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WHY CRIME?

Mr. Claud Mullins' book, *Crime and Psychology*, now in its fourth edition, was acclaimed by no less an authority than Dr. Edward Glover, and every reviewer praised it. The second part of Mr. Mullins' survey, *Why Crime?*, deals with the causes of crime, as seen in the light of modern psychology. If there is ignorance about the causes of crime, its treatment cannot be truly scientific. Mr. Mullins relates four principal causes—heredity, unwelcome births, parental discord, and illegitimacy. He gives ample reasons for this selection, and supports his arguments with many illustrative cases that have come before him as magistrate. This book is as interesting and provocative as *Crime and Psychology*.

By the same author

CRIME AND PSYCHOLOGY

WHY CRIME?

Some causes and remedies from
the psychological standpoint

by

CLAUD MULLINS

SECOND EDITION

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TO

E.G.M.

AND TO

A.G.M.

B.K.M.

E.B.M.

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THIS BOOK IS PRODUCED IN COMPLETE CONFORMITY WITH THE AUTHORIZED ECONOMY STANDARDS

PRINTED IN GREAT BRITAIN

PREFACE

SOON after I became a metropolitan magistrate in 1931 I realized that I was incompetent to deal with many of those whom I had to find guilty. I neither knew why they had committed their crime nor what action by me would best deter them from further criminal acts. So I sought the aid of medical men who had made a special study of abnormal conduct. Thus I came into contact with modern psychology. I gradually found that with the help of these doctors and the probation officers of the court I could understand our difficult cases and thus become more effective in dealing with them.

This experience made me feel that I had no right to benefit from the unpaid services of these doctors without doing what was possible to understand their principles and their methods, so that I could see when their services were necessary and could understand the reports that they sent to me. In this way I began reading books about modern psychology and seeking as many contacts with psycho-therapists as I could. I have never stopped doing this.

My book *Crime and Psychology*, published in November, 1943, dealt with the general principles of modern psychology, explained how many of them could be introduced into our system of criminal trial, and gave many accounts of actual cases that had been helped with the aid of psycho-therapists.

But general psychological principles and questions of practical treatment were not everything. My studies proved highly stimulating and interesting, and I found that through them I was also learning much about the reasons why people commit crime; also why so many cases which appeared to need psychological treatment could not be

helped in this way. The incapables proved to be at least as instructive as the successes. They showed that in many cases the injury to the emotional life that had been the basic cause of the criminal conduct had taken place so early in the life of the delinquent that psychological treatment could not eradicate the effects. I found many cases whose condition was such that they could not even begin treatment. One object of this book is to inquire into the reasons why and to give illustrative cases.

Up to the present time those interested in the psychological treatment of delinquents have concentrated upon curative measures, and here grand work has been done. But prevention is notoriously better than cure. Since crime is always with us, I hope that this book will stimulate inquiry into the principal causes of crime. This inquiry should be undertaken by psycho-therapists with experience of criminals and by those amid the general public interested in the causes of crime. Most people are interested in criminals, but the need to-day is to arouse interest in the reasons why criminals exist.

In this book I have gone beyond the causes of crime. Wherever possible I have made suggestions about the most useful efforts which could be made to prevent crime in the future.

I do not pretend that my diagnosis of the main causes of crime is likely to be generally accepted. I have suggested the following: defective heredity, whether physical or psychological; the denial of parental love in early life; discord between parents involving unhappy homes and often separation or divorce; lastly illegitimacy. Both my experience in court and my studies in modern psychology have convinced me that these are the most important causes of criminal conduct. It is a widely accepted principle of

modern psychology that the main lines of character development are fixed by about the age of seven. Each of the above causes of crime, except in some measure the third, is operative before this age is reached. Of course there are many other causes of crime, notably defective education ; material poverty, of which there was comparatively little during the war ; poverty of spiritual power ; the acceptance by parents and children of hedonist values ; the wrong use of leisure, a cause that was operative even during the strenuous years of the war of 1939—a lad of seventeen who in 1943 had broken into a shop explained his conduct to me by saying that he had nothing else to do ; and so on. Each of these contributes many delinquents to the gloomy total. But I doubt whether any of them can be said to be a principal cause of crime. All of these operate mainly after the age of seven has been reached. Their effect, therefore, is less severe, and their consequences can more easily be satisfactorily dealt with. None the less I have touched on most of these factors in the following pages.

I am greatly indebted to Dr. Maurice B. Wright for reading the typescript of this book and for correcting some errors. Dr. Wright's help was particularly valuable because of his great experience, both as practising physician and as medical psycho-therapist. Though Dr. Wright did not say so, I think that he must have disagreed with some of my statements. Be that as it may, I must make clear that his help in no way commits him to agreement with the opinions expressed by me. In its last stages Dr. A. McLeod Fraser kindly read chapter one and made several valuable suggestions.

Several years ago I tried out some of the ideas contained in chapters three and four in the pages of the *Quarterly Review*, the *Law Journal*, and the *Fortnightly Review*.

Except in chapter three, not much remains of what I wrote in these journals, ever hospitable to new legal ideas. My gratitude to their editors is great, both for their hospitality and for the permission, readily granted, to make unrestricted use of my original writings.

There are, I fully agree, too many quotations in this book. The reason is that I am a mere lawyer, untrained in biology and psychology; this being so, I thought it best to seek the recognized authorities and to quote from them, rather than to give my version of what they have taught. My thanks for permission to make quotations are due to the following publishers and authors:

The Macmillan Company, New York: *Delinquents and Criminals, their Making and Unmaking*, by William Healy and Augusta F. Bronner; also *The Glands Regulating Personality*, by Louis Berman

Yale University Press and the Oxford University Press: *New Light on Delinquency and Its Treatment*, by William Healy and Augusta F. Bronner

Little, Brown and Company: *Mental Conflicts and Misconduct*, by William Healy; also *Crime and Justice*, by Sheldon Glueck

Harvard University Press: *One Thousand Juvenile Delinquents*, by Sheldon and Eleanor T. Glueck

The Commonwealth Fund, New York, and the Oxford University Press: *Later Criminal Careers* and *Juvenile Delinquents Grown Up*, by the same authors

Alfred A. Knopf, New York: *Five Hundred Criminal Careers*, by the same authors

Thomas Seltzer, New York: *The Challenge of Childhood*, by Ira S. Wile

George Allen and Unwin Ltd.: *Understanding Human Nature*, by Alfred Adler; also *The Personal Equation*, by Louis Berman

Jonathan Cape Ltd.: *Diagnosis of Man*, by Kenneth Walker

Chapman and Hall Ltd. and W. W. Norton and Company Inc., New York: *Personality in Formation and Action*, by William Healy

Faber and Faber Ltd.: *The Biological Basis of Human Nature*, by H. S. Jennings; also *Social Interest*, by Alfred Adler

The Hogarth Press and the Institute of Psycho-Analysis: *A General Selection from the Works of Sigmund Freud*, by John Rickman.

Kegan Paul, Trench, Trubner and Co., Ltd.: *The Integration of the Personality*, by C. G. Jung; *The Psychology of C. G. Jung*, by Jolan Jacobi; *Emotion and Delinquency*, by L. Grimberg; *Character and the Unconscious*, by J. H. van der Hoop; *Crime, Law and Social Science*, by Jerome Michael and Mortimer J. Adler; and *The Psychology of Men of Genius*, by Ernst Kretschmer

Longmans, Green and Co. Ltd.: *Basic Problems of Behaviour*, by Mandel Sherman

John Murray: *A Biological Introduction to Psychology*, by R. J. S. McDowall; also *The Roots of Evil*, by Sir Edward Cadogan

University of London Press Ltd.: *The Young Delinquent*, by Cyril Burt

Other quotations have been made, but on so small a scale that it seemed unnecessary to trouble the publishers for permission. But my gratitude to the authors and publishers of these books is none the less sincere.

I wish to make it clear that this book is not a hurried production, hastily put together because *Crime and Psychology* has sold well. This book has been several years in the writing, like its predecessor, and so far as authorship is concerned it is, in fact, its twin.

C. M.

July, 1944

CONTENTS

CHAPTER I

THE INHERITANCE

A man of a certain constitution put in a certain environment will be a criminal.

PROFESSOR J. B. S. HALDANE [1]

How can a community hurt a criminal it has created, which it has borne as truly as a mother bears a child ?

MARGARET WILSON [2]

THE above quotations illustrate the muddle in people's minds about the causes of crime. The popular view among those interested in the subject is that criminals are what they are because society has made them so. This view accords with modern political tendencies and is based upon the assumption that if society had provided for all a satisfactory social and economic environment, there would be few criminals. Those holding this view find that it generates soothing feelings of anger against the scheme of things. They would demand, if they were logical, that instead of criminal prosecutions being termed, as they are, Rex *v.* Smith (in the United States of America The People *v.* Smith), they should be termed Smith *v.* Rex (Smith *v.* the People), for they believe that the delinquent, rather than his victims or society, is really the aggrieved party. A good example of such reasoning is the ' Reservation ' that Mr. Dan Griffiths wrote to the report of the Departmental Committee on Persistent Offenders (1932). There was much that was sound in Mr. Griffiths's expressed opinions, but he also wrote that ' three-quarters of all crime is due to

[1] In a Foreword to *Crime as Destiny*, by Dr. Johannes Lange.

[2] In a book with the somewhat fantastic title, *The Crime of Punishment*, p. 309. ' Margaret Wilson's ' opinions may have been the result of her many years spent by prison walls; her husband was a prison governor.

sheer poverty, poverty of the means of a decent, civilized life, or, what is worse, destitution of the elementary requirements of physical existence '.

This popular theme that crime is caused by poverty, while it undoubtedly contains an element of truth, could not be upheld during the grim years of the war of 1939. Practical work then in dealing with delinquents provided constant evidence in support of the hackneyed dictum of Carlyle that ' adversity is sometimes hard upon a man, but for one man who can stand prosperity there are a hundred that will stand adversity '. Soon after the war began wages for those who were not in the fighting services increased greatly, and in plenty of cases became high in comparison with pre-war times ; yet stealing continued, even by many of those who were by comparison well off. Much of this stealing was of luxury articles. In November 1941, several chairmen of juvenile courts wrote a letter to *The Times* protesting that the high wages earned by youths, sometimes higher than the wages of their fathers, were direct causes of crime. Magistrates in adult courts also had much experience of the effect of high wages on those with insufficient ability to make good use of their money and of what leisure they had.

Superficial views about the causes of crime, such as placing crime at the door of poverty, are not often held by those who have much experience in the handling of delinquents. It is always good that those without much, or even any, experience of our criminal courts should interest themselves in delinquency, but much hard study, both in court and outside, is essential to the formation of sound opinions about crime, especially about the causes of crime. Uninstructed generalizations are easy, particularly when strong political opinions influence their making. But there are many authorities whose work has to be studied before worth-while generalizations can be made.

Of these authorities on the causes of crime one of the greatest was Dr. Charles Goring, a medical officer in the English prison service. About his time a great Italian,

Cesare Lombroso, had propounded the theory that there is an absolute difference in physical build between criminals and others. (In later life Lombroso modified this opinion.) This theory was a challenge to Goring. With the approval of the Prison Commissioners, a large-scale investigation of some 3,000 inmates of English prisons was made in the years 1902 to 1908. Goring examined more than half of these prisoners and later tabulated all the material yielded by the investigation. His conclusion that ' there is no such thing as a physical criminal type ', guarded though it was by other statements, has ever since given immense encouragement to environmentalists. But just as Lombroso never received adequate credit for the real merit of his achievements, so Goring's work has been remembered mainly because he refuted the early opinion of Lombroso. But what did Goring discover? His negative conclusions were but a small part of his work. An abridged edition of his report was published in 1919,[1] and a reading of this shows that Goring clearly realized the importance of the inheritance. Professor Karl Pearson, who had collaborated in the investigation, wrote an introduction to this edition, wherein he stated that it came as a surprise to Goring that the results of the investigation forced him to the conclusion that there was ' found relatively small influence of environment '. Goring was quite candid: ' We may dogmatically assert that recidivism, in its most pronounced form, is certainly not a product of any of the social and economic inequalities we have been examining.' [2] Further he wrote:

> Relatively to its origin in the constitution of the malefactor, and especially in his mentally defective constitution, crime in this country is only to a trifling extent (if to any) the product of social inequality, of adverse environment, or of other manifestations of what may be comprehensively termed ' the force of circumstances '.[3]

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[1] Published under the title *The English Convict*, by H.M. Stationery Office.

[2] p. 211.

[3] pp. 211–12.

Goring summed up thus: 'Our correlations tell us that, despite of education, heritable constitutional conditions prevail in the making of criminals.'[1]

Among more recent authorities is Professor Cyril Burt of London University, who was formerly psychologist to the education department of the London County Council, a post offering vast opportunities for experience of delinquent and other children. For the purposes of his book, *The Young Delinquent*, Professor Burt investigated 200 delinquent children and 400 non-delinquents of similar ages. This experience convinced Professor Burt that 'if our inquiry is to begin at the very beginning, it must go back to influences that were operative long before the child himself was born. We must review not only his birth and early life, but his ancestry also'.[2] This is surely common sense. Yet many of those interested in criminals are reluctant to accept this necessity, or to recognize that human inheritance, whether physical or psychological, bears any relation to problems of crime.

In individual cases any research into ancestry is difficult. In court we usually have to be content with inquiring into the parentage of our younger delinquents. But in the study of crime research has to be made into the ancestry of criminals; otherwise statements about the causes of criminal conduct are mere guesswork. If ancestry is ignored, we are back in the times before the discovery of the continuity of the germ plasm; till 1883 people could reasonably believe that inheritance had no importance, since science taught that the cells from the parents, which by uniting formed a new life, were used up in the process. Weismann put an end to such beliefs, but some superficial students of criminology do not seem to have realized the consequences.

For knowledge about the inheritance it is best first to inquire from a biologist. Professor H. S. Jennings of

[1] *The English Convict*, p. 274. It is worthy of note that Havelock Ellis was convinced by his own investigations that sexual inversion 'may be inborn'; *Psychology of Sex*, p. 198.

[2] Third edition, p. 29.

Johns Hopkins University, a leading light in this field, wrote a most useful book, *The Biological Basis of Human Nature*. Not only is this book easy to read for laymen in the science, but it inspires confidence because the author obviously set out to present the facts fairly and without any bias against the environmentalists.

Observation and experiment [wrote Professor Jennings] have shown that the original cell contains a great number of distinct and separable substances existing as minute particles. The development of an individual is brought about by the interaction of these thousand substances—their interaction with each other, with other parts of the cell, and with material taken from outside. . . . These many diverse substances present at the beginning of development are called the genes.

What is the importance of these genes ? Again we should turn to Professor Jennings :

It is known that different individuals start with diverse sets of these substances and that the way a given individual develops, what he becomes, what characteristics he gets, what peculiarities he shows, depend, other things being equal, on what set of these substances he starts with. . . . Some combinations of them give imperfect individuals, feeble-minded, deformed, monstrous. Others give normal individuals, others superior individuals. There are combinations giving every intermediate type, some yielding slightly imperfect individuals, lazy, stupid or silly ; and there are combinations that produce genius.[1]

This may appear a somewhat drastic start for our inquiry, for if we accept this, and we must, a new-born child is in a sense already an aged being. But this is precisely what every new-born child is. He is ' heir of all the ages ' both in body and mind.

No inquiry into the problem of heredity in its relation to criminal conduct should ignore the remarkable opinions expressed by Dr. Louis Berman of New York in two thought-provoking books, *The Glands Regulating Personality* and *The Personal Equation*, books which have to be used with care

[1] Both quotations come from pp. 1–3.

because they give the impression, unlike the book of Professor Jennings, that their author wished to prove a case and set out to belittle both the environmental and the psychological approaches to abnormal conduct. Dr. Berman's principal theme was that the inherited endocrine glands, also called the ductless glands or the glands of internal secretion, are all-important in the human inheritance. Thus:

> A man resembles his parents because he gets from them the original chemical materials, placed differently in time and space amid varying conditions, which commence to react and interact and so immediately to acquire a biography, a history.[1]

Knowledge of the influence and importance of these endocrine glands has increased in recent years, but unfortunately it is still true that ' there is as yet little understanding of the factors needed for the normal functioning of the various glands and for their normal integration '.[2] According to Dr. Berman these glands are ' the fundamentals in the personality ',[3] and I believe that this will one day be generally recognized among physicians. I have personal experience to justify this belief. For six years I struggled with ill-health and had several breakdowns, and only when these glands received the attention of an expert did hope return. In future years intensive research into the working of these glands will be required, for even Dr. Berman with all his confidence admitted that ' our knowledge of the glands of internal secretion as an interlocking directorate presiding over all the functions of the organism is still exceedingly meager '.[4] Even present knowledge about these glands may, as we shall see, have its use in connexion with delinquency.

The inheritance is not, of course, limited to physical traits. Our minds are also endowed at conception with a psychological inheritance. On the whole medical psychologists have tended in their work to belittle the importance of

[1] *The Personal Equation*, p. 31.
[2] *Medicine and Mankind*, by Dr. Arnold Sorsby, p. 144.
[3] *The Personal Equation*, p. 43.
[4] *The Glands Regulating Personality*, p. 145.

heredity, but an increasing number among them are studying psychological inheritance. A pioneer among these was Professor Ernst Kretschmer, who in pre-Nazi days was a famous professor of psychiatry and neurology in German universities. In his book *The Psychology of Men of Genius* he wrote: 'That inherited dispositions, and not environmental factors, are the essential causes of highly talented performances can be regarded as proven, according to the present position of research.' [1] Also: 'Genius is born as such, and it must perfect itself according to the laws which caused it to appear.' [2] The reverse side of the picture was also made clear by Professor Kretschmer. Referring to a case of schizophrenia, by now a well-known psychological disorder, often called 'split mind', he wrote that 'a rich schizoid basis spreads pertinaciously down both branches of the family like a creeping evil'.[3]

A psycho-therapist who was well known in New York, Dr. Ira Wile of the Mount Sinai hospital, showed in his book *The Challenge of Childhood* his full conviction on the subject of psychological inheritance. Heredity, he wrote, 'transmits widely variant mental potentials, which determine the limits within which intellectual development is possible. . . . The created mind has its ultimate future powers at birth as truly as the germinal cells have predetermined the dominant features of the physiognomy.' [4]

Dr. C. G. Jung, the famous psycho-therapist of Zurich, went considerably further. He believed profoundly in what he called the 'collective unconscious', which he described as 'the mighty spiritual inheritance of human development, reborn in every individual'.[5] After birth a child 'must struggle out of infancy, which still is wholly imprisoned in the collective unconscious, to the differentiation and demarcation of his ego'. At the end of life 'the

[1] p. 56. [2] p. 47.
[3] *Physique and Character*, p. 122. This is a difficult book for students to read. [4] p. 72.
[5] Taken from *The Psychology of C. G. Jung*, by Dr. Jolan Jacobi, p. 33.

ageing individual nears ever more the state of dissolution in the collective psyche, out of which as a child he once with great effort emerged '.[1] This almost Hindu belief will not be generally accepted, but it should not be ignored in any study of psychological inheritance.

It is quite natural that many, probably most, practising psycho-therapists do not attribute the characteristics of their patients to hereditary factors. The existing mental state and the existing environment offer such wide fields for attention that more speculative questions about inheritance are apt to become side-tracked. By treating their patients from the psychological angle psycho-therapists can often secure improvements, even if limiting hereditary factors remain. Besides, it has to be remembered that some conditions which have the appearance of being hereditary may in fact be caused by what psychologists term identification. This is specially true in regard to some delinquents. Thus where a father has been a thief, his son may thieve from an unconscious desire to be like him. The son may feel that he must not be better than his father.

One school of psychological thought has taken an extreme view about heredity, namely the literal followers of Dr. Alfred Adler, founder of the school known as Individual Psychology. Adler boldly declared that ' the concept that character and personality are inherited from one's parents is universally harmful ',[2] a statement that looks like a triumph of theory over fact. Little wonder that Adler's English biographer, Phyllis Bottome, could go so far as to report that ' Adler inherited, or as he would himself have said, " chose " his father's mental and spiritual qualities '.[3] The motto of Adler and of all those who take this line might well be the words of Shakespeare: ' For use almost can change the stamp of nature.' [4]

[1] Taken from *The Psychology of C. G. Jung*, by Dr. Jolan Jacobi, pp. 142–3.
[2] *Understanding Human Nature*, p. 23.
[3] *Alfred Adler, Apostle of Freedom*, p. 28.
[4] *Hamlet*, III. iv.

Once the fact of heredity is accepted, a wide field of inquiry is opened up. Professor Jennings had no doubt that a ' diversity of genes ' can decide whether an individual learns rapidly or slowly, whether he ' is readily swayed by every surrounding influence ', whether he ' makes satisfaction of his own immediate personal wants the mainspring of his action ' [1] and so on. This shows that the inheritance can be closely linked with problems of crime, though it does not mean that psychological causes have not also been at work. Qualities such as these are the very ones that prompt the commission of crime. Every magistrate has frequent experience of delinquents whose appearance in court has been due to their inability to resist the influence of their less respectable but domineering friends; also of those in open-counter stores whose ' mainspring ' has driven them to the ' satisfaction of their own immediate wants ' without the formality of payment. All such delinquents and countless others are seen in a new light when the possibility is considered that their genes may have been in part the cause of their conduct. Women who have stolen from shops are wearisome people for magistrates, but they almost become interesting when one reflects on the possible origins of their conduct.

No one would maintain that the inheritance, whether biological or psychological, can be directly a cause of crime. Hereditary influence, which of course can be for good or for evil, must be indirect. It affects, for instance, the power to control the instincts and the quality of the intelligence; it can produce an easily controlled or an uncontrollable temper; it can result in the under-development or the over-development of the sexual instincts, the latter a frequent cause of criminal conduct. It happens sometimes in court that even before I receive a medical report about a man or youth charged with a sexual assault I can see that the defendant's primitive sexual instincts have been developed far beyond his power to control them. This failure of control may, of course, have either a physical or a psychological origin.

[1] Op. cit., pp. 162–4.

Many psychological factors can account for the damming up of sexual energy, and this can be followed by an explosion in the form of criminal sexual conduct. Such cases are specially difficult to deal with, and the harm that they have done to their victims, sometimes young children, is often great.

The influences in a child or adult that originated in the inheritance can seldom be completely separated from the influences emanating from the environment, especially as ordinarily children spend their most formative years in close company with their parents. Hereditary and environmental traits are bound to become somewhat mixed up. Men of similar heredity can develop quite differently because of their environment. One man with a bad heredity, for instance, may lead a blameless life from the police standpoint, whereas another with no worse heredity will be a criminal. In his impartial way Professor Jennings stated that 'the genes do not act independently of the environment'. Yet he is forced by the facts to maintain that 'if the individual starts with thoroughly poor genes, the method of treatment, the environment, can do little'.[1] Thus only in extreme cases does heredity make environmental measures fruitless. Such cases exist and more will have to be written about them later. But the main danger of a defective heredity is that when combined with a defective environment, as so often happens, hopeless cases can be the result. The dangers described in the other chapters of this book are real even where the hereditary endowment is not abnormal. But when children born from bad stock live with parents who resented their coming, with parents who quarrel, separate, or divorce, or become flotsam and jetsam by reason of being born illegitimate, then they can easily become hopeless criminals. In such cases environment intensifies the bad in the heredity; then any inquiry whether heredity or environment is the prime cause becomes as useless as inquiry into the precedence of the hen and the egg.

Another point must be made clear. Nothing in this

[1] Op. cit., pp. 228 and 139.

chapter is intended to give the impression that genetic quality is a matter of economic or social status. The eugenic best are found at all levels. Equality is not to be expected of Nature. Man's treatment of man should have as its purpose the discovery of the true inequality by allowing each to make the best of his heredity through good environment. It may be that the main difference between those of bad heredity coming into a sheltered life and those of like nature coming into a rougher environment is that the sheltered are likely to show their failures in ill-health and the others may fail, if at all, by committing crime. Whatever be the truth of this theory, it is necessary to emphasize that those who teach the importance of the inheritance will in most cases agree with the environmentalists that all reasonable steps should be taken to help those who are below the average; they are likely also to admit that bad environment can produce much the same result as bad heredity. Indeed Professor Jennings expressly said: 'Bad living conditions often produce the same kind of results that bad genes do.'[1] I think, however, that he would agree that criminal conduct due primarily to defective living conditions is more easily dealt with than when it is mainly the consequence of the inheritance.

Summing up what has so far been written, we can all agree that crime is sometimes 'a symptom of the imperfection of human society', but all should admit that it may be 'a symptom of the imperfections of the human being as a social agent'.[2]

When contemplating delinquents whose conduct may be partly or wholly due to their inheritance we can console ourselves with the obvious fact that people grow up and that in doing so they often throw off the effects of their inherited weaknesses. Criminals can do this as well as others. In that somewhat heavy language which those associated with modern psychology tend to use, 'the achieve-

[1] Op. cit., p. 250.

[2] *Crime, Law and Social Science*, by Professor J. Michael and M. J. Adler, p. 241.

ment of adequate maturation, regardless of the chronological age at which it occurs, is the significant factor in the behaviour changes of criminals'.[1] My simpler wording above has much the same meaning. When abnormalities develop in this process of growing up, they may fall within the sphere of either physician or psycho-therapist or both. So sometimes both physical and psychological treatments have to be considered when handling difficult delinquents.

The subject of the physical treatment of delinquents would deserve a book of its own. Much work has been quietly going on to help prevent the repetition of criminal conduct through the removal of physical states, whether inherited or not, which appear to have been in part conducive to such conduct. Most experienced judges and magistrates must have seen cases where this has been done.

If it be true that 'the life of every individual, normal or abnormal, his physical appearance and his psychic traits, are dominated largely by his internal secretions',[2] then physicians who understand the endocrine glands should have great usefulness when efforts are being made to put criminals back on to the right road. Even hypodermic syringes and glandular extracts may become valuable adjuncts to existing methods of handling delinquents. This is no mere phantom. A modern London surgeon laid stress on the importance of chemical factors in the human constitution. In *Diagnosis of Man* Mr. Kenneth Walker wrote graphically that 'about three and a half grains of iodine stand between us and idiocy'[3]: iodine is the main component of the secretion formed by the thyroid gland, one of the most important of the endocrine group. Thyroid given to a cretinous[4] child will bring him far on the road to

[1] Professor Sheldon and Eleanor Glueck in *Juvenile Delinquents Grown Up*, p. 94.

[2] Dr. L. Berman, *The Glands Regulating Personality*, p. 22.

[3] p. 43.

[4] Cretinism is 'a condition of endemic or inherited idiocy, accompanied by physical degeneracy and deformity'—(Webster).

physical normality,[1] though a cretin so treated could still suffer from psychological illness. Dr. Berman made the further interesting statement that ' crimes of passion may well be traced in no small part to disturbances of the thyroid. . . . . Similarly crimes of violence may be ascribed to a profound break in the adrenal equilibrium '.[2] If this be so, it would seem likely that some relief would come from glandular injections. But in such cases both mind and body would probably need attention. Crimes of passion and of violence denote intense feelings of aggression. Such a state comes within the sphere of the psycho-therapist.

It has to be remembered that people generally are apt to regard a weakness as being caused by a physical condition, although in fact the cause may be psychological, for public opinion is still unsound about defects of mind, which are widely regarded as steps on the road to insanity, which people dread. It is more ' respectable ' to have most physical ailments than even a neurosis.

It is common knowledge that the psychological condition affects the cure of physical conditions. A broken limb will heal quicker if the mind of the patient is at peace and free from worries. That frequent and painful complaint gastric ulcers is another example. If there is a genuine wish to be well and not to allow the complaint to interfere with the daily round, the chances that the complaint will quickly yield to treatment are increased. It seems to follow that psycho-therapy can have beneficial effects in many cases of physical illnesses. When the unofficial Feversham Committee on the Voluntary Health Services sought a definition of psycho-therapy, they consulted the Mental Health Committee of the British Medical Association. They were given the following : ' Treatment, whether of mental or physical illness, by methods of mental analysis, suggestion, persuasion, or re-education directed to the rectification of abnormal states deemed to be responsible for the illness

[1] See *The Glands Regulating Personality*, p. 56 : *The Personal Equation*, p. 55.

[2] *The Glands Regulating Personality*, p. 312.

under treatment.'[1] The inclusion of 'physical illness' in this definition is convincing. In fact psycho-therapists of experience can tell of many physical conditions that have been successfully relieved by them. Adler went so far as to put forward the stimulating speculation that 'the functions of the endocrine glands are influenced by the external world' and that 'in correspondence with the individual's style of life they respond to psychical impressions according to the strength with which they are subjectively experienced'.[2] Few psycho-therapists would doubt this. Adler claimed that 'there is no question but that all cases of exophthalmic goitre'—that distressing condition of bulging eyes—'develop as the result of psychical shocks'.[3] What is caused by psychical shocks can presumably be successfully treated by psycho-therapy. I have been told of such cases. In fact psycho-therapy is being used more and more to alleviate the effects of apparently physical, and possibly inherited, disorders. Before the 1914 war the Tavistock Clinic (The Institute of Medical Psychology) organized much research into the possibilities of psychological treatment of ailments hitherto regarded as purely physical. The allergic ailments are specially good spheres for such investigation. I know of a case where worried parents took their child of five to a chest specialist on account of asthma which had followed eczema. They expected that the child would be given the conventional treatment by injections. To their surprise they were advised against this and recommended to take the child to a medical psychologist experienced in the treatment of children. The play-therapy given by the therapist succeeded in bringing about a big improvement in the child.

Questions of psychological cures for apparently physical illnesses were usefully discussed by Dr. R. J. S. McDowall

[1] Report, p. 14. This report was issued a few months before the outbreak of war in 1939. It therefore did not receive the widespread attention that it deserved.

[2] *Social Interest*, Adler's last book, p. 113.

[3] Ibid., p. 181.

in his book *A Biological Introduction to Psychology*. There he wrote :

> The chronic effects of fear and anxiety, commonly known as worry, are well known. A man may 'worry his guts out', which is a vulgar way of saying that his whole alimentary canal may become upset. Actually we know that worry is a most potent cause of dyspepsia and ulcer. It is well recognized, too, that anxiety is an important factor in circulatory disease, notably high blood pressure, and it is believed that there may be reduced resistance of the body generally to illness.[1]

Worry, it is well to remember, can indirectly lead to crime. If courts and probation officers can persuade delinquents to change their mental attitude towards their physical troubles, their health improves, their worries lessen and their temptations to crime may disappear through an early return to normal life. But, as we shall see, efforts to achieve this are likely to fail in many cases.

These interesting questions are of real importance in connexion with a highly difficult branch of behaviour that the law proscribes as criminal, namely homo-sexuality. It has only been with the coming of modern psychology that there has been any serious attempt to understand the mentality of homo-sexuals, or the causes of their conduct. But still the attitude of the law is much the same as it was several centuries ago, when even lawyers could not bring themselves to mention the subject; the words 'the horrible offence not to be mentioned among Christians' were the technical but peculiar description. Homo-sexuality used to be an ecclesiastical offence; it was *lèse-majesté* against God, punishable by death. This was laid down in Leviticus xx. 13 and survived in English law, with a temporary dis-use, till 1828. The law in most Continental countries, unlike even the English law of to-day, does not concern itself with homo-sexual conduct in private between consenting adults. Therein is much wisdom. The blackmailer is

[1] pp. 124–5. A new and extended edition of this book has been published under the title *Sane Psychology*. In the newer book these words are on p. 179.

sometimes the one to benefit from the English attempt to penalize this. I have sent men of this kind for trial.

It cannot be denied that achievements of real value to the community, especially in various forms of art, have come from those addicted to homo-sexual conduct. None the less penal laws dealing with some forms of homo-sexual conduct are justified, though imprisonment should be avoided wherever possible. It is a theory of psycho-analysis that only those who are potentially homo-sexuals are likely to fall victim to seducers, but another theory in psycho-analysis is that most people have these tendencies to some extent. Dr. Jung declared that 'either sex is inhabited by the opposite sex to a certain degree, for, biologically speaking, it is only the greater number of masculine genes that tips the scale in favour of the masculine sex'.[1] The reverse applies to women.

Homo-sexual conduct may be the direct result of heredity. An example was once brought to my notice in an unsolicited letter from a stranger who read about a case before me in the press. The writer was obviously a man of good education and achievement. He had commanded a large income. Suddenly had come arrest and conviction. The letter continued: 'I was born inverted . . . To attempt cure is in my opinion to attempt perversion of an inborn instinct . . . Will a psychologist give me, for example, a masculine pair of hands, or cause a friend of mine to grow a beard?' There are many such men. That the writer was not morally to blame was indicated by the fact that the judge had bound him over. In such cases as these psycho-therapists are often ready to admit that they can do nothing, for there must be a complete absence of any wish to be cured, a necessary preliminary for treatment. But in plenty of less serious cases, especially among young men, successful psychological treatment is possible. There are examples in *Crime and Psychology*.

This wish to be well and to make the best of illness is crucial. In the big majority of people it is their personal

[1] *The Integration of the Personality*, p. 77.

psychological attitude to their troubles that is the immediate factor. One man who is seriously ill, whether the illness be inherited or not, will be cheerful and make the best of things, carrying on his work to the limit of his strength. Another man in the same physical condition will quickly give up his work and become a nuisance to all around him. I had an early lesson in this contrast in the life of my father, Edwin Roscoe Mullins, a well-known sculptor of his day. When he died at the age of 58 in 1907, *The Times* truly wrote of him as ' a man of a very amiable disposition who will be greatly missed by many friends.' [1] Yet during his last years my father had an unending struggle for what we all get without thinking—breath. He was always the centre of cheerfulness, never complained and continued at his work to quite near the end. My father knew nothing about psychological principles, but in his life he was an admirable example of their working. What we call the St. Dunstan's spirit is not restricted to the blind. There is vast need of it to-day.

Unfortunately in most branches of their work magistrates are at short intervals brought face to face with those who have, from the psychological point of view, a bad outlook in regard to themselves. The independence which good health and employment bring seems to have no attractions for them. In his report on ' Social Insurance and Allied Services ' Sir William Beveridge wrote the following:

> Most men who have once gained the habit of work would rather work—in ways to which they are used—than be idle, and all men would rather be well than ill. But getting work or getting well may involve a change of habits, doing something that is unfamiliar or leaving one's friends or making a painful effort of some other kind.[2]

Magistrates see many who have never ' gained the habit of work ', not always because no work was available; some such were seen during the war of 1939 when work of almost every kind was available and compulsion to work existed. But apart from this, it is difficult to see justification for the

[1] *The Times*, 14 January, 1907. [2] Report, pp. 57–8.

contrast that ' most men ' want to work and ' all men ' want to be in good health. It is true that ' most men ' want to be well. We are not a decadent nation. But it is not true in my experience that ' all men ' want to be well. Both practical work in court and general psychological principles have convinced me that large numbers of men and women, and of youths of both sexes, wish to escape from the responsibilities of life through either ill-health or the receipt of unemployment benefit. In many such cases these wishes are unconscious and come from their general psychological make-up, probably from their inheritance. All schemes for free medical attention need to be examined from this point of view, for medical attention that ignores unconscious desires can deter patients from recovery. Later on the same page of the report Sir William Beveridge referred to ' the relatively few persons who may be suspected of malingering '. But malingering implies a conscious wish; the difficulty with most of those who do not seek independence through work or well-being is that they are not aware of their motives. Many of those seen in magistrates courts cannot change their habits, do things that are unfamiliar, leave their friends, or make painful efforts of any kind. But they do not know why and, therefore, are very difficult people.

In all social and economic levels people of this kind are to be found. Sometimes wise handling will bring them to the point of ignoring all thoughts of ill-health so that they want employment. But where the inheritance has been really bad, such people will continue to be ill and work-shy. Professor Jennings went so far as to write:

> Dull people are those little affected by environment; in deciding their fate genes are more powerful than environment. Since it is the very quality of their gene combination that it does not adjust well to environmental differences, little can be done to help the stupid. ' Against stupidity the Gods themselves do strive in vain,' says Carlyle.[1]

[1] Op. cit., p. 175. Carlyle may have written this, but there is an earlier source, namely Schiller's play *Die Jungfrau von Orleans*, III. vi.

But the dull and stupid are sometimes ineffective only because the work expected of them is unsuitable. When their lives are on an even keel and excessive demands are not made of them, when in other words such people can live in emotional security, some of them can perform useful functions. But even ordinary happenings in their lives can unbalance them. This is where work in magistrates courts is so often depressing. With failures of this kind both court and probation officers become painfully conscious that there is no quality in them to which appeal can be made; no efforts, however kind, seem to arouse any response. Magistrates see many such, either accused of crime, or on account of their matrimonial failures, or because of their illegitimate children. Whatever the object of their visit to court, be it voluntary or compulsory, tales of conduct are recounted which reveal varying degrees of irresponsibility. Magistrates find it difficult to explain to them the simplest propositions. Sometimes such people cannot read. In the later years of the war many people in their 'teens or early twenties were found in my court to be illiterate; 'I'm no scholar' was their usual way of describing this deficiency. I agree that illiteracy is not necessarily a sign of mental deficiency or even of mental dullness. No one who has lived in India could believe that it is. But unfortunately most of the illiterates seen in magistrates courts are of very low grade. They usually make no response when the suggestion is made that it is not too late to remedy the deficiency. When I said this to one young man of 20, he replied that he saw no reason why he should read and was doing very well as he was. He was a labourer earning £2 a week and had no ambitions.

It may be said, and often with truth, that the education of people like this was defective, but many of these cases were found to have attended special schools for the mentally retarded. Such people seldom have any contacts with churches. They are outside the helpful influence of trade unions. They seem content to escape from the struggles and responsibilities of life through unemployment benefit,

health benefit or public assistance. They proudly present medical certificates that they are unable to work. Sometimes these certificates refer to ailments which would not be disabling if there was any genuine wish to be independent through work. There have been cases when the ailment specified was one against which to my knowledge one or other of the members of the court staff was bravely struggling while continuing at work. Sometimes I have been driven to the conclusion that the panel doctors of these defendants have shown excessive sympathy to them in giving certificates. Now that knowledge of the elements of modern psychology has spread abroad among doctors, people of this type sometimes flourish certificates of inability to work bearing the impressive name 'anxiety neurosis', a term often used loosely and inaccurately. Such a condition should seldom be crippling, even in times of air raids.[1]

Among criminals of this kind one has often to admit that they were not wisely dealt with on their first appearance in a court for crime, but at least equally often they are found to have gone through all modern corrective procedure without benefit. One cannot resist the thought that their genes were such that, in the words of Oscar Wilde, they could 'resist everything but temptation'. When magistrates ask for reports from the medical officer of the remand prison, such reports usually read: 'This man [or woman] is of subnormal intelligence, but is not certifiable as mentally deficient.' Such reports are the bane of magisterial life; they are so frequent that one is tempted to wonder why the medical officers do not use a rubber stamp bearing these words. Social investigators are apt to classify people of this kind under the name 'social problem group', but 'group' seems a strange name for them. Their numbers may be small in proportion to the general population, but in relation to the criminal population they are serious.

[1] On pp. 119–20 of *Crime and Psychology* a remarkable case of this kind is described. The anxiety neurosis faded when in prison this man was compelled to work.

There is no gainsaying that the big improvement in the social services made during this century has been of enormous value. But every advantage is achieved at a price. So far as our courts are concerned the price is seen in the existence of those who have no taste for independence or work. All plans for ' social security ' must be brought face to face with this problem. Many men and women from seventeen upwards will readily live on the lowest standards. Training makes no appeal to them and compulsory training is most difficult to enforce upon them. The war gave me much experience of this.

It is important to remember that, as we have seen, modern psychologists are agreed that by the time children reach the age of seven or eight their general life-style is fixed for life. Thus it is probably true that even some children and young people are hopeless cases by reason of defective heredity and bad environment, though a court would hesitate to declare any particular individuals of such ages to be so. But there can be no doubt that some delinquents of the ages of seventeen upwards are definitely beyond repair. Drs. Norwood East and W. H. de B. Hubert made an official investigation at Wormwood Scrubs prison before the war into the possibilities of giving psycho-therapy to young prisoners who had a bad record of previous crimes. Their report [1] was published in March, 1939. In the course of this investigation these eminent doctors found several of their cases to be hopeless. Thus Case IX in the report ' was not considered to be a moral defective. His anti-social conduct was persistent and was not attributable to environmental stress. It appeared to be due to constitutional anomaly.' These are grim words about a youth then 18½ years old. A young man of 20⅔ in a Borstal institution was ' quite unsuitable for ordinary Borstal detention and required special supervision and training '. Epilepsy ' was an important factor ' in his case ; his mother was an epileptic and he had a sister in a mental hospital (Case VI).

[1] *The Psychological Treatment of Crime* (1939), published by H.M. Stationery Office.

Another youth of 18 was found to be ' a case of constitutional psychic inferiority ' and to be ' unsuitable for psychotherapy ' (Case XIX).

I cannot be so definite about hereditary causes in my own cases ; only a specially trained doctor is qualified to do this. But in some cases there is definite evidence pointing to that conclusion. I would cite two, well concealed behind purely imaginary initials.

T. R. had been sent by the Ministry of Labour to a training centre. He had travelled there at public expense, did not like the look of things and returned home. He then appeared before me on account of a minor theft. He was 23 and living unmarried with a young woman. After inquiry by the probation officer, I placed T. R. on probation for a year. He agreed to this and thus became under a legal obligation to ' lead an honest and industrious life '. This is his work record, as later reported to me by the much-worried probation officer : His first job after the appearance in court lasted eight days, but that was not stated to have been to his discredit. The employment exchange directed him to another, but he refused it as he felt that the wages offered were insufficient. He was formally told that he must accept the work, did so, but was discharged for misconduct after seven days. Much the same happened at the next job. Later he went to the exchange asking to be permitted to work at another firm where a friend of his was working. This was refused and T. R. was told to return to his last job. He did so, but the work was finished soon after. He was directed elsewhere, worked 67 out of a possible 113 hours and complained that the work was too hard. The next job lasted about three weeks, but ended because T. R. did not like working occasionally in the rain ; he was discharged for bad time-keeping. About this time he told the probation officer : ' If I cannot get the sort of work I want to do, I'm just not going to work.' From the next job he was dismissed avowedly for talking to a fellow-worker about the pay. During this time he appeared voluntarily at court on two occasions because a friend of his was charged and con-

victed of an offence, the friend with whom he had wanted to work. On both these occasions the probation officer saw him, and saw in his possession the green card which employment exchanges give to applicants for work when sending them to a job. These cards were several days old and were unmarked; this showed that T. R. had on neither occasion even been to the firm in question. All this happened, it is important to note, during the war, when the authorities had compulsory powers to direct people to work of any kind and at any place.

Is it too easy to account for such a man by believing that his genes were responsible for what he was? He had been marked Grade 4 by the medical board before whom he appeared in connexion with military service and thus not called up. Personally I doubt if T. R. was to blame for his work-shyness. I doubt whether, being what he was, he could have been a steady worker.

Another Grade 4 case is significant. He was aged 20 on his latest appearance for crime before me. This was P. L.'s criminal record: At 16 he had been 'dismissed under the Probation Act' in a juvenile court for shop-breaking. That meant that he was neither punished nor supervised. This may have been an unwise decision of the court, but I cannot criticize it as I am ignorant of the circumstances. Sixteen months later he was found guilty by me for possessing army stores. The probation officer felt that he would not respond to supervision by him, so I fined him £5. This was paid, but a fortnight later P. L. was sent to prison for three months by another court for stealing from his employer. A month after his discharge I found him guilty of stealing. I obtained reports on P. L. from both governor and medical officer of the remand prison. They and the probation officer agreed with my proposal that P. L. should be sent to Borstal. Magistrates do not send delinquents to Borstal; they send the cases to Quarter Sessions with a recommendation. Sessions sent P. L. to Borstal for three years. As happens in many cases, he was discharged after two years' residence. The month following his discharge he was sent to prison for

21 days for stealing a cycle, a most serious offence in the days when people could not buy bicycles. His Borstal licence was revoked and he was thus liable to complete his three years' residence in a Borstal institution and some extra time as well. Six months after his second release his own parents prosecuted him before me for theft. He was then earning £4 5*s.* a week.

In trying to account for such a life one cannot help being impressed by the fact that other members of this family had also given some trouble to the police. Genes? What other solution is possible?

How we struggle to put right even the most depressing cases is shown by the case of P. B. (Throughout the book the initials used are not those of the offenders.) This man was 27 at the time of his latest escapade. His early years could not be investigated since he knew next to nothing about them and the authorities had failed to find out more than the probability that he had been illegitimate. The offence that brought P. B. before me was breaking open a gas meter and stealing the contents amounting to five shillings odd. This was P. B.'s record:

Age 14 Probation at a juvenile court for two years on a charge of stealing. Not long after the making of this order, there was further crime and P. B. was sent to an approved school. It was ascertained that at the time P. B. was living with an elderly relation who knew almost nothing about him, save that his mother never had any help from the boy's father and had never kept touch with the boy.

Age 19 Probation at an adult magistrates court for one year for stealing £2. At that time the elderly relation had disappeared and P. B. was living in lodgings.

Age 20 A breach of the terms of the probation order in that P. B. was arrested for begging. The court allowed probation to continue. The probation officer at this court sent a bad report to my probation officer about his experiences with P. B.

Age 20 Nine months ' hard labour ' at Quarter Sessions for shop-breaking and the possession of burglar's tools. It seemed a pity that Borstal was not tried, but I could not feel convinced that a Borstal sentence would have changed P. B.

Age 22 Two months ' hard labour ' at a magistrates court for possessing counterfeit coin.

Age 23 Four months imprisonment at a magistrates court for stealing from a Poor Law institution where P. B. had been living.

Age 25 Four months imprisonment at a magistrates court for stealing from his employer.

Age 26 Five weeks imprisonment for stealing.

When this ' persistent offender ' of 27 appeared before me, he had just deserted from the army, having enlisted under a false name and having given false answers to the recruiting officer's questions. This was pre-war. P. B. pleaded guilty before me, and after a week's remand the probation officer reported that P. B. had been extremely reticent and had shown no response to the approaches made, being apparently quite certain that another term of imprisonment lay ahead. Both probation officer and I regarded him as a challenge, especially as we could obtain no information about his life during the early years ; we wanted to help since the young man had been pushed about from pillar to post without any one having lasting charge of him. He could give us no details about any one who could be approached for information. The probation officer agreed with me that immediate probation was out of the question, so I remanded him for two months on bail, told him to keep in touch with the probation officer and encouraged him to believe that if he made an effort to establish himself, we would help him to settle down.

At first the probation officer reported a distinct improvement. ' It was some little time,' he said, ' before he could pull himself together. He is now slowly opening up.' We

were both convinced that P. B. had never in his life had a real friend to whom he could open up. During the remand P. B. had been living in a hostel, arranged by the probation officer, going daily to work as a baker, a trade whose elements P. B. had learned in his approved school, where he had lived from 14 to 17, earning there no good report. On his third appearance before me P. B. was earning £2 15*s*. a week; his work had been found for him by the London Police Court Mission, and his employer spoke fairly well of him. So I did all that I could to encourage P. B. and made a probation order. When about two months later I asked for a report about P. B., the probation officer was less hopeful; it was still very difficult for P. B. to settle down. Soon afterwards P. B. was dismissed from his job; he said that he had been dismissed for incompetence, but the employer stated that P. B. had left of his own accord. Then P. B. disappeared. After some weeks the probation officer traced him through his contacts with Poor Law institutions in the neighbourhood. P. B. explained that he had gone to the institution because he had been sick, a statement which was denied by the master, who added that the young man was well known in the institution and was regarded there as a 'complete waster'. When P. B. left the institution, he did not obey a summons to come to the court and made no attempts to see the probation officer. A warrant for his arrest was issued, but P. B. had doubtless taken another name. He had already used several. We never heard of him again. There can be little doubt that he got into further trouble.

It is just possible that psycho-therapy at an early stage in the life of P. B. might have done good. Psycho-therapists are not necessarily deterred by a multiplicity of symptoms, for a case with a single symptom may prove more intractable than one with many. I do not think that P. B. can be explained by the omission of Quarter Sessions to send him to Borstal, nor even by his imprisonment at the age of 20; nor by any defects that may have existed in the approved school. It is more probable, I fear, that P. B. would have

failed despite any efforts at reclamation, for the reason that either in his heredity or in the early environment, or both, he had been handicapped beyond his strength to recover.

Those who theorize about punishment without being familiar with criminals usually ignore such cases as those cited here. They assume that all those who break the criminal law can be put right by one means or another. Such optimism is basically false.

The frequent commission of crime is not the only burden that those of low-grade lay on the community. As subsequent chapters will make clear, many men of this type are seen in magistrates courts in connexion with illegitimate children and on account of their neglect of their lawful children. Women of similar type are sometimes brought to court for neglecting their children, and in their matrimonial disputes they become the most difficult applicants in domestic courts.

These gloomy pages were necessary because of the almost universal tendency to ignore the hereditary factor in problems of crime. They are not intended in any way to discourage persistence in remedial measures and in improved methods for dealing with criminals. Acceptance of all that has been written here need not deter those responsible for the treatment of delinquents from doing their best to reform them. But it has to be appreciated that if ever the treatment of crime became really scientific, or the interests of the state were considered supreme, many criminals would have to be kept in indefinite custody. For reasons given here even the most enlightened on the Bench have sometimes to say: 'There is no cure for this disease.' Most of the experts in criminal problems whose books I have read, including the progressive-minded American psycho-therapist Dr. William Healy and his wife Augusta Bronner, have urged the indefinite detention of hopeless criminals.[1] Most of the older writers whose works have been translated and published in

[1] See, for instance, *Delinquents and Criminals, their Making and Unmaking*, pp. 201, 210 and 219.

the American Modern Science Series do the same.[1] Some experienced men on the criminal Bench have been forced by experience to this conclusion. Thus the Recorder of London, Sir Gerald Dodson, once addressed an 'old lag' in these words: 'You have spent years and years in prison. It may be that some day our laws will provide camps or settlements where men like you can go. You are a person of criminal instincts which you seem unable to control and you are a danger to the community.'[2] I wish that this could be done, for many recidivists have long ceased to be able to check themselves, assuming that they were ever able to do so.

So far the efforts of Parliament to deal with the apparently hopeless criminal have failed. When the Bill that became the Prevention of Crime Act, 1908, was introduced, it provided for imprisonment for life. Such imprisonment is usually a fiction and means confinement at the discretion of the Prison Commissioners up to a period of fifteen years if the criminal lives as long. Even so, Parliament would not give these powers to a bureaucracy. Thus the Act permitted imprisonment for any period between five and ten years. But this was the wrong way of putting the Bill right, and the proposals in the abortive Criminal Justice Bill of 1938–9 were little better. The best course would be to provide for indeterminate sentences in the cases which appear to be hopeless.

Some penologists have gone much further. Enrico Ferri,[3] a well-known socialist of his day, George Ives,[4] Albert Morris,[5] and others have discussed the necessity for the painless extinction of the hopeless cases. This extreme step is not likely to be taken, but it is wise to remember that a merely scientific treatment of delinquency would involve this. Two factors will deter us. The first is that except for those

[1] Lombroso in *Crime, its Causes and Remedies*, p. 423; his pupil Baron Garofalo in *Criminology*, pp. 211 and 251; Professor Saleilles in *The Individualisation of Punishment*, pp. 117, &c.

[2] Reported in *The Times*, 16 September, 1943.

[3] *Criminal Sociology*, pp. 527–8.

[4] *A History of Penal Methods*, p. 367.

[5] *Criminology*, p. 331.

near the end of their lives, when human pity would save them, one never knows whether at long last criminals with a bad record will turn from crime and become harmless, if not valuable, members of the community. However pessimistic one may be about the future of such as T. R., P. L., and P. B., who would take the responsibility of declaring them entirely hopeless? Hopeless they may in fact prove to be, but this can scarcely be foreseen. Secondly, religious opinion would in practice, and in my opinion rightly, prevent the killing of young people at the hands of the state merely because of their record in a very imperfect world.

One of the reasons why the indefinite detention of many criminals, even some of the younger ones, is needed for the protection of the public—and this does not exclude the possibility of their ultimate discharge to freedom after prolonged treatment—is that present methods, even with the young, can be ineffective. It happens that large sums of public money are spent all to no purpose. There is a remarkable case of this kind in the report of the Children's Branch of the Home Office, issued in January, 1938:

A. B., an illegitimate child born in 1922, spent most of her early years in an institution. At about the age of ten her mother took charge of her, but she was not sent to school regularly and fell into the habit of frequenting the company of sailors. Brought before a juvenile court in September 1936, as being beyond parental control, she was sent to an approved school. She ran away four times in the first month, assaulted other girls, and proved so difficult that she was sent to a local hospital for observation. . . . There her behaviour was so bad that she had to be kept in a padded cell for four days. She . . . was not thought to be certifiable. She was then transferred to another approved school . . . but the same difficulties occurred. . . . She was certified as insane and she was . . . transferred . . . to the mental hospital of her own county. Here she behaved better, and was thought to be no longer insane, and was sent home on condition that she attended the local child guidance clinic.

Two months later she was brought before a juvenile court charged with theft and as being in need of care or protection. She was removed to a Home, where she proved so unmanageable

that she had to be detained for three days in a police station. On re-appearing before the court she was remanded to prison, being too unruly for a remand home. In prison she settled down, and on further inquiry was sent to an ordinary remand home. There her behaviour was such that she was believed to be suffering from acute mania, and the day after her admission she was removed to a mental hospital. The medical officer of this institution would not certify that she was insane, and on re-appearing before the court she was remanded for a second time to prison. Efforts were then made to find some one willing to undertake the care of her and to keep in touch with a clinic, but they were unsuccessful and finally she was sent to an approved school. From this she soon absconded, and on being returned to the school, she proved herself to be uncontrollable, screaming for hours on end and telling the other girls to make themselves such nuisances that no one would keep them. She was charged with assaulting another girl and remanded to prison. . . . A specialist was called in, and finally she was certified to be mentally defective. . . .[1]

The Home Office report concluded: 'In the space of about fifteen months this girl was seen by fifteen doctors, was in three Home Office schools, three mental hospitals, and two prisons, not to mention the remand home and other institutions.' The report made no attempt to draw any moral from this depressing history. But is not the moral clear? If this unfortunate girl had been detained indefinitely instead of being sent for the second time to an approved school, lengthy psychological treatment could have been given to her. This might have made her suitable for free life in the community and thus have prevented her devastating later history. If the treatment did not achieve this, her destiny would have been the same as in fact it was, namely indefinite detention as a mental defective. The detention need not have been in a penal institution, provided that escape was impossible.

It is idle to expect of the ordinary courts and corrective institutions that they can satisfactorily deal with delinquent cases where past conduct has shown that there is no likeli-

[1] pp. 41–2.

hood of a return to a useful or harmless life. This, of course, applies to such delinquents of all ages. Cases that have been shown to be apparently hopeless should be detained indefinitely, given whatever treatment experts find to be suitable, and released when experts report that adequate improvement has taken place. There are few who would lightly endow the state with powers to hold any one for an indefinite period without the most stringent precautions. But stringent precautions are not difficult to devise. There would need to be a Treatment Board, consisting of the judge or magistrate who first noticed the necessity for indefinite detention, three medical psycho-therapists, at least one physician, a representative of the Prison Commission, and so on. Such a board would be able to satisfy public opinion that indefinite detention was necessary. Regular examinations of each person held in such custody would be necessary. With such a procedure there would be little danger of there arising hostility to the executive as, for instance, arose during the war in some cases of indefinite detention of politically dangerous people without trial.

For other steps to reform existing conditions one can only await the spread of eugenic teaching and for greater agreement among eugenists themselves. The direction that such further steps would take would probably be to prevent the genetically hopeless cases from reproducing their kind. Professor Jennings wrote some wise words about this:

> The lives of even the individuals bearing defective genes may be made as satisfactory, as complete, as the most advanced civilization can make them without the smallest harm to posterity; but these individuals must not propagate. It is not the preservation of individuals with defective genes that is harmful, but their propagation.[1]

This raises the difficult question of sterilization, and in later pages more will be said about this. The only scientific objection to sterilization would come from those who accept the teaching of Lamarck that acquired characteristics are

[1] Op. cit., p. 356.

inherited, and who thus believe that improvements in an individual by treatment will improve his genes. On the whole modern psychologists tend to accept Lamarck. Professor William McDougall stated in his *Psycho-Analysis and Social Psychology* that Jung ' has from the first implicitly assumed the validity of the Lamarckian principle ', and that Freud's ' writings have implied such acceptance '.[1] In such a difficult scientific dispute a mere lawyer cannot take sides. He is forced by experience to doubt, but he can hope that Lamarck was right, since then greater scope is offered to the psychological treatment of delinquents, the most hopeful method of dealing with serious cases, provided that mentality is not excessively low. But we should be wise to note the opinion of Professor Cyril Burt: ' What is inborn is incurable ; what is merely super-added may yet be removed.' [2]

Having covered, I hope, the importance of the inheritance, let us now turn to environmental conditions that can be causes of crime even among the genetically fit and which only too frequently tend to result in crime among the unfit.

[1] p. 75. [2] *The Young Delinquent*, p. 419.

CHAPTER II

PARENTS AND CHILDREN

Seldom does one begin a criminal life as a full-grown man. The origin of the typical criminal is an imperfect child.

CLARENCE DARROW [1]

A small child generally has a yearning hunger for love, which is partly due to its sense of weakness and dependence. If it finds no satisfaction for this hunger, it may retreat into its own little world, and retain the impression of the callousness and enmity of the outer world for the rest of its life. Lack of love may also cause a reaction in the child, who may become sullen and cruel, as if it wished to prove to itself that all this need of affection is senseless, and that to be a victim and to victimize others is merely human destiny.

J. H. VAN DER HOOP [2]

CONTINUING our search for the main sources from which delinquents come, we arrive at a problem which has long been ignored as a source of crime and which even now is sometimes regarded as so difficult, and to some so unpleasant, that it is set aside. But it is one of the principal discoveries of modern psychology that from the beginning a child is in serious danger if its birth was not welcome to both of its parents. The unwanted child, whether born in wedlock or illegitimate, begins life with a handicap which may be as unsuspected by those responsible for it as by the child itself. Conduct in any age may be deeply influenced by the consequences of this handicap. For this reason problems of crime ought to be studied from the standpoint that human life begins at conception.

The consequences of an early, and probably unconscious, feeling of being unloved were well put by Dr. J. R. Rees, Medical Director of the Tavistock Clinic: ' There are few

[1] *Crime, its Cause and Treatment*, p. 48.
[2] *Character and the Unconscious*, p. 82.

greater blows to the child's self-esteem than to feel that it is not wanted, and it is not only with illegitimate or adopted children that this is an important matter.' [1] Dr. Rees went on to point out, what many even to this day refuse to recognize, that even in wedlock 'a good many children are accidently born'. Modern psychology teaches that long before children could put into words this feeling of having been unwanted, such a feeling can have powerful unconscious effects in moulding their character. As stated in the quotation at the head of this chapter, one consequence may be a reaction to hardness and cruelty towards others; a child may obtain satisfaction—sometimes as unconscious as the feeling of having been unwanted—from inflicting on others, or on the community, injury in some form or other which will help to redress the balance and thus give relief. Or a lack of love [2] in the earliest months and years may result in a failure to achieve an unconscious sublimation of the normal instincts of aggression and desire for power. When such sublimation is difficult or impossible, the natural feeling of being 'bottled-up' is likely to become exaggerated; the unconscious urges to rebellion become stronger.

Those who have come from good parental homes, or who have given such homes to their own children, must know full well the benefit when children are thus given security. Children under the best of circumstances have their fears and anxieties. Some of these, such as nightmares, can come from their unconscious, but even in their ordinary conscious life all children experience a constant succession of emotional troubles at all ages. If these cannot be resolved by parental love (or by the love of guardians

[1] *The Health of the Mind*, p. 203.

[2] In view of the hostility to Christianity shown by many psychologists, it is worth observing that in this matter the foundations of modern psychology are the same as those of Christianity. Love is central in both. As an antidote to Freud's views on religion *The New Psychology and the Preacher*, by Dr. Crichton Miller, should be read.

if parents have to be separated from their children), then emotional growth must be hampered. Again, even before children go to school they can show a longing for knowledge of all kinds, including sexual knowledge. Parents can secure natural and healthy growth by satisfying such longings, even if they are convinced that their children are too young to absorb the information given them. Every hour of a child's daily life from birth to adulthood can produce crises that often seem terrifying, and if parents or others who love the child are at hand and deal with the situation wisely, the child has a stimulating feeling of security.

I have already stated that one of the principles on which psychologists of all schools are agreed is that the foundations of a child's character are set for life at about the age of seven. As Adler wrote, ' people do not change their attitude toward life after their infancy '. [1] On an earlier page of the same book Adler wrote that ' the individual retains the same line of activity both in childhood and in maturity '.[2] Thus about seven it is decided whether a child will become naturally selfish or generous, acquisitive or keen to share possessions, affectionate or indifferent, law-abiding or rebellious, and so on. As life proceeds effort may minimize the expression of such tendencies as are productive of drawbacks for others, but only if the general moral health is good. Even so, the main characteristics do not become reversed. Therefore it is obvious that an early feeling of having been unwanted may warp the whole of life; even where the hereditary endowment is good, irreparable harm may have been done by the time that the life-style is set.

This is where attempts to cure delinquents are often handicapped; there can legally be no delinquency until a child is eight years old, and by that time a grave psychological trauma may have become embedded in the life-style. Such children may be conscious of a feeling of inferiority. ' It has been shown that children who feel inferior are

[1] *Understanding Human Nature*, p. 81. [2] p. 7.

much more likely to become delinquents than those who believe they have status and prestige. A feeling of inferiority frequently results in motivations which impel the child to associate with delinquents in order to attain status. Social workers have shown that children who are unwanted, and who feel deprived at home, tend to stay away as much as possible, and to associate themselves with other delinquents.'[1] The unwanted child may thus become the 'tough guy' because by eight years old a general attitude of hostility to the community has developed. If such a one should be sent to a psycho-therapist in later life on account of criminal acts, it may be too late to modify criminal tendencies. In fact many published accounts of psycho-therapeutic work among delinquents contain admissions of failure because of some deep-lying trauma that was inflicted very early in life. I have received reports to this effect from psycho-therapists to whom I have sent delinquents. The earliest and deepest trauma that can be inflicted is a feeling, conscious or unconscious, of having been unwanted at birth. This is specially apt to happen when the parents are of the type mentioned towards the end of the previous chapter. I have many times heard women use the words 'I fell' when they have to tell me that they are pregnant, and usually such women have bitterness in their voices. These are grim words to apply to the conception of children and augur badly for the children themselves.

The trauma of being unwanted exists mostly when large families have come without any wish for them. It is significant that Dr. Charles Goring, quoted early in this book, discovered that 'upon the evidence of our statistics we find the criminal to be unquestionably a product of the most prolific stocks in the general community'.[2] In their intensive studies and follow-up of delinquent children Professor Sheldon and Eleanor Glueck found that such children 'come from families appreciably larger than the

[1] *Basic Problems of Behaviour*, by Dr. Mandel Sherman, p. 348.
[2] *The English Convict*, p. 272.

average family '[1] in Massachusetts, where the investigation took place. They found that their delinquents came from families in over half of which there were five or more children. In their follow-up fifteen years later they found that the proportion of successes among the children of parents who had immigrated to the United States was lowest where the families had come from countries where large families were usual, such as Ireland and Italy.[2] Similar results were obtained by Drs. Healy and Bronner: 'Among repeated offenders Italians have about twice their quota'.[3] In both Ireland and Italy the voluntary control of the size of families was officially discouraged. The same conclusion was arrived at from a different method of investigation. Professor Glueck discovered that 'the evidence is overwhelming that persons of the kind so largely represented in criminal classes are often unfit to care properly for children. Nor can it be gainsaid that a large proportion of them are irresponsible in their sexual relations and that the women in such families, as well as female offenders themselves, are prolific breeders'.[4] From such sources come many of the difficult and hopeless criminals, largely because of the trauma arising from being unwelcome at birth.

It is usually the case that efforts to relieve a need or deficiency have a greater public appeal than investigations into the causes why help is necessary. To help the needy produces quickly at least superficial results; to investigate causes opens up fields which many prefer to ignore. Especially the question of unwanted births seems to arouse in many an acute distaste for investigation. But I know of no unofficial inquiry into the causes of delinquency which does not place unwanted births high in the list. Even the every-day work of a magistrates court provides frequent illustrations of the injurious consequences when

[1] *One Thousand Juvenile Delinquents*, pp. 77–8.
[2] *Juvenile Delinquents Grown-up*, p. 111–2.
[3] *Delinquents and Criminals, their Making and Unmaking*, p. 107.
[4] *Crime and Justice*, p. 267.

children enter the world without parental love. Sometimes the parents themselves acknowledge that they have had too many children; they will speak of their large family as 'a misfortune'; they will explain their failure to bring up their children properly by giving the number of their families; they will sometimes try hard to get one or more of their children 'put away'. In one of his books Dr. William Healy emphasized the vital importance of inducing parents to assist in the attempts made to cure their delinquent children; every magistrate or probation officer has had cases where the parents cannot be brought to the right standard of co-operation with the children. Many times I have been advised by psycho-therapists who have examined cases of mine after the facts were proved, that if a more affectionate attitude could be adopted by the parents, the treatment of a delinquent would be greatly helped. Dr. Healy said well that a psycho-therapist, in addition to treating a delinquent child, must try 'to get older people to be more sympathetically confidential; to cultivate more understanding of the vital problems of youth, to give more of their own time to companionship', and so on.[1] But when from birth onwards children have been regarded by their parents as 'misfortunes,' there is but little opportunity to secure this essential co-operation. I have been conscious many times that failure has come because the delinquent's parents have not realized the vital part that they should play in his life. This must be the experience of magistrates in juvenile courts also; probably to a greater extent. In my visits to London juvenile courts I have been struck by the pathetic number of children whose delinquency, or whose condition of being 'in need of care and protection', was due to the fact that they came from large families, brought into the world without any thought or any ability to provide or care for them. Both juvenile court magistrates and probation officers have told me that want of parental love is the root trouble in a high proportion of their cases. My own experience with those

[1] *Mental Conflicts and Misconduct*, p. 76.

of seventeen upwards has given me countless examples of delinquency caused in a similar way.

It occasionally happens that parents will repudiate their delinquent youths. They profess to be utterly shocked by the conduct complained of and announce their intention of having nothing more to do with the son or daughter who has ' disgraced them '. The fundamental reason why parents thus play the part of Pilate is usually that from the beginning the delinquent youths were regarded as ' misfortunes '. Yet the parental attitude, and the lack of security in the children that came from it, have probably been a main cause of the delinquency and sometimes are the cause of the failure of attempts at cure. Thus Dr. Healy, describing several of his cases, quoted his failure with ' William G.', who had been before ' courts at least ten or twelve times ' by the time he was nineteen. At twelve ' he had already been smoking a little for a couple of years '. His father ' was unsympathetic, occasionally a drinking man, who gave this boy very little consideration . . . He never gave the slightest attention to the boy, except alternately to defend him from kindly probation officers or to berate him.' His mother ' was incapable of going far enough or keeping long enough at the task of winning the boy's confidence '.[1] Well do I know parents of this sort. They usually have brought into the world a large number of children, and I have known many such cases where several children had been delinquent.

I fully agree that the reverse position of parents with an over-adored only child is sometimes equally difficult to handle. Such cases are unfortunately becoming more frequent. Professor Glueck found, however, that ' in but 38 cases ' out of his thousand delinquent boys ' was our juvenile delinquent an only child '.[2] A similar inquiry now would probably show an increased proportion. Those who are only children have psychological dangers of their own.

[1] Ibid., pp. 167–74.
[2] *One Thousand Juvenile Delinquents*, p. 86.

Large families, of course, do not necessarily include unwanted children. Most people have probably known cases where many children have been born and every birth was welcome. When this is so, nothing but good results from the size of the family. Our nation would be healthier if there were more such families. From all points of view, including that of psychological health, large families are desirable. But only where the children have a reasonable prospect of being loved and cared for by their parents and where the standard of health is good. It seems strange to me that so much religious opinion, while urging that love is the basis of right conduct, is opposed to the use of scientific knowledge to prevent conception where these conditions do not exist. Dr. N. P. Williams, once Lady Margaret Professor of Divinity at Oxford, evolved the remarkable doctrine that while man has free will in the use of his sexual powers, God decides 'whether such outflow of energy shall result in the generation of a new immortal soul, or not'.[1] But it is no rare occurrence in magistrates courts to hear cases where illegitimate children have been born to parents who met only once. If only religious opinion could combine with science to teach sound sexual principles, both within and outside of marriage, the problems discussed in this chapter would quickly become less serious.[2]

Even amid difficult economic conditions large families can be a centre of love and health. I have known mothers, particularly in the country, who have brought up many children on small means and have none the less done ample justice to each one. But only parents of exceptional ability, whatever their education, can achieve this. Where large families come to parents of low-grade intelligence, grim results can follow. Magistrates are familiar with delinquents where a poor inherited endowment is coupled with a feeling of having been unwanted.

[1] *Theology*, December, 1930.

[2] My book, *Marriage, Children and God*, dealt in some detail with religious attitudes to the voluntary control of conception.

A high proportion of the failures in remedial treatments comes from such sources. The tragedy is that often low-grade parents could manage fairly well with a small family, but they cannot keep their family down to the level of their abilities and their means. Low-grade parents are often hopelessly overwhelmed by a large family, to the immense detriment of their children. Literally they 'have so many children' that they 'don't know what to do'. I have had several prosecutions of parents, brought by the National Society for the Prevention of Cruelty to Children, for neglecting their children 'in a manner likely to cause them unnecessary suffering or injury to health'. When the society prosecutes, the case is always a bad one, for the general policy of the society is to make as much use as possible of advice and warnings. In several of such prosecutions before me the family under the supervision of the society's inspector had increased in numbers during the supervision. In one such prosecution the parents had been living for three years under the inspector's observation, he making efforts at intervals, but never succeeding in coming to grips with the shocking conditions under which the family lived. During this time over £70 came into the home from a minor accident to the father, which, however, did not keep him from work, but still no improvement took place. In the three years of supervision a family of four had become a family of seven children, and when I heard the case, the condition of the children was appalling. The parents were of very low grade; they might possibly have done reasonable justice to two children, but they would have done injustice to a large family, whatever their economic conditions. With such parents I doubt if children's allowances of any size would make much difference.

Any one who doubts the importance of these matters should read the memorandum submitted by the National Society to the Departmental Committee on Sterilization (1934) whose report should not be allowed to pass into official oblivion. Its recommendations should be seriously

considered as part of post-war reconstruction. This memorandum was termed by the committee themselves a ' grim document '. Really terrible cases of large families among the sub-normal are given.

A searchlight on the conditions in which many children are brought up was thrown by the evacuation scheme organized by the Government when war broke out in 1939. Nearly a million children, about 735,000 of them unaccompanied by their parents, were sent from towns to safer areas. These children had been away from school for about a month owing to the ordinary holidays. On arrival at their new homes, about one child in ten was found to be unclean or verminous.[1] It is not possible to distribute responsibility for such disgraceful conditions ; slum housing conditions, unemployment and other environmental circumstances were in part the cause. But is it not probable that a high proportion of the neglected children came from homes where the parents had more children than they could adequately care and provide for ?

There is another way in which serious harm to children is done by parents of low-grade mentality. No cases before magistrates are more depressing than those arising out of the desertion of their families by the bread-winners. Some men with large families, finding their homes too crowded and noisy, are quite irresponsible ; they will desert their homes, usually making trivial excuses, and many such men will link up with other women, sometimes beginning new families. Other such men, while continuing to live in their homes, will establish temporary relationships with other women and become the fathers of further children. It frequently happens that when magistrates have such situations to handle, probation officers will state that they have known the families for some time and that one or more of the children have committed crime. In cases of this sort the fathers are usually unskilled men. I remember one man who had eight children by his wife

[1] *Evacuation Survey*, a report presented to the Fabian Society, pp. 43 and 99.

and three by the woman with whom he was living when I had to deal with him. At that time he was earning 'good money', as they say, but not enough to provide for all these children. During the war of 1939 many wives who had evacuated themselves with their children were forced back to danger areas because their husbands failed to send them money for their keep; such husbands were only too often establishing new responsibilities. It is a sad truth that in fact the law is often powerless in the face of such situations. In theory punishment exists when families are deserted and have to resort to the Poor Law; in theory courts can make husbands and fathers pay maintenance to their wives or to the mothers of their illegitimate children. But only too frequently there is not enough money to enforce payment, and the punishment of the father may punish the family. Children's allowances may help to meet this problem if it can be secured that the money reaches the housewife who does the spending. But such allowances will not add to the ability of the parents to manage their money or their children. I fear that with or without children's allowances many children of low-grade parents will continue to suffer. The words of Dr. L. Grimberg are true all too often:

> It is this raw material, the product of either maladjusted or immoral personalities, that forms the bulk of our delinquents. As raw material they enter school to be moulded into adjusted social units, into desirable personalities, and then return home until the next school-day, to the same atmosphere of degeneracy or maladjustment. What one year of school life attempts to accomplish is destroyed by a few days of home life.[1]

Where this can be truly said, delinquency in one form or another is often the result. Then it may be found that cure is out of the question because of the low intelligence and low standards of the children. Some may be saved, but many cannot. It may be said that residential schools will help in these situations. But such schools are likely

[1] *Emotion and Delinquency*, p. 64.

to be primarily for the young hopefuls, not for those of low grade.

Many unwanted children survive without injury through the wise care of parent-substitutes. Many societies play this role with great success. Barnardo's Homes, the Foundling Hospital, the Homes for Waifs and Strays, &c., enable many thousands of unwanted children, as well as those deprived of their parents through accident or war, to overcome their severe initial handicap. (That children are called waifs and strays seems to me an unnecessary accentuation of their early difficulties.) But however excellent be the work of such institutions as these—and excellent the work is—most psychologists would maintain that the trauma of having been unwanted at birth will remain in many of these children as a source of possible danger throughout their lives. After all, it is Nature's plan that children shall live with two people who love them, rather than with many people who can never, however much they try, establish a real parental relationship.

It is not the function of this book to suggest more than in broad outline how these thorny problems could be tackled. A Royal Commission is studying problems of population, and one may hope that it will not ignore those aspects of these problems that are dealt with in the report on sterilization and the memorandum of the National Society for the Prevention of Cruelty to Children included in that report. I have been convinced by experience that only as these aspects of population problems are tackled can there be a diminution in the large number of delinquent cases beyond the aid of any existing method for dealing with them. The first step is obviously that informed public opinion should be brought to realize the disastrous effect of numerous unwanted births among those who are unable to care and provide for a large family. Hitherto public opinion, driven by considerations of national defence, has reflected more on quantitative than on qualitative aspects of population problems. What has to be realized is, in the words of Sir William Beveridge, that

'the interest of the State is not in getting children born, but in getting them born in conditions which secure to them the proper domestic environment and care'[1]; and, I would add, a sound inheritance. A country is weakened, not strengthened, by the existence of large numbers of children brought into the world by an almost automatic process in defiance of the teachings of both eugenics and psychology—and, I would say, of religion. A couple that came frequently before me had this record: the father seldom paid his separation order, made on account of persistent cruelty to his wife and children; the mother had been found guilty of stealing; there were four children of the marriage, three of whom had been sent to approved schools by juvenile courts. Such families involve a heavy drain on public and charitable exchequers. Our national and local social services have hitherto done little either to discourage unwanted births where the children are likely to be burdens upon the nation, or to encourage the birth of children by those well fitted to have them and look after them. There is much scope for future activities in both directions.

Relief measures and institutions for the care of destitute children will probably always be required, since accidents will happen and the best of parents can die young. But the facts that such institutions have to exist on so huge a scale, and that thousands of children have to be brought up by public assistance authorities, would seem to indicate that a change in public opinion is desirable. Once public opinion realizes that numerous unwanted births in wedlock by those with a poor inheritance of health are at least as serious a national problem as illegitimate children, progress in many directions will be possible. Till then those engaged in the battle against failure will continue to be overwhelmed, and to know that however hard they may try, there will be plenty of hopeless failures.

I would have those who believe that all births are welcome consider the case of the *X* family. When I had one of the

[1] *Social Insurance and Allied Services*, p. 135.

young women of this family before me for persistent wandering in the streets at night, I was informed: 'This woman is a native of —— and is the eldest of six children, all of whom are inmates of either homes or penal institutions.' The father had ceased to be interested in this family and was living with another woman, probably becoming the father of more children. The young woman before me was twenty years old and had been three times on probation for similar offences and three times in prison. I could only send her forward with a recommendation that she be sent to a Borstal institution, but I had little hope. It seemed doubtful if any of these six children had ever in their lives been wanted, for the mother had deserted them. The father had long ceased to care.

Somewhat typical of the present public and religious attitude to these problems is the report, issued in 1939, of the Inter-Departmental Committee appointed to survey the ever-difficult problem of abortion. It might have been expected of such a committee that they would have appreciated the reason why abortion is a great problem in married life, as well as among women who have conceived out of wedlock. In fact attempts at abortion are sometimes the only way of avoiding unwanted births in wedlock that are known and approved of by married women. The committee admitted in their report that 'purely selfish motives predominate in only a small minority of cases'[1] of abortion, but they had little to recommend save increased legal coercion to produce unwanted children. They wrote in their report that 'it is for social workers in every field to counteract the tendency in some quarters to deprecate large families, by using every suitable opportunity to emphasize, not only the importance of the family as the unit of social life, but its value as one of the greatest sources of happiness to the individual'.[2] As I have already said, large families are thoroughly desirable, but only where all

[1] p. 40. The personnel of this committee gave the impression that a conservative report was hoped for.

[2] p. 104.

the children are wanted and well cared for. But the committee seemed to be more concerned with what they regarded as the morals of parents than with the interests of children. Abortion is horrible, but if we accept the teaching of modern psychology, we should surely be fearful of the fate of children born of a mother who hated their coming so greatly that she would risk the horrors of amateur and criminal abortion. Even in cases of incest the committee concentrated on their view of the morals of the parents:

'It is true that such [incestuous] unions are regarded with repugnance by normal persons, and that they may be dysgenic. In many cases, however, the woman has been a consenting party and has entered into the relation with full knowledge that she was transgressing the law and that she might become pregnant . . .'[1]

Because, therefore, of the 'transgression' of the woman, a child must in the eyes of the committee be born, regardless of its interests, in order presumably to punish the mother. To the committee the important factor was the punishment of sin. Even when conception is the result of rape, the committee made no clear-cut recommendation for reform, although Denmark, Sweden, Iceland, &c., solved this problem long ago. That the life-style of a child can be permanently affected by conditions existing at conception and birth is a truth which apparently never penetrated to the committee.

More instructive on the problems raised in this chapter was the report, issued in 1934, of the Departmental Committee on Sterilization. This committee was primarily concerned with mental defect, but its report contained many allusions to problems affecting the border-line population. Thus the committee stated that they were 'impressed by the dead weight of social inefficiency and individual misery which is entailed by the existence in our midst of over a quarter of a million mental defectives and of a far larger number of persons who, without being certifiably defective, are mentally subnormal'.[2] (On an earlier page

[1] p. 89. [2] p. 55.

the committee stated that all witnesses before them 'recognized heredity as an important factor in the causation of these conditions.') [1] Paragraph 75 of this report needs to be carefully considered by those who have to deal with social failures. Dealing with those who are wrongly termed 'the social problem group', the report stated: 'There is abundant evidence that this group contributes much more than its numerical proportion to the total volume of defect, and an equal or even larger proportion of children of low intelligence.' [2] It is no less certain that this 'group' contributes a high proportion of the number of hopeless delinquents. In a later paragraph comes the statement that 'this mass of defectives and subnormals is being steadily recruited and is probably growing'.[3]

Further details were given by the unofficial Feversham Committee on the Voluntary Mental Health Services, mentioned in the preceding chapter. The report of this committee estimated, 'from surveys made by Professor Cyril Burt, that there are about 105,000 children of school age who are mentally defective within the meaning of section 55 of the Education Act, 1921', and that 'of these, 35,000 may be regarded as educationally retarded only'. In addition, the report stated, 'There is a big marginal group of educationally retarded children (dull and backward) which, including these 35,000, amounts to about 300,000.' [4] One can have much sympathy with these numerous unfortunates, and wish that everything possible shall be done to bring them to the highest possible level, and at the same time labour to secure conditions whereunder so many such children shall not be born in future. From the eugenic point of view mentally defective people are not so dangerous as those on the borderline, for a high proportion of the former have low vitality and low fertility, whereas dull and borderline people often have high birth-rates.

Delinquency is closely associated with the low-grade and the mentally deficient. The trauma of having been un-

[1] p. 10. [2] p. 41.
[3] p. 55. [4] p. 54.

wanted at birth is potent for evil in the mentally retarded at least as forcibly as in those of greater intelligence. A high proportion of those who are confirmed criminals, however young, come from those who are either mentally retarded or on the borderline.

Neither scientific knowledge nor public opinion is yet sufficiently advanced to accept compulsory measures of birth prevention. But much can be done without any such drastic step. The Sterilization Committee expressed the opinion that many low-grade parents 'would be glad to be relieved of the dread of repeated pregnancies and to escape the recurring burden of parenthood, for which they are so manifestly unfitted '.[1] There must be few of those who have had close contacts with such people who would disagree with this statement. If public opinion would accept this suggestion, and encourage Poor Law authorities, care committees, magistrates courts, &c., to advise such people to accept the, for the men, minor disturbance involved by sterilization, then a big step forward would be made. The only practical way of preventing people of low-grade intelligence from being overwhelmed with unwanted children, to the immense detriment of such children, is by the sterilization of the fathers. Tactful propaganda among such fathers might have useful results, for it is my belief that many of those who have been beaten in the struggle to maintain their children by reason of their number would have consented to this step if advice to this effect had been given by disinterested authorities.

From the national point of view such a proposal is of great importance, but it is only half of the population problem. Tactful propaganda is desirable also with those who have an only child or no children at all. In my domestic court I am frequently finding that the absence of children is a cause of matrimonial breakdown as well as the existence of an excessive number. There are many married couples on all economic levels who should have married earlier and should have had more children than they have. A new

[1] p. 42.

law to make clearly legal the voluntary sterilization of the low-grade, when their families are of a maximum size having regard to their ability to look after them, needs to be supplemented by propaganda and adjustments in taxation directed to the object of enabling those with high standards to marry early and have as many children as they can look after. Even before the war of 1939 the tendency was for the fit to retard their marriage and to restrict severely the number of their children. Without accepting his solutions, it is possible to agree with Dr. Julian Huxley when he wrote that 'eugenically speaking, our system is characterized by the social promotion of infertility and the excess fertility of social failure'.[1]

But the desirable increase in numbers of the fit does not come within the scope of this book; the unborn, however much they may be missed, do not commit crime, though their non-arrival sometimes brings grown-up people to the point where a 'nervous breakdown' necessitates psycho-therapy.

It is almost an agreed maxim to-day that the community should do all that is possible to bring all human beings to a minimum of health, education and opportunity. But however hard be the effort to achieve this, innumerable failures must result unless the public care for children begins at conception. Much of the opposition to the voluntary control of conception (which is quite different from disputed methods for achieving the control of births) is based on unconscious reactions. Psychology does more than explain the dangers haunting unwanted children. It tries to explain the mentality of those who encourage births regardless of circumstances. Professor J. C. Flugel stated in his book *Men and their Motives* that 'the pride that would find a more primitive expression in the individual's own fertility is displaced on to the fertility of the race or the community'.[2] It is often the case that indiscriminating enthusiasts for large families are those who have not married or who never became parents. Possibly such people

[1] *The Uniqueness of Man*, p. 72. [2] p. 28.

satisfy an unconscious sense of guilt by advocating large families for others. It is also true that many such enthusiasts brought up their families in circumstances of economic privilege. They too may have a sense of guilt and seek similar relief. Be this as it may, it is certain that problems arising from the thoughtless fertility of the unfit and semi-fit will never be solved by purely environmental measures. Measures of relief occupy the attentions of hosts of public officials and of many charitable associations and individual workers. In fact there is some danger that the relief of the unfit may become a kind of vested interest which is jealous of efforts to dam the supply of future recipients of relief. Those who are doing good work are apt to dislike the prospect of having less good work to do. Before the war *Punch* had a picture which well illustrated this dislike. A lady, well covered in furs, returns from her holiday to the scene of her 'slumming'. Arriving in her splendid car, complete with footman, she finds a vacant site with a board announcing 'Borough Council Slum Clearance Scheme'. The caption below the picture was: 'How dare they take away my slum?' Such an attitude towards the unfortunate is somewhat natural, but in reality it is what Professor John Macmurray termed subjective and irrational love.[1] Work among human failures should be objective and rational. The irrational ideal is that every deficient child shall be adequately cared for. The rational ideal is that fewer such children shall be born. There will always be, as I have said, opportunity for public social services and for genuine charity, since even the fit meet with disasters. Similarly there will always be crime, owing to the frailty of human nature. But we ought to work to diminish both deficiency and crime. I have no fears of magisterial unemployment, but I would willingly be relieved of the gloomy duty of struggling with those who cannot respond to any efforts because of what they are.

While we must continue to protect and advance every individual life, so far as is possible, we ought to turn also

[1] In his book, *Reason and Emotion.*

to as many measures of prevention as we can. The community has gone far in helping the deficient and the defective. It is high time that the power of the deficient and the defective to injure the community was considered. In no way can men and women injure the community more than by giving life to a number of children born either genetically unsound or unwanted. If we accept the opinion of psychologists that home life is the best for children, then we cannot rely solely on the public services to see that homes reach a minimum standard; the parents in the homes have to play their part. Dr. Inge once said that the protection of life is incompatible with free trade in its production. This is the standpoint that should now be accepted by those dealing with crime and many other social ailments.

Before parting with the need for parental love, and the sense of security which it gives, a kindred problem needs brief attention. There is serious danger when the parental relation does not develop with the maturity of the children. Healthy growth requires a gradual weaning from the security which life with parents should involve.[1] This applies to all children, and especially to only children. One of the most difficult tasks of parents is to encourage their children to be independent, to face life without undue reliance upon the security of the home. That feeling of security must continue, but gradually children should become less dependent upon it. Love between parents and children has to assume new forms, and it demands courage in parents to produce courage in their children. Without this quality children will be unable to face life with all its dangers and pitfalls. This weaning process is always difficult, both for parents and children, and more so when there is an only child. It is more difficult also for the youngest of a family, especially if there is a wide gap in age between the youngest and his next brother or sister. But especially for only children the natural and essential progress towards independence is often impeded

[1] Professor Flugel is also helpful on this point. See his *The Psycho-Analytical Study of the Family*, pp. 230–4.

by an undue prolongation of the kind of parental relationship that is suitable, and indeed essential, for young children.

Delinquency can be the result of this excessive prolongation, as well as of the absence, of early parental love. Psycho-therapists have told me of cases where they were satisfied that delinquent acts by older children or adolescents were the result of an undue reliance upon the sanctuary of the home; also that some forms of sexual promiscuity have been due to the continued, and often unconscious, search for a mother or father substitute. Homo-sexual conduct can also originate in this way. It is tragic when unwise love, love that has not adapted itself with the growth of children, is the psychological cause of serious trouble in the later life of the younger generation. Magistrates can see such cases. Psycho-therapists see many more. As one of the latter once said to me: 'We see so many wrecked lives due to the mother being unable to give up her children, long after the children have become chronologically adult.' Fathers also are sometimes similarly guilty.

This problem became acute during the war of 1939 when compulsory service of various kinds was demanded from both sexes in their later adolescence. I was informed by some one of great experience in the administration of compulsory military service that a considerable number of young soldiers broke down in health because of home-fixation long before they were expected to leave our island; some such had even to be discharged from the Services. These men were unable to break themselves free from the ties of home; the enforced break ultimately resulted in ill-health. With young women the problem was even more serious, both in the women's Services and in civilian life. It came vividly before me in the course of magisterial work. Young women who refused either to give information to, or to obey a 'direction' issued by, the Ministry of Labour were prosecuted before magistrates. In four consecutive cases young women of from 17 upwards were brought before me on these grounds. These young women were all 'mobile' within the rules of the Ministry. I

referred each case in turn to the woman probation officer, as the circumstances pointed to acute mother fixation. At the second hearings my suspicions were confirmed by the probation officer, who reported that the tie with mother was so strong that enforced separation would probably be followed by serious ill-health. In one of these cases a breakdown in health had already followed from an enforced stay in a Midland town; this had reinforced the fixation, and before me both mother and daughter declared with much vigour that there would be no obedience to the second order of the Ministry. I was so worried about the right course to take in these cases that I sought an interview with high officials at the Ministry. I had no need to explain the psychological principles about fixation, for the problem was known, though not its extent. My visit did result, however, in an understanding of the reason why I could not punish in many cases of this kind. Immense patience was necessary in these cases, and often several adjournments. By methods of persuasion we were nearly always successful in both satisfying the Ministry and avoiding punishment.

Fixation of this kind is met with in many kinds of circumstance, including cases of matrimonial breakdown. Many young wives and husbands rush back to mother at an early stage of matrimonial crisis. In one case of this sort a wife-applicant produced a letter written by her husband after he had left her. Parts of this are of interest:

> I shall make my home here with mother for the rest of her days. . . . I have the greatest affection for my mother as a devoted and entirely unselfish person who was for ever thinking of every one else's well-being and interest to the sacrifice of her own. . . . When mother has no further need of my love and protection, there is no reason for my part why we cannot settle down to I hope a more comfortable time than ever we had before.

As the mother had gladly received the young husband, I could not feel convinced of her unselfishness, but there was no doubt that the defendant-husband had written that

letter in complete good faith, as he saw the situation. I feared, however, that he might well be an optimist about his wife's patience, and I felt obliged to tell him so. But I could not shift his determination to desert his wife.

Such cases as these are the exceptions, but the harm that they do is great. In the coming years we may well hope that more help and guidance will be available for parents. There is much need for a greater sense of responsibility in the giving of life. But there is also the need that parents shall learn that step by step they must withdraw from the life of their children, so that the children shall almost unconsciously develop their own lives and in doing so create a new relationship with their parents which wise parents recognize as something as valuable as that which went before.

CHAPTER III

BREAKING HOMES

Lack of parental affection, even when accompanied by dutiful observance of parental responsibilities, has a very profound effect in unsettling a child. The mere existence of uncertainty in a child's mind as to its actual relationship to its parents can disturb its conduct.

DR. R. D. GILLESPIE [1]

I have for many years been afforded the opportunity of examining the officially compiled histories of Borstal boys. As a result of these researches I am impressed with the high percentage of these boys whose parentage is defective; either the marriage tie does not exist at all, or is so loose as to demoralize the household.

SIR EDWARD CADOGAN [2]

AUTHORITIES on delinquency are in general agreement that discord between parents is a potent cause. Where parents are living with their children, but are quarrelling and producing an atmosphere of hostility in the home, the consequences to the children may vary from bad work in school to actual delinquency, either in the home or outside. Where the parents have parted as a result of their quarrels, the outlook for their children may be improved, but more often their situation becomes worse than ever. Whether such parents remain together or not, their children are exposed by the parental situation to mental conflicts which must have a big effect on their character and conduct. When the warring parents are of poor genetic stock or of primitive intelligence, as is often the case, the resulting dangers for the children become all the more serious.

[1] In an address to the Magistrates Association; *The Magistrate*, March–April 1934, p. 768.

[2] *The Roots of Evil*, p. 283.

The surveys made by Professor and Eleanor Glueck, already referred to, amply showed the consequences in delinquency of breaking and broken homes. Thus in the original follow-up of a thousand juvenile delinquents it was possible to obtain and tabulate information about the moral standards of the homes in 908 cases. It was found that only 10·7 per cent. of the young delinquents ' had lived in homes with high moral standards ' ; 18·9 per cent. came from ' homes with fair standards ' ; 70·4 per cent. came from ' homes with low standards '.[1] When the cases were classified according to the relationship that had existed between the parents, the results were that of 813 of the thousand families 21·7 per cent. had to be described as ' socially unhealthy ' ; there was ' gross incompatibility, yet no open breach ' between the parents in a further 15·9 per cent.[2] Even more significant was the study by Professor and Eleanor Glueck of 510 men who had passed through the Massachusetts Reformatory. The social background of these men was examined and it was found that there had been ' abnormal or deleterious home situations ' in no less than 84 per cent. of the cases.[3] A later book gave a follow-up of 454 of the same cases up to an average age of 35. This enabled the inquiry to discover what these men had made out of their own marriages. It was found that among those men who had reformed there were ' poor conjugal relations ' in only 4·3 per cent., but among the unreformed such conditions were found in as many as 44·7 per cent.[4]

These figures should not be taken as representing more than a general picture, for the books quoted are so rich in material and explanation that isolated statistics from them can be misleading without a careful study of all that the authors wrote about the effect of home conditions. None the less the general picture is both clear and grim.

[1] *One Thousand Juvenile Delinquents*, p. 79.
[2] Ibid., pp. 73 and 329.
[3] *Five Hundred Criminal Careers*, p. 117.
[4] *Later Criminal Careers*, pp. 20 and 93–6.

In the studies of juvenile delinquents in Chicago and Boston made by Drs. Healy and Bronner it was found that 'normal parental conditions', meaning that both parents were alive and living at home, 'existed in only a little over half the cases in each city'.[1] Later the same experts made another study on a smaller scale and found that among 153 young delinquents it was 'probably nearly accurate to state that there was real disharmony between the parents in 54 per cent. and distinct harmony in only 30 per cent.'.[2] The note of caution in this last quotation is due to the fact that the authors were 'far from convinced that parents' verbalizations about their own lives were always correct', a suspicion that will be shared by all who have had to listen to the parents of delinquents.

The effects on the children of breaking or broken homes are not, of course, automatic. They depend a great deal on the ages of the children. If the home has been normally peaceful and the parents normally affectionate until all the children are at least seven, the consequences of a subsequent breach will not be so disastrous as if the breach between the parents had come earlier. The reason for this has already been given; the life-style is set by the age of seven or eight. The consequences will also depend on the general psychological stability of each child. Drs. Healy and Bronner emphasized this fact in a manner which all experienced in youthful delinquency will accept as indisputable. 'The influences which make for delinquency are frequently highly selective in their operation according to whether any member of the family has the personality or the interests or something else which leads him to be or not to be influenced.'[3] These are important points, for it would be a serious mistake to assume that warring parents necessarily have delinquent children, or even children who are failures in any other way. Some of those coming from

[1] *Delinquents and Criminals their Making and Unmaking*, p. 122.

[2] *New Light on Delinquency and its Treatment*, pp. 29 and 30.

[3] *Delinquents and Criminals*, p. 105.

homes that are badly broken have the spiritual qualities necessary to enable them to compensate for their drawbacks. I have sometimes found, for instance, in applications for consent to marry from minors, whose parents will not give consent, that applicants who for many years have not enjoyed the advantages of a good parental home have found a good second best. Such young people seem to have suffered no ill effect from their parents' lack of consideration for them. Such fortunate ones probably came from good genetic stock. Dr. Healy had much experience of this fine type. Writing of one of his cases, he said: 'What would his career have been had he not been undernourished emotionally? He probably would have remained quite content in the environment which, apart from his affectional needs, offered him many satisfying experiences.' [1] But while undoubtedly many prosper despite their parents' quarrelling, many more are adversely affected.

In this country experience of the results of parental discord has been generally the same. Dr. Grace Pailthorpe found that one of the points that stood out most prominently in her studies of two hundred women inmates of prisons and homes was 'the large percentage of homes where normal family love relationships are absent'.[2] An authority who had great opportunities for investigating the causes of juvenile delinquency is Professor Cyril Burt. His book *The Young Delinquent*, already quoted, showed that among the delinquent children 57·9 per cent. suffered from 'defective family relationships', but among the non-delinquent only 25·7 per cent. so suffered. Under the heading 'vicious home' came 25·9 per cent. of the delinquents, but only 6·2 per cent. of the non-delinquents.[3] Professor Burt summed up these investigations thus:

From this general survey of environmental origins, both outside the home and within it, one main conclusion can be drawn.

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[1] *Personality in Formation and Action*, p. 67.
[2] *Studies in the Psychology of Delinquency*, p. 89.
[3] p. 53.

It is clear that the commonest and the most disastrous conditions are those that centre about the family life. In one respect or another, among what is by far the majority of my delinquent cases, the child's domestic circumstances are demonstrably inimical.[1]

We saw in Chapter 1 that Professor Burt considered the inherited characteristics to be of great importance. We are probably justified in concluding that those who remained unsoiled were those well equipped at the outset of their lives.

The statistics of experts confirm expectations. It is common sense that when a child is surrounded by the love of father and mother in its formative years, it should find it easy to evolve from childish egotism and to develop a community sense. For this to happen in the normal way love must not be merely directed towards the child; a child needs the continuing sense of security which love between its parents brings with it. Discord between parents can undermine all feelings of security. A child living amid parental discord is little, if any, better off than the unwanted child; many children suffer both handicaps. When parents are at enmity, a strain is placed on the child which, whether realized or not, may severely affect the child's style of life and thus produce conduct disorders at any stage of later life. This strain is not removed by separation or divorce; on the contrary it may become intensified. In a case known to me the father had divorced his wife. The High Court had ordered that their son should live with the father during term time and with the divorced mother during the holidays. The father remarried, and a genuinely affectionate relationship developed between the son and his stepmother. This triangle was too much for the boy's emotional development. His school reports got worse and worse and eventually his head master wrote to the father a serious warning that the boy, then aged nine, was becoming thoroughly unstable. No blame could rest upon the boy. Even if he spent less time with his natural mother, her

[1] Op. cit., p. 187.

very existence would draw upon the boy's emotions. The boy's situation was inherently bad, and no amount of kindness by father, mother or stepmother would rectify it. Should that boy commit crime, could he be blamed?

Strife between parents also involves a smashing of the child's ideals. There arises gradually a feeling that either father or mother is blameworthy, there is a loss of that feeling which is comforting for the child and flattering for the parent, that father and mother know everything and can always be relied on. Another factor is that parental strife offers undesirable opportunities for gaining advantage by taking a side. A child quickly perceives that by so doing, or even by taking each side in turn, material and other advantages can be gained. In some of my semi-private talks with children [1] involved in matrimonial disputes, I have found that the unfortunate child victims have sometimes found consolation for conflict in the home through gaining favours in this way. When describing his case 'Beatrice' Dr. Ira Wile wrote that 'to expect a twelve-year-old child to disregard any advantage that might accrue from parental disputation is more than unreasonable'.[2] It certainly is.

These considerations have great relevance to problems of juvenile delinquency, and juvenile delinquency has great relevance to adult delinquency. Drs. Healy and Bronner went so far as to say that it is 'grossly unfair' that only the delinquent in a family is treated.[3] To some extent English law has realized this. Juvenile courts can fine the parent or guardian of a child for the child's delinquent acts, if he or she has 'conduced to the commission of the offence by neglecting to exercise due care of the child or young person'.[4] All Child Guidance Clinics regard parents

[1] See Chapter 8 of *Crime and Psychology*.

[2] *The Challenge of Childhood*, pp. 238–9.

[3] *New Light on Delinquency and its Treatment*, p. 14. In one place in the United States a Domestic Relations Court evolved plans for a school for the education of parents of delinquent children. See *Preventing Crime*, edited by S. & E. Glueck, Chapter 21.

[4] Section 55 of the Children and Young Persons Act, 1933.

as in some measure their patients, as well as the delinquent children. It is probable that the idea of making punishment fit the parent will some day be extended, for the idea is psychologically sound.

So important and devastating are the effects of matrimonial breakdown that various attempts have been made to do what is possible to strengthen marriage. In 1934 three men united to produce a cheap pamphlet, ' Right Marriage,' which when put in the hands of those about to marry, or those recently married, could help them to avoid some of the inevitable pitfalls.[1] The Student Christian Movement Press published the pamphlet, and many later editions have followed. This was an attempt to carry out a recommendation passed by a committee at the Lambeth Conference of the Church of England in 1930 that ' there should be special preparation for marriage for persons between their engagement and the wedding. . . . It may be done, in part at least, through suitable literature '.[2] There were several other books of this kind, notably *Preparation for Marriage* (1932), prepared by a special committee on behalf of the British Social Hygiene Council. Both these publications were free from that unnecessary and dangerous reserve on the subject of the voluntary limitation on the birth of children which characterizes much literature on this subject.

In 1938 a much bolder scheme was set on foot, the Marriage Guidance Council, formed ' to meet a widespread and growing need on the part of the public for accurate knowledge and expert help in the sphere of marital relations '. The work of this council was held up by the war, but, so great was the need for it, it was revived in 1943. The ' general principles ' on which this council works are such that only those opposed to the employment

[1] Dr. F. R. Barry, then Canon of Westminster, later Bishop of Southwell, the late Dr. Douglas White, learned in both divinity and medicine, and the author of this book, his part being mainly editorial.

[2] Report of the Lambeth Conference (1930), p. 88.

of scientific knowledge in the spacing of children could fail to approve them. As the planned work of this council succeeds, the grim problem of matrimonial breakdown will be reduced in volume. There can be no doubt that many marriages fail through sexual ignorance, so as sound knowledge spreads, conditions should improve, though, as will be seen some pages hence, human frailties such as selfishness and an absence of any sense of duty are menaces to marriage more frequent but less easily tackled.

In view of the fact that sound marriage is generally admitted to be basic in human welfare, both individual and collective, it might have been expected, quite reasonably, that English law on breaking marriages would have been thoroughly overhauled to bring it into line with modern thought. Here and there improvements have been made and new ideas adopted. But there has been no overhaul, and to this day our law deals with matrimonial failure primarily from the standpoint of the partners to the marriage. In all the legislation passed from the accession of Queen Victoria onwards to the present day no difference, for instance, has been made between the court methods for handling a matrimonial dispute between parents with dependent children and such a dispute where there are either no children or the children have grown up. With one exception relating to procedure in magistrates courts, made in 1937, all matrimonial disputes have been regarded solely as matters of law in which only the parties are concerned. (The State is a possible party, in a negative way only, in divorce cases, in the form of the King's Proctor.)

If the teaching of modern psychology had been known in Parliament for several decades, the matrimonial legislation of this century would have been very different from the laws that we now have. There would, for instance, have been an entirely separate procedure in divorce cases where the parties have dependent children. In legislation affecting divorce for those with children the situation and interests of the children would have been paramount. But narrow conceptions of law and religion, and not modern

psychology, have influenced the framing of our divorce laws.

For nearly a hundred years religious organizations generally have taken a narrow view on the subject of divorce. Most of their efforts have been spent in argument whether full divorce, giving a legal right to re-marry, is or is not permissible according to Biblical teaching. In one form or another, often in the form of decrees of nullity, a safety-valve has always existed in Christian churches for some of those whose marriage was a failure and who wished to marry again. But instead of, as might have been expected, devoting attention to the dangers to children arising from divorce, religious opinion has spent itself in exegetic disputation. The presence of the much disputed words 'saving for the cause of fornication' [1] in Saint Matthew's Gospel, whether authentic or not, is some evidence that from the beginning Christians accepted the view that indissoluble marriage, while beyond doubt the Christian ideal, could not be legally enforced. But these words became widely accepted as justifying full divorce where adultery could be proved by one of the parties to a marriage. The Matrimonial Causes Act of 1857, which for the first time in this country authorized full divorce through the agency of the national courts of law, was accepted because it seemed to be based upon this text. But in that Act lay the seeds of evils which neither religious nor political

[1] There has been much discussion about the real meaning of the original word translated 'fornication' in our Bible. In his book *The Teaching of the New Testament on Divorce*, Dr. R. H. Charles stated (p. 23) that the Greek version of the word 'often quite definitely means different forms of unchastity'. One of the possible meanings, according to Dr. Charles (p. 104), is 'adultery persistently committed either for hire or through wantonness'. But in 1857 most people were content to rely upon the Authorized Version without scrutiny. Thus our law accepted one act of adultery, often stage-managed, as sufficient for full divorce. In recent times the Divorce Court has stiffened up its standards because of the frequency of cases built up on stage-managed adultery. But this has made matters worse.

opinion foresaw. The penalty of legislating on the authority of isolated texts in the Bible was that a situation arose in which full divorce for even casual adultery became possible, whereas divorce for other reasons, even the most grave, was denied. But, as Lord Birkenhead once said, 'the spiritual and moral sides of marriage are incomparably more important than the physical side. . . . Adultery is a breach of the carnal implications of marriage . . . But I have always taken the view that that aspect of marriage was exaggerated, and somewhat crudely exaggerated, in the marriage service.' [1]

Interpreting the Biblical word fornication as adultery, our law since 1857 has accepted proof of adultery by one of the parties as adequate ground for divorce, provided that there was no proof that the other party had also committed adultery. Thus divorce became too easy as well as too difficult. Besides, these vital questions were treated purely as matters of law and legal procedure, to be tried in the same way as an action for libel or for damages consequent upon a motor collision. In so doing our ancestors flattered themselves that they were acting in full accord with Biblical teaching. Thus religious opinion failed to appreciate that, as Bishop Barry explained in modern times, the New Testament 'is not concerned with life in its detail, but with life in its core of worth and significance'.[2]

The evil inherent in such a situation was long in developing. After 1857 the annual number of divorce decrees was for many years about 200. In the period 1881–5 the annual number was only about 330. In the last years of the century it was only about 500. Between 1908 and 1912, the year in which the famous Royal Commission reported, the annual number was about 650. It was but a little higher when war broke out in 1914. In 1923 religious opinion, with marked exceptions, and political opinion accepted a change in the law to give women the same rights of divorce as men, regardless of inherent

[1] In the House of Lords, 24 March, 1920.
[2] *The Relevance of Christianity*, p. 57.

differences. Women were enabled to obtain full divorce by proving an act of adultery by their husbands. (It is no credit to our democratic institutions that nearly all the Acts of Parliament passed in modern times on the subject of marriage were the result of bills introduced by private members. Democratic Governments have proved themselves to be singularly shy on all these matters; yet legislation about marriage is bound to be half-baked if left to the initiative of private members.) The result of the Act of 1923 was that the number of decrees shot up. In 1932 there were nearly 4,000 decrees of divorce. Then in 1937 Parliament again altered the law and provided that divorce could be obtained for causes other than adultery. Thus further thousands were added to the number of divorce decrees each year and soon those granted to wives nearly equalled those granted to men.

Here is one of the principal causes of that increase in juvenile delinquency that shocks the self-righteous whose own errors have been forgotten. Truly the sins of the fathers are visited upon the children.

In all this divorce legislation, the object of attention was the so-called rights of the partners to marriages. The law attempts to secure the maintenance of the children of the marriage by one of the parents, and to provide for custody and guardianship. But these matters are regarded as secondary in divorce litigation. Apart from a useful law restricting the reporting of divorce cases in the newspapers, there has been no change in the legal procedure whereby divorce cases are heard and decided. Parliament, the legal profession and vocal public opinion had apparently no doubts about the suitability of historic common-law methods of trial for matrimonial litigation. For many generations it has been assumed that the conventional methods of our common-law courts are efficient for eliciting the truth in all kinds of case. The only substantial change was that gradually juries almost disappeared from civil cases. Otherwise historic procedure was retained and marriage disputes in the High Court still have to be decided by it. There

is irony in the fact that in 1895 the commercial world revolted against the unduly formal, expensive and dilatory methods of common-law trial with the result that for commercial cases the judges voluntarily prepared a new and more businesslike procedure. But warring husbands and wives could not bring their needs forward, so for them the ancient methods have remained.

Even for people of small means, whose matrimonial disputes are dealt with in a magistrates court (though no divorce can be granted there) the full vigour of common law procedure used to apply. When in 1857 Parliament was passing the Matrimonial Causes Act, a section was included to enable wives, deserted by their husbands, to apply to a magistrates court for the protection of their earnings and property. This was the beginning of magisterial concern with marriage problems. Magisterial orders for the separation of husbands and wives—the practical equivalent of the old ecclesiastical decree of divorce *a mensa et thoro* which gave no right to re-marry—were introduced in 1878 for cases where husbands had been convicted of aggravated assaults upon their wives. Provision was then made for maintenance and for the custody of children of the marriage. Eight years later the jurisdiction of magistrates courts was extended to cover cases where wives had been deserted by their husbands or where husbands had wilfully neglected to maintain their wives. In 1895 the matrimonial jurisdiction of magistrates courts was consolidated by the Summary Jurisdiction (Married Women) Act, which is still the principal Act governing magistrates' powers in marriage disputes. Throughout this legislation and until 1937, the historic common-law procedure was in full force. Thus when I became a magistrate, I found that I had to deal with marriage disputes in precisely the same way in which I tried a man for theft or heard a summons against a motor driver. I quickly found that by such means the real truth of a matrimonial situation seldom emerged. In 1937 came several valuable, but somewhat restricted, reforms to provide a more humane and psycho-

logically sound procedure for matrimonial work in magistrates courts.

By the Summary Procedure (Domestic Proceedings) Act, 1937, historic legal procedure was modified in several respects. Matrimonial cases were to be separated from the ordinary work of magistrates courts and only three magistrates could sit on the Bench when domestic work was being done. Section 9 of the Act provided that metropolitan magistrates shall, if they wish, be entitled to hear these cases alone. I have long believed that there is something indecent in a lawyer hearing such cases without the co-operation of experienced lay justices, preferably one of each sex. The Act also provided that admission to the court should be severely controlled; the right of the press to report marriage cases was restricted, and it was recognized that probation officers can do good work in helping both parties and the court. Even the problem of cross-examination where the parties have no legal assistance was tackled, but the remedy provided was useless. None the less, if this Act is worked by magistrates in the spirit as well as in the letter, we now have in our lower courts a procedure for the hearing of matrimonial disputes which is fundamentally different from ancient common-law ideas, a procedure which is in consonance generally with modern psychological opinion.

Why has no corresponding reform been introduced in the branch of the High Court where divorce and other matrimonial cases are heard? If a modified procedure in court and the services of probation officers have been found necessary in the matrimonial work of magistrates, which can in no case affect the status of the parties, it might be thought that in the High Court, where the married status is altered, similar reforms would have been found essential. In recent years, thanks to reformed rules whereby 'poor persons' can apply for matrimonial relief, the same people who can apply for relief in a magistrates court have been taking their troubles to the High Court. If they apply in a magistrates court, there is a reformed procedure and

they have the services of social workers, usually the probation officers, if they want to make use of them. But if they apply in the High Court, where the relief asked for is far more drastic, they are dealt with on old-time procedure and have no social workers to help them; they are purely litigants, and the court is concerned solely with the legal issue about whether the case can be proved. This is a strange state of affairs, one which only history and the inherent conservatism of lawyers can explain.

In the last letter which he wrote to the press Sir Frederick Pollock drew attention to the need for social investigation in divorce cases:

> A court for matrimonial causes should have conciliation for its first object . . . and should be entrusted with wide discretion. It should have power to grant a final decree of divorce when, after full inquiry and consideration, reconciliation proves impracticable . . . When our Divorce Court was created, its method and procedure was modelled, rather as a matter of course, on those of our civil courts in matters of ordinary litigation . . . The application of that scheme to family relationships is, in my humble opinion, all wrong.[1]

In fact our common-law procedure for hearing and deciding matrimonial disputes is as out of date in the Divorce Court and at Assizes as it was in magistrates courts before 1937. But court proceedings between the parties should be the last stage of a matrimonial case, not the inevitable feature of all such cases. The old procedure compels concentration from the beginning on legal issues. What is needed is a procedure step by step which has for its object the elimination of the cases where hasty and ill-considered action has prompted application for breaking up the home which is not really desired. From the beginning the old procedure keeps the parties apart and tends to intensify their differences. A man who had great experience in 'poor persons' divorces once told me that often he got the impression that only the system and the lawyers

[1] The *Daily Telegraph*, 14 November, 1936.

kept the parties from coming together again. How different from the kind of Chancery procedure for which Sir Frederick Pollock pleaded and which should now exist in magistrates' domestic courts.

The defects in the present procedure in divorce cases are particularly noticeable in the assize courts. There, criminal work, civil work and divorce cases are all dealt with in the same place and by the same procedure. In each kind of case the judge's problem is the same: have the prosecution, the plaintiff or the petitioner proved a case? If a divorce case is proved, a decree follows, and at no stage is there any social inquiry. While probation officers may (or may not) be in attendance for criminal cases at assizes, they are not employed to assist in matrimonial cases, which become merely combats between the parties. The issues have been narrowed down in the written statements prepared by lawyers, and in this way the trial is shortened as much as possible. Complaint was made to the Lord Chancellor's Committee on the trial of matrimonial cases in the provinces (1943) that such cases 'receive less attention, owing to pressure of other work, than is called for by the importance of the issues which they raise'.[1] My experience of assizes is insufficient for me to have an opinion about this. But whether a divorce case be tried in London or the provinces, if the party accused of a matrimonial offence does not appear in court, as often happens, the case usually takes about five minutes, and that is all that the judge sees of it. Many judges have expressed opinions to the effect that such cases are boring and tiresome. Thus Lord Justice Mackinnon wrote that 'the most trying days at Leeds were those on which I had to deal with about eighty undefended divorce cases. This is the only form of judicial work that I have always detested; and I have resented having to do it.' He termed such judicial work 'so repulsive and degrading a duty' and expressed wonder that such cases were not disposed of by the Registrar in a County Court. He added: 'It

[1] Report, p. 9.

would be hard on that capable official, for in fact they [these divorce cases] would not tax the powers of the stupidest man who was ever an acting Deputy Registrar of a County Court.' [1] Lord Hewart, when Lord Chief Justice, was even more caustic. After dealing with some undefended divorce cases at Lewes he once asked a well-known barrister : ' Can you tell me why cases of this kind should not be tried in Police Courts, and if possible in batches ? ' [2] Later changes in the law have enabled the judges of the Divorce Court to visit assize towns to deal with the matrimonial cases. This will relieve most of the other High Court judges of these duties, but the quality of the work and the legal methods of doing it remain as before.

To any magistrate who has taken an interest in matrimonial cases under the reformed procedure in magistrates courts, these criticisms by eminent judges are painful. If domestic disputes are detestable or worthy of being dealt with in batches, this clearly indicates that something is radically wrong with the procedure under which they are tried. In fact such cases, though sometimes depressing, especially since 1939, are seldom even dull, if the full facts are elicited. Judges of the King's Bench have disliked trying them probably because their duties are so restricted by the old-fashioned procedure ; they see but little of the human side of the cases. It must be ' repulsive and degrading ' to spend an hour in dealing with some fifteen or twenty cases when the sole duty of the court is to answer the legal question whether adultery, &c., has been proved. This remains the duty of the judges, be they members of the Divorce Court or judges from another branch of the High Court.

My experience has been that an hour has its interest when one is occupied in hearing the whole story of three or four cases, assisted by the inquiries and impressions of probation officers who have been struggling with the cases for several days. The interest is greatly increased, and often the

[1] *On Circuit 1924–1937*, pp. 112–13.
[2] *Evening Standard*, 10 March, 1937.

depression also, when questions of the custody, guardianship, maintenance, &c., of children have to be decided.

High Court judges ordinarily leave these last matters to registrars in the first instance. But magistrates frequently see the children themselves, discuss with them, if they are old enough, the existing situation, and thus learn much about the parents. Even where the children are not heard, so much of the time taken by a case is concerned with their interests that such cases could not be 'degrading' except when the parties are degraded. A magistrate has always to realize that the dispute between the parents may have serious effects on the children's future lives.

The evils surrounding the present procedure in divorce cases were less evident in the days when it was almost solely used by those who, being able to pay for ample professional advice, would be less likely to embark on divorce cases which would prove harmful to themselves as well as to their children; at least there was usually enough money to secure the maintenance and supervision of the children. But the 'improvements' made in recent years in what is somewhat patronizingly called the 'poor persons procedure' have made the situation really dangerous, for, as I have said, many of the same people for whom modern procedure has been created in magistrates courts now proceed to the High Court for divorce.

In a 'poor persons' suit for divorce only legal aid is granted. There is nothing to correspond with the optional conciliation procedure by probation officers in magistrates courts. Yet the issues in the High Court, as we have seen, are far more serious and have permanent results. The parties to a marriage dispute in a magistrates court can at any time in effect annul the court's decision by living together again. This they often do.

It is far from my intention to disparage in any way the voluntary work for 'poor persons' done by both branches of the legal profession. On the contrary, the lawyers doing this work without remuneration deserve the highest praise. But the question whether legal aid is sufficient in these

cases demands an answer. In some measure the solicitor for a paying client does part of the work that a probation officer performs in a case before magistrates. Ordinarily such a solicitor will discuss with his client, before starting proceedings, all questions concerning the immediate gravity of the situation, the interests of children, the financial aspect of the problem and generally the wisdom of taking the proposed legal proceedings. Often he will communicate with the solicitor for the other party to the marriage to find out the attitude adopted. As a result some paying clients, who entered their solicitor's office intending to take divorce proceedings, discover that there are other and better ways of dealing with a difficult situation. Thus the paying client does not as a rule approach the court without at least an opportunity to look all round the situation and to discuss it with an experienced man or woman. This cannot be regarded as a thorough process of preliminary inquiry, since solicitors are not trained in social problems, but it is a valuable procedure and probably results in some futile divorces being nipped in the bud.

Few lawyers are, however, competent to deal with such problems as the real interests of the married women of the wage-earners, the immediate or ultimate welfare of their children, &c., without the assistance of trained social workers who are familiar with the lives of the wage-earners. Ordinarily the solicitor acting for a ' poor person ' concentrates upon the question whether his client can prove a case in court. He seldom begins with social inquiries and seldom has lengthy correspondence with the other side. So as a rule even the pseudo-conciliation procedure that the paying client undergoes in his or her solicitor's office is wanting in a ' poor person's ' case. Yet it is precisely in such cases that conciliation procedure is needed.

Conciliation procedure does not mean that there is any barrier against the obtaining of legal rights. Doubtless many solicitors acting for paying clients have had to launch divorce proceedings which they believe will be detrimental to their client's real interests. In the same way magis-

trates often have to make separation and maintenance orders when they are convinced that the parties and their children would be better off if they made up their differences. In both cases the law takes its course if the parties insist. But in conciliation procedure the last question that is considered is whether the case can be legally proved. Before that question is considered, the conciliator sees first that the party concerned fully understands the consequences of the proposed step; alternative courses are clearly explained. Without using undue pressure, the conciliator endeavours to see whether the parties can be satisfied without having to bring their troubles before a court of law. With conciliation procedure in existence, a court knows that the very fact that the hearing of a case is necessary is an indication that the parties are determined, or that one side in the dispute is determined, to force matters to legal decision. Before the war it sometimes happened that even so, opportunities arose during the legal hearing for further attempts at conciliation to be made. But where there is no conciliation procedure, a court never knows whether its decision will bring more harm than good to the party who wins the case. Little wonder that judges have termed such proceedings 'repulsive and degrading'. In this association the adjectives are suitable.

A minor feature of this problem is that it seems unfair to burden professional men with 'poor persons' cases until they have been sifted from the social point of view.

From magisterial contact with those who have passed through the Divorce Court I am convinced that even at that late stage some of the parties do not understand the situation after a divorce has been granted. Divorce decrees are often granted in cases where previously there existed an order for maintenance and custody made in a magistrates court. Then the High Court usually makes no order on these matters, so the magistrates' order remains in force until it is amended. I have had before me men who had not opposed the divorce proceedings taken by their wives,

but who cheerfully assumed that the divorce decree against them freed them from all responsibility; such men had no answer when I asked them who was in future to maintain their children. I have also had to deal many times with women who have successfully petitioned for divorce, but who had not previously applied for an order in a magistrates court; when they tell me that the husband has not paid the amount that the High Court ordered, I can only reply that they must make application in the High Court, which costs money and takes time. That possibility never occurred to them when they applied for a divorce, and nobody was at hand to explain it to them. Is it not tragic that people can enter into divorce proceedings without having explained to them so simple a point as that children will still need to be provided for, or that magistrates courts have no power (unfortunately) to enforce orders made by the High Court?

It is all wrong that there is no social assistance for those seeking divorce, and in particular for those within the financial limits prescribed by the Poor Persons Rules. They can obtain a certificate to take divorce proceedings as 'poor persons', without any social inquiry or assistance. This constitutes a grave social evil and jeopardizes the lives of countless children. Seeing that a large grant from public funds is made towards the expenses of the Poor Persons organization, conducted by the Law Society, it is no exaggeration to say that public money is in effect used to facilitate divorces among the lower wage-earners many of which will do harm to their children. This is not a wise use of public money. The main lesson that my years of matrimonial work in magistrates courts have taught me is that even intelligent people need social, as well as legal, help when their marriages threaten to break. This opinion coincides with the statement of the Departmental Committee on the Social Services in Courts of Summary Jurisdiction (1936) that 'in matrimonial disputes social considerations are mixed up with the purely legal issues, and no court could properly exercise its functions in this direc-

tion without bearing this fact in mind '.[1] Yet ever since 1857 the High Court has exercised its matrimonial functions without any machinery for social advice or investigation.

A true story will illustrate my assertion that people need social help in divorce cases, as in cases in magistrates courts. In order to apply for a certificate as a 'poor person', applicants have to fill up a form, and their signatures on these forms have to be witnessed. Frequently applicants come to a magistrate for his signature as witness. The magistrate is in fact a human rubber stamp on these occasions, nothing more. These applicants could in most cases proceed, if they do not want freedom to re-marry, in a magistrates court; in any case they are the same type of humanity as those who come to magisterial domestic courts. It has long been my practice, whenever possible, to invite applicants seeking my signature on these forms to have a talk, first with me and then with one of the court probation officers; I briefly explain to them the main differences between separation in magistrates courts and divorce in the High Court. Sometimes the applicants have firmly made up their minds, as they think, and refuse help. This type of applicant greatly increased in numbers after 1939.

Many applicants used to be glad to accept my offer. Such an applicant was Mrs. P. I read through her form and found that, if she could prove her statements, every necessary element for obtaining a divorce was present. But Mrs. P. was still young and, more important, there were young children. In the short talk that I could have with her I became suspicious that in reality Mrs. P. was acting under the influence of Mr. P. Happily Mrs. P. was co-operative and had, on my invitation, several talks with a probation officer, who quickly became convinced that Mrs. P. still loved her husband and wanted him back. So Mrs. P. was asked to see me again. I told her that at any time I would sign her form, but that if she really did hope that her husband would come back to her (he had 'gone off' with another woman), a summons was

[1] Paragraph 5.

better than a petition for divorce, since no final decisions could be made. Mrs. P. seemed grateful for the suggestion, so a summons for desertion was issued. I put the case in my colleague's list, as I had gone further in my inquiries than a magistrate should if he is going to try the case. In the end the summons was withdrawn at the request of both parties; Mr. P. had, in a talk with the probation officer, indicated in manner rather than in words that he wanted to be forgiven. So he was advised to go and see his wife. Married life was quietly resumed, the probation officer kept in touch with Mr. and Mrs. P. and two years later they were living happily together. So they passed from our vision. The reconciliation was effected without any legal powers. Had I blindly signed Mrs. P.'s application form, probably a divorce would have followed, for adultery had been committed.

From these talks with intending applicants (which have become rare since 1939), as well as from experience in domestic courts with similar types of people, I am firmly convinced that many of those who begin divorce proceedings are taking a step for which afterwards they will be sorry. In comparatively few of such applicants is there any desire to re-marry. (One woman, when I asked her about this, replied, 'Who's going to take me?'). In many cases their problems could be more effectively settled in magistrates courts. We have already travelled so far along the road to abundant divorce that some women seem to think that they will not be respectable again until they have punished, as they think, their erring husbands by divorcing them. But when they find that divorce does not in fact result in the payment of maintenance by the errant husband, they feel differently.

It is sometimes said that it is an insult to people's intelligence to assume that they do not know, when in matrimonial difficulties, what is the best course to take, and that in fact they know what they want better than anybody else. Thus the anonymous and very critical author, signing himself 'Barrister', of *Justice in England* took exception to

what he described as a ' a kind of preliminary moral censorship '.[1] He objected to any one applying for matrimonial relief being asked if she, or he, would like to talk things over with a sympathetic and trained probation officer. In the past, I agree, there was a certain amount of misplaced moral pressure by the predecessors of probation officers; this was sometimes a real barrier between the applicant and the court, a barrier all the more undesirable because it was unconscious and placed there with the best of intentions. But in a well-conducted domestic court a summons is issued whenever it looks as if a case can be made out. This is before the applicant is invited to discuss matters with a probation officer.[2] Such is real conciliation, for there is always an open road to the court. Though I began conducting a domestic court nearly three years before Parliament made them compulsory, no complaint has ever been made, to the High Court, or to me, that there has been any denial of justice. On the contrary there have been many letters of gratitude. Another pre-war example may be useful.

The problems of Mrs. D. were such that obviously there should be a hearing in court before there was any reference to a probation officer. So I heard the case in the week following the granting of the summons. At the hearing I got the impression that the husband had been ' persistently cruel ' and that the wife, somewhat naturally, was antagonistic to him. Nevertheless I felt that the parties had not yet reached finality; there was some response to my suggestions that separation would involve hardship upon the children, as well as awkward financial problems for both husband and wife. So I made an ' interim ' order for maintenance and custody for a month and suggested that both sides should keep in touch with the probation officer. I also advised that Mr. D. should see one of the local

[1] p. 181. Despite its bitter tone, this book should be read by all lawyers willing to examine present methods.

[2] This name is not suitable for those who act as conciliators. Why not ' Court Friend ' ?

doctors who were helping the court. This was because there were vague complaints by Mrs. D. that her husband was sexually abnormal and because, though I suspected that such complaints might be well founded, I could not obtain in court sufficient evidence about them. When the case appeared again in my list, I was intrigued to find neither party present. The probation officer reported that the husband had seen one of our friendly doctors, that cohabitation had been resumed the following week and that all was well. The following is a letter from Mrs. D. that lay on my table (with the original punctuation and spelling):

Sir, with your permission I would like to drop my case against my husband for a seperation. You see Sir you gave him a chance and by doing that you seem to have performed a miracle for it has been the happiest month of our fifteen years married life, We both feel the same about it Sir. We realy are sincerly devoted to each other and it took a lot of courage to bring him to your court as he realy is a good man at heart only something had to be done to stop him drinking as he might have done something serious to me. I can hardly believe that those few minutes [1] with you has made such a difference, he has been wonderful to me and the children and our home now is heaven when he comes home wereas before we were scared of him coming home and I have every faith in him sir that he will never go back to the old life . . .

This letter ended with thanks for the probation officers and myself: 'God bless you' were the last words. Such a letter is compensation for much of the depressing work of domestic courts. Perhaps in this case we prevented the existence of some future criminals. The probation officer kept in casual touch, wisely feeling that the less that Mr. and Mrs. D. saw of him, the better. About a year later he paid a visit and the result of this was the receipt by me of the following letter:

I hope you will forgive me for taking the liberty of writing to you, I have often felt I would like to do so . . . Well Sir I

[1] There were at least twenty of them.

expressed my gratitude to you once and now after nearly twelf months may I thank you again for what you did for us. From the moment we left your court my husband was a different man and our home has been a very very happy one, it seems almost impossible to imagine now that it was ever anything else . . .

This human story has a moral. This is that Mrs. D. had an absolute right to a separation order in my court, for she could have proved her case. Even more important is the fact that had Mrs. D. heard of the Poor Persons Department, and that divorce is possible for cruelty, she could have applied for divorce. Had she done so, there would have been no independent person who, after hearing both sides, could suggest a temporary makeshift while the parties thought the matter over again and received advice. There would have been no brake on the legal wheel.

As it is now established fact that breaking and broken homes can be a powerful factor in encouraging youthful crime, it is an urgent need that our judicial machinery for hearing divorce petitions should be examined by minds untainted with that conservatism and reverence for the past that seems to possess almost all lawyers. Both the beginning and the end of divorce cases need attention. Much has been written in these pages about the beginning; at the end every divorce decree of the High Court relating to the wage-earners might well be transferred to magisterial domestic courts, where all questions of the payment of maintenance can be quickly and cheaply dealt with. Magistrates courts have a quick, effective and ever-ready procedure for dealing with such matters as the amount to be paid and the enforcement of payment. They can also decide with the same speed and economy all questions of the custody of children. The use of this machinery, when the High Court has decided the main issues, would prevent the denial of justice often involved when wage-earners have to use the machinery of the High Court in the effort to get their maintenance.

Quite other opinions were held by the committee on the trial of divorce cases at assizes, mentioned a few pages

back. Questions of custody and of money, they decided, 'raise issues which are peculiarly technical and difficult, and in which it may frequently be necessary that the issues arising should be decided by the judge himself'.[1] One cannot help wondering whether the committee ever realized that these issues have long been decided almost every day by magistrates in their own courts; they are in terms of humanity of great difficulty, but in terms of law these issues between husband and wife are simple, not technical.

But difficulties concerning the enforcement of payment or alterations in the amounts to be paid pale before the problem of providing conciliation machinery before petitions for divorce are launched. Here there has been so far an almost total failure to realize the gravity of existing conditions. Both Parliament and the legal world seem to have soothed themselves that the changes that have been made in the working of the Poor Persons Rules and the increase in the number of judges in the Divorce Court have solved the problem of divorce for the wage-earners. The truth is very different.

Another important factor that should be realized is that the financial limits imposed on the Poor Persons procedure are very low. In fact a high proportion of wage-earners who cannot afford to pay professional fees are excluded from the operation of the Rules.

The principal problem is to secure that applications for divorce shall be made by wage-earners, and if possible by every one else, only when the situation that drives men and women to think of divorce has been considered from all points of view and discussed, if the parties are willing, with independent and trained social workers. Only thus can the interests of dependent children be really protected; only thus can the bitter disappointment that can follow divorce be prevented. There should be some preliminary procedure concerned solely with the social aspects of the existing differences between the parties.

The idea of conciliation proceedings before divorce cases

[1] Report, p. 8.

are taken to the courts is new in this country, and, of course, on that account many will say that it is impossible. But the war of 1939 necessitated its adoption for soldiers, whether serving at home or abroad. There were so many applications by soldiers to stop their wives' allowances (many of them due to idle gossip about the wives sent to them by callous neighbours), that the War Office introduced a conciliation procedure. Such cases were dealt with sympathetically by experienced workers and were usually referred to probation officers in the areas where the maligned wives were living. Often the resulting reports exposed the hollowness of the gossip and the devilry of those who passed it on. The distressed soldiers were in this way able to obtain a true view of their home situation. Many petitions for divorce were abandoned, and more were never filed, because this simple conciliation machinery existed. Help could be given to the cases where conditions were hopeless, all the more so because the cases where no action was really desired had been weeded out. It seems to me urgent that this experience should be examined and its lessons taken into consideration in connexion with the general problem of divorce.

The army scheme involved some measure of compulsion. In matrimonial disputes in magistrates courts there is no legal insistence upon conciliation, though in any well-conducted domestic court it exists and is something very real and valuable. The lack of compulsion has the drawback that it leaves conciliation to the discretion of courts, and in fact some courts are old-fashioned and fail to do what more progressive courts find valuable and much appreciated.

In planning how conciliation procedure can be provided for divorce cases, there is need for an examination of the procedure in other countries, for many different schemes have been in actual working for some time. Thus in pre-war Norway those contemplating either divorce or separation had always to submit their case to mediation first; there was a mediation board in every district; the mediator summoned the parties, who were under an obligation to

present themselves before him.[1] One of the best legislative attempts of this kind is in the State of California. By a law which came into force on 19 September, 1939, compulsory conciliation procedure was introduced both for divorce and separation cases where there are dependent children. Thus, ' whenever any controversy exists between spouses which may, unless a reconciliation is achieved, result in the dissolution or annulment of the marriage, or in the disruption of the household, and there is any minor child of the spouses, or either of them, whose welfare might be affected thereby ', a court of conciliation ' shall have jurisdiction over the controversy, and over the parties thereto and all persons having any relation to the controversy '. Another section provided that probation officers and employees of the conciliation court shall assist those who need help. If settlement out of court is impossible, there is a hearing in the conciliation court which is conducted informally. It was expressly provided that during a period of thirty days after the application to the conciliation court, neither spouse shall take ' any action for divorce, annulment of marriage or separate maintenance '. If any such action should be begun without prior reference to the conciliation court, the superior court is bound to transfer the case to the court of conciliation if ' it appears to the court at any time during the pendency of the action that there is a minor child of the spouses, or of either of them, whose welfare may be affected by the dissolution or annulment of the marriage, or the disruption of the household '.

There are features in this law which would scarcely be suited to the English temperament. But I would urge that in making distinction between matrimonial cases where there are dependent children and those where there are none, California has shown the way to conditions which would conform to modern knowledge and to the rights of children. That state has thereby taken a big step towards a reduction in the volume of juvenile crime.

In this distinction between applications for divorce,

[1] From information obtained from Norwegian sources.

annulment or separation where there are dependent children and similar applications where either there are no children or the children have grown up, lies in my opinion the essence of the reforms needed in this country. The fact that warring parents have dependent children would justify the existence of conciliation procedure as a necessary preliminary to legal action. Grandmotherly legislation will never, I hope, be popular in this country; but if married men and women desire to take advantage of laws providing divorce or separation facilities, they have no right to complain if the State, as the protector of dependent human life, insists upon social inquiry before legal action in cases where there are dependent children. It has been because no attempt has been made in this country to make this distinction that our laws in relief of unhappy husbands and wives have become a social danger. We may reasonably hope that the increasing public interest in the problem of juvenile delinquency and in the teaching of modern psychology will bring about a demand that this distinction shall be reflected in the procedure whereby all matrimonial disputes are heard.

In the 'eighties and 'nineties of the last century the frailties and peculiarities of parents in the matter of marriage were almost never the subject of conversation by their children or their children's comrades. When I was at school, such matters were not discussed, not because of any Victorian prudery, but because there was no occasion; parents lived together and one never heard of any divorce or separation. I was in late adolescence before I knew of any broken home. But in these modern days domestic triangles, sometimes quadrilaterals or even worse, are known among school-children, especially in boarding schools; such matters may be seldom talked about because of respect for the children affected, but knowledge of these conditions is widespread. One modern child told me that a school friend had three mothers and two fathers. This kind of knowledge can be dangerous, even for those coming from normally happy homes. By such knowledge the whole

conception of what marriage involves can become altered, probably unconsciously. It is easy for the idea to get spread abroad that marriages are not ' for better for worse '.

There is not the slightest doubt that the war of 1939 seriously intensified conditions that were already dangerous before it broke out. I gradually saw in my domestic court the effects of war, and most magistrates must have had the same experience. By 1942 conditions had changed beyond recognition. Whereas before the war in about a third of the cases in my weekly list I would be told by probation officers that the conciliation process had satisfied the parties, by 1942 I had often to try every case in my list. I found a definite lowering of matrimonial morale. Both husbands and wives were numerous who were unashamed of their adultery, even with the wife or husband of some one else. That the new partners had young children of their own did not seem to matter to such people. The happiness of the moment seemed to be their supreme moral law, and the consent of the other party, whether married or single, parent or free, appeared to be regarded as a complete justification. Thus in a criminal case before me a young woman witness referred to the defendant as her fiancé. As he was a married man living with his wife and three young children, I asked her what she meant. ' He's going to get a divorce,' she said in a tone showing full satisfaction. Before the war I regarded my domestic court as the high spot of my week's work. From 1942 onwards I could but consider it a painful duty. As the war proceeded I found that attempts to reason with applicant wives or defendant husbands were usually fruitless. An excellent section of our matrimonial law enables domestic courts, without any adjudication on the merits of cases, to make interim orders for any period between a fortnight and three months, during which time husbands can be directed to pay weekly sums for the maintenance of their families.[1] Before the war I used this procedure freely, especially in cases where it

[1] Section 6 of the Summary Jurisdiction (Separation and Maintenance) Act, 1925.

seemed that the parties had not reached finality and where probation officers thought that further efforts at conciliation might be successful. Through this procedure the rights of neither party were jeopardized, and it frequently happened that on the second hearing the parties were not present, their troubles having been adjusted by consent. This happened in the case of Mrs. D. above. By 1943 interim orders were almost useless; the parties almost always appeared at the second hearing, and legal decisions on the facts stated in evidence had to be given.

We found also that it was useless to reason with those who applied for the magistrate's signature to their applications for divorce to the Poor Persons department. Such applicants, even when they had young children, were well set in their 'triumph of hope over experience'. All that I could do was to inform applicants that lawyers willing and able to undertake voluntary work were much fewer than before the war and that they should satisfy themselves before sending their applications to the department that they were justified in doing so. They satisfied themselves as a rule quite quickly.

The widespread lowering of matrimonial and sexual morale during the later war years was apparent to all who had eyes to see. As Lord Elton told the House of Lords: 'The family was the first and most tragic casualty of the war. Families had been broken up, divorce flourished, and bigamy was almost a national industry.'[1] In a special supplement to the *Christian News-Letter*,[2] it was stated: 'the war broke upon a generation of young people who were already riding loose to moral standards in sex as in much else.'

To-day it is not a few alarmists [the supplement continued] who are making a hue and cry. No matter where one goes, level-headed citizens, parsons, doctors, teachers, are deeply per-

[1] *The Times*, 10 December, 1943.

[2] Supplement to No. 184 (16th June, 1943); article by Kathleen Bliss.

turbed by what they see and hear, and are asking whether we are not caught in a moral landslide which is carrying us to chaos . . . The first fact that emerges is that the passing of the double moral standard by which a chaste man was regarded as a marvel and an unchaste woman as a social outcaste has resulted in a situation in this war quite unparalleled in any other war . . . Most promiscuous relationships are of free consent . . . Another disturbing result of this war has been the number of broken marriages.

The supplement went on to point out the great increase among 'amateur prostitutes' seeking only a 'good time', the increase in the number of babies whose conception took place before the parties were married; also the appalling increase in venereal disease. Magistrates also had ample opportunities of observing these gloomy tendencies. No less an authority than the Minister of Health was moved by the conditions to declare in public:

It is no use blinking the fact that the main factor in the present increase of venereal disease is the collapse of moral standards among a section of our population and an increase in promiscuity. . . . Last year [1942] the number of new cases of syphilis coming for treatment was more than double the pre-war total.[1]

A loosening of morals has probably always been one of the results of war; 'the world is not improved by war', as Mr. A. P. Herbert truly wrote. But the 'moral landslide' and the 'collapse of moral standards' were so vast that it is safe to say that unless the early years of peace bring a widespread return of matrimonial good will and sexual self-control, the prospects for the coming generation must be poor, a grim consequence of the war to establish true liberty. If marriage is not generally accepted to be 'for better for worse', if parents are not ordinarily willing to accept the principle that the welfare of their children must come before their own happiness, to make a consistent effort, when disappointment sets in, to concentrate upon what they have in common rather than upon their immediate

[1] Mr. Ernest Brown, *The Times*, 30 June, 1943.

troubles, then the outlook for children must be serious; and modern psychologists know full well how serious that outlook will be. Nobody figures more prominently in psychological analyses, I am told by experts, than the step-parent. Even if the step-parent comes into the lives of children as the consequence of the untimely death of mother or father, a difficult psychological crisis confronts the children. In the unconscious minds of the children the step-parent is likely to figure as a usurper, however much love the step-parent may be ready to give. The relationship when the step-parent comes into the family as the result of parental divorce is far more dangerous. In many psychological reports received in connection with cases of mine it has been clearly stated that in large measure the crimes complained of were the product of unresolved conflict centring round step-parents.

Apart from questions of delinquency, loose matrimonial conditions have other grave results. They are apt to be infectious. When the relationship between husband and wife becomes strained, as at moments it probably does in most marriages, there is bitter truth in the familiar words of Shakespeare:

> How oft the sight of means to do ill deeds
> Makes ill deeds done.

The very fact that relations, friends, neighbours, or even prominent people mentioned in newspapers, are granted divorce is knowledge that involves temptation when the inevitable troubles of married life seem overwhelming. 'Marriage has many pains', said Dr. Johnson, and when these pains come, thoughts are easily directed towards separation or divorce. The maintenance of matrimonial morale demands that those aware of these pains shall reflect on essentials, not on their own petty and momentary happiness. This is what justifies conciliation.

I fully realize that magistrates only see a small fraction of married people, but we see enough to be convinced that unless matrimonial goodwill becomes again widespread,

what politicians call 'social security' is going to have a dangerously one-sided meaning, especially in regard to children. The demand for 'social security' has been limited to economic security, but children, like their elders, do not live by bread alone. The most valuable security for children is emotional security, as we saw early in this chapter.

This is an age when much is said and written about individual rights. However liberal one may try to be, it is difficult to accept the position that there is a right in anybody to secure emancipation from marriage at the expense of young children. It is often argued that it is bad for children to live in a home where there is domestic discord and that this is a convincing reason why divorce should be possible. While every one will probably agree that it is less easy to conceal parental discord from the modern child than it was from the Victorian child, there should always be the possibility that husband and wife who are in disagreement can make a good second best without endangering the stability of their children's lives. It is arguable that there should be no full divorce for those who have dependent children, or may have within the period of nature. Such an argument would be founded, not on ecclesiastical rulings about the impossibility of divorce in a Christian country, but on child psychology and the danger lest juvenile delinquency be encouraged. Were this bold step taken, the full facilities for separation, maintenance, custody, &c., would still be available, since no law can compel husband and wife to live together. But no re-marriage would be possible until all children are grown-up.

If it should be considered that parents of young children cannot be denied divorce facilities, the question arises how conciliation procedure can be introduced into divorce cases. Any one who is familiar with our Divorce Court will quake at the prospect of reforming it on the lines by which the matrimonial work of magistrates has been transformed. For sound conciliation work should be based on tradition.

In magistrates courts there is a tradition that there should be conciliation in matrimonial disputes. That tradition in the bigger towns is more than half a century old. Courts in many country districts follow this tradition, and the public in all areas is gradually becoming conscious that magistrates courts are not only places where people get punished, but also places where help and advice is forthcoming. The tradition of the High Court, including the Assizes, is different. It is acknowledged that the best of justice is obtainable there—for those who can afford its services. But in nobody's mind is the High Court associated with advice, help or social investigation. What then can be done?

If we wish to spread abroad the belief that the breaking of a marriage and the giving of a legal right to re-marry are serious steps, then the best course is to retain the jurisdiction of the High Court as it is and to supplement it with preliminary proceedings elsewhere. As a first step it would be necessary to study the qualifications, methods and experience of those who conducted conciliation proceedings in Norway, in California and in other states where conciliation before divorce, &c., has been established. My own belief is that eventually, and after drastic reforms in the method of appointing magistrates, and in the probation service, our magisterial domestic courts will be well suited to perform the work of conciliation in cases which may (or may not) reach the High Court. The co-operation of legally qualified members in such courts would be useful, but I would not regard it as essential. Care would have to be taken to keep cranks off the Bench, for it has to be realized that marriage is a subject in which there are plenty of cranks. All those with extreme views about marriage should somehow or other be excluded from domestic courts. But not only would specially qualified magistrates be required; specially trained probation officers would also be necessary. In the existing matrimonial work of domestic courts it has been found that not all probation officers make good conciliators. Married men

and, if possible, women, are desirable, but this again is not essential. As with magistrates, it is desirable to avoid the services of any probation officer who has extreme views about divorce.

At present the whole idea of conciliation in divorce cases has received very little consideration. But it is worthy of note that the original version of Mr. A. P. Herbert's Marriage Bill, the bill that eventually became the Matrimonial Causes Act, 1937, contained a scheme whereby in effect those applying for divorce or nullity who were on the same economic level as people coming to the existing magistrates courts would pass through conciliation procedure. I suggested this idea to Mr. Herbert and drafted the clause. It was not a good scheme, but at least it brought before the House the need for conciliation for those who cannot pay professional fees. In Mr. Herbert's book *The Ayes have It* there is some account of my part in producing his bill and, if I desired to be controversial, I could argue about some of his statements. But it is the idea of conciliation that is important, not the scheme in the bill, which was all that was possible in the circumstances. This clause 10 attracted much sympathy when on 20 November, 1936, the bill was debated on second reading in the House of Commons. Even the principal opponent of the Bill, Mr. Spens (later Sir Patrick Spens, Chief Justice of India), declared that ' the provisions in favour of conciliation have my wholehearted support, because they are trying to cure an evil which, I believe, is the greatest social and inherent difficulty about the extension of the divorce law '.[1] So great an authority on divorce procedure as Sir John Withers pronounced the proposal to be ' extremely good ', and the Attorney-General (Sir Donald Somervell, K.C.) stated that ' everybody will agree that conciliation is desirable '. But nothing further happened. There was a race for time, as is usual in private members' bills, and clause 10 was dropped in committee in order that the bill might be returned to the House quickly. It is urgent that some fresh steps

[1] Hansard for 20 November, 1936, columns 2096–7.

should be taken to revive the idea of conciliation in divorce cases, for without some such scheme the extension of the grounds of divorce in 1937 was dangerous for married people, for their children and for the community.

A matter of real importance in connexion with all forms of matrimonial conciliation is that the services of medical men, and if possible of medical women also, should be available wherever conciliation work is done. In the case of Mrs. D. a friendly doctor helped greatly towards the successful outcome. It seems common sense that if the true causes of matrimonial discord are to be investigated, some cases will reveal that sexual difficulties are at the root of the friction. Magistrates and probation officers may be competent to handle such matters, but even so, they are likely to meet with reluctance on the part of husbands, and especially wives, to talk about them. Some women in magistrates courts have difficulty in telling the court that they are expecting a baby, so it is unusual to find that women will give details about their husbands' sexual conduct. With a doctor in a private room, sexual problems unfold themselves more easily. Not every doctor is qualified to talk about sex; 'unfortunately physicians are not favoured above the rest of the children of men in their personal relationship to the questions of sex life', wrote Freud.[1] Ideally, medical psycho-therapists would assist in handling matrimonial disputes, but the time for this is not yet.

On some such lines a conciliation service for divorce cases could be built up. A necessary provision would be that no divorce proceedings shall begin in the High Court (or Assizes) until a certificate is presented from a domestic court that conciliation has failed. But at first it might be wise to confine this restriction to those who have, or will have, children.

[1] This quotation from Freud's lectures in America is taken from Dr. Rickman's selection, p. 28. The British Social Hygiene Council kindly helped me to obtain the services of uninhibited doctors.

The question has been raised whether the work of domestic courts should be amalgamated with that of juvenile courts. Those who read such a book as *The Family in Court*, by Jonah J. Goldstein, a city magistrate in New York, will find much of interest in support of the idea, carried out within Mr. Goldstein's jurisdiction, of creating Domestic Relations Courts which unify the handling of juvenile crime, &c., and of parental discord. But it would be best to maintain separate courts for some time, at least until the idea of conciliation in marriage cases has been adopted in practice for several years; also until juvenile courts in all parts are on a higher level.

It is my firm belief, born of experience, that many divorces, especially among those who cannot afford to do justice to two homes, can be nipped in the bud through conciliation procedure without any denial of legal rights. I am convinced also that many divorces that have been granted have created greater hardships than they have relieved.

These ideas may seem revolutionary, especially to lawyers. One lawyer at least has pleaded for the adoption of new ideas in the judicial machinery for hearing divorce cases. Thus, one of the most experienced practitioners in the Probate, Divorce and Admiralty Division of the High Court (the technical name of the Divorce Court) once pleaded for some form of conciliation procedure in that court. 'I would like', he said, 'to see some scheme whereby a judge would inquire much more closely than is feasible as the law now stands into the real reason of the failure and the future prospects of children and would satisfy himself that all chance of reconciliation had come to an end.'[1] I have given reasons why conciliation work needs to be done outside the High Court.

It is urgent that it should be widely realized that the partners in a marriage that is breaking, or has broken, are frequently immature from the psychological standpoint. They brought with them into their marriage the sum total

[1] Mr. Thomas Bucknill, *The Times*, 2 March, 1935.

of their past experiences and the attitudes which they unconsciously adopted both towards themselves and to those around them, such attitudes being the product of their earlier emotional development. Failure in marriage is often the result of psychological immaturity. Psychological fixations that were unconsciously formed long before marriage can become important factors in marriage and can result in failure to live happily with the marriage partner or to do justice to children of the marriage. As education for marriage becomes more widespread—and it cannot be denied that most people in all walks of life enter into marriage very badly equipped—separations and divorces should become fewer. It is grim to think that countless children have committed crime because of their parents' immaturity, but this is a psychological truth.

These being the problems, both of adults and of children, arising from unhappy marriages, let us now turn to the dangers and difficulties which surround children whose parents were not married at all.

CHAPTER IV

ILLEGITIMATE CHILDREN

His [the male parent's] duties and responsibilities are as important for the nurture of his child as they are for his biologic characteristics and essential traits . . . Fatherhood and motherhood deserve equal recognition in the matter of child training.

DR. IRA S. WILE [1]

Feeling about father . . . is the basis of our unconscious attitude towards all authority and law.

DR. E. GRAHAM HOWE [2]

AN illegitimate child may according to circumstances be better or worse off than a child of married parents living in conflict, who were dealt with in the previous chapter. But whether better off or worse, the illegitimate child is likely to be severely handicapped, for it is one of the most important discoveries of modern psychology that even in cases where illegitimate children suffer no apparent deprivation, there is nevertheless a constant danger that harm has been done to the child.

Dr. Graham Howe has been quoted above. The quotation needs some elaboration. It is fundamental in the teaching of both Freud and Jung that human personality is deeply affected by what Dr. Graham Howe termed ' certain instinctive and emotional tendencies which are to be found deep-rooted in us all, originating not in our own experience, but in a distant racial past, and yet actively causative of much subsequent behaviour '. There are many ' feeling patterns ', legacies from the collective unconscious, and the different schools of psychology are not in unison about them. Of these patterns, the ' feeling about father ', is specially prominent and important. Quoting again Dr.

[1] *The Challenge of Childhood*, p. 293.
[2] *Motives and Mechanisms of the Mind*, pp. 99 and 117.

Graham Howe, this feeling about father 'is something independent of father, deeper and greater than experience'. Its derivatives 'extend beyond the individual's attitude towards his father, determining his attitude towards all those who are in authority and his opinions on various subjects, especially those of religion and politics'.[1] In simple language it suffices if we realize that there is an inherited and unconscious tendency in all of us in regard to authority and that this tendency can best be developed in the direction of social usefulness by the constant influence of a father. If paternal authority be evoked to excess, a tendency to lawlessness can develop which may be worse than the consequences of the absence of a father's authority.[2] Where on the other hand there has never been any awareness of the actual father, as in most cases of illegitimacy, the results can be dangerous, especially if there is no one who can exert paternal authority, a task which is difficult for a mother to perform. Because illegitimate children usually have no paternal training, and often no training by a father-substitute, they frequently become unconventional, perhaps rebellious, in their attitude to politics, religion and morals. Such people as churchwardens, Sunday school teachers, &c., have seldom been born illegitimate. But many rebels against the demands of conventional society have been so born. In itself this can be an advantage, for a healthy society needs the stimulation that comes from unorthodox minds. But unfortunately illegitimate children are frequently rebels, not only against the conventions of society, but also against its fundamental demands and its criminal law. Thus the fate of illegitimate children and our laws concerning them are of considerable importance to the community. Such children can become a serious danger to the community by reason of the absence of the father; for the role of the father is to develop in his children

[1] These extracts are from pages 98 and 99 of *Motives and Mechanisms of the Mind.*

[2] On this point Dr. Crichton Miller's book *New Psychology and the Preacher* is useful, e.g. p. 135.

their inborn instincts so that in the end there may be in them a minimum conformity to the fundamental laws and standards of the community.

In most surveys of the causes of crime it is emphasized that illegitimacy is an important factor; that is so in the surveys of both yesterday and to-day. Thus Lombroso went so far as to say that 'the greater part of the foundlings that escape death abandon themselves to crime . . . They find an honest living hard to get and are inevitably drawn toward evil.' [1] During the last half-century there has been much social and some legislative effort to save the lives of illegitimate children; what used to be known as baby-farming, which caused a heavy death-roll among children placed with foster-mothers who cared more for the money paid for the children they housed than for the children themselves, was put down early this century. But while illegitimate children now have in this country a reasonable prospect of growing up, their handicaps are still heavy. In a book written in the first decade of this century, Dr. W. A. Bonger, a Dutch criminologist, stated that 'a natural son runs twice as much danger of becoming criminal as he would if legitimate . . . This danger is even four times as great in the case of a natural daughter.' [2] I know of no such figures for this country, but there is little doubt that the proportion of delinquents who are illegitimate would be found higher than the proportion among those born in wedlock. Is it not to be expected that those handicapped by a stain on their birth would be tempted to get themselves right with the community by offending against the community's laws? [3] Knowledge about an illegitimate origin can easily be an urge to acts which in the eyes of the law are criminal. This seems common sense as well as sound psychology. I only know of one book by an

[1] *Crime, its Causes and Remedies*, American Modern Criminal Science Series, p. 146.

[2] *Criminality and Economic Conditions*, same edition, p. 494.

[3] See on this point Professor Cyril Burt, *The Young Delinquent*, pp. 560–1.

expert in abnormal behaviour which disagrees with this conclusion. Writing in 1926, Drs. Healy and Bronner stated that 'our findings reverse the foreign statistics, which apparently almost uniformly show a considerably higher percentage of illegitimates among juvenile delinquents than in the general population'.[1] When I was with Dr. Healy in the summer of 1939 I asked him if this was still his opinion. He said that it was. If it had been possible to keep statistics showing the proportion of illegitimates in the cases that I have dealt with, I feel confident that the results would have conformed with the general opinion.

Psychological probabilities are a better guide than collections of statistics. If we accept the psychological argument briefly set out here, we must expect higher rates of delinquency among the illegitimate than among others.

It must be the practical experience of most of those on the criminal Bench to have to decide the fate of youths or young adults, born illegitimate, who appear to have no standards, no helpful friends, and no good record of work. Sometimes in such cases there seems to be nothing which one can grip, no quality which can be developed to produce stability. Perhaps an example will best illustrate the kind of problem I mean.

A. C. was a young woman in the late twenties charged before me for rather a mean theft. At her first appearance she appeared no different from many young women who come before a magistrate. The inquiries during the week's remand elicited that A. C. had been born illegitimate towards the end of the war of 1914. Her mother later married another man. When A. C. was about eight, her mother transferred her to the care of two maiden aunts of the mother; the probation officer gathered that this was done because A. C. was disliked by her mother's husband and had not settled down in the new home. These two aunts were elderly (A. C.'s mother had been one of a large family) and were apparently quite unfit to deal with

[1] *Delinquents and Criminals*, p. 122.

a wayward child. As the probation officer said, they saw to it that A. C. continuously realized the aunts' virtues and their kindness in bringing her up. A. C. was expected to understand thoroughly the misfortune and disgrace of her birth. The aunts blundered on, never even trying to understand A. C., whose persistent wilfulness was in reality a cloak for her sensitiveness. Both at 'home' and at school A. C. became a cross-grained girl, and one of her school reports solemnly declared that A. C. 'always looked, and generally was, very disagreeable'; doubtless she showed complete lack of appreciation for all the 'kindness' bestowed upon her. After leaving school A. C. had many jobs; her restless nature seemed to demand a constant variety of environment. At seventeen she went the way of her mother and gave birth to an illegitimate boy. No one had known of her pregnancy, except herself, until a month before the birth, so she had that battle to fight alone. A. C. quixotically loved the child's father to the extent of persistently refusing to take any steps against him, or even to divulge his name to any one, although he apparently refused to help A. C. or the child in any way. When they heard of A. C.'s maternity, the aunts insisted that the boy should be adopted, and meekly A. C. gave the necessary consent. Judging by what followed some years after, that step was most unwise, but respectability demanded it.

Then came the appearance before me; there had been some appearances before juvenile courts for moral offences, and at one stage A. C. had been examined for psychological treatment. The doctor had reported that A. C.'s mentality was too low for successful therapy. I obtained a medical report about her and thus learned that A. C. was suffering from venereal disease. I placed A. C. on probation for two years and obtained her consent to a condition that she should reside for at least six months in a Home where venereal cases were taken. There A. C. became involved in endless rows. At one stage, however, the matron informed the probation officer that 'every one likes A. C. in spite of her rudeness and utter lack of consideration for

anybody'. When I heard of that, I could not help wondering why A. C. should consider any one; had any one ever truly considered her? A. C. had never been really loved; she had never felt wanted, except for the wild moments of her boy's conception.

When the time came for A. C. to leave the Home, the probation officer found work for her, but A. C. was restless and did not stick to her jobs. She lived in lodgings and later with one of the more human of her mother's relations. Of her mother she saw and heard nothing. A. C. wrote frequently to her probation officer and after coming out of the Home saw her at short intervals. The probation officer seemed to be the only person in her world to whom A. C. could give genuine affection. Then late one night A. C. went to the home of the probation officer and confessed that she was again pregnant; she said that she had always loved her boy's father, although he was now engaged to another girl, and that he again was responsible for her condition. A girl was born and once again A. C. refused to give the father's name. A. C. allowed him to marry his girl and presumably live happily ever after; men take lightly the self-sacrifice of women.

When the two years of the probation order expired, the probation officer and I had a long talk about A. C. The baby was with foster-parents, and A. C. lived in lodgings near by, working all day and seeing a good deal of the child. But it seemed unlikely that A. C. had the grit to lead this life long, for in those years before the war of 1939 it was a hard task for an untrained woman to earn enough to keep herself in lodgings and to pay the 12*s.* 6*d.* each week to the foster-parents. But both probation officer and I were convinced that the child was A. C.'s only hope; it seemed to her to be her only justification. A practical difficulty for us was that the probation officer felt that she was the only adult friend that A. C. possessed; yet after two years of probation a weaning process has to begin; there were many other cases in the charge of the probation officer. Informal contact was kept up for some time, and

then A. C. passed into oblivion, so far as we were concerned. We shall never know the end of A. C.'s story. Perhaps that is as well for us. Perhaps also A. C. married during the war a Service man who was kind to her and the girl. I hope so, for A. C. was far more sinned against than sinning.

The women's Borstal institution and the women's prisons probably have many inmates like A. C.; the similar institutions for men likewise have many inmates who are there because they have never been able to overcome the drawbacks resulting from their illegitimate births. The psychological trauma which is produced by the very fact of illegitimacy has led these delinquents to crime.

At some time or other illegitimate children will probably hear about their having been 'born unfortunate'. (I have often heard those words from adolescents and adults who were not born in wedlock.) Where this revelation is postponed by those in charge, there sometimes arises in the course of adolescence, or even earlier, a suspicion that they are somewhat different from other people. I have had some youths before me whose unsettled state could only be explained by their lurking doubts about themselves. Mrs. le Mesurier, who was for many years the leader of the women workers at the Boys' Prison in London, wrote that in this social work among youths in custody, 'one often discovers that a doubt of his own legitimacy has caused a lad to brood until he is in a thoroughly morbid, unhealthy state of mind, with strange repercussions on his conduct'.[1] When one takes account of the 'respectable' standards in which most young lads are brought up, one can appreciate this problem. When adolescents feel doubts about the 'respectability' of their birth, there is no easy way out for them, for probably the mother has been the one lodestar in their lives, and to question her virtue seems torture.

> And to be wroth with one we love,
> Doth work like madness in the brain.[2]

[1] *Boys in Trouble*, p. 62.

[2] Coleridge in 'Christabel'.

Such conflicts destroy all feelings of security and can easily result in conduct which leads to criminal courts.

Often the dangers inherent in illegitimacy are minimized by the child's early adoption into a normal and healthy home where both husband and wife, living in a harmonious atmosphere, treat the newcomer as their own. But, as in the case of A. C., adoption frequently brings severe psychological dangers to the mother and may have detrimental results in her life. Even under the most favourable conditions, many medical psychologists would say that a trauma will also remain in the child's unconscious which at any time may result in a crisis. Such a trauma may produce throughout life a hostility towards some one or society generally. An excellent illustration of this was the life of Herbert Smith, a well-known miners' leader in the decades between the wars. His uncompromising nature, which may have injured the cause he had so sincerely at heart, was more than the result of the cruel conditions when as a mere boy he worked in the pits; its explanation probably lay in the fact that he was a foundling, adopted into the home of a miner and his wife, both of whom were as good as foster-parents can be. If substitute parental love can be thoroughly effective, Herbert Smith would have received full benefit. But all his life his pugnacity and his dogged reluctance to meet the other side in any way were in all probability the legacy from his birth, and though his-foster-parents' love and care doubtless had their beneficial effect, they could not eradicate what birth and the earliest reception into the world had produced[1].

Adoption only became legal in 1926, and until that year the legal theory was that no parent could deprive himself or herself of the custody of a child. In this respect our law differed from Roman Law, which not only permitted adoption, but encouraged it; even honours and estates could pass to an adopted child. Marcus Aurelius passed on the imperial crown to his adopted son. After the passing

[1] See *The Man in the Cap. The Life of Herbert Smith*, by Jack Lawson.

of the Adoption Act in 1926, many abuses crept in, and these increased in gravity in the earlier years of the war of 1939. For many children adoption has proved a blessing, but even so, the psychological effects on both mother and child can be dangerous. I have had to witness the signature of many mothers to the form in which they declare their agreement to the adoption. Some of these unhappy women break down as they sign, and I can only be fearful of their future.

Even to-day enormous pressure is sometimes brought upon the parents of illegitimate children to persuade them to marry. Often the parents of the mother are adamant that a marriage shall take place; they cannot see further than their own respectability. No doubt many such marriages prosper, but in the course of my magisterial work I see so many of them that fail that I am led to the conviction that in such marriages the dice are loaded against success. In my domestic court at least a half, probably two-thirds, of the unhappy marriages that I have to handle originated in this way. When a man marries because the woman is pregnant by him—that is in the vernacular 'to give the baby a name' or 'to make an honest woman of her'—there is a severe risk that all three parties will suffer. A marriage whose basis is parental or social pressure can easily fail. As I see such failures, the man seems to think that he did a noble deed when he married and sometimes that the marriage exhausted the duties that he owed. In fact it often happens that by marrying such men only relieved their sense of guilt. When they claim credit for the marriage, I sometimes ask them whether the child (or children, for there are often several others by the time the marriage comes into court) has any reason to be proud of the name thus given. Marriages of this sort are usually the most difficult to handle, for there is no solid foundation of love or respect on which efforts at reconciliation can be based. When, as happens all too often, the husband adds insult to injury by telling his wife, when things are difficult, that he was tricked into marrying and that the

baby was not really his, then matters are usually hopeless and I can only sigh and wonder at ' man's inhumanity to man '. Wives will forgive much, but that insult almost never.

When one of the parties is under the age of twenty-one, a magistrate is sometimes asked to over-rule the refusal of parents to give their consent. Some parents do refuse when their unmarried daughter is pregnant. In such cases I insist upon time for investigation by a probation officer and seldom give consent unless I see true love between the parents-to-be. In these cases I often feel that whichever way I decide, the results for the child, the life that matters most, will be unsatisfactory.

Another useful change in the law was made by the Legitimacy Act, 1926, whereby under certain conditions a marriage between the father and mother of a child born before marriage will make the child legitimate. The utility of the new law was severely restricted by the section which provided that ' nothing in this Act shall operate to legitimate a person whose father or mother was married to a third person when the illegitimate person was born '. At first sight the restriction seems perverse, but if one thinks out the kinds of situation that would become legitimate if this restriction was not made, its justification becomes obvious. It is pleasant to record that this question of legitimation by subsequent marriage is one on which ecclesiastical opinion was for centuries ahead of political opinion. The Statute of Merton, 1235, records that when ' all the Bishops instanted the Lords that they would consent that all such as were born before matrimony should be legitimate, as well as they that be born after matrimony ', then ' all the Earls and Barons with one voice answered that they would not change the Laws of the Realm '. There is at least honesty in this famous reply ; nowadays the refrain is that parliamentary time is not available or that the point has been noted for consideration when opportunity offers ; the results are the same.

By reason of this change in the law haste to marry before

the birth is no longer justified, and if delay results in the departure of the father out of the mother's life, then neither child nor mother has lost anything substantial. But this reform is in many cases a dead letter, as the parties when marrying make no mention of their child, who, therefore, does not become a ' child of the marriage ' [1] for whom maintenance, &c., can be ordered in a domestic court. This is a matter that demands inquiry.

The lot of an illegitimate child is sometimes ameliorated by the marriage of the mother to another man. Social and magisterial work have taught me that many unmarried mothers subsequently make happy marriages and that in such cases the husbands develop real love for the illegitimate first-born; they sometimes adopt the child that is not theirs. But such marriages can also be disastrous to illegitimate children, as was the marriage of the mother of A. C. I have frequently had to separate couples who had several lawful children and have found that the basic cause of disagreement has been the illegitimate child, on whom all the discontents appear to have been directed once unhappiness began in the home.

When an illegitimate child lives with its mother alone, some neglect is usually unavoidable, owing to the work that the mother is forced to do to make ends meet. The ' lady downstairs ' is often kind and helpful, or sometimes there is a day nursery near-by (sometimes pronounced ' kreech ' in my court by those who like to pronounce foreign words). While there are dangers, the child at least receives mother love, and opinion is hardening among social workers that this is the best way for mother and child to live, short of a genuine marriage. With this opinion the Council for the Unmarried Mother and her Child and modern psychologists are in full agreement.

Children placed with foster-mothers are now in some measure supervised by public authorities; any one who ' undertakes for reward the nursing and maintenance of a

[1] See Summary Jurisdiction (Married Women) Act, 1895, s.5 (b).

child under the age of nine years'[1] is subjected to many regulations, the value of which, of course, depends upon the vigilance of the local health authorities. But this method, too, has its drawbacks. The weekly charge made by foster-mothers is often a heavy drain on the mother, even if there is an affiliation order for the child's part maintenance. Some foster-mothers do their duty, but only on a contractual basis; I have seen cases where children have ruthlessly been handed back as soon as the weekly payment fell into arrear. The transfer of a child from one foster-mother to another must inevitably be difficult, and often dangerous, for children. Other foster-mothers err in the opposite direction and become so attached to the child that jealousy of the mother is aroused; this also involves fresh conflicts for the unfortunate child.

The last way of dealing with illegitimate children that needs to be mentioned is the Home. I have already revealed prejudice against all Homes, with a capital letter, but I must not do any injustice to them, as they have saved thousands of illegitimate and other lives. One can feel grateful for the work of such organizations as Dr. Barnardo's Homes and at the same time feel that home life with two parents is, as I have said, Nature's way. This is the strong opinion of most medical psycho-therapists.

Despite all these resources, all is far from being well with illegitimate children, and unfortunately public opinion is not alive to the fact. As we saw with the problem of divorce, this problem too has been handled in the past with far too little regard for the interests of the children concerned. The so-called rights of adults and, as we shall see, the interests of ratepayers, have received attention, but not the real interests of illegitimate children. Having regard to the dangers to which illegitimate children are exposed, it might have been expected that long ago our laws concerning them would have been overhauled by Parliament, especially as during the present century there has been so great an effort to protect infant life. There

[1] Public Health Act, 1936, s. 206.

has been no such overhaul. Problems about illegitimate children, like those of marriage and divorce, have been neglected by Governments. Unfortunately illegitimacy, here unlike divorce reform, has not attracted the attention of private members of parliament.

But for the outbreak of war public attention might have been directed to the needs of illegitimate children, for, shortly before September 1939, there was issued a 'Study on the Legal Position of the Illegitimate Child', prepared under the auspices of the Advisory Committee on Social Questions of the League of Nations. It was a thousand pities that this informative study was snowed under by the realities of war. Surveying conditions in most countries of the world, the study came to the conclusion that 'without exception there is a higher infant mortality rate among illegitimate children; sometimes the difference is as high as 50–100 per cent.'.[1] The existence of this gloomy contrast should compel attention to the needs of illegitimate children, and in particular to our laws for securing their economic maintenance by those who may be responsible for their birth. Such matters can very closely affect problems of delinquency.

The Study emphasized one point of importance which must be mentioned here. Countries professing Christianity should be under a special obligation to see that their laws about illegitimacy are as up-to-date as possible, because illegitimate children are the victims of Christian civilization. 'Heathen' Roman law made little distinction between children born illegitimate and those born in wedlock. Christianity 'completely transformed the legal and social position of illegitimate children. Concubinage was disavowed, and, to bring about its disappearance, the emperors introduced various restrictive measures preventing illegitimate and legitimate children from being placed on the same footing. Thus the children were made to suffer as

[1] p. 111. 'In certain parts of Europe in the nineteenth century illegitimate births amounted to 50 per cent. of the total births'; Study, p. 10.

a means of indirectly penalizing extra-marital relations.'[1] Christianity undoubtedly raised the status of women and children generally; its influence gave both inspiration and stability to the family. But the illegitimate child suffered. In Buddhism and Confucianism 'the problem of the illegitimate child is virtually unknown'. Under Mohammedan law a man may have four wives, and also concubines, so at least a recognized relationship exists between children born of different mothers. No one who reads the historical outline in this Study can fail to recognize that the welfare of illegitimate children is a particular obligation upon all Christians, since the very virtues of Christianity in safeguarding the normal home have made illegitimate children suffer. To quote the Study again: 'In the Middle Ages the church, being universal, was able to secure the fullest acceptance for its rules . . . Among the common people the social position of illegitimate children—bastards—became worse and worse.'[2] Christians need to realize that God loves all children, regardless of their parentage.

English Common Law (our historic law laid down through the centuries since 1190 by the judges in individual cases before them) evolved, in accord with the failings of Christianity as above, an amazingly harsh law of illegitimacy, doubtless in the belief that illegitimate children are the product of sin. A bastard child had no legal rights and owed no legal obligations; he was regarded as a stranger to both his parents; he did not even possess a name by legal right; neither his father nor his mother was under any legal obligation to maintain him; only in one respect did the law recognize that he had relatives of the blood; he could not commit the then ecclesiastical offence of incest with impunity.[3] When Parliament interfered, it acted not out of any sympathy with the miserable lot of illegitimate children but solely to protect the local rates. Thus in an Act of Parliament of 1576 (still sufficiently valid to be mentioned in the table of statutes in the standard work on

[1] Study, p. 8. [2] p. 9.
[3] See *Encyclopedia of the Laws of England*, under title 'Bastard'.

the law of bastardy) we find the following grotesque preamble:

> Concerning bastards begotten and born out of lawful matrimony (an offence against God's and Man's laws) the said bastards being now left to be kept at the charges of the parish where they be born, to the great burden of the same parish and in defrauding of the relief of the impotent and aged true poor of the same parish, and to the evil example and encouragement of the lewd life; it is ordained and enacted . . .

With such an introduction it is not surprising that this act referred to the payments which fathers and mothers of illegitimate children had henceforth to make to the Poor Law authorities as being ordered 'for the punishment of the mother and reputed father of such bastard child'. But an even worse attitude was adopted by the judges. Thus in 1804 the question whether the father of an illegitimate child could be compelled to pay for its maintenance was brought before Lord Ellenborough.[1] A woman who had maintained an illegitimate child sued the father for the cost. She won her case, but only because she could prove that the father had made a voluntary contract with her to pay for the child. Lord Ellenborough emphasized that this was a special case, since a father of an illegitimate child 'could be charged only on his contract'. Thus if a father chose to deny paternity or otherwise to ignore his illegitimate child, the Common Law permitted him to do so. Even more striking was a decision of the Court for Crown Cases Reserved, the forerunner of the Court of Criminal Appeal, in 1833. In those bad days the slightest inaccuracy in an indictment (the written charge against a defendant) would be accepted as a good ground for upsetting a verdict of guilty on appeal. In R. *v.* Mary Smith[2] the defendant had been found guilty of the murder of her illegitimate daughter. The indictment had described the unfortunate child as 'a female child whose name was

[1] Hesketh *v.* Gowing, 5 Espinasse, p. 131.
[2] 1 Moody's Crown Cases, p. 402.

unknown'. But at the trial some evidence had been given to the effect that the child had in its short life been known as Mary Ann. In a desperate attempt to save Mary Smith from the gallows, her counsel had appealed to the Court for Crown Cases Reserved on the ground that the indictment was bad because of this evidence that the child had acquired the name Mary Ann by reputation. The majority of the appeal judges solemnly decided that the indictment was correct. They maintained that, as the child had not been baptized, it shared the fate of most illegitimate children in not having any name.

Another startling case is that of Ann Lloyd,[1] who endeavoured to obtain from the cynical Mr. Justice Maule a writ of habeas corpus for the possession of her child, then in the custody of the father. In the course of legal argument the judge asked counsel, 'How does the mother of an illegitimate child differ from a stranger?' The question was not so outrageous as it seems, for under the Common Law the mother of such a child was legally a stranger to it. In the end the judge took the sensible course of consulting the child, who was eleven years old. Child-like the answer was that it would rather remain where it had been. So the child was returned to its father.

For those who could afford expensive court proceedings the 'narrow spirit and rigid technical rules of the Common Law'[2] were to some extent controlled and superseded by the courts of Equity, and after the bringing together of Common Law and Equity in 1875, a famous Master of the Rolls, Sir George Jessel, commented in a case[3] before him on these words of Mr. Justice Maule. 'I am disposed to think that this was said ironically,' said Sir George, Jessel, and he went on to declare the equitable doctrine, which by then had superseded the Common Law rule, that 'there is in such cases a sort of blood relationship

[1] 3 Manning and Granger, p. 547.

[2] These words were used by Lord Chancellor Cottenham in 1868.

[3] The Queen *v.* Nash, 1883, 10 Q.B.D., p. 454.

which, though not legal, gives the natural relatives a right to the custody of the child '. Unfortunately this ' sort of blood relationship ' was forgotten by Parliament when new Acts of Parliament were passed to regulate proceedings about illegitimate children, for, as we shall see, to this day the father of such a child has no rights at all while the mother is alive.

Our statute law of illegitimacy grew out of the Poor Law, as we have just seen. Its primary care was, and is, not the welfare of the child nor the position of the mother, but the rates. The mother did not become a suppliant in her own right for maintenance for the child until 1844; till then only Poor Law authorities could proceed against alleged fathers,[1] so that those in charge of illegitimate children not being maintained under the Poor Law had no legal right to maintenance for them. In return for this privilege, mothers became criminally answerable to the Poor Law authorities if they left their children chargeable upon the rates. The principal Act of Parliament now in force is the Bastardy Laws Amendment Act of 1872, but later acts have made certain amendments. One cannot help wondering what the state of public health or of national education would be to-day if these vital spheres were still managed under a principal act of 1872.

Under the present law only a ' single woman ' can take proceedings for the support of her illegitimate child. Even if the mother was single at the time of the birth and marries before court proceedings are taken, she cannot succeed in her case, a judicial ruling [2] which needs to be reconsidered. Yet the High Court has felt itself able to perform the remarkable feat of accepting widows, and in some circumstances married women, as ' single '. There are other

[1] Poor Law authorities may still take proceedings, in certain circumstances, against the alleged father of an illegitimate child.

[2] Stacey *v.* Lintell (1878), 4 Q.B.D., p. 291. The reason for the decision was that after marriage the husband became responsible to maintain the child. But such a child is not a ' child of the marriage '. Therefore no money for the child can be ordered if the mother and step-father separate.

features that deserve re-consideration. Thus if the wife of a man who deserted her many years previously and went to live at the other end of the world has a child by another man, the law presumes this child to be the child of the absent husband unless independent evidence to the contrary is given.

In the notorious case of Russell *v.* Russell [1] in 1924 the House of Lords went even further and decided that a doctrine laid down centuries previously was still valid; this doctrine was to the effect that in legal proceedings consequent upon adultery, which include claims in bastardy by a married woman, neither husband nor wife can give evidence that he or she did not at relevant times have sexual intercourse with the married partner,—even if for many years the oceans have separated the partners. This unfortunate decision was a majority one only; Lord Sumner, a very great judge, would not agree with the majority and used these wise words: 'In the administration of justice nothing is of higher importance than that all relevant evidence should be admissible and should be heard by the tribunal that is charged with deciding according to the truth.' This seems common sense, but it was not acceptable to the majority of the Law Lords. The result is that when a married woman, deserted by her husband for years (he may be dead) has a child by another man, bastardy proceedings cannot begin until she has called a witness who can state on oath that the mother did not live with her husband during the relative time. In some cases such evidence cannot be found, so no money can be obtained for the illegitimate children from their fathers, who in such cases cannot, if available, be put on oath as to whether they are responsible for the births or not. In such cases a magistrate is tempted to say with Burns: 'Courts for cowards were erected.' I remember one case where the defendant man, who was obviously friendly with the mother-applicant, volunteered before he was asked that he was the father of the child. But the

[1] 1924 A.C., p. 687.

mother was a married woman, and as she had no witness and could not find one, to give the necessary evidence of non-access by the husband, the proceedings could not even begin. So although the man wanted an order made against him, no order could be made. I could only advise him to enter into an agreement with the mother to make weekly payments. But even if he did so, the unfortunate mother would have to take any necessary proceedings for arrears on the agreement in the county court, where substantial fees have to be paid before cases can be begun.

In bastardy proceedings magistrates courts can only make orders for money payments 'if the evidence of the mother be corroborated in some material particular by other evidence to the satisfaction of the court'. Many cases break down and probably even more never come into court because of this legal requirement. I would not advocate the abolition of the need for corroboration, for a court would often find itself in a difficult position if it had merely to decide between the word of the mother and that of the man. Corroboration has been rendered all the more necessary by reason of the lowering of sexual morality that was mentioned in the previous chapter. In the latter years of the war I had many cases where I was convinced that the women-applicants had sought out the defendants for the purposes of sexual intercourse. This happened mostly in cases brought against soldiers. Often the women yielded to the request for intercourse at once. In such cases it was usually difficult to believe that the women had not acted similarly with other men. None the less the legal need for corroboration sometimes seems unnecessarily difficult for the applicants, especially in cases where the alleged father is not present in court. When the alleged father attends the hearing, this difficulty can be overcome by calling him as a witness for the mother and putting questions to him; but at best this is a dangerous proceeding since, when called as a witness for the applicant, the alleged father cannot be cross-examined on her behalf. But many men summoned in bastardy proceedings stay

away from the court; then they can only be brought to the court if the applicants put down the money necessary for their fares and maintenance. This the mothers can seldom do.

On this difficult question of corroboration I should like to see an investigation into the proposal that corroboration of the mother's evidence should only be required by law if the man attends the hearing and offers himself as a witness. While full justice must be done to defendants, it can scarcely be denied that at present the law gives them several unfair advantages, especially if they do not attend the court proceedings.

There are yet other strange features of our present law of illegitimacy. Only magistrates courts have jurisdiction, and the maximum amount that can be awarded for the maintenance of an illegitimate child is £1 a week; apparently the law presumes that either rich men never have illegitimate children, or, if they do, that they will voluntarily do justice to them. In fact the low limit provided by the law places a premium on unjust settlements when rich men have illegitimate children. There would seem to be a need that the High Court should also be given jurisdiction in cases where the fathers of such children refuse either to acknowledge paternity or to make adequate financial arrangements for them; if that were done, there would be no need for any maximum amount to be fixed and the judges could be left free to fix amounts in accordance with the financial level of the parties.

If, as I believe, our present law in effect encourages irresponsible paternity with all its grave results, what else could be done? I would suggest that any new law of illegitimacy should repeal all existing law, both statute and judge-made, and start afresh. It is impossible to tinker with the existing law of bastardy, since its very foundations are false. I would suggest that, provided that courts remain impartial between the parties to cases in bastardy, the fundamental principle of a new law should be the welfare of illegitimate children.

The Study of the League of Nations stated that the law of Switzerland, pre-war Germany and in one of the states of the United States provided that from birth illegitimate children should be under official guardianship. My faith in officials is not sufficient to induce me to advocate this step, but in some cases the object of such a law is attained under existing English law. Children, illegitimate or not, in 'need of care and protection' can be supervised by juvenile courts. An inquiry into existing bastardy law would need to decide whether this law so far as illegitimate children are concerned needs stiffening.

In some countries illegitimacy has been abolished in regard to such matters as inheritance, &c.[1] Here one has to tread carefully. A complete equality between illegitimate and legitimate children can only be achieved by in effect abolishing monogamous marriage. The unfortunate consequences of Christianity on illegitimate children would thus be abolished by abolishing Christianity; a bad example of pouring away the baby with the bath. So open-minded a thinker as Professor Westermarck expressed the opinion that 'however much legislation may improve the conditions of illegitimate children, it cannot make them equal to those under which most other children develop'.[2] That, it seems to me, must be accepted. The function of a new law should be to do the maximum justice to illegitimate children without departing from monogamous marriage or from family life as most of us have known it, and without doing injustice to accused men.

After prolonged thought I have come to the conclusion that the present law which concentrates on 'putative' paternity is wrong. Instead of this two alternative procedures should be available, one in cases where the father denies his paternity, the other where paternity is admitted. For the former I would suggest that the test in court proceedings should be possible, rather than putative, paternity. The difference is vital, but in fact not as great

[1] Study, pp. 52 onwards.

[2] *The Future of Marriage in Western Civilisation*, p. 129.

as many may suppose.[1] In my view it is wrong that under any circumstances courts should be compelled to label the defendant as the putative father, especially as but few defendants are intellectually capable of understanding the meaning of the word putative. There would be more widespread willingness to pay among defendants if they were merely adjudged to be possible fathers and as such made to contribute to the maintenance of the children. Such a change in the law would render irrelevant the demand that blood tests should be taken to decide the issue between the parties. In the years before the war of 1939 there was much writing in the popular press on this subject, and in July, 1939, a Select Committee of the House of Lords gave its blessing to a bill introduced by Lord Merthyr. That bill proposed that a defendant in a bastardy case should be able to demand as of right that a blood test be made on both the child and himself and that if the mother refused, the case should be adjourned indefinitely. Blood tests were if necessary to be paid for out of public funds, and most of them would have to be. It is agreed that blood tests cannot do more than afford negative evidence that a particular man cannot be the father of a particular child, and this can only be decided in some of the cases. Where this result cannot be arrived at, the only possible inference is that the alleged father may be the father of the child. But similar tests on the blood of the magistrates deciding the case might well have this latter result, for some blood groups are common to many. There is no method known to science for proving that a man is the father of a child. Therefore blood tests can never help the mothers to obtain maintenance for their illegitimate children.

I would suggest that where paternity is not admitted, the mother should take out a summons asking for a Child Maintenance Order. The court would not be concerned with any scientific questions about actual or putative

[1] The case of Cole *v.* Manning, 1877, 2 Q.B.D., p. 611, stretches rather far the theory that ' putative paternity ' is being decided by the court.

paternity. If the mother could prove that the defendant is a possible father of her child, and if her evidence be corroborated, then the burden of proof should be shifted to the defendant. If he could satisfy the court that he did not have intercourse with the applicant within possible times, the mother would lose her case. But if he could not do this, he would, if the court accepted the evidence of the mother and corroborating witnesses, be ordered to make contributions to the maintenance of the child. The order made would not mention paternity.

Such a proposal would need careful examination. Would it open the way to injustice to men defendants? The cases mentioned above where the women have freely offered themselves to men would be the supreme test. But even under these circumstances I do not think that this suggested amendment of the law would involve injustice. Courts would still have to satisfy themselves that intercourse took place within the limits of nature, and the evidence of the mothers would still have to be corroborated in some way or other. The main difference would be that even if the court believes on the evidence that the mother may have been promiscuous, the court would concentrate on the actions of the defendants. If they are proved to have had intercourse during possible times, they would have to share the expense of maintaining the children. It is well to remember that a frequent defence in bastardy proceedings is, not that no intercourse has ever taken place, but that intercourse took place in the tenth or eleventh month before the child's birth.

This frequent defence is of importance in connexion with the demand for blood tests. That the community should be put to the expense of paying for the taking of blood tests in such cases seems to me morally wrong. But if the test to be decided by the court is to be actual paternity —and the introduction of blood tests would have this result—then such a defence, ignoble though it often is, would be valid. Another defence that is becoming more frequent is that though the defendant admits intercourse

at a possible time, he ' took precautions '. Is public money to be spent in supporting such evidence with state-paid blood tests ?

A logical consequence of making possible paternity the test would be that in a few cases more than one man would have to be made liable to pay for the child's maintenance. This would seldom happen, for nearly all mothers of illegitimate children know perfectly well who is the father of their child. But the existence of this possibility would be valuable to counteract that sordid but not unusual defence that, while the defendant admits intercourse during the possible time, another man had similar privileges. When such a defence is proved—and I have known it proved—the court must at present dismiss the case. But the child still lives. Surely it would be better to make both men contribute to its maintenance without any determination of paternity. It seems strange to me that this proposal has aroused the opposition of some who support the demand for a new bastardy law, for a similar scheme was long ago enacted into the laws of Norway, Denmark and of some provinces of Canada. The general scheme outlined here could be put into effect without this provision. But it would be severely crippled. I fully agree that most illegitimate children derive benefit from their knowledge that they once had a father ; ordinarily the mother tells them that father went abroad or is dead. Father remains a definite person in the child's mind, with beneficial psychological consequences. But the proposal to make it possible for maintenance orders to be made against more than one man only applies to cases where the mothers of illegitimate children have been promiscuous. There is an increasing number of such women, and objections about concurrent orders of maintenance for illegitimate children being inherently indecent can only come from those who cannot believe that women can fall so low. But it would be the conduct of the mother, not the proposed law, that would be indecent. Yet the children should not suffer. In my outlook nothing is more indecent in connexion with illegitimate children

than that men who have had their pleasures and may be the fathers can escape all responsibility. This often happens under the present law.

For those cases, and happily they are numerous, where the father acknowledges his paternity and is willing to help to provide for the child the law is at present almost as unjust as the law in cases of disputed paternity is unjust to women. Such fathers have no rights at all in respect to the children during the life of the mothers. They must pay, and rightly so, but they can never see the child except by consent, and they cannot apply to be made the guardian of the child even if they can prove that the mother is neglecting the child. Here the law is not clear. The best legal opinion, with which I agree, is that fathers of illegitimate children cannot make use of the Guardianship Acts to obtain access or custody. They are legally just as much ' strangers ' to the children as were the mothers in the days of Mr. Justice Maule. In plenty of cases this does not matter, as the fathers show no interest. But there are cases where the fathers have acted decently and resent their exclusion. I was once asked by the mother of an illegitimate child to make an order under the Guardianship of Infants Acts that she should recover the custody of her child. The story was that when the child was a few weeks old the mother had permitted the father, a married man still living with his wife, to have possession of the child. Both husband and wife had treated the child as their own and had been its sole support. This had gone on for several years. Though the mother denied the suggestion, the father maintained that the present application was caused by a row between his wife and the mother of the child ; I felt that this was probably true, but the fact was legally irrelevant. As the mother's right was absolute, I had no power to refuse her application. I resorted to that strategy that can be so useful to magistrates, namely to adjourn the case in the hope that in the end legal rights will not be demanded. But in this case, despite the efforts of a probation officer, the strategy failed. The mother

demanded her child and I was powerless. The order for custody had to be made, and it was to the real detriment of the child. The father and his wife had never told the child about its maternity, and I could foresee very serious psychological dangers in the abrupt transfer to its natural mother.

I would urge that in cases where the father has acknowledged the child and the court is satisfied that he will help to maintain it, the mother should be able to obtain a Paternity Order. This should provide for the amount of the father's weekly payments, but also permit at any time applications by the father for access and even custody. It seems to me that the mother of an illegitimate child would be more careful in her handling of the child if she knew that the father, who has acknowledged his paternity and is paying regular maintenance, had legal rights to apply to the court for access to the child and for custody if all is not well with the child. It has to be remembered that some wives of men who have done them the injustice of being the father of illegitimate children turn out to be very noble women ; they are sometimes eager to adopt the child and thus to treat it in all respects as their own. In such cases the child must benefit.

One more weakness of our present law must be mentioned.[1] There is no difference between the methods of trial in a bastardy claim and a prosecution of a motorist for a breach of the traffic laws. When the bill that became the Summary Procedure (Domestic Proceedings) Act, 1937, was introduced into the House of Commons, it contained words to include bastardy cases in the reforms of procedure made for matrimonial disputes in magistrates courts. When this proposal reached the House of Lords, it was opposed by Law Lords. There was no time for an adequate compromise to be worked out, so to save the bill it was agreed to cut out all reference to the trial of bastardy cases. This

[1] There are some that I have not mentioned, e.g. the rule of the law that the death of the father of an illegitimate child ends all liability for the child.

was unfortunate, for it seems obvious that at least some of the restrictions imposed by the act for the hearing of matrimonial cases should be applied to bastardy cases. Thus the number of magistrates composing the court should be restricted to three, for there is something indecent in the idea of a large Bench in such cases. There seems no justification for the free entry into the court of idle spectators; the act provided a sound solution of this problem for marriage disputes. It is almost certain that if these suggestions could have been offered as an alternative to the more radical changes suggested in the bill, opposition would have ceased.

It is urgent that the points mentioned in this chapter, and many others, shall be investigated and a new law of illegitimacy worked out. Present law and procedure are profoundly unsatisfactory. As a magistrate I have to decline to make orders when I am morally, but not legally, convinced that defendants are the fathers; sometimes I have to declare men to be putative fathers when all that I can be morally certain of is that it is possible that they may be. In every bastardy case I fully realize that, in fact, though not in law, there is a consideration far more important than the legal rights of the parties before me; there is a young child, born into a hostile world and hampered from the start by psychological and economic handicaps. The law cannot be sentimental or attempt to compel morality. But, as I have tried to show, there is much that the law could do to ease the path of illegitimate children without doing any injustice to men. This is one of the ways to reduce the volume of juvenile crime.

Apart from the economic and psychological dangers of illegitimate children, the important fact has to be realized that one of the causes of prostitution is injustice to the mothers of illegitimate children. In making social inquiries about women convicted by me of openly carrying on the sordid trade of prostitution, probation officers have sometimes found, and have reported to me, that the real reason why the prostitutes continue in their horrible life is that

they have an illegitimate child to provide for without help. I have also had cases of attempted suicide, of concealment of birth, of abandoning a child, and even of murder, where the true source of trouble lay in a mother's inability to struggle alone with an illegitimate child. The vast problem of abortion is also closely linked with problems of illegitimacy. I have already criticized the report of the Inter-Departmental Committee on Abortion. One more quotation from their report needs to be given here:

> Although by far the greater number of criminal abortions undoubtedly occur among married women, there is reason to suppose that the proportion of pregnant unmarried women who undergo criminal abortion is higher than the proportion of pregnant married women who resort to it.[1]

The committee made no recommendation to deal with this grim state of affairs, for the reform of the law of illegitimacy would not have been within their terms of reference. When hearing disputed bastardy cases I have frequently to listen to tales of attempts at abortion; sometimes the only corroboration available is the evidence of a witness that the defendant took the applicant to an abortionist, or gave her the address of one. It is doubtful whether criminal abortion can be prevented by legal penalties. A more hopeful way is to improve the lot of the unmarried mother and to make it easier to secure contribution towards the maintenance of illegitimate children from the men who have had their sordid pleasures and can be proved to be possible fathers.

The planning of a new law of illegitimacy needs infinite care. It is easy to do harm with excellent intentions. An illustration of how not to help illegitimate children was once given me by a lawyer from California. In that state well-meaning people forced through a new law to put illegitimate children as far as possible in the same legal position as those born in wedlock. It is in most countries one of the privileges, seldom appreciated, of those born in wedlock that

[1] p. 107.

they are in later life responsible for the maintenance of their parents if the latter have to receive Poor Law assistance. This 'privilege' exists also in California. The result was, according to my friend, that if an illegitimate child made good—became a film star, for instance—there could arise a claim against him or her for the maintenance of some miserable man or woman who claimed to be the father or mother, but who at no time had done anything for the child. Such a state of affairs is a warning against sentimental efforts to improve the lot of those born illegitimate. Truly the lot of the reformer is hard.

In any new law of illegitimacy a new name will be required. The word bastard should remain the perquisite of classical English literature, French history and plebeian abuse. Another word will have to be found. 'Natural child' is the term used in modern legislation in the state of New York, but that is too pessimistic. I hope that the natural child is still the child born in wedlock. But so far I have failed to find a better name.

POSTSCRIPT

WAR usually intensifies the gravity of the crime problem. After years of war many who have to handle delinquents, and a considerable number of those amid the general public interested in criminals, are worried about the volume of lawlessness, particularly among the young. A study of the fundamental causes of crime seems, therefore, to be an urgent need. So far both official and public attention have been mostly concentrated upon measures designed to improve methods dealing with the criminals themselves. My earlier book, *Crime and Psychology*, provided a programme for making drastic changes in such methods in accord with the established principles of modern psychology. But reforms in the treatment of criminals should be solidly based on sound knowledge of the fundamental causes of crime. The four chapters of this book lead to the conclusion that the best hope for tackling the volume of crime lies in an indirect approach, in efforts to introduce reforms which will directly affect the causes of crime. I have given reasons for my belief that reductions in both the number of 'first offenders' (who, in fact, may be hardened criminals), and of those wearisome people who persist in crime after their first appearance in a criminal court, will come best through reforms in harmony with the general principles of modern psychology and of biology.

So far experts in modern psychology, while giving invaluable help in attempts to cure delinquents, have given little thought to preventive measures which could reduce the number of delinquents to be cured. So far as I know few biologists have related their science to problems of crime and even fewer to preventive measures. One of my objects in writing this book has been to encourage both experts and the general public to interest themselves in the causes of crime and to investigate how science can aid the prevention of crime.

As I wrote in the preface, I fully realize that the fields for future activity described in this book are not the only ones. But in my opinion they are the ones of greatest importance, and I have given reasons for this belief. But there need be no competition. Whatever will prevent the existence of temptation to commit crime should be of value. The prime need is that thought shall be directed to the various reasons why crime is committed and to the more difficult problem why criminals do not cease committing crime after their first conviction. Only by searching for the causes of crime can we reasonably hope to dam up the supply of the hardened criminals of the future.

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