

Book Review

THE PREVENTION OF REPEATED CRIME. By John Barker Waite.
Ann Arbor: The University of Michigan Press. 1943. Pp. xi,
221. \$5.00.

"Do you believe," said Candide, "that men have always massacred one another as they do today, that they have always been liars, cheats, traitors, ingrates, brigands, idiots, thieves, scoundrels, gluttons, drunkards, misers, envious, ambitious, bloody-minded, calumniators, debauchees, fanatics, hypocrites and fools?"

"Do you believe," said Martin, "that hawks have always eaten pigeons when they have found them?"

"Without doubt," said Candide.

"Well, then," said Martin, "if hawks have always had the same character, why should you imagine that men have changed theirs?"

—From "CANDIDE," by Voltaire.

THE BOOK'S THESIS.—Crime prevention may be either forestalling commission of a first crime or preventing a criminal from committing another crime. Professor Waite's book is directed to the latter aspect of crime prevention, *i.e.*, eliminating or minimizing reiteration, recidivism and habitual delinquency.

From the classical or orthodox viewpoint criminal justice is primarily punitive, retributive and retrospective and only incidentally correctional, reformatory and prospective. Professor Waite's book is a frontal assault against the retaliatory character of penal law. He proposes to shift the emphasis from punishment to prevention.

He argues that punitive treatment has failed to prevent repeated crime. The reasons: (a) it may possibly beget a desire to refrain from commission of a subsequent crime, but it is not designed to foster an ability to refrain; (b) it neglects rehabilitation; (c) it fails to assist the released criminal in leading a law-abiding existence; and (d) it returns to freedom criminals known to be dangerous.

He suggests nonpunitive treatment consisting of avoiding character-destructive contacts, providing for segregation from society during the whole period of the offender's dangerousness, utilizing all possibilities of training in trade skills, etc. and rendering to convicted criminals affirmative and active assistance in their efforts to abstain from further crime. Legislation embodying these reforms

would be enacted. The book contains extracts from statutes of different states indicating widespread recognition of preventive features of crime treatment.

Professor Waite advocates complete overhauling of present penal laws which are based upon the notion of deterrence thru punishment. Instead, the ideas of rehabilitation and of active assistance in abstention from crime should permeate criminal statutes. He concludes that by jettisoning the punitive motivation of criminal justice and inaugurating the rehabilitation system, "the present intolerable burden of crime and punishment and unceasingly repeated crime despite the punishment cannot but be materially decreased."

THE OTHER SIDE OF THE PICTURE.—"Fifty years ago," says Will Durant, writing in 1930, "our jails were dens of filth and horror, colleges for the graduation of minor criminals into major criminals; now our prisons are vacation resorts for tired murderers." *The Mansions of Philosophy*, p. 373. This statement reveals the contradictoriness inherent in measures for rehabilitative treatment of criminals. The objective of preventing crime repetition is certainly laudable and extremely desirable; but some are of opinion that rehabilitative measures constitute pampering of criminals.

"At no time has public opinion favored trying to reform all criminals or even all who had not committed murder, robbery, rape or some other atrocious crime. There have always been doubting Thomases who believe in retribution and the effectiveness of severe punishment as a deterrent: Crime waves . . . have been followed by demands that officials cease 'molly-coddling' criminals." *Administration of Criminal Justice*, by Sam B. Warner and Henry B. Cabot, 50 *Har. Law Rev.* 601-2.

The books published by Sheldon and Eleanor Glueck, "500 Criminal Careers" and "One Thousand Juvenile Delinquents," "seem to demonstrate that whatever the humanitarian advantages of the changes which have occurred in the last half century, psychiatric clinics, juvenile courts, probation, reformatories and parole have done little, if anything, to reduce criminality . . . The percentage of reformed offenders shown by the Glueck investigation is dishearteningly small." *Id.*, pp. 602-3.

A REASONABLE COMPROMISE.—The state is concerned not only in the imperative necessity of protecting the social organization against the criminal acts of destructive individuals but also in redeeming the offender for economic usefulness and other social ends. Butte,

J., *People v. Ducosin*, 59 Phil. 109, 118. How the redemption of the offender should be effected so as to prevent crime repetition is the problem. Assuredly, it is not exclusively the problem of the legal order. The law, as Roscoe Pound said, is only one form of social control. Many of the ills that men endure cannot be cured by the government and the laws.

Professor Waite admits that presumably the substitute for the punitive process could not wisely, even were attainment practicable, depart entirely from the notion of unpleasant consequences as a result of conviction of wrongdoing. He concedes that it might not be altogether safe to disregard the vigorous insistence of the man on the street that wrongdoers be punished because they deserve to be punished. He cautiously states that satisfaction of that undeniably prevalent wish for retributory suffering as a consequence of injury done must be given some heed in considering any substitute for the common, punitive method of dealing with convicted criminals. "The only question," he says, "is as to the essentials of that substitute."

Abrupt abandonment of the punitive system would seem to be unwise. The gradual and careful introduction of rehabilitative measures appears to be advisable. As in the case of other innovations the proper substitute for the punitive process might possibly be arrived at by trial and error. A judicious compromise between the retributory and preventive processes ought to be evolved.

BASIC ETHICAL AND LEGAL IDEAS.—The validity of any proposal for crime prevention depends ultimately on the true philosophy of law and morals. Pessimists aver that reformers will come and go and will leave men as foolish as they have always been. Determinists assert that "such fields as aesthetics and ethics are illusions built on illusions comparable in law to presumptions based on presumptions. They are mere vagrant by-products. The world of reality knows nothing of the good, the true, and the beautiful. It is neither rational or irrational; it exists simply; and it embodies in itself all the possibilities of appearance in the phenomenal world. Natural law and an ultimate standard of justice, which even conventional reason must recognize as mere constructions of practical ideals created by the human mind, are examples of illusion on illusion . . . The legal institution will go on its way and men will continue to build systems and theories based on appearances of the only world we can directly know. Thus in the end our illusions are for us the sole reality." Albert Kocourek, *My Philosophy of Law*, pp. 175-6. Quare.—RAMON C. AQUINO *

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