

YALE LAW JOURNAL

VOL. VII

JANUARY, 1898

No. 4

LEGAL TONIC.

The last Federal census showed an alarming increase of homicide in the United States in the decade of 1880-90, and unofficial figures seem to show, as might have been expected from financial conditions, a still greater per cent of increase during the past five years. This increase is not local, but general, and therefore the more alarming. This phenomenon has attracted particular attention in the South, not because the percentage of increase is greater here than elsewhere, but because it seems strange that crimes of violence should be more frequent under the home-rule of the white people of the Southern States thirty years after emancipation than during the troublous dozen years of social, industrial and political transformation immediately following the Civil War, when society was adjusting itself to changed conditions under ignorant negro domination and corrupt carpet-bag governments. In some of the States of the old Confederacy the Governors have called special attention of legislators and people to this homicidal epidemic; and, in one of them, a good bishop has set apart a particular Sunday for suitable services and sermons in the churches of his own communion, and invited the ministers of all denominations to unite with his own on that day in calling public attention to this perilous social condition and arousing all the moral forces of the State in a joint effort to suppress the spirit of violence and bloodshed sweeping over the State. Magazines and journals are doing similar service in other portions of the country, and there is pleasing prospect of a rise in the value of human life in the United States.

The forces calculated to bring about so desirable a result are, of course, chiefly moral. The streams of human sentiment which dashed so noisily for a while in the narrow channel of prohibition, and before had swept with such resistless force through the black cañon of abolition, have found wider channels and means of extensive irrigation in the broader fields of civic reform; and the signs of the times indicate that every owner will keep his own sidewalk clean in the next century. Wanting the energy of those social forces that make for righteousness, the law, of course, is powerless. With that dormant energy aroused, with public sentiment demanding civil order, legal functions will become stimulated and legal forces properly directed to accomplish this result. And the time is ripe for the patriotic lawyer to lend a hand in guiding the impulses and sentiments of the laity into channels that shall render them most efficient for law and order.

Obviously, his first duty, like that of the physician called to treat a patient, is diagnosis. It is mere empiricism to apply remedies without understanding the disease. It is social quackery to doctor symptoms. Such treatment may give temporary relief, but never will effect a cure. First, then, what ails the body politic? And next, what remedy can the law afford?

The homicidal symptoms under consideration, aggravated by local and temporary pathological conditions, are the plain outcome of a lawless and irreverent spirit pervading our heterogeneous population. A current contribution to the *North American Review*, by a writer of authority, attributes the great percentage of these crimes in the North to the immigrant population, and in the South to the negro. How much of these result from barbaric conditions and tendencies, and how much from scientific agnosticism, or base anarchism, is an interesting problem not pertinent to the present inquiry; but certain it is, that the criminal classes need either policemen or devil to restrain them, and the records of crime will show homicides to be fewest in those communities where the wholesome dread of both, acts conjointly in repressing violence.

The decay of popular faith is the sure precursor of crime, and irreverence and lawlessness are twin curses of American society to-day. With the former it is the special function of the church and kindred organizations to deal; and, since law can be no better than the public sentiment of a community, lawyers well may wish the success of all moral and religious influences in preserving popular faith and preventing moral decadence, in restoring

the reverent feeling of old and resisting the onslaught of vulgar skepticism upon all things sacred and holy. Assuming this cause of disease to be removed by the broad intelligence and earnest labors of the doctors of divinity and others having the cure of souls, what can lawyers do in the present epidemic of lawlessness? With reverence restored as a general and dominant sentiment, with a willingness and even desire upon the part of the body politic to use and apply the proper remedies to its present condition, what have the doctors of law to recommend?

The physician who finds a patient with hollow eyes and weak pulse, feeble voice and no appetite, with anon a chill and then a fever, the victim of "that tired feeling" so peculiarly American, knows only too well that from intemperance in drink or food, or work or play, from over-haste and hurry, or from over-work and worry, the nervous system has lost its tone, and its functions are now only half performed. Tonics are indicated; and he prescribes them, well knowing that until the tone of the nervous system is restored health and vigor will not return.

The American body politic is in atony. From intemperance, excitement and excess, from over-work and worry, from greed of gain and too eager pursuit of wealth, from over-use of stimulants to manufacture and trade, from devotion to obtaining patents and franchises, powers and monopolies, from selfish preference of individuals at the expense of society, from promoting personal rather than general welfare, from absorption of courts in the protection of vested rights of property to the neglect of life, liberty and the pursuit of happiness, there has resulted that loss of nervous tone in our body politic which tolerates the epidemic of homicide with indifference and lassitude. We are suffering from moral atrophy and commercial hypertrophy; and the utmost skill of lawyers and statesmen is needed to effect a cure; not that any new remedy need be prescribed, but that lawyers and judges shall have the intelligence to discern a sure remedy in an old prescription and the courage to insist that it be administered.

Enforce the law. This and none other is the tonic needed. This is the sure cure for the spirit of lawlessness abroad in the land. Simple it may be, but none the less effective for that. It is a perfect remedy for such conditions, a tried cure for such disease. In all ages and all countries it has been found effective; and no sufficient substitute has ever yet been discovered. Enforce it promptly, without sale, denial or delay. Let prosecution pursue the act, and punishment follow guilt adjudged. Let

the criminal feel that the penalty will surely follow crime. Naught else will restrain him who has not the fear of God before his eyes. Retributive justice is wholesome for society, and those who delight in crime deride our courts and laws. Blind and leaden-footed Justice they do not fear. Her they avoid and outrun; and so crime goes on; homicides increase and widows and orphans are multiplied throughout the land. Impotent courts invite Judge Lynch to take a hand; and one crime is piled upon another to satisfy the public demand for vengeance. And this passion of the body politic will have satisfaction, lawful if it may; but, if this is denied, then will it glut its maw with victims of its lawless violence.

Continuances of trial are too easily obtained in courts, groundless appeals double delay, and punishment is so long deferred oftentimes as to dull the edge of the sword of Justice. Time often heals the gaping wound, and society regards a punishment so long delayed with sympathy for the convict. The Governor intervenes, and mercy for the criminal inflicts cruelty upon society. Cruel and excessive punishments are not needed; nor, indeed, to be tolerated. But the public welfare, the repression of crime, and the prevention of homicide in our country inexorably demand that the punishment for murder committed and proven shall be speedy and certain. To so amend the criminal laws, and to so administer them that this result shall follow is the special function of the legal profession; and its performance will entitle lawyers to the gratitude of society.

In some States there may be no ground for complaint. In others existing laws may suffice, but the judiciary be remiss. In many, however, the merciful maxims of the days of the Stuarts, and a corresponding practice still prevail—maxims formulated by a judiciary resolved upon the protection of the people against royal persecution and tyranny at a time when there were more than a hundred capital offenses, and the accused was denied the privilege of counsel. All those cautions then given by merciful judges to juries, unenlightened by the discussion of counsel, are now used by artful attorneys for defense in winsome arguments, with what result is only too plain to be seen.

Continuances are sought and granted because of public excitement against the prisoner at the enormity of his own crime; and the public, fearing, oftentimes justly, that this is the first step toward the escape of notorious guilt, hasten with violence to prevent this consummation. To prevent all these evils, to defend society from such harms, there is no remedy but a return

to the wholesome *ante-bellum* days, when law was respected for its own sake, and enforced for the sake of society; when the courts of law were invoked as well for the prevention as the punishment of crime, and equity had not been suspected of being the guardian of the peace of society. The legal tonic for these times is to enforce the law.

Henry H. Ingersoll.

KNOXVILLE, December, 1897.