

Organized Crime and our Changing Criminal Law

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CRIMINAL justice in the United States since the turn of the century has been marked by two fundamentally different characteristics. The last three decades have witnessed the most intensive inspection and reevaluation of deeply entrenched legal notions of guilt and punishment. They have witnessed the increasingly persuasive espousal of preventive justice and the individualization of treatment. They have witnessed an encouraging disposition on the part of some to revert to fundamentals, to examine causative factors in criminal behavior, and to apply scientific methods in the treatment of crime. Probation and juvenile courts, for example, have been born and have reached maturity in this short space of time.

On the other hand, this same period has witnessed a most naive faith on the part of the American public in the efficacy of legislative prohibitions as the cure for antisocial behavior. Where members of the voting constituency, rankled by some noncriminal act, have murmured that "there ought to be a law against it," the legislators have obligingly enacted legislation. At times the rush to legislative halls has approached bedlam; and the enactments, whether nurtured in the cradle of popular will or special interest, too often have been mere patchwork. Yet no critic of the legislative product can claim the right to an audience who fails to appreciate the value of both the long time program of preventive justice and the first aid techniques designed to meet emergencies.

OUR legislators of recent years have employed both of these approaches, the one involving a scientific examination of fundamentals, the other involving the establishment of certain temporary devices to combat the very real and present-day problem of organized crime. On the same day that a bill is passed, appropriating money for a state-wide study of juvenile delinquency, the legislature approves a bill to increase the minimum punishment for robbery with a gun. One approach is preventive, the other remedial. The two are not inconsistent, and for the present, at least, both seem necessary. An analogy may be found in the housekeeper who sprays insect poison around the foundation of her dwelling but who, upon reentering the house, finds a large bug in the kitchen. The fact that she has employed the scientific method of prevention by spraying the exterior of the house should not cause

her to be the least bit hesitant in adopting the emergency device of crushing the kitchen insect beneath her heel.

The rise in recent years of the organized criminal gang, well financed, equipped with the most effective implements for crime commission, and employing new *modi operandi*, has presented problems for law enforcement officials, the solution of which has called, in part at least, for the setting up of new legislative prohibitions. It should be kept in mind that the staggering multiplication of criminal statutes does not evidence so much an increase in the number of basic mores as it does an attempt to apply a few fundamental mores to the new inventions of a machine age. A statute passed 20 years ago making it grand larceny to steal an automobile, is amended today to include airplanes, not because there has been any startling change in our basic ideas of social behavior, but rather because our ideas of antisocial conduct of 20 years ago could not possibly be worded in statutory prohibitions which would include every change of an inventive generation.

If fundamental mores could be crystallized into criminal legislation so broad as to cover all the situations which the genius of the future could devise, legislation and law enforcement would be simplified considerably. Even if such were possible the very vagueness of such general prohibitions would render them odious to the constitutional requirements of certainty. So legislation perforce will ever involve some patchwork. Each new invention, device, organization, or social relationship will call for amendment of our criminal codes. The legislature is destined to a burdensome and thankless task.

IN the field of legislation designed to resist the assault by organized crime, the contribution of present-day legislators can best be appreciated by an illustration from a hypothetical case of crime commission: X appropriates Y's automobile with the intention of using it for the purpose of escape from the scene of a proposed burglary. He changes the license plates, obliterates the manufacturer's serial number, and equips it with plate armor. He arms himself with dynamite, tear gas bombs, a machine gun, and smaller firearms from which all serial numbers have likewise been erased. With the explosives he succeeds in cracking a safe. Loading its contents in the car, he makes his escape. He is pursued by a policeman, who shoots through a glass window and wounds X. X then makes use of the special smoke screen device, which he has installed in the car, and soon is out of danger. He stores the car in a garage and proceeds to a hospital for treatment. Ten years ago in most states a criminal who proceeded in such a fashion had all the advantage. Having eliminated traces of identification and surrounded himself with the latest protective devices, the likelihood of escape was great. But assuming for the moment that the prosecuting officials have secured

all the evidence by which the above operations could be graphically portrayed to a civic-minded jury, X could be convicted at most of trespass or malicious injury to the automobile (in most states a rather unpretentious misdemeanor), possession of firearms (in some states) and theft of the safe's contents (or burglary if his operations involve breaking and entering a building).

Within the last few years, however, legislators have thrown about every one of X's movements a series of prohibitions—deterrents, if you prefer—which would render the commission of any single act in the above *modus operandi* the object of severe treatment. Furthermore, they have inaugurated and set in motion machinery for identification and apprehension which could hardly be said to encourage such a money-making scheme as that pictured.

An examination of a few of these statutory appendages formulated by our lawmakers should indicate that amid the confusion engendered by the rapid rise of organized crime, the harassed legislator has at least made an intensive effort to deal a lethal blow to the dissentients of the underworld.

One could not be convicted of the common law crime of larceny who did not take property with the intention of permanently depriving the owner of its use.¹ Thus to take a car merely for a joy-ride was not larceny, even though the car was taken without the owner's consent.² An onerous burden of proof was thus assigned to the prosecutor. With the advent of high-powered motor vehicles, many cases arose where admittedly the only intention on the part of the car appropriator was to borrow the vehicle. To aggravate the situation cars were too often borrowed for the sole purpose of use in commission of crimes.

Statutes have thus become quite common which punish the larceny of the temporary use of automobiles or which prohibit driving without the owner's consent.³

One of the most customary means of attempting to prevent the identification of stolen or unlawfully borrowed property is the obliteration of the manufacturer's serial numbers, such as the engine number of a motor vehicle. Statutes have been enacted in many states preventing the obliteration or removal of such serial numbers from automobiles.⁴ Some of these statutes have subsequently been amended to prohibit such defacement of numbers on any manufactured article.⁵ And to further aid police and prosecutors, some legislatures have made the mere possession of such

unidentifiable property a crime,⁶ or prima facie evidence that the marks were obliterated by the possessor or that he knew such marks had been removed from the article in his possession.⁷ When the statutes by their terms require no guilty knowledge the courts are showing a tendency to construe them literally, and the deeply entrenched concept of *mens rea* is disintegrating to a subject of mere academic discussion so far as such statutes are concerned. Perhaps the courts have recognized that such statutes have been effective in breaking up the traffic in stolen property. In passing upon such a statute, the Illinois Supreme Court said:

"One may violate the law without any intention on his part to do so. . . . Laws cannot be held invalid merely because some innocent person may possibly suffer."⁸ Such statutes have also facilitated the enforcement of firearm laws. Particularly in states requiring the registration of firearms, statutes prohibiting the obliteration of identification marks serve as helpful adjuncts to the general firearms laws.⁹

WHEN machine guns came to play a prominent part in gang warfare, it was apparent that new legislative prohibitions would have to be set up. Accordingly, in 1927, four states enacted laws prohibiting the possession of machine guns¹⁰ and since then at least six other states have done likewise,¹¹ while New Jersey, recognizing the propriety of their use as protective weapons by banks and other licensed persons and organizations, framed a statute prohibiting the sale, gift, loan, or delivery of such weapons to unlicensed persons.¹²

Aware of still other modern techniques of crime commission, legislators rushed through statutes prohibiting the possession of bombs,¹³ the discharge of bombs¹⁴ and the use of tear gas bombs.¹⁵ Statutes setting up heavy penalties for the use of dynamite and other explosives have been quite prevalent. They prohibit possession of such materials,¹⁶ their use in the destruction of property¹⁷ or in the commission of bur-

¹ Cal. Pen. Cd. § 537e; Pa. Laws 1929, p. 918; R. I. Laws 1928 ch. 1194.

² Mich. Laws 1929, Act No. 129.

³ People v. Johnson, 288 Ill. 442, 123 N. E. 543.

⁴ R. I. Laws 1927, ch. 1052 § 12; Pa. Laws 1931 Act No. 158 § 15. For a discussion of the Uniform Firearms Act and the extent to which it has met with approval of the states see (1932) 18 Va. L. Rev. 904. This article also deals with other recent firearm legislation.

⁵ Cal. Laws 1927, ch. 522; Ind. Laws 1927, ch. 156; Iowa Laws 1927, ch. 234; Mass. Laws 1927, ch. 326.

⁶ Pa. Laws 1929, Act No. 329; Wis. Laws 1929, ch. 132; Neb. Laws 1929, ch. 190; Mo. Laws 1929, p. 107; N. Y. Laws 1931, ch. 792; Del. Laws 1931, ch. 249; see 18 Am. Bar Assn. Jour. 167.

⁷ N. J. Laws 1927, ch. 95.

⁸ Kan. Laws 1929, ch. 171; Mich. Laws 1927, Act No. 119; Mass. Laws 1930, ch. 317; Pa. Laws 1929, Act No. 330; Ind. Laws 1927, ch. 156. See on bombing legislation (1930) 16 St. Louis L. Rev. 72; 18 Am. Bar Assn. Jour. 167.

⁹ Ind. Laws 1927, ch. 156; Mo. Laws 1929, ch. 165.

¹⁰ Wash. Laws 1927, ch. 245; Cal. Laws 1931, ch. 470.

¹¹ Mich. Laws 1927, Act No. 119.

¹² Mich. Laws, 1927; Act No. 119; Pa. Laws 1927, Act No. 194.

¹ State v. South, 28 N. J. L. 28, 75 Am. Dec. 250; Keety v. State, 14 Ind. 36; Witt v. State, 9 Mo. 671.

² People v. Pastel, 300 Ill. 565, 138 N. E. 194; State v. Boggs, 181 Iowa 358, 164 N. W. 750.

³ Michie N. C. Code 1931 § 4262 and N. Y. Laws 1928 c 373 are illustrative.

⁴ R. I. Laws 1928 ch. 1194; N. Y. Laws 1930, ch. 823; N. C. Laws 1919, ch. 119; Ore. Laws 1925, ch. 140; Mass. Laws 1925, ch. 237; Pa. Laws 1929, p. 918.

⁵ For example the Michigan and Wisconsin Statutes formerly applying to motor vehicles only are now much broader. Michigan Laws 1929, Act No. 129; Wisconsin Laws 1929, ch. 37.

glary.¹⁸ Indiana has declared that escape by automobile is auto-banditry and has made the offense punishable by ten to twenty-five years.¹⁹ In 1929 the same state enacted legislation against the use of armored automobiles.²⁰ The manufacture and sale of gas-ejecting devices²¹ and the use, possession, or installation of smoke screen devices on motor vehicles have been made crimes in a number of states since 1926.²² The use of deadly weapons in crime commission became sufficiently alarming to induce seven jurisdictions in a single year to enact legislation declaring that the "carrying" of firearms by one committing crime operates as an aggravation of the offense committed,²³ while Indiana made the same declaration as to the "use" of firearms.²⁴

AN automobile perforated with bullet holes or smeared with bloodstains raises the presumption that at least something out of the ordinary has occurred, and in the interest of crime detection and investigation six states in the single year 1929 saw fit to command garage keepers to report any vehicles on their premises containing such marks of crime.²⁵ Other states have required their citizens to report abandoned cars. Under the same theory, that where there is smoke there is fire, Massachusetts in 1927,²⁶ and Rhode Island in 1929²⁷ enacted legislation to compel physicians and hospital attendants to report the treatment of gun wounds. It is readily apparent that X in the hypothetical case previously given has received, in his undertaking, very little encouragement from contemporary legislation. But the enactments in the nature of those listed here have not stopped at this point. Within the past five years, at least thirteen states²⁸ have established state bureaus of identification following the example of eight other states²⁹ which had set

up state agencies between 1919 and 1927; while still other states have made miscellaneous provisions for the taking of fingerprints by various law enforcement officers.³⁰ Legislation, which has given the art of criminal apprehension an added finesse, includes enactments providing for the use of the radio in the apprehension of criminals,³¹ and the establishment of teletype communications systems for the transmission and reception of crime information.³² To enumerate all the legislative creations of the last few years which have been formulated for the express purpose of coping with organized crime is obviously an impossible task.

The few recounted above are simply typical—indicative of our changing criminal law. In fact, the advent of such institutions as the modern criminal gang has led to such entirely new types of crime³³ and to such revolutionary methods of procedure³⁴ that one whose only acquaintance with the criminal law is through the medium of a textbook simply cannot have the slightest comprehension of the subject. A review of this new body of law leads one to the conclusion that however many indiscretions our lawmakers have been guilty of, and however many times they have erred, or brushed aside the lessons of the past, they have nevertheless provided us with some effective expedients, some helpful new devices for the era of organized crime.

It remains to be seen to what extent these devices will be availed of by the police, the prosecutors and the courts. Undoubtedly, some good has come from our rush to legislative halls.

On the other hand, one cannot help but be impressed by the temporary character—the inadequacy—of much of our statutory law. At times these enactments are admittedly gestures of despair, born of expediency, shaped to fit emergencies that might have been averted. Law-makers of the future will be forced to make a similar unsatisfactory transient contribution, so long as law-makers of the present lack the vision to adopt a long-time, lasting, preventive program.

RUNNING the risk of repetition, it is safe to say that much will be accomplished when people come to realize that aside from certain routine amendments to our criminal statutes which changing inventions periodically make necessary, legislatures are confronted with the two-fold problem of setting up machinery for crime prevention, and also, of dealing with present-day crime that should have been prevented years ago but wasn't. But far more will be accomplished when we come to realize that no set of prohibitions alone will solve the problem and that even intelligent legislation is but a small part of any program for social betterment.

¹⁸ Neb. Laws 1929, ch. 74; Comp. Tex. St. 1928 art. 1398.

¹⁹ Ind. Laws 1929, ch. 54.

²⁰ Ind. Laws 1929, ch. 203.

²¹ Mich. Laws 1929, Act. no. 206.

²² N. Y. Laws 1930, ch. 756; Mich. Laws 1929, Act No. 58; S. C. Laws 1930, Act No. 736; N. C. Laws 1929, ch. 64; Va. Laws 1926, ch. 446; 1928; ch. 131.

²³ Mo. Laws 1927, p. 173; N. Y. Laws 1927, ch. 342; R. I. Laws 1927, ch. 1052, § 2; Vt. Laws 1927, Act. No. 127; Wash. Laws 1927, ch. 233; Hawaii 1927, Act No. 206 § 1-3; Minn. Laws 1927, ch. 294.

²⁴ Ind. Laws 1929, ch. 55.

²⁵ Del. Laws 1929, ch. 10 § 110; Me. Laws 1929, ch. 327 § 4; N. Mex. Laws 1929, ch. 75, § 30; Ohio Laws 1929, p. 139; S. Dak. Laws 1929 ch. 251 § 32; Pa. Laws 1929, Act No. 403 § 1215, 1220.

²⁶ Mass. Laws 1927, ch. 69.

²⁷ R. I. Laws 1929, ch. 1384. For somewhat similar statutes see: Iowa Laws 1929 ch. 143; Calif. Laws 1929 ch. 417.

²⁸ Ariz. Laws 1929, ch. 16; Fla. Laws 1929, ch. 13619; N. J. Laws 1930, ch. 65; N. Dak. Laws 1929, ch. 116; Ind. Laws 1927, ch. 216; La. Laws 1928, Act No. 99; Minn. Laws 1927, ch. 224; N. Y. Laws 1928, ch. 875; R. I. Laws 1927, ch. 977; Utah Laws 1927, ch. 84; Kan. Laws 1931, ch. 178; Mont. Laws 1931, ch. 151; Ill. Laws 1931, p. 464. See 4 Fla. St. B. A. L. J. 392 at 394.

²⁹ Mich. Laws 1925, Act No. 289; N. C. Laws 1925, ch. 228; Oklahoma Laws 1925, ch. 127; Vt. Laws 1925, Act No. 131; N. Y. Laws 1926, ch. 702; Cal. Laws 1917, ch. 721, 1921, ch. 876; Iowa Laws 1921 ch. 186; Ohio Laws 1921, p. 584; 1923, p. 5.

Fellow Members

The 38th Annual Convention of the C. L. L. A. has passed into history; but its record, in the bulky volume of Time, is not a blank and empty sheet; on the contrary, the achievements of the 1932 Meeting fill many crowded pages.

To the League members who were present in Washington on July 5th to 8th, nothing need be said; but to those who did not attend, permit us to comment:

"Let this be a lesson to you!"

Here's why:

First: Despite the economic maladjustment allegedly still persisting, the 1932 Convention scored an attendance of 806—the fourth largest in the entire history of the *League*.

Second: The visit to the Nation's Capital and its environs was a revelation of delight and enlightenment—a vision of natural and architectural beauty; a stirring of patriotic pride; an awakening of historical memories and knowledge.

Third: The business sessions were noteworthy and gratifying: the attendance was regular and substantial; the proceedings were informative and important; the interest was continuous and genuine; the discussions were intelligent and helpful; the participation was spontaneous and general; the resolutions adopted were serious and progressive.

Fourth: The entertainment features were splendid: the Wardman Park Hotel left nothing to be desired, from the standpoint of size, beauty, service and comfort; our fellow Leaguers of Washington surpassed the hotel in untiring hospitality and courtesy, arranging even for a drop of 20 degrees in temperature beginning the day before our Convention opened, and continuing throughout the entire period.

Fifth: The social and sporting events—dancing, teas, golf, tennis, swimming, baseball, horseshoes—tours to Mount Vernon, Arlington Cemetery, Alexandria, Lincoln Memorial, the White House, numerous public buildings—combined to make the occasion delightful, impressive, unforgettable.

But "the tumult and the shouting" have died, "the captains and the kings" (also the queens, sevens, and ten-spots—U. S. Treasury Department issue) have departed.

We are face to face, not with the Past, but with the Future. Not in the Past repose our glories and our accomplishments, our fears, our doubts, our problems; but in the Future—there they lie, whether rosy with hopeful promise or dark with grave implications. We must keep our gaze Eastward, for it is in the East only that the sun rises; although there may be "thunder on the horizon," there, also, is the dawn.

Walter Lippmann, eminent American journalist and philosopher, recently said: "We shall emerge from our present difficulties when we shall cease trying to *re-construct* the Past, and shall begin to build anew for the Future."

We are confronted by new problems which cannot be solved by ancient formulae. Our pathway is obstructed by new obstacles which cannot be surmounted by the creaky devices of former generations. New difficulties beset us, which cannot be overcome by antiquated methods. New attacks and new antagonists must be met by newer marshaling of our forces—just as the Macedonian phalanx, deemed invincible, was routed by the newer arms and tactics of the Roman legion!

Lastly, we must combat new heresies, new sophistries, new errors, by a renewed oath of allegiance to truth, to reason, to courage, and to cooperative effort.

Come, let us go forward and upward together!

SOL WEISS,

President

NAME	ADDRESS	HOUSE AGENCY FOR	ADDRESS
Western Adjustment Co.	2635 Cottage Grove Ave., Chicago	West Disinfecting Co.	Same
Western Collection Agency	Burlington, Iowa	Iowa Soap Co.	Same
Western Collection Agency	Station "C," Omaha	Smith-Lockwood Mfg. Co.	Same
Wheeler, Leo W.	402 Peacock Bldg., Chicago	Wheeler's, Inc., 135 S. State St., Chicago	
White, Thomas C.	13th and Market Sts., Philadelphia	John Wanamaker	Same
Wholesale Merchants Protective & Collection Ass'n	640 Broadway, New York City	A. Golden & Co.	Same
Wholesale & Retail Merchants Assn.	107 E. 16th St., New York City	Lincoln, Potter & Co., Greenstein & Pelz	Same
		G. W. Sterling & Co.	Same
		Standard Handkerchief Co.	Same
Wholesalers' Collection Agency	370 Orange St., Newark	James A. Bannister Co., Inc.	Same
Wholesalers' Collection Agency	Boston and St. Louis	Hamilton-Brown Shoe Co.	Same
Wholesalers' Credit Reporting Co.	4160 Thomozan Ave., St. Louis	L. D. LeGear Medicine Co.	Same
Wholesalers' Mercantile Association	632 S. Wabash Ave., Chicago	R. W. Eyster Linen Co.	Same
Williams, Jesse M.	Michigan Building, Kalamazoo	Merchants Pub. Co.	Same
Windmiller, V. L., Collection Agency	Louisiana, Mo.	Stark Bros. Nursery and Orchard Co.	Same
Windsor International Agency	2403 Garrison Blvd., Baltimore	Headley Chocolate Co.	Same
Winne, Worden, E.	116 W. 32nd St., New York City	Gimbel Bros., Broadway & 33rd St.	
Witte Collection Agency	19 S. Wells St., Chicago	Holland Knitting Mills Co.	Same
Wolf Mercantile Agency	Cleveland	Electric Paint & Varnish Co., Acorn Refining Co., American Asbestos Products Co., The Franklin Paint Co., The Progress Paint & Varnish Co. and Allied Concerns.	Same
Wolf, Walter J.	St. Louis	Singer Bros. Cloak Co.	Same
World Collection Agency	Akron	Rubber City Paint Co.	Same
World Collection Agency	Cleveland	Phoenix Oil Co. and Bell Mfg. Co.	Same
Wulfsohn, Leo	188 W. Randolph St., Chicago	Albert Pick-Barth Co., Inc., 1200 W. 35th.	
Wright, J. H.	22 E. 18th St., New York City	Home Pattern Co., 261 Fifth Ave.	

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²⁰ For example, see Me. Laws 1929, ch. 325; Mich. Laws 1929, Act No. 197; Minn. Laws 1929, ch. 46; N. Mex. Laws 1929, ch. 68; Ore. Laws 1929 ch. 376; Miss. Laws 1926, ch. 165; and see Mass. Laws 1931, ch. 350; Ala. Laws 1931, Act No. 411.

²¹ Mich. Laws 1929, Act No. 152, providing for a state radio broadcasting station for police purposes, and Ohio Laws 1929, p. 139, authorizing contracts with radio companies for the broadcasting of information concerning felonies in which perpetrators have escaped. See also Ill. Laws 1931, ch. 460 and Iowa Laws 1931, ch. 241.

²² N. J. Laws 1930, ch. 64, is illustrative.

²³ For an excellent collection of recent habitual criminal statutes and other modern criminal legislation, see (1932) 80 U. of Pa. L. Rev. 565-572. Consult Chamberlain's reviews of recent legislation appearing periodically in The American Bar Association Journal such as 17 A. B. A. Journal 217, and 18 A. B. A. Journal 83, 167. See also Annual Reports of Prison Association of New York such as 85th annual report (1929) p. 83.

²⁴ See references at 33 supra and (1931) 16 St. Louis L. Rev. 148.

I want to take this opportunity of thanking you for the prompt and efficient manner in which you have answered every inquiry which I put to you and want to tell you that it is highly appreciated. The service which you render to your members is worth many times the amount of the annual dues.—H. Rockmaker, Allentown, Pa.

We are enclosing herewith check in the sum of six dollars and fifty cents, covering payment of membership dues to the League.

May we say in closing that this expenditure is the best form that we know of in connection with our business, and that we do not see how it is possible for anyone engaged in the commercial business to be without representation in this worthy organization.—Nat. F. Melman & Associates, Dallas.

Roll of Honor

The Number of Applications Brought in by Each Since
July 1, 1932

Nine Members

Illinois: The Secretary's Office, Chicago.

Four Members

Minnesota: Joseph A. Birk, Minneapolis.

One Member

Connecticut: B. P. Saltman, Bridgeport.

District of Columbia: M. G. Kenedy, Washington.

Georgia: A. A. Baumstark, Atlanta.

Illinois: E. Malcolm-Darnalt, Alexander D. King, Chicago;
P. H. Sheridan, East St. Louis.

Massachusetts: Harry D. Penan, Fitchburg.

Michigan: Roe H. Heal, Detroit.

New Jersey: Louis A. Fast, Newark; Irving Kunzman,
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New York: Willard Saperston, Buffalo; Chas. J. Brady,
Harry J. Greenstein, Sam'l Katz, S. J. Raab, New York.

Ohio: John A. Chamberlain, P. L. Steinberg, Cleveland;
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Pennsylvania: John P. Feeley, Hazelton.

Virginia: Frank C. Miller, Norfolk.

West Virginia: Sam Silverstein, Charleston.

Wisconsin: Harry S. Wollheim, Milwaukee.

