

A. W. J. J. J. J.
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A QUADRUPLE BLUNDER.



In the March number of the FORUM, Cardinal Manning, in an article entitled, "The Bible in the Public Schools", but which is more properly an argument against secular education of any sort and a re-iteration of the claim of the Romish Church, to control all educational instrumentalities, follows ex-Assistant Attorney General Montgomery, in a comparison instituted by the latter, between the pauperism and crime in the six New England states, Maine, Massachusetts Rhode Island, Connecticut, New Hampshire and Vermont, in which the average of intelligence was highest, and six "unlettered states" as the Cardinal unflatteringly denominates them, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia. The comparison is made on the basis of the Census of 1860. The first six states having 2,665,945 native-born white(?) inhabitants, of whom only 8,453, could neither read nor write; the last had 3,181,969, a ~~large population~~ of whom 262,802, adults could neither read nor write." So far the Cardinal. Then follows a quotation from Mr Montgomery: "In the New England states the proportion of illiterate whites was only one to every 312, while Virginia and her five sisters counted one to every 12. How stand the criminal lists? Massachusetts and her five sis-

ters out of her native population of a little more than two and a half millions, had on June 1st 1860, just 2,459 criminals in prison; while Virginia and her five unlettered companions, with a native population of over three millions, had but 477, in prison."

Then again the Cardinal:

"That is, the New England six, had one criminal in prison to every 1064; the other six, had one to every 6670. So again as to pauperism; there was one pauper to every 178, as against one to every 345. Suicides were one in every 13,235, as against one in every 56,584; of deaths from criminal passions, one in 84,737 as against one in 128,729; and of insanity one in every 800, as against one in every 1682. All this needs explanation which has never been given."

The charge is clearly made and, so far as I am aware, the fact is truly stated, that "all this needs explanation which has never been given." In the April number of the same magazine Prof. G. P. Fisher makes an impassioned and eloquent reply to the Cardinal's article but instead of offering such explanation as the diverse conditions of the two groups really afford, he treats the argument as "A good specimen of the confounding of the consequent with effect--the propter hoc with the post hoc."

This treatment of the argument from comparison seems hardly just and certainly would not be satisfactory to an inquiring mind.

It is not enough to intimate that the same argument might be adduced in favor of slavery or duelling. Neither is it enough to say that "in the New England group there are great manufacturing centers, large cities--a vast number of recently arrived immigrants,--all of these being conditions not belonging to the group with which New England is composed."

Indeed this is a statement which the objector would be sure to question. Is ^{it} ~~it~~ ^{entirely} ~~certainly~~ correct to say that "large cities" are a condition not belonging to the southern group? Were not Wilmington, Del, Baltimore, Md., Richmond, Va., Wilmington, N.C., Charleston, S.C., and Savannah, Ga., entitled to be termed "large cities", in 1860? Evidently ~~this statement~~ is too broad to be relied on in such a controversy. Cardinal Manning asserts that the groups were identical in origin and character of population at the beginning, that ^{was} ~~more~~ than two centuries ago, and while this is not strictly accurate, the inaccuracy is one that tells against himself and cannot be taken advantage of by an objector. It is unquestionable that up to the end of the second decade of this country the moral ~~advantage~~ quality of the immigration into New England, was at least equal and probably greatly superior to that which flowed into the southern group. Now the claim of Cardinal Manning is, that the chief difference in moral conditions between the two groups after that time which could, as he

views it, have produced the remarkable apparent difference in the criminal tendencies of the two, was the public school system of New England. It is true, slavery existed in the one and did not in the other yet it would be hard to admit that as a purifying influence. So too, it will hardly do to ~~attribute~~ such startling discrepancy in criminal statistics, to the excess of the foreign-born increment in the northern group. There were at that time, in the six New England states, only 453,330 people of foreign birth, being only about 14 per cent of the population. Such a population is altogether insufficient to account for the results apparently indicated.

Prof. Fisher seems to have felt the force of this inconsistency, for he appeals to Gen. Francis A. Walker, the Superintendent of the census of 1880, for an explanation, who says in a letter incorporated in Prof. Fisher's article, in effect, first that we never had any reliable criminal statistics until 1880; and ~~second~~, that the volume referred to was not properly made up and is, in short worthless, for purposes of comparison. He gives also some reasons why there may have been more persons in prison in some states than others. He does not, however, give any reason why there should be anything like the difference alleged or indeed any specific difference between these two groups. So far, Cardinal Manning is correct in saying that there has been no explanation of the difference. Prof. Fisher hints

that it may have been due to immigrants; Gen. W. says, the volume from which the figures were taken was not reliable but does not show that the figures themselves are incorrect.

Now, there is not the least ground in the world for supposing that the particular tables used by Mr Montgomery and quoted by Cardinal Manning were incorrect. On the contrary there is the best of reasons for believing them to be entirely accurate. While it is true that the collection of criminal statistics was very imperfectly made until 1880, and are, indeed, the most unsatisfactory of all statistical results, yet there is nothing about this particular inquiry which should make the result difficult or doubtful. The inquiry was not, it is true, made by special experts, but it was one of the questions on the blank furnished all enumerators and there is no reason why it should have been more fully answered or more truly by the New England enumerators than by those of the southern group. It was the simple inquiry as to the number "imprisoned for crime". The enumerator could not be unaware of the existence of a penal institution and every motive of personal and political advantage forbade him from omitting from his returns the inmates of such institution. It must be remembered that the South was fighting for political power at that time, and that the enumerator had a direct personal interest in getting as many names as he could with as little travel as

possible. It was hard to find the scattered population of the South, so that it was never fully enumerated until 1880; but no census-taker would ever have missed a penal or charitable institution. Such a thing was a windfall to him. There was no reason therefore why this inquiry should have been made thoroughly in one group of states and imperfectly done in another. As it was well done in the one there is every reason to believe that it was fairly and thoroughly conducted in another. Indeed, the actual results are the strongest possible confirmation of ^{the} correctness of this table to one who will take the trouble accurately to inform himself of the real condition of the two groups, as affecting the relative number of persons in confinement for crime at the specific data. In other words, the difference is just about what one acquainted with the social and legal conditions of the contrasted groups would expect.

It is ⁱⁿ these conditions, that the "explanation" Cardinal Manning so triumphantly demands, really lies. Of these conditions Mr Montgomery, from his nativity and profession could hardly have been unaware and he must therefore, be held morally responsible for intended misrepresentation. It is presumable that Cardinal Manning had no knowledge of these conditions sufficient at least to inform him of the unreliability of his inferences. Prof. Fisher would no doubt have been informed with regard to them but for the inveterate northern

habit of reasoning by analogy and assumption, in regard to all things touching southern life, rather than from knowledge or investigation of facts. Gen Walker's attention was probably never for a moment turned in that direction: he simply assumed that such a difference could arise only from defective returns or imperfect compilation.

In considering the conditions which reconcile and explain such glaring differences, it is necessary to keep steadily in mind two important facts:

1--That the comparison with which we have to deal was made in 1860.

2--That it is confined solely to the inquiry as to the number in confinement for criminal offenses at a *specific* data.

It may be well to note here that the statement of Mr Montgomery is not absolutely correct. Throughout his whole volume he is given to a species of inaccuracy so frequent and apparent as to seem almost temperamental. Massachusetts and her five sisters, "he says", out of a native population of a little over two and a half millions, had 2,459 criminals in prison." Now, this number of criminals were not in point of fact "out of", her native population of 2,665,993, but out of them plus 459,330, "foreign-born" inhabitants. The Cardinal also attaches the modifying term "white" to the New England estimate, an inaccuracy which though amounting to only about 25,000, it is well enough to observe.

In considering the conditions attaching to the contrasted groups, it is well to note, in the first place, that general intelligence, whether it is the result of the public school system or not, no doubt directly tends to increase the number of criminal convictions, first because crime is more likely to be ferreted out and complaint made in an intelligent community and secondly, because with the increase of intelligence, in our American life, has come a desire for ease and luxury which scorns the ways of humble toil, seeks for shorter and not unfrequently crooked roads to fortune, which have undoubtedly increased to a very considerable degree certain classes of crime. While this is not the result of intelligence it is unquestionably the result of that consuming desire to be rich which has developed to a wonderful degree with the growth of our public school system. That it is not a necessary result of that system very many of the most thoughtful students of our educational and social conditions readily admit, but in such a controversy as the present it is not wise to deny such tendencies, and the New England group is fairly chargeable with a special tendency to certain crimes dependent upon general intelligence either for motive or opportunity.

In other words the only difference between the groups of states compared with each other lay in the fact that the one had one adult

out of every 312 who was unable to read or write, and the other, one out of every 12, every capable sociologist would naturally expect the convictions for crime in the former to exceed those in the latter, especially in a republic in which the ~~judicial~~ judicial power is more immediately a reflection of the popular will and more particularly in the ~~the~~ American Republic in which the judicial power is wholly dependent on the individual or collective authority and intelligence of the citizenship, not only for information in regard to the commission of crime, but for investigation of its origin and the detection and apprehension of the criminal. With us, the Grand Jury, is supplemented by a magistracy and a police force selected by the people, representing their prejudices and inclinations and dependent on their favor for continuance in office. Thus the people themselves become the eyes and ears of the courts of justice. By their co-operation crime is ~~punished~~ punished; without it punishment is impossible; and this co-operation depends for its efficiency very greatly on the intelligence of the individuals composing the body of the population.

This difference, is, however, insufficient to account for a tithe of the apparent difference as shown by the statistics cited, and the fallacy of Mr Montgomery, in which Cardinal Manning not unwillingly though perhaps, hardly comprehendingly, follows him, lies in ignoring

this healthful cause of increased conviction, as well as other responsible conditions, and claiming the whole apparent difference as the result of demoralizing tendencies of the public schools--especially public schools in which the Bible has been used as a textbook.

The term "apparent difference" is used advisedly, for while freely admitting that the statistics of those confined as criminals are correct, at least as correct in one group as in the other, it is by no means the intention to admit that they are in any respect reliable indications of the respective criminal tendencies or even of the criminal convictions of the contrasted groups.

In the New England states imprisonment was practically the only punishment for crime. In one of them capital punishment did not exist; and in all the others it was limited to murder in the first degree. For all other serious offenses, imprisonment for a term of years, either with or without hard labor, was the only means of punishment known to the law. For a few lesser offenses, fines were imposed which were also sometimes made an adjunct of imprisonment in graver offenses. It was only in rare instances if indeed there are any cases in which an offense of a serious character was punishable by fine alone. Very few crimes of any magnitude are punished by imprisonment for less than a year and some of really trivial character

are punished by much longer terms. From ten days to six months is the usual length of merely corrective or restrictive sentences. The statistics of those "confined for criminal offenses", in New England on a day certain, therefore, constituted a fairly accurate statement of the serious offences committed in that group of states within a twelvemonth, together with the bulk of those convicted of minor offences, for at least three months previous. The only class of offenders that would be exempted from such an inquiry would be that not very numerous class of violators of mere police regulations, who are subject to fine or imprisonment and being required to pay a fine ~~as~~ are able to do so. This fact had made the building of state prisons in each of the New England states a necessity and in them was evidently found a large proportion of the 2,459 "criminals in prison," on the 1st of June 1860." This would be an average indeed of only 410 convicts in each state.

On the other hand, however, imprisonment as a punishment for crime was almost unknown in the states composing the southern group in the year 1860. Hanging, whipping, branding and the pillory were the forms of legal punishment for nearly all crimes not expiated by a fine.

In the first place the list of capital felonies was surprising ^{or all} large. Murder, rape, arson and burglary in all but one at least, while in several of them second and third offences of a lower grade were

punishable in like manner. In one of them there were at least twelve offences, which were punishable with death, including robbery, horse-stealing and certain offences against slave property.

For the lesser grades of offences, down to mere acts of nuisance simple assault and violation of police regulations, the sole forms of punishment were the lash, the branding-iron, mutilation and the stocks. In not one of them was there a penitentiary or any need for one. The jails were used almost entirely as places of detention pending trial and for the restraint of debtors. In every court-house yard, however, were to be found, the stocks and the whipping-post; in every sheriff's office was an assortment of branding-irons. Any one who will inspect the dockets of the courts in these states at that time will find the records of conviction accompanied by such minutes of judgment, as the following, "to be hanged by the neck," or "to be branded on the right cheek",, or "in the palm of the hand", to have both ears slit", "to have his right ear cut off": to receive forty lashes well laid on": " to sit in the pillory one hour a day for three days", with every possible variety of combination. Some of the laws prescribing penalties for specific acts especially applicable to colored offenders were too horrible to mention.

Thus while there were very few "criminals in prison" in those states, the statistics of those whose backs had been scarred by the

lash, who had lost their ears, or other members by operation of the law, on whose flesh the heated iron had hissed and smoked while they cried out three times, "God save the state!", or who had faced the jeering multitude from the vantage-ground of the stocks, would have been very considerable--probably greater than the number of imprisoned convicts in the northern group--for the southern courts were very summary and slavery greatly increased the verge of legal crime in one direction while it probably reduced it in another. Trading with a negro, seduction of a slave, (that is inducing him to leave his master), injuring the slave of another, inciting to sedition, &c, &c,--these were grave offences which were sure to be punished.

On the other hand, there can be little doubt that slavery furnished an outlet for brutal passion which tended to decrease the number of punishable offences. There were in the southern group nearly as many blacks as whites. ~~None~~ None of these could be witnesses. Very few acts of violence against them were either punished or punishable. If a slave was maimed by another, his master would see that the offender was punished. Neither the ravishment nor seduction of a female slave was a crime. In this way the race served as a safety-valve for the evil passions of the whites and, measured by the record of convictions, no doubt tended to lessen the apparent criminality of the staes in which it existed.

These circumstances constitute so fully and completely the "explanation" which the shrewdly plausible Cardinal demands, that one who will study the penal statutes of those states at that time and examine a few of the criminal dockets of the courts, will wonder, not at so great disparity between those imprisoned for criminal conduct in the two contrasted sections, but that even the small number reported were found under conviction in the jails of the southern group--state prisons, be it remembered, they had none.

Still a farther influence operated to produce this result. In several of these states parties sentenced to pay a fine and to be imprisoned until it was paid, in case of inability were put up at auction and disposed of to the man who would pay fine and costs for the shortest period of service. This of course were no longer "imprisoned for crime", though the hirers had the power of arrest and confinement by any means they chose. Until the "carpet-bag" governments of 1868 abolished the whipping-post, the branding-iron and the stocks as relics of barbarism, and restricted the range of crimes which might be capitally punished, imprisonment was hardly recognized and certainly not a usual or predominant means of punishment for crimes in the southern group of states, while in New England, it was practically the only penalty imposed for crime.

Instead of affording even a remote ground for comparison as to *the*

criminal tendencies of the two peoples, the facts stated are simply a demonstration that the one group punished its criminals by mutilating the offender's body, the other by confining it. The club with which the Cardinal seeks to destroy the public schools of New England as unprecedented corruptors of morals, is not only stuffed with falsehood, but that falsehood is of such a character that his authority cannot in justice to his intelligence and professional attainments, be presumed to have been ignorant of it, and the results he cites are so amazing as should have put even a prudent stranger on his guard.

Albion W. Tourgee.

From Albion F. Burgess
Mayville
Chautauque Co. N.Y.

May 14th 1879.

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CHAUTAUCQUE COUNTY HISTORICAL SOCIETY