(editor's note: This paper was transcribed from a handwritten cursive copy with various difficulties. For a perfect rendition, the reader might wish to consult the original, itself a copy, in the volume entitled *Literary Club Papers 1*, 1885 – 1886 Oct 3, '85 to May 29, '86) The original is very badly faded.

Budget – Hinkle editor
April 24, 1886

# About Crime And Criminals

The occurrence of crime in any community is, to some extent an index to the moral condition of its people. Human beings of the same race, remaining in circumstances substantially the same, continue to act upon nearly the same motives, and produce substantially the same amount of folly and immorality; hence the general observation that crime keeps in approximate proportion to population.

This observation however, applies more particularly to the two great classes of crime; against the person, and against property; but is not observed with the same exactness to other statutory offenses, such as crimes against liquor laws, suffrage, public peace, public policy, and other classes of crime were the enforcement of the laws to a great extent depends upon public sentiment for the time being. But, generally speaking, the prevalence of crime in any community is in close relation to the standard of morality in the community and were a community has, by its habit of thought, custom, or conduct subjected itself to influences productive of crime while such influences and temptations remain, the same amount of criminal violations of law is likely to recur.

Crime cannot be put a stop to buy the fiat of the legislative body, any more than they can stop the ebb and flow of the ocean by such means. The idea of forcing a community into a higher morality by means of legal enactments, has long since been recognized as futile by all thinkers on the subject; and the fact that both law and morality are spontaneous growths, but slightly susceptible of acceleration or retardation by external influences, is equally well-recognized.

Every student of Roman law is familiar with the fact that much of what developed into the law of obligations was in early times dealt with by the priests as matters of religion or morality, and even in England almost all the acts which we now call crimes, were treated only as civil injuries, or sins. With the Ancients, morality was law; with us, law is morality; and this change simply corresponds to the change which has taken place in the

governing and governed classes.

When the general sentiment of a community disapproves of any act, or course of conduct, on the part of members of the community to such an extent as to prescribe a penalty through the legislative body, the act or conduct which, prior to that time may have been only a civil injury or a moral delinquency, at once becomes criminal. Thereafter the individual in doing such inhibited act, puts his particular will against the universal will, is bound to enforce the penalty without which society would necessarily fall apart. And so it is that our lives, liberty and property are dependent upon laws, the character of which is the criterion of our moral development as a people. While the punishments or sanctions prescribed are simply expressions, by the national conscience, of the character of the offense.

Among the most interesting and instructive of legal studies, is that of the history and evolution of criminal laws, and their influence in effecting changes in the manners of the community; but it is not the province of this contribution to the budget to enter upon that subject, only in an incidental way.

At the foundation of the superstructure of criminal jurisprudence lies the definition of crime. In Ohio, as in most of the states of the union, there are no common law crimes recognized. The act which is a crime in one State may or may not be a crime in another state; that which is criminal in the state this year, may or may not be criminal for next year. In short, that only is a crime which has been pronounced immoral by the community as expressed through its legislative body, and the observance of which may be enforced by punishment. So that in estimating the prevalence of vice or crime in any particular community, the first inquiry must be, What acts are considered criminal in that particular community?

From 1798 to 1802 in Ohio, there were only 6 felonies and 11 misdemeanors: in all, 17 acts which were criminal. In 1831 the category of crimes had been increased by legislation to 36 felonies and 47 misdemeanors: in all, 83 criminal acts. In 1886, there are about 350 criminal acts in Ohio.

What would have been the reputation of our puritanical ancestors for morality and virtue had their catalogue of crimes numbered 350 instead of 17, we can only guess. The change is an important one in considering how bad our boys are, but is one rarely recognized when we are invidious (sic)

comparisons between the morality of then and now. Then all actions outside of 17 well-defined crimes were either simple civil injuries, or sins having no physical or worldly sanctions, and about which the present generation would be quite indifferent. Now every sin or folly known since Adam, save one, is catalogued and is called crime. There is one left unlisted as a safety valve; that is, simply lying: we can lie like the devil, without fear or favor, but that is all. Every other outlet of frail human nature is corked up with a criminal law. It is true that in addition to this one outlet left to us, there has been a slight letting in the severity of the punishments prescribed. Under Territorial and early state laws, punishments were quite severe: if they did not have many crimes, they believed in substantial punishment.

In each county, as an essential equipment of the courthouse was a whipping-post, a pillory, and "so many stocks as may be convenient for the punishment of offenders." The six felonies were Treason, Murder, Manslaughter, Arson, Burglary, and Robbery. Treason was punished by death or forfeiture of Estate, Murder by death; Manslaughter as provided by Common Law; Arson, 39 stripes, 2 hours in Pillory, and 3 years in jail; but if caught armed, indicating violent intention, then 40 years in jail and forfeiture of estate. Burglary 39 stripes and 3 years in jail –
Robbery punished the same as burglary. Of the misdemeanors. –
Riot was punished by 39 lashes and $300 fine.
Perjury 39 stripes, 2 hours in Pillory, and rendered incapable of giving testimony or holding office.
Larceny. 1st offense 31 stripes, and a fine of twice the value of the article stolen. 2nd offense 39 stripes, and a fine of four fold the value of the article stolen.
Forgery. Fine, Pillory, and disqualified from testifying or holding office.
Usurpation, Assault and Battery, and Fraudulent Deed, – Fine.
Disobedience of Children or Servants, 10 stripes
Drunkenness, Fine, 5 dimes.
Maiming. The law making maiming a misdemeanor was passed in 1798, evidently to provide against a growing evil. It throws a ray of light upon the gentleness of law-breakers of those days! The act provides that whoever unlawfully "cut out or disabled the tongue, put out an eye, slit or bite the nose, ear, or lip, "might be confined in the County jail 1 to 6 months, also fined $50 to $1000 and for want of means to pay the fine, the offender shall be sold to service by the court, before which he is convicted, for any time not exceeding 5 years, the purchaser finding him food and raiment.

With the provisions of this old law reenacted and applied to all police court

cases in this city, Judge Fitzgerald could pay off the city debt in a few years. It is to be regretted that no statistics have been preserved, tending to show the prevalence of these crimes. Especially would such statistics prove valuable as to the deterrent influence of severe punishment, as compared with the milder and more humane treatment of criminals in our day and times.

In Kentucky punishments are characterized by more severity, and partake more of the Puritanical ideas man in the state, yet crime generally seems to be more prevalent; from which it may be inferable that severity of the penalty is not a successful deterrent of crime. On the other hand, it is said that in one of the Eastern States, where the whipping-post is retained for petty offenses, that those offenses which are punished by public whippings are scarcely known.

The general drift of modern legislation and modern thought on the subject is in the direction of light, but certain punishment, eliminating from it, all elements of degradation, torture, revenge, or cruelty, – on the theory that punishment is or merely for the benefit of the state, and secondarily for the reform of the individual. As it is through wrongs that rights are revealed, so through crime morality is revealed; but to estimate the relative morality of different communities, or the same community at different periods by the negative element of crime, requires substantial agreement in the number and character of statutory crimes: so that in Ohio, between the rapid multiplication of crimes, and the absence of anything like reliable statistical data, it is next to impossible to form any correct comparison by statistics between the territorial and early state conditions, and the present, as to relative morality. It is only since 1857 that statistics, of more or less value, have been collected in Ohio. As to criminal statistics, there is no national legislation. Each state gathers up its own statistics or not, as it deems best; and the result is that even in States where statistics are collected, there is no regularity or uniformity and classification or extent; and consequently no practical results have been obtained and to the extent that our criminal legislation has been wise and effective, we are indebted to the experiences of other countries; and so far as well-meaning efforts to improve the condition of Society by legislation have proved unsuccessful or mischievous, –as they have at times, it is largely due to the absence of such experiences, intelligently classified and made available for deductive reasoning and until our Legislative bodies give closer attention to classified experiences of this character so long is disappointment apt to follow upon the failure of apparently well conceived laws to effect the purpose for which they are

devised. Nor is it alone in the line of intelligent legislation that statistics of this kind are of practical value in instances like the present in Cincinnati, where, through a concurrence of unfortunate circumstances a reputation of criminality attaches to the city and its people, such as to effect not only the business, but the general values of property. Where such a reputation becomes established as the character of the community, the injury was irreparable; and in the absence of statistical facts to refute it such public prejudice for it may be mistaken notion, is not likely to be dislodged with anything short of dear bought experience. As between States, the only statistics I have been able to get tending to show the relative prevalence of crime, is what is contained in the last US Census, giving the number of criminals in prison in most of the states, and from which I have computed the ratio of prisoners to population as follows: In

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| Mississippi | There is 1 prisoner to each | 1135 of the population |
| Tennessee | | 1337 |
| New Jersey | | 1374 |
| California | | 1406 |
| New York | | 1421 |
| Virginia | | 1489 |
| Louisiana | | 1504 |
| South Carolina | | 1593 |
| Indiana | | 1607 |
| Illinois | | 1620 |
| Missouri | | 1676 |
| Kentucky | | 1677 |
| Vermont | | 1898 |
| Michigan | | 2019 |
| Pennsylvania | | 2301 |
| Ohio | | 2347 |
| Massachusetts | | 2355 |
| Kansas | | 2451 |
| Connecticut | | 2481 |
| Georgia | | 2608 |
| W. Virginia | | 2831 |
| Maine | | 2937 |
| Minnesota | | 3450 |
| Wisconsin | There is 1 prisoner to each | 4256 of the population |
| Iowa | | 4602 |

In these 25 states, 15 indicate a greater number of criminals in proportion to population than Ohio: 9 indicate a less number. The average in the 25 states is 1 prisoner to 2174 of Population, while Ohio is 1 to 2347. The greatest number of criminals to population is in Mississippi, and the least number in Iowa. On the whole, the result of this comparison is

quite favorable to Ohio, standing as it does in this respect on a par with Massachusetts, Connecticut, and Maine.

In Ohio since 1857, statistics relating to crime, of more or less value, have been collected, although since E. D. Mansfield left the office of Commissioner, the work has not been characterized by the same intelligence, nor has any attempt been made to generalize, compare, or make any practical deductions from the mass of figures furnished the Department of State. With the aid these statistics have afforded, I have made a few comparisons in regard to the prevalence of some of the indictable offenses in Hamilton, Cuyahoga, and Lucas counties, and in the State at large. I have had to narrow the comparison of crimes against the Person and crimes against Property on account of the Police Court statistics in Cincinnati and Cleveland not being included; while that class of offenses included from other parts of the state: crimes against the person embrace

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| Homicides of all grades | Maiming |
| Abortion | Malicious injuries |
| Rape | Libel |
| Robbery | Blackmailing, –& others |

Crimes against Property

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| Arson | Larceny of all kinds |
| Burglary | Distraction property of all kinds |
| Embezzlement | Forgery – and others |

Of these crimes the statistics are no doubt fairly accurate, so far as they go, excepting for 1884 when the records in Cincinnati and many indictments, prosecutions, & convictions were lost by the distruction of the Court House. The average number of indictments for all crimes in Ohio

From 1857 to 1862 were 1 in 711 of the population

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| 1875–1880 | 615 |
| 1880 – 1884 | 511 |

showing a rapid increase in the number of indictments in relation to population; but I find this indication largely if not entirely accounted for by spasmodic prosecution under the liquor laws and other offenses which are dependent upon popular sentiment or excitements in different localities over the state, as well as to the increase in acts made criminal by law. And that taking crimes against the person, and crimes against property alone, there would be no relative increase. Classing all the criminal indictments under three heads: –against the Person, against property, and against all other statutory offenses

Crimes against the person equal 23 percent of all

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| Property | 35 |
| All others | 42 |

For five years up to 1862 these same ratios stood.

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| Crimes against the person equaled | 21 percent of all |
| Property | 27 |
| All others– | 52 |

This would indicate a relative increase in classes of crimes against the Person and Property; but in the estimate to 1862 The Police Court cases in Cincinnati and Cleveland are included, and are not included in the present estimate, and I'm inclined to think that including the Police Court cases the proportion would be a decrease rather than an increase in the crimes against person and property as compared with other statutory offenses. But without much longer wearying the club with these dry details, the result of this inquiry is as follows.

As to crimes against the person.

In the state at large there is 1 indictment in 3522 of pop.

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| Hamilton County | 1 | 4168 |
| Cuyahoga | 1 | 6322 |
| Lucas | 1 | 4903 |

Indicating that in the cities of Cincinnati, Cleveland, and Toledo, crimes against the person are less frequent than in the average over the state. As to crimes against property.

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| In the state at large there is | 1 indictment in | 3518 of pop. |
| Hamilton County | 1 | 3076 |
| Cuyahoga | 1 | 2801 |
| Lucas | 1 | 1060 |

indicating that crimes of that class are more prevalent in these three cities than in the average of the state; that while Cincinnati and Cleveland in that regard are nearly on a par, that Toledo has nearly 3 times as many criminals of that class than Cincinnati. Taking all classes of crime together

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| in the state there is | 1 indictment in | 808 of Pop. |
| Hamilton County | 1 | 1652 |

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| Cuyahoga | 1 | 1640 |
| Lucas | 1 | 602 |

In this ratio the influence of the omission of the Police Court records in Cincinnati and Cleveland is manifest. If those were included as they are in other counties, the proportion of offenses would probably exceed the average of the state, although not to any considerable extent. The general result of this inquiry, so far as it has proceeded, insofar as it relates to Cincinnati is that of the more atrocious crimes their prevalence in Cincinnati is less in proportion to population than in either of the cities compared with it, and less than the average in the state. While the state in that respect ranks among the best regulated of the States in the Union.

Excluding indictments for gambling, Houses of Ill-fame and Election cases, which are spasmodically prosecuted, about once in 3 or 4 years, the average indictments in this county will not exceed 200 per year and about 60% of those indicted will be found guilty. Of course, in addition to these are the offenses prosecuted in the police court, but of indictable offenses, the actual number is probably not $1/20^{th}$ of what our average citizen would a credit to our city in view of its reputation. There is at best only a small portion of the actual crime of any community ever brought to light. If every violation of our 350 penal statutes were ruthlessly exposed, instead of having 1 offender in each 800 of our population, we would have 800 offenders to one who observed all the laws.

Few men indeed regulate their daily conduct by law and probably the fewer the better, for law, in its abstract form never served to keep society together, and never will. Until we reach the influences productive of crime we need not to expect to suppress it by force of law. The other day Judge Fitzgerald stated that about 90 per cent of the offenses prosecuted in his court could be traced to one producing influence. Until we legislate in the direction of removing temptations, of regulating causes, our efforts to improve Society, however well-meaning, are apt to disappoint us.

It is of infinitely greater importance to preserve from crime the great majority who are yet innocent, than to exhaust our force in the punishment of those who have already fallen. –

C. D. Robertson