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RATIONAL CRIME TREATMENT

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The amazing progress of science in revealing the physical universe is making the world an increasingly reasonable place. During the great gathering of scientists at Cambridge, Mass., in December last, thrilling discoveries and unheard of advances in knowledge were reported at nearly every session. Man was shown controlling the physical forces of nature in proportion as he more fully understands them. But the general note of optimism was somewhat broken by speakers who deplored the lack of scientific knowledge of man himself and the forces of society. Said Professor Mead of the University of Chicago: "What we are called upon to do in our conduct is to pursue the same method in dealing with social questions that we pursue in dealing with scientific ones."

We realize clearly enough today that there are other worlds to conquer. Much have we to learn about our own minds; we must understand better, if we are to control, the springs of human conduct; a great deal remains to be done to bring organization into our chaotic social life. Ghosts, witches, devils—the dark brood of ignorance and fear that haunted men's minds for ages—are passing; but we have still much to unlearn as well as to learn and in no field more than in that of treatment of man's antisocial behavior, broadly known as crime.

THE SCIENTIFIC APPROACH

But the insatiable mind of man, ever seeking and finding new truth, is today as never before entering upon the greatest study of mankind. We are just beginning to build up a science of human behavior which alone will make it possible for us to understand the so-called criminal. In the advances of psychology, in the new sciences of psychiatry and psychoanalysis, in the recent studies of human behavior and in the increasing knowledge of the child mind, rather than in the older pseudo-sciences of criminology and penology, lies the hope for a solution of our vast crime problem of today.

As yet few grasp the significance of the scientific approach to this problem. The great mass of people are still hopelessly irrational and unscientific in their consideration of it—more so, perhaps, than in almost any other field of human experience. Why is this so? Because it is a field in which emotions have long ruled—primitive emotions; fear, hatred, revenge. Then too, it is a field largely monopolized by that most conservative of all professions, the law. Treatment of crime has been largely hampered by rigid criminal codes, based upon outworn principles of equal responsibility, "punishment to fit the crime," and the essentially unjust and discredited principle of the need for severe

punishment to deter others. Through inertia, conservatism and the accumulated fears and prejudices of generations, the law has changed but little, although increased knowledge and social advances have made fundamental changes imperative.

FAULTS OF THE PRESENT SYSTEM

Eventually, if we are to solve the crime problem, as it has by no means yet been solved, we shall of necessity have to scrap much of our wholly unscientific criminal law; we shall abolish or greatly modify our present system of courts and do away with the kind of prison existing today.

"This," it may be said, "is a sweeping statement, based on mere hypothesis." But consider these facts: In the first place, is it not clear to every one who studies the problem that our present agencies for dealing with crime have largely failed? They do not even result in an understanding of the offender; they certainly do not cure, or what is even more to be desired, *prevent* crime.

The criminal law, as everybody knows, attempts to mete out punishments for each crime regardless of the many individual variations in motives and degrees of responsibility and the greatly varying needs of the offender. It sets up a rigid, impractical scheme, based on classical ideas of crime deterrence. Already it is being modified and will some day be replaced by a system more just and more scientific.

It is but natural that conservative lawyers with eyes on the past, ever seeking precedents, should explain, as some of them have attempted to do, the unquestioned failure of our treatment of crime as due to departure from the orthodox principles and methods of the past. The modern innovations: indeterminate sentence, probation, parole, psychiatric examinations, which are in reality attempts to apply some of the conclusions of science through the developing study of the individual and society, are blamed as causing or increasing the crime problem. The fallacy of such a view is apparent to the open-minded student.

FUTILITY OF SEVERE PENALTIES

If any fact is well established in the world today, it is this: Severe penalties do not deter from crime and therefore do not protect society. We

have always had severe penalties and crime has increased. No country has ever carried the theory of deterrence by intimidation further than supposedly Christian England. History records that there were 72,000 executions for crime in England during the twenty-year reign of Henry VIII in the sixteenth century. Blackstone, writing his "Commentaries" in 1765, describes 160 kinds of crime punishable by death. The records of those days tell of mere children who were hung, transported, or who died in prison for no worse crime than stealing, perhaps only to appease their hunger. All kinds of inhuman punishments were imposed for trivial offenses.

But history also shows that during these periods of greatest severity crime flourished and increased. The more hung, the more there were to hang. Brutality bred brutality. A striking illustration of the failure of punishment to deter is contained in the following melancholy incident which has come down to us on good authority: It was a capital offense in the eighteenth century in England to pick a pocket, yet at the great public hangings, when scores were executed, pickpockets were caught plying their trade in the very shadow of the gallows.

To this day English law and our own, which came from England, reflect the spirit and ideas of those times, though a more humane age has required some modification. It is only in comparatively recent times that fixed prison sentences have been substituted for the death penalty and capital punishment relegated in most of our States, though by no means in all, to first-degree murder. Long prison terms are still commonly imposed, mainly to deter others. Such, for instance, was the case of the boy K-, sixteen years old, sentenced recently in Queens County, New York, to *not less than* thirty years in Sing Sing prison for committing burglary and highway robbery.

HAS CRIME ACTUALLY INCREASED?

During all these centuries, crime has held its own and even increased. No statistical evidence has been presented, however, showing in recent years a serious increase of crime in this country. In fact, before the war, a marked decrease in prison population had begun. In the last few years, statistics compiled by the police departments of a number of our larger cities, like New York, show some decrease in the total number of

crimes committed and arrests made. However, the reportorial phrase "crime wave" has been somewhat justified by a sporadic increase in the major crimes of violence, and in the atrocious efficiency of the perpetrators. Stealing is now done wholesale, and there has been of late unusual disregard for human life, due to the reckless use of firearms.

The apparent increase in spectacular crime today is due to several things. First, aftereffects of the war: unemployment, unsettled conditions, general lawlessness, familiarity with weapons. This result has followed every great war. Other factors in the situation today are: The availability of the high-powered automobile; the unrestrained publicity given to successful crime through the moving pictures and especially the newspapers. But more important than any of these is the growing inadequacy and incongruity of the old system of law and treatment to meet modern conditions. There is increasing disrespect for a system so unscientific and ineffective. We must find a new way. That way leads to a thorough overhauling of our machinery of law, courts and prison, to enable us to determine in every case the causes, both individual and social, back of the offense and then establish a system which will remove and correct these causes.

THE CRIMINAL COURTS—ATTITUDE OF THE LEGAL PROFESSION

The greatest blame must be attached to our criminal court system. It is hardly necessary to cite authorities to prove that it has worked badly, especially in the higher criminal courts. Eminent lawyers, like Secretary Hughes and Chief Justice Taft, have borne eloquent testimony to this fact as has recently the Committee on Law Enforcement of the American Bar Association. Unfortunately, that Committee, composed of eminent and conservative lawyers, themselves a part of the system, fails to suggest any adequate remedy. Minor improvements in the criminal courts to speed up the rusty wheels of justice and to make punishment more severe and "sure" will never accomplish the results desired. The attitude of the Committee was legal and not scientific. Must we look to other professions for the remedies which will reform our laws and court system, the necessity of which is well recognized by the lawyers?

The criminal courts, however, are now being modified, slowly but surely. In time they will be revolutionized. Courts should be, and in some places have today become, clinics for studying the causes of crime and for fitting treatment to the individual criminal. The old system and practice dies hard in so conservative a profession as the judiciary and the public is not yet fully awake to the need.

PROBATION AS A SCIENTIFIC METHOD

One remedy for a rigid and unscientific court system has been found and is making headway. This is the extension of the power to place offenders on probation. The development of this system has done more to modify criminal law and court procedure than any previous reform in a generation. As a method for individualizing justice and bringing social treatment to bear in suitable cases, probation is generally endorsed; but in no State is its administration adequate.

Probation laws now in effect in every State of the Union, and to some extent in nearly every civilized country, give the court not only the power to suspend the sentence imposed by law but, most important, to prescribe instead of imprisonment a social treatment. Although released in society the probationer is under the watchful eye and personal, helpful influence of the probation officer. The probation officer is, or should be, a trained social case worker, skilled in following a large number of cases, not losing sight of any, but influencing and guiding each one. The probation officer is also the social investigator of the court, bringing to the judge a complete knowledge of the previous history, social condition, individual character of the accused, and probable causes of crime upon which evidence many courts are now largely basing their sentences.

Probation is essentially scientific, based on a study of the facts in each case, using just so far as public safety permits, the powerful forces of persistent kindness, self-help, encouragement and rewards for achievement, all the while maintaining strict disciplinary conditions of the court, often very strict ones, for the protection of society.

INSTANCES FROM LIFE

With probation every possible incentive is given to the delinquent to succeed. No publicity is given

to his offense or the fact that he is under supervision. His attitude, almost without a single exception, is one of gratitude to the court for the chance given him to go "straight." I have often heard probationers express this feeling with touching sincerity and earnestness. More important, their acts show it. Usually they respond to all suggestions and directions of the probation officer as to employment, associates, use of leisure time, family life and other matters varying with the case.

John R was a young man of fair education and many good character traits. He was from a good family and had a devoted wife. He held a position with an express company, commanding very good wages. Bad company and drink got the better of him. He fell to the depths, lost his position and even went so far that his wife could not live with him or help him. While intoxicated he slept in the open, in gutters and under stables; he became filthy and vermin ridden. It was while in this condition that he became a felon. While he was with boon companions, somewhat under the influence of liquor as usual, a horse and carriage were stolen from a farmer, driven off and abandoned. He was arraigned for grand larceny, pleaded guilty and, it being his first time in court, was placed on probation.

An admirable probation officer was assigned to the case. The officer became a brother to the man. He found his task by no means easy. The man showed a real desire to get back to respectability, but his character was weakened by long indulgence. Conditions had to be very strict: No drink, a job, no association with former companions, reporting to the probation officer every week and giving a full account of himself.

Regular reporting, while an essential part of the probation system, is far less important than the constructive work of the probation officer. The officer visited the man frequently, got him work, kept him at it and finally brought about a reconciliation with his wife. At first the man "fell" more than once, but gradually grew stronger, took courage, gave up his bad habits entirely, got back his original position, was reconciled to his family, and after a period of a year and a half on probation, toward the close of which the supervision was somewhat relaxed, received his "honorable discharge" as a completely successful case. Best of all he has "made good" ever since his discharge and has kept in touch with his friend and former probation officer. This is a true story

and, far from being exceptional, is typical of a large percentage of probation cases.

As the probation treatment is a "testing out" process many inevitably fail, but not nearly as many as do so after the heartbreaking, desocializing experience of a prison sentence. During 1921, according to the carefully compiled statistics of the New York State Probation Commission (an official State department supervising probation work in all courts of the State), 78.2 per cent of the 19,452 persons of all ages and both sexes, who finished probation terms within the year, were discharged as successful; that is, they lived up to the conditions of probation and committed no further offenses. Approximately 80 per cent of successes have been reported by Massachusetts authorities for several years. Individual after-studies made in New York State of all the probationers successfully discharged from probation in certain courts during a given period have shown over 70 per cent (72.1 per cent in one study of 200 consecutive cases) completely restored to good citizenship with no more offending. Many of them had made truly remarkable progress, industrially, socially and morally.

In advocating the extension of probation to all courts (for it is used extensively today in only a few States) great emphasis must be placed on the selection of offenders and the securing of enough skilled probation officers to supervise them thoroughly. One office should not supervise more than fifty cases—better less. Few cities have made adequate provision for this work, although it is an undoubted economy to do so. Most of the failures of the system are due either to selecting probationers without full investigation or the overcrowding of the officer so that he cannot get results.

It should be remembered by critics of the system that with the skillful probation officer, not overworked, the community is well protected. The probationer *must* be industrious, *must* keep good habits and out of further crime. Otherwise he is practically sure to be found out with speed by the officer, brought back to court, and given much more drastic treatment than he would have received if sentenced in the first place.

THE COURT CLINIC

In recent years another agency has developed in some of the courts, especially those dealing with

children. This is the court clinic. Its establishment followed and in part resulted from the introduction of the probation system. In the growing number of courts which have clinics (and all need them) their work is always closely associated with the work of the probation staff—the clinic making the physical and mental diagnoses, the probation staff making the social investigations and frequently carrying out the recommendations of the clinic for social treatment.

In the best-equipped courts a majority of cases are examined in the clinic; its report, made to the judge before final dispositions, often revealing serious mental and physical defects as the principal causes of the individual's misconduct. Both a psychiatrist, i.e., a physician skilled in treating mental diseases, and a psychologist, are essential to the complete court clinic.

The work of these clinics has been of untold value when well conducted. They enable the court to understand the offender and to recognize many feeble-minded, insane, epileptic or defective delinquents who otherwise would escape notice. From 10 per cent to 50 per cent of the individuals brought before the average court have been found to be more or less mentally defective, or diseased, requiring in many cases to be sent to the special institutions for these classes, which are being developed in all States. The advice of the clinic is also of the greatest value to the probation officers, enabling them to understand and so better aid those placed under their care. It safeguards the use of probation and helps in selecting delinquents who can safely be given a chance.

JUVENILE AND DOMESTIC RELATIONS COURTS

Besides the probation system and the court clinic, which adapt themselves to all courts dealing with delinquency, the movement for special socially organized courts is also a hopeful factor in the situation.

First comes the Juvenile Court, which has been established, legally at least, in all but two of our States. In most of our large cities today there are successful Juvenile Courts. Men of the highest type of devotion to the public interest, outstanding men, with a keen understanding of the needs of delinquent and neglected childhood, are serving in these courts. The fundamental

principles of the Juvenile Court—individual study and understanding of each child, protection of the unfortunate one from publicity and contamination, social treatment through probation—have been and are leading the way for the application of the same principles to all courts.

As yet, however, in no State have all delinquent children the benefit of juvenile court procedure. In many States children are still tried like adult criminals and mingle with them in police stations, courts and jails; their first contact with the State is anything but parental. Detention in jails, those breeding places of crime, is common in nine-tenths of the States of this country, especially in rural districts, but also in cities. The separate court for children, with its special detention home, avoids this early introduction of the child into associations which cannot but harden him, developing instead of correcting every evil tendency.

The newer Domestic Relations of Family Courts, dealing with the problems of broken homes and domestic quarrels, especially cases of desertion and non-support and including divorce jurisdiction in some States, use practically the same social procedure as the Juvenile Court. Even more than the Juvenile Court, their work involves the adjustments of families. There must be the same protection from publicity and disgrace and continued supervision of the home through probation, rather than the former method of breaking up the home and scattering its members. These courts, well conducted, not only prevent untold misery to wives and children, but prevent crime.

HOSPITALS AND REFORMATORIES AS SUBSTITUTES FOR PRISONS

What, finally, shall we say of the place of prisons? The problem of prison reform cannot be considered apart from the whole system of crime treatment. As long as the courts continue to send to prisons the heterogeneous group that now go, without study of the individual and his needs, fixing determinate or partly determinate sentences which make rational treatment impossible, the prisons will continue to be the hopeless travesties upon just and scientific treatment of crime which they now are.

The failure of the prison as now conducted is an age-old problem to be met, not by prison

reform (that has always proved ephemeral) but by abolishing the prisons of today and in their place establishing the following:

1. A well-supervised probation system in each community for the treatment of every offender who is not a confirmed repeater or so abnormal as to be a menace to society. A majority of the so-called criminals in our courts are young, early offenders, often more sinned against than sinning, accidental offenders, victims of environment or associates; they are largely reclaimable if taken in hand at the time of the first offense and then thoroughly treated.

2. Special hospitals where all feeble-minded, insane, epileptic and physically sick offenders shall be sent. Here their defects, the principal causes of the antisocial behavior, may be treated and if possible cured. This will take a large number of so-called criminals. Studies have shown in many prisons and reformatories that nearly 50 per cent of the inmates belong to one of the above classes. They should not go to prisons but to institutions where they will not be stigmatized or punished, but cured if possible or, if incurable, kept as long as they are a menace to themselves or society, often for life. They should be kept busy with wholesome work and recreation and helped to lead as normal a life as possible.

3. Reformatory institutions where the residue, a small one and gradually decreasing as more thorough work is done with the first offenders, may be given closer supervision than the probation plan can hope to give. To these institutions will go the confirmed criminals to be confined until "cured." They should be kept busy, taught trades, made to live as normal and healthy lives as possible, though safely confined. All good influences should be brought to bear upon them, through keepers and guards selected for their ability to understand and reform men. When released they should be placed under strict parole.

SOCIETY'S RESPONSIBILITY

This scientific plan of crime treatment, whose aim is to lift up and save rather than to crush

down and destroy, should prove not only more successful and more safe, but also more just. How prone are we to forget that the debt is not all on one side! Every delinquent child, every criminal adult, no matter how deliberate may seem his offending, is to some extent at least the victim of bad social conditions for which society and all of us as members thereof are surely to blame. Small wonder that the boy growing up in the city or the country slum, surrounded by wretchedness and immorality from his very birth, with suitable education often denied, soon learns from parents, perhaps, or associates, the ways of evil. Well may we ask ourselves the question—we who would inflict retaliative social vengeance: What have we done to prevent this natural result? These victims, for such they often are—victims of others and of social neglect—deserve help, deserve what may be perhaps their first real chance to live normal lives. The court experience with its awakening, especially when kindness is shown, often affords very favorable soil in which new determination to succeed may grow.

We are so far today from the rational program of crime treatment outlined that it will take time to attain it, but progress should be more rapid than at any previous time in history because of the growing scientific spirit and approach to the problem.

Why do not we adopt such a program at once? Because of inertia and conservatism; the many selfish interests involved in the present system; the incompetency of many public officials, hampered by politics and the distrust in which they are held by the public; ignorance of the scientific gains in this field; persistence of the instinctive emotions of fear and hatred of the criminal and the primitive demand for vengeance. Last, and perhaps most of all, comes our "penny-wise" economy—the objections of the taxpayer to the outlay necessary to establish through probation systems, special courts, and the diversified institutions required. This last and greatest objection will be overcome, however, as will the others, by greater public knowledge, as unquestionably the expenditure will prove an investment in manhood and womanhood bringing large social returns. "The greatest enterprise in the world," says Emerson, "for splendor, for extent, is the upbuilding of a man."