

# Coddling Criminals

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CRIME is not necessarily a sin, nor is a sin necessarily a crime—none of the seven deadly sins denounced by the church are crimes. The law, therefore, is not an institution calling upon the sinner to repent, for it has no concern with sin, as such, but only with crime. A crime is an act which is adjudged by lawful authority to be so deleterious to the public good as to require it not only to be prohibited but to require the punishment of those who disobey the prohibition, to the end that, an example having been made, the prohibition will be obeyed. It follows that when the law fixes varying punishments for various crimes, it does not look to see whether the one crime is more sinful than the other, but only endeavors to determine which involves the greater danger to the public good. Thus I have tried cases of petit larceny when the act was more sinful and showed greater moral depravity upon the defendant's part than was evinced on the part of the defendant in many a homicide case. But as the law is not concerned with sin, it does not say that a greater sinner shall be more severely punished for petit larceny than a lesser sinner for murder; but, on the contrary, says that as the unlawful taking of human life involves more danger to the public safety than petit larceny, so the murderer shall be more severely punished than the petty thief, irrespective of the amount of sin involved in their respective acts.

In considering the matter of the punishment of crime and the treatment of the convict, this underlying distinction must be kept in mind if the punishment of crime is to be worked out along lines to make it effective to accomplish its intended end. During the last fifteen or twenty years, in the State of New York,

at least, a large, influential, well-meaning, and extremely vociferous body of people and organizations have been doing all in their power to ignore and to compel the authorities to ignore the fundamental difference between reformation of the sinner and punishment as a deterrent to crime. Of course, the result has been, on the one hand, to diminish the force and effect of punishment as a deterrent to crime; while, on the other, the increase in the amount of reformation effected over that obtained by the old system has been negligible. The so-called "coddling" system in the New York State prisons has had at least a twelve-year swing, and if its reformatory effects amounted to anything substantial, the proportion of second offenders serving now would be substantially less than it was fifteen years ago. But it is nothing of the sort—it has, so far as I have been able to ascertain, substantially increased. In 1915, the year after Thomas Mott Osborne became Warden of Sing Sing Prison, the proportion of inmates previously convicted of felony imprisoned in State's prisons was thirty-nine per cent; in the year 1924 it was forty-four per cent—both according to the official report of the Superintendent of State's Prisons for those respective years.

The reasons for both of these results are not far to seek. Taking the second one first, a prison is and necessarily must be a most unfavorable place to effect a reformation of the individual. Reformation is a work requiring individual effort of a high order of spiritual quality upon the individual sought to be reformed; it requires a favorable environment and associations, and long-continued watchfulness and care. None of these conditions is or can be found in a prison. I am extremely sceptical of the possibility of the spiritual reformation of a body of men en masse, but the inmates of a State's prison are a body—a large body of men—

and individual work upon them can, from the nature of the case, be but short-lived and haphazard. Each convict is continuously surrounded by other convicts, so the environment is neither uplifting nor stimulating to reformation—and those people who think that the furnishing of baseball games, movies, theatrical shows, banquets, and flowers is in itself reformation of sin or effects reformation of sin, are quite capable of thinking that it would effect the reformation of indigestion.

But still more unfortunate is the effect upon the efficacy of punishment as a deterrent which has been produced by treating it as an attempt solely to rehabilitate the individual. While certain flagrant abuses have been remedied in the administration of our New York State prisons, yet many who have had a clear idea of the function of the criminal law had prophesied years ago that carrying the softening of prison discipline to foolish lengths not only would accomplish little in the way of reformation, but would end in increasing crime—and their prophecies have been and are being fulfilled. When young first offenders, before me for sentence, plead to be sent to Sing Sing and not to the Elmira Reformatory, as happens almost weekly, I know that they are not seeking reformation there, but rather a “soft snap” in comparison with the military discipline of the reformatory.

In a recent number of the prison magazine printed at Sing Sing, I observed that during the baseball season just ended the local nine had played over one hundred games with outside visiting nines, viewed by the prison inmates from a concrete grand stand; that during the theatrical season there had been a theatrical performance nearly every Friday evening by various companies, many presenting the best shows running in New York, to see which the unconvicted citizen has to pay five or six dollars a seat; and the movies while away the tedium of almost all of the other nights of the week. The hours of work are much shorter than those of the ordinary working man; and until very recently, if the fastidious palate of any prisoner were offended by the prison fare, he was allowed, if possessed of the price, to buy special food for himself and have it specially cooked and privately served. In

the prison at Great Meadow the inmates go forth at a gentlemanly hour in the morning (compared with the ordinary farm-hand) to labor unguarded on the farm until an hour not too late unduly to fatigue them, when they return each to a large and commodious cell with a shower in it, where they refresh themselves for the evening meal and the evening entertainment. A few have strolled off and never returned, but the management should not feel mortified over its failure to please—there are always, everywhere, some hypercritical individuals who are never satisfied.

In addition to all this, the terms of imprisonment are enormously and unreasonably cut down by “commutation for good conduct” and by “compensation for efficient and willing service,” and, in addition, by paroles from the Parole Board, which, as in the recent notorious Brindell case, may be granted to prisoners whose conduct has been notoriously bad. When the Indeterminate Sentence Law was enacted, its framers probably had in mind the picture of an ideal body of men sitting in careful examination of each case coming before it and endeavoring to determine from the prisoner’s record while in custody, and from the nature of his crime and the presence or absence of mitigating or aggravating circumstances, whether he should be discharged on the expiration of the minimum of his sentence, or kept for the maximum, or at just what intermediate point he should be liberated. So much superior to the judgment of the trial judge was the knowledge and insight of this ideal body to be, that the judge was not allowed to fix the minimum of the sentence at more than one-half of the possible maximum in order to make sure that the board should have plenty of elbow-room in which to work out its patient and astute conclusions. As not infrequently happens, however, the practical working out of this law differs slightly from the picture in the mind of its framers. What has happened is that, the prisons being overcrowded, every prisoner has been liberated almost as a matter of course on his minimum, without regard to the nature or gravity of the offense committed, and as the sentencing judge has been forbidden to make the minimum more than half of

what he might have imposed, the practical effect has been to cut in half the sentence of any first offender, no matter how heinous the offense. In addition, time for "compensation for efficient and willing service" is now deducted from the *minimum* of the sentence. The "flat sentence" of a second offender is cut down by both "commutation" and "compensation."

All of the foregoing is only a brief and partial indication of the many ways in which it has been sought during the last twenty years to soften the quality and lessen the quantity of prison discipline, until now a discharged convict knows that if he should subsequently be sentenced, he will retire from the world for a sufficient season to enable him to get the alcohol and venereal disease out of his system, will work minimum hours, get a maximum of recreation and entertainment, and may, if his soul rises above the frivolities of prison life, also acquire an education or learn a trade.

A good concrete example of this attempt to exalt the welfare of the individual convict and to destroy the force of punishment as a deterrent is found in the recently proposed legislation to grant wages to prisoners, payable to their families. Such a law would undoubtedly be a great benefit to the unfortunate families involved in the calamity of a conviction—and would incidentally relieve the sentencing judge of much worry and nervous strain. But the legislature might as well make the following proclamation:

*Whereas*, Citizens of this State who have formerly contemplated the commission of murder, robbery, burglary, and divers other crimes, have been disturbed in their minds by the possibility that such action on their part might involve their families in financial difficulties, and have even in some instances been prevented from the commission of such crimes by such possibility; and,

*Whereas*, The Legislature of this State, being desirous of remedying a condition causing such unnatural anxiety, has determined to relieve it; it is now proclaimed that no one contemplating the commission of a crime shall hereafter burden his mind with fears for the welfare of his family nor allow such fears to prevent him

from concentrating his mind upon the crime contemplated; and to this end, it is now enacted that the families of all so-called victims of crime shall be taxed to support the families of those who have victimized them, during the period of the withdrawal of the latter's usual means of support.

No one now believes that prisoners should be treated with cruelty or brutality, nor that they should be kept in unsanitary surroundings which might undermine their health—such as the notorious old cell block at Sing Sing. But if the State confines its prisoners in sanitary prisons, segregates the first offenders from the "second-timers," affords opportunity for education and self-improvement, teaches a useful trade and helps discharged convicts to obtain employment, it has discharged its duties to them, and not only is under no obligation to make their term of imprisonment easy and agreeable, but should carefully refrain from doing so, substituting a strict and firm discipline for the recreational methods now in vogue. Obtaining work for convicts upon discharge is one of the most beneficent means of promoting their welfare and preventing a relapse into crime, and if the time, labor, and money expended by the sentimentalists had been concentrated upon that effort, they might have accomplished good instead of harm.

The English administration of the criminal law before conviction is frequently contrasted favorably with our own, and we might well consider if their system of administering their prisons without cruelty but with an unvarying and inexorable discipline, starting out with a short period of solitary confinement, is not the common-sense method of making crime unpopular.

One of the most frequent phrases of attack upon the idea of punishment as a deterrent is the dogmatic statement that it is a failure as a deterrent because it does not deter, and this statement is usually bolstered up by that other one to the effect that in the eighteenth century there were forty hanging offenses, and yet crime was more prevalent then than now. In reply to this it may be freely conceded that a law that is not enforced and pun-

ishment that is not imposed is never a deterrent—any more than vaccination is a deterrent to smallpox if it is not administered. To test whether or not punishment is a deterrent, one must find out how it would work if it were *certain* to be inflicted if a given crime were committed.

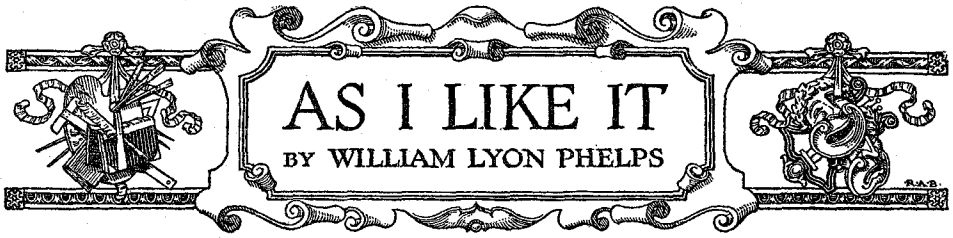
The readers of this article need indulge in no far-away or fanciful speculations as to how the minds of criminals would react if they *knew* in advance that punishment would follow a contemplated crime. Undoubtedly a large proportion of such readers are themselves criminals and liable to many years in some Federal penitentiary if punished for their every violation of the Volstead Act. But the enforcement of the Volstead Act is a farce. Let each such reader, therefore, ask himself whether he would break that law tomorrow if he positively and certainly *knew* that he would spend a year in the Atlanta Federal Penitentiary if he broke it. Whatever answer the reader makes to this question will be the same answer that the burglar, the robber, the forger, or the thief would make to the analogous question put to him. As to the saying anent punishment in the eighteenth century, it is a perfect example of the *post hoc ergo propter hoc* argument and consequently entirely illogical, but is a standby of a certain class of mind and has accomplished much harm. In the eighteenth century there was no police force as we know the word now—only “the watch” that circulated slowly and with great publicity through certain city streets at night, and the sheriffs and their men to serve warrants; there was absolutely no detective force, no finger-prints, Bertillon measurements or rogues’ galleries; no telegraphs, telephones, or any means of com-

munication between places rapid enough to head off a criminal—in short, if the criminal made his “getaway” from the scene of the crime, he was safe. Under those circumstances the law made the consequences so appalling in case the criminal *were* caught that only the boldest would have dared commit crime if arrest had been even probable. One has only to read Defoe’s “Chronicle of Moll Flanders” to realize the terror with which even the boldest spirits went forth with their lives in their hands to commit crime in that age. The real question is, “Would there have been more crime or less crime *in that age* if the penalty had been less severe?”—not whether there was more crime then than now—and no student of those times can be in doubt as to the answer.

Crime is not less in the twentieth than in the eighteenth century because punishment has been diminished; but punishment has been diminished because crime is less. No one is in favor of making punishment more severe than is necessary to accomplish its end. As, therefore, the human race has gradually emerged from the virtual barbarism of those old days, its progress and the progress of civilization have resulted in a lessening of crime—and naturally punishment also has been relaxed. But when it is so relaxed as to become no punishment at all and is so frequently escaped as to warrant the assumption it will be escaped altogether, then there can be no wonder that it fails to act as a deterrent. Such is the condition existing in the United States to-day, and such it is certain to continue until the day arrives when punishment is restored to its true function as a deterrent, and is made reasonably certain in its infliction.







IF I had a billion dollars, I should found an American college in Athens. I do not mean a university, or an institution for special research. I mean an undergraduate liberal college, with a four years course leading to the degree of Bachelor of Arts. I would make the study of Greek and Latin compulsory for all four years, and have other courses, English, Science, History, Political Economy, etc., elective. The term would last from October to June. A special ship would bring the students from America to the Piraeus in September, and those who wished to spend the summer in the United States could return on her in June.

This college would have certain peculiar advantages. Greek and Latin, which are the best foundation for culture and for any active career to-day, would be studied in the best possible environment; no man would receive a B.A. who could not read Greek and Latin at sight and with ease; thus for the rest of his life every alumnus would have at command Greek drama, philosophy, poetry, and history.

Mr. E. Nelson Fell, who was educated at Eton and received a sound training in the classics, maintains that in his long experience as the manager of a large business enterprise in Russia (see his charming book, "Russian and Nomad") nothing in his youth helped him so much as Greek and Latin and the general discipline and traditions of Eton. He points out that Greek and Latin literature forms a complete and closed subject and thus makes a true foundation for modern life and culture. Science is shifting, history depends largely on the bias of the men who write it, etc., but the story of Greek and Roman political, social, and artistic life is complete and permanent, which no new discoveries can hurt or change.

Another advantage of the Athenian college would be the elimination of the infinite number of extra-curriculum activities which vitiate the intellectual climate

of the institutions of learning in the United States. There would be no Big Three or Conference or Coast Championships; many other extra-curriculum affairs, eagerly engaged in by students naturally ambitious for social rather than intellectual distinction, would be absent.

On the other hand, in a country where the Olympic games first flourished, there would be every opportunity for athletic sports on land and water: golf, tennis, baseball, football, rowing, sailing, swimming, and every form of track athletics.

There would, I think, be no difficulty about securing a high-grade faculty; some of the professors would be permanent, and as for the others, there are any number of leading professors in America who would be glad to spend one year teaching American students in Athens.

I am not opposed to intercollegiate athletics in America, for the same reason that I am not opposed to the New England winter climate; and much good comes out of both. But I think there is room for one American college (not vocational, professional, or graduate school) where the major interest of the majority of students would be the acquisition of sound culture, in an environment peculiarly favorable.

It would seem that there could hardly be anything that promised more tranquillity and less eccentricity than a journey from New Haven to Philadelphia. Yet on the day of the February blizzard, when I took the Colonial Express at New Haven, I enjoyed several unusual experiences. First of all, my travelling-bag unaccountably missed the train, so, like a runaway bride, I had nothing except the clothes I sat in. The train was nearly three hours late in reaching Philadelphia; accoutred as I was, I leaped into a taxi and urged the driver to make the extreme legal margin of speed. On a dark and narrow side street, the car broke down