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SOME SOCIOLOGICAL ASPECTS OF CRIMINAL LAW.

THERE is a vast need for something that will sometime be written upon the subject of Sociology as a basis of Criminal Law and Procedure. The science of what may be termed Sociological Jurisprudence is in an embryonic state at present and the nearest approach perhaps is what we call Criminal Sociology or Criminology. The progress of this study has been rapid but we may still hope for a more general application of principles to practice. It is true that readjustment in law is more difficult than in other fields, as necessary formalities of procedure often seem to impose unreasonable obstructions to change. What readjustment there is made, must come through the personnel of the profession. They are bound to observe all developments of Sociology related to their practice, for only through them can legal usage be socialized.

In the first place, there may be considered the different conditions which affect the offender's criminal status, one of which is the state of being *non compos mentis*. Under this heading much is written in practical treatises on insanity and other aberrant states of mind, but there appears little recognition of a far more frequent abnormality, that of mental defect or feeble-mindedness. It is, of course, clear to all readers that there is a fundamental distinction between insanity and feeble-mindedness—the former a temporary or permanent derangement of the mind suffered sometime during the life of the patient, the latter an incompleteness or imperfection generally arising from pre-natal causes and remaining a permanent condition.

Long and intensive studies of insanity have defined with comparative precision its relation to criminology. This is not the case however with feeble-mindedness, an affliction more dangerous because it is more frequently present and in its higher forms is more difficult of identification. The following is a simple classification of feeble-mindedness or mental defect and it will be observed that the higher states are those most often met with in criminal cases.¹

CLASSIFICATION :

1. *Idiots*. Mental capacity of 2 years—unimprovable, or improvable only in self-help.
2. *Imbeciles*. Mental capacity 2-7 years.

¹ Adapted from Educational Classification of Mental Defectives, Martin W. Barr, M.D., Pennsylvania Training School, Elwyn, Pa.; Lectures of Professor Charles Richmond Henderson and Dr. William Healy before Chicago School of Philanthropy; Recent numbers of the Journal of Psycho-asthenics, Faribault, Minn. White and Jelliffe, Nervous Diseases.

3. *Morons.* Mental capacity 7-12 years.
The last two classes mentally and morally deficient. Temperament bestial. Criminal aptitude. Trainable in manual occupations, and in some cases in intellectual arts. Require custodial care and perpetual guardianship, long apprenticeship and colony life under protection.
4. *Sub-normal, dull, or backward cases.*
Varying degrees of retardation. Clever geniuses for crime frequently, constituting large percentage of repeating offenders. Possessing sufficient industrial capacity to be trained for economic place in world, if danger of transmission of inheritable defects can be obviated by surgery,—sterilization or castration.
5. *Epileptics.* They constitute probably 10% of the chronic offenders and often defy diagnostic identification.
6. *Cases of specialized mental defect.*
The major and minor psychoses under this class most frequently conducing to delinquency and criminality include morbid impulses and hallucinations, hysteria, adolescent instability, senile mental changes and other abnormal states. Such cases present oftentimes the greatest difficulties in identification.

The question now arises: How is the presence of any mental defect to be discovered? It is clearly beyond the reach of anyone but a psychopathic specialist trained in the pathology of mind as well as body, and experienced in the understanding of human nature. Repeated tests skillfully administered² and continued obser-

² In the work of psychopathic examinations, diagnosis and prescription, Dr. William Healy, connected with the Juvenile Court of Chicago, may be considered a pioneer. He has devised a group of tests that are preferable in some respects to those of the Binet-Simon system, generally considered the standard system.

In this connection there arises an interesting difference of opinion as to the efficacy of the Binet-Simon tests. The authorities of the Vineland Training School for Feeble-minded, headed by Doctors Johnstone and Goddard, translated the text into English and have since been considered the heartiest sponsors of the system in America. On the other hand, Dr. Martin W. Barr of the Pennsylvania Training School for Feeble-minded, Elwyn, Pennsylvania, considers the tests arbitrary and inflexible.

A sane compromise is resorted to in some courts by supplementing these tests with those of Dr. Healy of Chicago, or Dr. Gesell of Yale University. In accordance with the feeling, rather general, that these standardized tests do not sufficiently allow for the element of environment and training, Miss Jeanne Modell of the Philadelphia Juvenile Court has framed for her use a series of special tests corresponding to the grade of the child in school and the nature of its industrial and social environment.

While the best work in this line of psychopathic research has been done in connection with Juvenile Courts and Detention Homes, it is of great value also when applied to adults. Only in this way can many abnormal states of mind and modes of reaction

vation under carefully regulated conditions are requisites for an intelligent diagnosis of the case and a sound recommendation to the court. It is true that some juvenile courts and fewer regular courts of criminal jurisdiction have psychopathic expert advice. It is imperative, however, that all courts of this class have the advantages of special expert examination and the provisions for sufficient study of offenders under color of mental defect. Until this need is met, the present unfortunate practice will continue of frequent commitments of feeble-minded and epileptics to institutions for the delinquent.³ The consequent results will continue to be accordingly unsatisfactory. It is to be hoped, therefore, that the legal profession will be active in promoting this co-operation of the psychopathic specialist, to the end that after a scientific diagnosis is presented by the specialist, a correct disposition of the case may be made by the court.

There is a second reason why expert advice is much needed in our courts. It alone leads to a clear understanding and full appreciation of the causes underlying delinquency and criminality, and these are necessary factors in a preventive as well as remedial program. It is the right of lay legislators to turn to the legal profession for views upon abatement of crime just as it is their right to refer to the medical profession for advice on combatting venereal disease. This advice should be founded upon as accurate knowledge of causes as is possible, and this justifies the promulgation of definite preventive recommendations.

So far as causes of feeble-mindedness are concerned, careful investigation has already produced a body of fairly significant facts. Authoritative study on the part of various reliable investigators has revealed three sets of causes.⁴ Those active after birth result in about 30% of the existing feeble-mindedness. They include acute diseases, injury, neglect and exposure, masturbation, and use of drugs. Causes acting at birth are responsible for probably 5%. Special importance, however, attaches to the class of causes operating before birth which produces at least 65%, and this shows the

be discovered. The presence of morbid hallucinations, excessive excitability, chronic mental instability, hysteria or other psychoses naturally alters the basis of criminality.

A splendid resume of the various methods of testing and study is contained in *Experimental Sociology, Descriptive and Analytical*, by Frances A. Kellor, (Macmillan).

³ Mangold, *Problems of Child Welfare*, Part V, Chap. I, p. 357 et seq. Frequently 25 per cent. of the inmates of our State Industrial Schools are delinquent because of unquestionable mental defect, and accordingly they belong in institutions essentially educative rather than corrective in character. The Superintendents of some of these institutions place the number as high as 65 per cent.

⁴ *Etiological Table of Mental Defect*, Martin W. Barr, M.D. A. Church and F. Peterson, *Nervous and Mental Diseases*; White and Jelliff, *op. cit.*

preponderance of the pre-natal responsibility. Over half of the current feeble-mindedness can be traced to a family history of idiocy, imbecility, venereal disease, intemperance, and epilepsy.⁵

What will the profession advise, then, as steps in a preventive program so far as criminality through mental defect is concerned? Will it be permanent custodial care to prevent perpetuation of these defects, rather than short term commitments to jail and workhouse based upon complete indifference to the nature and needs of the case? Granted that feeble-mindedness is incurable, that it in no way impairs fecundity, that it is unquestionably transmissible by inheritance, and that it is a considerable cause of all forms of delinquency and criminality, can the legal profession afford to overlook the imperative need of custodial care if not sterilization?⁶

In this brief mention of several sociological aspects of criminal law, it may be observed in the second place, that a certain responsibility attaches to a justice committing an offender, to acquaint himself in some measure with the institutions of his state or community before determining upon the place and period of a commitment. It is true that State Boards of Correction, Administration, or Inspection exist for the purpose of keeping up institutions to a standard of efficiency, nevertheless it is equally true that reformatory institutions very often do not "reform" and other correctionary institutions do not "correct."

If this is true, the court should know it and discontinue the stream of commitments until conditions change for the better. A poorly organized and managed correctionary institution can further demoralize the most demoralized character, and through the aggravation of immoral tendencies can seriously menace the society of the entire community. The sooner that judges realize that reformatories frequently deform,⁷ the sooner will they incline to extend their probation policy to all cases which will respond to suitable supervision,⁸ and for those cases impossible of probation they will demand an

⁵ Goddard, *The Kallikak Family*; Dugdale, *The Jukes*.

⁶ Reports and Transactions of the American Society of Sanitary and Moral Prophylaxis; Goddard, H. H., *Sterilization and Segregation, The Child*, September, 1912; Hart, H. H., *Sterilization as a Practical Measure*, American Prison Association, 1912.

⁷ A recently discovered instance is that of the New York State Reformatory for Women, Bedford Hills, N. Y. On the initiative of the State Prison Commission, a surprising body of testimony has been accumulated which removes this much-advertised institution from its supposed realm of superiority. Investigation is still pending at the time of this writing and will undoubtedly prove that the institution has enjoyed its unique reputation through an astounding measure of over-advertisement.

⁸ Bernard Flexner and Roger N. Baldwin, *Juvenile Courts and Probation*; Mangold, *Problems of Child Welfare*, Part V, Chap. III. Healy, *The Individual Delinquent*.

institution which not only confines the offender but one which tends to his improvement.

Classification of inmates on the grounds of degree of criminality, physical conditions, age, color and intractibility, coupled with systematic training, especially of an industrial nature looking to self-maintenance, are necessary factors in the policy of any real reforming institution.⁹ The policy, however, is wholly at the mercy of the personnel, from the Superintendent down to the lowest paid employee, and this personnel is, in several states, regulated by the politics of the State Administration.

Recently the State Industrial Schools for Girls in two of our commonwealths have been deprived of eminently capable Superintendents who were forced to resign in favor of persons holding some claims upon the administration party. One of these Schools was an institution forty-five years old which had experienced an upheaval with every change in the state administration when a new partisan creditor was installed to draw a salary and fail utterly in his work.

Those who are familiar in the least degree with institution life, especially among the younger delinquents, know well the great evil resulting from the intrusion of politics. A change in superintendency almost invariably means a complete change in the personnel of the entire institution. One experienced officer after another is decapitated, and new and inexperienced ones are installed who get their training at the expense of the inmates.

One particular incident presents itself as one of many instances illustrating the point in question. The Superintendent of the State Home for Deaf and Dumb in one of our commonwealths has held his position for twenty years in the face of strong political traditions, and is the richer in experience for doing so. Early in his superintendency he asked for a much needed appropriation and was gratified to find that the Legislature had granted it. Very promptly the gentleman who had most persistently sponsored this measure, made himself known to the Superintendent, and advised the latter that the favor could be reciprocated by appointing a certain relative as Head Nurse and Medical Superintendent. It was found that this relative was already on the ground as one of the laundry employees, who had never so much as considered a course of training as nurse or medical assistant. Because the Superintendent declined to promote the laundress to a position second to none in responsibility, he

⁹ Mangold *op. cit.*, Part V, Ch. IV; Kellor, Frances A., *op. cit.*. This merely confirms the conclusions necessarily arrived at after any careful inspection of a number of institutions of this class.

was harassed by the partisans of the Representative with threats of dismissal. The Superintendent responded with the demand for a public hearing. The partisan combination wisely decided to withdraw their opposition and for once political tradition in the state was broken.

The legal profession, and especially judges, on the basis of their responsibility in commitments, would have great influence in discouraging the partisan element in the appointment of the personnel of institutions to which they commit.

The care and reformation of the delinquent wards of the state demand vastly greater qualifications than those of party, and the intrusion of politics can only bring to an institution decadence, spasmodic attempts at reform, and a chronic state of disrupting suspense.

If our public institutions caring for the various unfortunate classes of the state are appropriate fields for the payment of political obligations, why are not our schools better, where the victims have the advantage of at least being considered normal?

These are but two of the numerous points of contact between Criminal Law and Sociology. It is to be hoped that the inter-relation of the two subjects will become more generally appreciated. The influence of the legal profession will be the strongest factor in gaining recognition for the sociological basis of criminal law, and it can thereby effect its socialization.¹⁰

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¹⁰ Kellor, Frances A., *op. cit.*, Chap. XII, p. 246 et seq. clearly states the need.