

Graduation Thesis

Subject:-
Criminal Law and Penal discipline

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Crime in some form or other has existed ever since the establishment of the human race. Primitive man, allowing his brutish instincts full play and actuated by the passion of revenge, sought out and punished his offender according to the dictates of his animal nature. His sole purpose in the infliction of punishment was that of retaliation. Thus we find primitive man basing law wholly on the right of vengeance.

As the human family began to assume tribal relations and to submit themselves either voluntarily or forcibly to the leadership of certain individuals, this right to fix and execute penalties devolved upon the conductors of the tribe to a considerable extent. Yet the fundamental idea of dealing with all offenders; namely, that of revenge, still predominated in the mind of man. He

dealt with the criminal not so much to afford better protection to society, but more for the satisfaction of his British desire for vengeance, by visiting bodily pain upon the victim.

But society in its ever-changing conditions has evolved from that barbaric stage, when the most ferocious penalties were imposed for trivial offenses, to our present penal system, which, though it embodies many commendable features and methods, is yet far from being either effective or humane in criminal treatment. It is shown by statistics that criminality is steadily increasing under the penitentiary system as it now is. Carroll D. Wright, United States Commissioner of Labor, gives the following figures:— In 1850 the number of prisoners in the United States was one in each 3442 of the population, while in 1890 the census report shows that the number of

prisoners was one in each 757. This evidence of deplorable failure in penological methods makes it imperative upon society to address itself anew to the solution of this question.

Crime is dealt with in either of two ways; namely, by moral, and physical agencies. The physical means has been and is still the predominating method used by society in its efforts to conquer crime. Capital punishment, the highest form of corporal punishment, and a most ghastly relic of barbarism, is still resorted to in the treatment for capital offenses. Whoso sheddeth man's blood, by man shall his blood be shed, is the principle that has been adhered to by all nations in all time. But can any rational, intelligent being deny that this practice is not inhuman, unjust? Society ought to have the undeniable right

to protect itself, but because one of its members in a period of abnormality - commits some atrocious deed, has society any justification in taking his life at the end of a rope, or in the electrocution~~ers~~ chair? No, it is only adding crime to crime, murder to murder. By this method society, or the people who by their acquiescence commend such treatment, commit a crime willfully, fearlessly, - a crime which far exceeds that of the victim.

Crime is the result of a moral disease. Criminologists have been hard at work during the last one hundred years studying, testing, and experimenting upon criminals of all sorts; and their almost universal verdict is that crime is committed under conditions abnormal to man - conditions for which the committer is irresponsible. This disease, for such

it is, may be inherited, contagious,
 or spontaneous. A man may,
 till he commits his lawless deed,
 be a law-abiding and valuable
 citizen, but in a moment of
 abnormality he falls. An un-
 married woman, having fallen in
 her weakness, and fearful of the
 condemnation of society, in a
 fit of moral insanity takes the
 life of her illegitimate child. A
 child through some unnatural-
 ness of its parents' circum-
 stances over which it has no control,
 may inherit a deficiency in its
 moral soundness. What can
 society hope to gain by inflicting
 punishment upon these moral
 imbeciles? Will others, affected by
 similar deformities of nature, be
 deterred from committing like
 deeds by the examples of punish-
 ment meted out to these
 helpless wretches? Obviously no.
 Some other method of treatment

must be devised, strike at the roots of this evil. Since it is not a physical deformity that constitutes a criminal, then the increasing infliction of pain, even to the extreme death penalty, will never eradicate this infliction of the human race.

The ancients believed that corporal punishment acted as a deterrent to crime. Their executions were public and attended by brutalities almost beyond human conception. Some of their penalties were strangulation, burning, decapitation, breaking upon the wheel, stoning, burying alive, scalding, dismembering and quartering. But, after long years of trial, it has been found that such brutalities openly illustrated to the people under the mandates of law, not only failed to deter others from committing the same identical crimes, but it unranked the morals of the people

and made them in this way more susceptible to the commitment of crime than before.

Crime cannot be repressed by the administration of physical punishment. This, in most cases only adds to, and aggravates the abnormality in the criminal. It makes him revengeful, sullen. Under these circumstances his moral infirmity only grows and more fully develops, making him all the more unsafe when the time comes for his restoration to society again.

Until about a century ago, all governments had dealt with criminals only in a retaliatory sort of way, with perhaps, an aim towards the protection of society. But in the latter part of the 18th century, John Howard began in England what has become a great and philanthropic movement. This is what is known as the

Reformatory Prison System. It is based on the principle that corporal punishment is almost wholly ineffectual in the prevention and cure of crime. It asserts that the mental and moral status of the prisoner must be studied and examined, and that the aim of society in treating with the criminal should be solely to reform and reclaim those who have offended its laws.

Like all reforms this new method of prison management requires time to prove its efficacy. Much needs to be done yet before the accomplishment of its true end. Our penitentiary system is the result of this reformatory movement, yet as we carefully study the management and methods of our penal institutions and note the results of the system, we are able to see how far they fail from accomplishing

the end for which they were instituted. But the merits and demerits of any plan can only be determined by actual experiment. And so with the penitentiary system. We have tried this method of confinement for criminals, with the prevailing idea of protection to society, giving little thought or concern as to the moral discipline of the convict.

The repression of crime will continue an impossibility as long as we do not employ different tactics in caring for criminals. If we accept the assertion that crime is a neurosis like insanity and idiocy, then, as these are diseases and are so treated, so must we treat this moral deficiency and effect a cure if possible. Justice to these unfortunates demands that our feelings of revenge be harnessed to those of deeper sympathy. We must.

in order to attain this ideal system, put aside and abolish the idea of punishment. The prisoner should not be made to understand that he is confined with the intention of inflicting punishment for the crime committed, but that society considers him an unsafe member, and, to insure the safety of its members, deems it best to submit him to a moral and intellectual training, such as may effect in him a permanent cure, and insure him to his full restoration to society.

Education should form a prominent part in the treatment of criminals. The education should be made compulsory. In many this would awaken new and higher ideals, and by having a good library in connection with the institu-

tion, these ideals might be broadened and developed. Most of the convicts sent to the penitentiaries especially from our large cities, are deplorably ignorant. They serve their sentences perhaps and are released into the world again more ignorant and helpless than when they entered, as they have had the slightly possible chance to even learn the happenings in the world about them. By a good and thorough system of education these useless and debased minds may be aroused from their dormative state and stimulated to something nobler.

Penologists are beginning to realize that the term sentence must be abolished before we can hope for this ideal reform. The term sentence is the length of servitude of the convicted prisoner as fixed by legislative

enactment, and administered by the discretion of the Courts. How can we hope to accomplish a reformation when there is no final inducement for the convict to strive for. The prisoner when he is sentenced knows just how long he is to serve. He sees only the merest chance for any commutation of his sentence; namely, that of recommendations by the Board of Charities to the State Governor. If the convict has no influential friends to aid him he usually works out his sentence, powerless to do anything in his behalf unassisted.

By the discontinuance of the time sentence this obstacle to the speedy reformation of the convict would be removed. The convicted man should be sent to the penitentiary (or perhaps better the moral hospital) with the

understanding that he was to remain there for life if necessary, or until judged fully competent to be returned with safety to society. There should be different grades of convicts in the prison and as convicts in lower grades show ample proof of moral advancement, they could be transferred to a higher grade. Under this method the management of our State prisons would necessarily become non-partisan, and the control given to broad-minded, philanthropic men and teachers. When this corps of officials and instructors feel assured that a convict had been truly morally cured, they should have the power to conditionally release him.

Not only should they release him, but they should see that assistance is given him after his release in getting a new start. Many are the

convicts released from our pen-
 itentiaries who have carelessly thrown
 out upon an injured and
 incensed world, branded by dis-
 grace and ignominy. No body
 will employ them as long as
 other help can be had. They are
 shunned, suspected, by the society
 which tried to effect a reform.
 Though they might have walked
 forth from the prison cell fully
 determined to conquer them-
 selves and prove useful mem-
 bers to society, yet the past hangs
 over them like a cloud; they
 find no consolation or friend-
 ly sympathy extended to them. For
 a time they bear this reproach,
 then, in utter despair, having
 failed in their attempts to do
 and live right, they seek out
 their old companions in crime,
 and soon the contagion of crime
 begins to reassert itself and as a
 result the ex-convict is again

sent to do penance at the state's prison.

This should not be. The released convict should be given all the chances in his favor. He should be assisted in securing some remunerative employment, and should be provided for till such employment was found.

The convict should not as he now is be released at the outer prison gate and there let jurisdiction over him end. Instead of this he should be released on the "trusty" plan. That is, he should be placed under a sort of guardianship by the state. It should be made a condition of his release that he make full reports at given intervals as to his whereabouts, and what is his occupation. In this way the exconvict would be placed greatly upon his honor.

He would feel that trust had been placed in him, and, this would naturally incite him to live for a better purpose.

By a more rigid police supervision, watch could be placed over the ex-convict for a time; and if he attempted to forfeit the trust put in him, he could, in most cases, be apprehended and returned for further treatment. In cases where the ex-convict did not prove himself as fully cured of his criminal proclivities and is re-committed to prison, the treatment should be more rigid and thorough than before.

Those who prove beyond a doubt that they have taken up crime as a life work, such as desperate murderers, and professionals, should be transported to some island, or placed in confinement somewhere for life. Such persons should

not be allowed near their fellow beings for fear of contamination. They should be placed where neither the moral diseases nor the deformities of the mind could be perpetuated. "Dipe at the mountain head should not be polluted."

Nature seldom produces the perfect. In the human race there is a large percentage of failures and it is from these deficiencies in men that crime results. Now the question remains shall we furnish for moral imbecility or shall we realize this ideal system and strive to make men of these abnormal beings?