

The recapitulation of the several institutions embraced by the Code of Reform and Prison Discipline, has been made to show their close connection, and that each part is so necessary to carry into effect the great objects of the system, that an omission of any one would, in a great measure, defeat the good effect that might be expected from the others. If we mean to guard the community from the inroads of crime, every avenue must be defended. A besieged city, fortified on one side, leaving the others open to hostile attacks, would be a just image of a country in which laws are made to eradicate offences by punishments only, while they invite them by neglect of education, by the toleration of mendicancy, idleness, vagrancy, and the corrupting associations of the accused before trial, as well as after conviction. Yet such is the lamentable state of criminal jurisprudence, that all nations are more or less in this state. Here great severity is used to punish offences, but no means are provided to prevent them; there mild punishments and a reformatory discipline are applied after judgment; but severe imprisonment and contaminating associations are indiscriminately inflicted on the innocent and the guilty before trial. Between some States the contest seems which shall raise the greatest revenue from the labor of the convicts: in others the object is to degrade and make them feel their misery. No where has a system been established consisting of a connected series of institutions founded on the same principle of uniformity, directed to the same end; no where is criminal jurisprudence treated as a science; what goes by that name, consists of a collection of dissimilar, unconnected, sometimes conflicting expedients to punish different offences as they happen to prevail; of experiments directed by no principle to try the effect of different penalties; of permanent laws to repress temporary evils; of discretionary power, sometimes with the blindest confidence vested in the judge, and at others with the most criminal negligence given to an officer of executive justice. All these and other incongruities would cease, were the lawgiver to form correct principles; enounce them for his own guidance and that of his successors; and, with them constantly before his eyes, arrange his system of criminal jurisprudence into its natural divisions, by providing for the poor, employing the idle, educating the ignorant, defining offences, and designating their correspondent punishment, regulating the mode of procedure for preventing crimes and prosecuting offenders, and giving precise rules for the government and discipline of prisons.

With such a system it may reasonably be expected, not that offences will be eradicated, but that their recurrence will be much less frequent, and that the rare spectacle will be witnessed of a retrograde movement in vice and crime. But the desultory attempts which have been made, and are daily making, to carry some of its detached parts into execution, do but retard the progress and endanger the success of reform; they are troublesome, they are expensive; the false reliance that is placed upon them by their advocates, excites high expectations, which must be disappointed, because a disease pervading the system cannot be cured by topical remedies; and the disappointment produces despair of final success, an abandonment of the plan of reformation, and an inclination to return to the old sanguinary system. (1)

The Code now submitted completes the system of penal law, which is respectfully offered for consideration.

(1) There is one other point, which, although insisted on in the introductory report to the Penal Code, I cannot avoid recurring to here, because its importance will justify repetition, and because of its bearing on one of the institutions recommended in this report. I mean such a change in the constitution of the courts as to leave one of criminal jurisdiction in permanent session. This arrangement will curtail expenses, both in the construction and administration of the House of Detention; will prevent delays, injurious to the course of justice and vexatious to the accused; and will be found neither difficult nor costly in its execution.

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