost insoluble. It is a poor consolation to know that in war-time, when anyone who *can* work is welcome to work it becomes easier. Moreover, 'though they are excluded from commissions (except for conspicuous gallantry on the field), the British Army receives ex-prisoners into its war-time ranks.

Such are a few of the matters on which it seems that a comprehensive study of likeness and difference between English and American penal procedure might well repay further study. In this field as well as in so many others, what a structure we might build if we could pick the best out of both systems!

From "The District Attorney's Office"—(Arthur Train)

"'Today,' said one of the wisest members of our judiciary, 'according to the notion of many, if not most, liberty is the right of part of the people to compel the other part to do what the first part thinks the latter ought to do for its own benefit.'"