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CAIN  
OR  
THE FUTURE OF CRIME

## TO-DAY AND TO-MORROW

*For the Contents of this Series see the end of  
the Book.*

**CAIN**  
OR  
**The Future of Crime**

BY  
**GEORGE GODWIN**

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*"We like progress", he said, "but it must commend itself to the common sense of the people. If a man gets to know more than his neighbours, he should keep his knowledge to himself till he has sounded them and seen whether they agree or are likely to agree, with him. He said it was as immoral to be too far in front of one's own age as to lag too far behind it. If a man can carry his neighbours with him, he may say what he likes; but, if not, what insult can be more gratuitous than the telling them what they do not want to know?"—Butler, Erewhon.*

*"Nothing in criminal procedure, nothing in our penal methods, can be divorced from psychology."—Dr Hamblin-Smith.*

*"Every hive of bees, every nest of wasps or ants is a crimeless community."—Dr Charles Mercier.*

# CAIN

OR

## THE FUTURE OF CRIME

### *SOCIETY AND THE OFFENDER*

Readers of Butler will remember that the Erewhonians regarded crime as an illness to be cured, and, fantastic as that view of the problem may seem, it is, in a word, the ultimate solution of it. What follows is a plea for the recognition of this fact, after which the problem then falls naturally into three parts: the physical cure, the mental cure, and the disposal of the irreclaimable human material.

No community of individuals could exist unless it adopted certain rules of conduct, and every law made to enforce such rules has always necessarily involved the curtailment of the liberty of the individual in the interests of the

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community. The problem of crime is to bring the individual into harmony with the code of the community. In other words, to inculcate the control of the self-regarding instincts and the development of the other-regarding instincts.

Ever since primitive man first made for himself rough-and-ready rules of conduct, Society has been faced with the problem of those of its members who refused to accept and abide by the code laid down by the will of the majority. The criminal was he who deliberately flouted tribal laws. The first murderer was cast forth from the fold 'to become a vagabond and an exile in the earth', not because he had offended against a moral law by doing murder, but because by killing he had weakened the fighting and foodhunting strength of the tribe and damaged the family unit.

In a primitive community the capacity for killing was undoubtedly a virtue, the virtue of the warrior, among the highest in a community hedged about by aggressive neighbours.

So, too, with the wife-stealer, and the thief of other chattels: he was proceeded against simply because his activities

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were a common menace. The moral distinction between murder and theft was obscure, and the essential moral difference in the nature of the two anti-social acts was probably not perceived.

Revenge is an old, a primeval instinct: it came into action. The ethics of the tribe were not outraged, since it is improbable that it possessed much moral sense. It did not so much punish the murderer or thief in the spirit of superiority of the modern mouthpiece of Society, delivering the judicial homily to the occupant of the dock, as it set about 'getting even' with him.

Sometimes this revenge took the form of swift death; sometimes of death after due torture; at others of exile; and, again, of mutilation. It developed later, being unorganized, into the form of the vendetta, in which the blood relatives of the slain declared a feud against the family of the assassin. In this form revenge has persisted down to modern times in Latin countries, in the form of the Corsican vendetta, and, in the United States, in the blood-feud.

Indiscriminate revenge against the

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wrongdoer by the community or family, however, was inconvenient. At some time or other the community relegated the task to the judge and the gaoler. Our modern prisons are the direct legacy of that old Draconian ferocity, because they represent the collective revenge of Society upon the wrongdoer. That is why, with all the goodwill in the world, and even with the co-operation of modern minds versed in psychopathology, our prisons can never be anything but the modern equivalent of our ancestors' system of unorganized revenge against the law-breaker. It is a system that takes no thought for the reform of the wrongdoer and his restoration to the normal life of the community.

This fierce desire of the community, always to pursue and punish the refractory member of it, has coloured the whole history of our criminal law and administration. Cruelty is no thing of a remote past: it was the characteristic of the prisons of yesterday, and, to a great extent, it is true of the prisons of to-day.

A Martian visitor to Earth would surely marvel at a race which produced, side by side with a Darwin and a Shelley, a system of legalized torture which required even the street strumpet to atone for her

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offence upon the treadwheel,<sup>1</sup> and cast the uncared-for waifs of the cities into dens of infamy.

In the *Calendar of Sessions Book: 1747-1751*, it is recorded that one Mary Meredith was ordered: "To be whipped at the cart's tail until her body be bloody along Wardour Street from that end next Edward Street unto the end thereof next to Tyburn Road;" the same record contains the injunction to the executioner in another case: "That the person who whips him is required to do his duty." Both these excerpts illustrate the part played by the passion for revenge, and the public satisfaction demanded by those who crowded to witness such barbarities in modern times.

A Martian might well express amazement that at the dawn of the glorious Nineteenth Century, no less than 128<sup>2</sup> new offences, punishable by death, were added to the Statute Book, including such venial delinquencies as the theft of five-shillings-worth of shop-goods, the robbery of a rabbit-warren, and the counterfeiting of

<sup>1</sup> Pregnant women were not exempted from the toil of the tread-wheel.

<sup>2</sup> Blackstone's *Commentaries*; *Murder and the Death Penalty*, by E. Roy Calvert; *Chambers' Encyclo.*, Vol II, p. 743.

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revenue perfumery-stamps. Yet such was the case.

But the attitude of Society towards the criminal has slowly undergone a change. The theory of punishment as an end in itself is now being challenged, and the idea of curing the offender of his anti-social propensities is perceptibly changing the angle from which enlightened experts approach the whole problem.

### *CRIME : WHAT IS IT ?*

Crime does not mean the same things in all countries or at all times. To arrive at a working definition for the purposes of a book like this is one of the great difficulties that face the writer. The Criminal Law of England divides crimes into those which are *mala quia prohibita* and those *mala in se*, an attempt to draw a hard-and-fast line between what is innately wicked and that which is so because it is prohibited by Society for its own good, without reference to moral sanctions.<sup>1</sup>

But the idea of what is wrong in itself is not a fixed conception : it differs with time and place. The wrong of West may

<sup>1</sup> Offences are classified as indictable and non-indictable, as felonies and misdemeanours.

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be the right of East ; and so with past, present, and future.

For example, in the Fijian Island of Vanua Levu more than half the infant population was destroyed with the approval of the community in the last century.<sup>1</sup> Aristotle, in his *Politics*, asserted that the law should forbid the nurturing of the maimed, and, when a check to population is required, abortion should be practised before the quickening of the infant. Plato also defended the practice. In Sparta the new-born child was examined by the elders, and if found to be inferior was cast into a cavern at the foot of Mount Taygetus. Even in modern India, despite Imperial interdiction, the destruction of female infants is still practised in secret according to ancient usage.<sup>2</sup>

But in England and in many other modern States to-day, the unmarried mother who destroys her new-born infant, or who procures the services of another to take its life *in utero*, commits a crime ; while in France, a country of declining birthrate, the social prohibition has been carried a step further and the use of con-

<sup>1</sup> *The Golden Bough*, by Sir J. Frazer, Abridged Edn., pp. 293 ff.

<sup>2</sup> *Mother India*, by Katherine Mayo, pp. 70 ff.

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traceptives made illegal—a law, it may be observed, that illustrates the limitation of the law-maker, since it is honoured only in the breach.

Again, in England to-day, it is a crime to marry two women; but it is not a crime for a syphilitic father to beget children of an epileptic mother. In this indifference to unnatural crime we are no better than the Hindu, who sees no offence in giving the ten-year-old child to the venerably infected middle-aged husband.<sup>1</sup>

Yet the man who marries two wives injures the community in no way, but may, on the contrary, actually confer a benefit upon it by enriching it with a large number of physically and mentally superior children. If he has offended against the criminal law it is because that law takes cognizance of religious taboos, polygamy being banned by Christian ethics.

But the begetter of offspring foredoomed to degeneracy and predisposed to crime has offended against no religious canon. Mr Bertrand Russell has said: "Supposing that in this world that we live in to-day an inexperienced girl is married to a syphilitic man, in that case the Catholic Church says: 'This is an

<sup>1</sup> *Mother India*, chapter v.

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indissoluble sacrament. You must stay together for life'." <sup>1</sup>

The criminal law, then, is not always concerned with crimes against nature and the resultant damage done to the community. But, strangely enough, it does concern itself with unnatural offences, such as homosexuality, that have no direct consequences to Society.<sup>2</sup>

But already the folly of such anomalies is becoming generally recognized, and an attempt is being made to deal with the evil. Fifteen States of the Union now make insanity, feeble-mindedness, epilepsy, criminality, and alcoholism bars to marriage; and in 1921 more than 2,000 defectives were sterilized.

The appalling consequences of the unrestrained fecundity of defectives—the most prolific class—is evidenced by the record of the infamous Jukes family. In a century and a half five degenerate sisters who married with their kind produced 2,094 descendants. Of this total half were feeble-minded or worse, and quite incapable of responding normally to the requirements of Society, while the other

<sup>1</sup> *Why I am not a Christian*, by Bertrand Russell. (The Canon Law on this point is at one with the Civil Law.)

<sup>2</sup> *The Intermediate Sex*, by Edward Carpenter.

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half, mentally and emotionally normal, became socially inadequate.

Nearly every crime, murder, attempted murder, rape, robbery with violence, burglary, incest—in fact, most crimes known to the Calendar—have been repeatedly perpetrated by members of this infamous brood.

The following table shows the contribution of the Jukes family to the streets.

### HARLOTRY IN THE JUKES FAMILY

#### *Percentage of Prostitutes*

2nd Generation	60.00
3rd        "	37.50
4th        "	69.23
5th        "	72.03
6th        "	50.45
7th        "	31.78
Total Number of Women	541
Total Number of Prostitutes	277

Paradoxically, now and then crime is virtue, virtue crime. The man who in 1916 refused military service, electing at a moment inconvenient to the State to practise the State religion, became a criminal unless he was able to satisfy a tribunal set up to examine his conscience that he did in fact believe and practise

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the Christian faith—which, in passing it may be recalled, was then generally considered extremely unlikely.

But nobody, even in those days, suggested that the conscientious objector was immoral. On the other hand, those who obeyed the State, fought, killed, or were killed, ceased to be murderers and became heroes. Murder, then, had become a virtue, and the State Church with most others, by a process of theological special pleading that is the despair of the lay mind, contrived to prove that black was white.

In other ways these anomalies exist to-day. The married man who keeps a mistress is guilty of immorality, but innocent of any criminal act : he becomes a criminal only when he seeks to regularize the second union. So, too, a man who steals a loaf of bread is liable to be sentenced to imprisonment, while the law grants practical immunity to the dishonest company promoter whose activities may bring disaster to thousands.

In the future we may find that by making the test of crime its effect, not only upon the community of to-day but also upon the race, certain things now criminal will cease to be so, while others not now crimes will become offences.

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A crime, then, in one country may be, and often is, a virtue in another—just as the crime of yesterday may become the virtue of to-morrow. In short, the nature of crime changes with changing morality and with social necessities, having no relation to morality.

How, then, can one get a wide and flexible definition that will serve the present purpose? Perhaps by taking a very wide view.

In the future we may regard as criminal every act, attempted act, or omission, that is directly or indirectly detrimental to the race.

### *THE CRIMINAL : WHAT IS HE ?*

Just as there have been many efforts to arrive at the perfect definition of crime, so, too, have there been many attempts to classify the criminal.

Lombroso, an ingenious constructor of theories, though now considered an incautious generalizer, postulated a 'criminal type'. The criminal, he asserted, bears upon him the stigmata of his type, his oxycephalic skull, low and receding forehead, protruding jaw, flap-ears, dead hair,

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and fixed and expressionless eyes betraying him.

Few experts to-day accept this theory ; but when it was launched on a world that talked of crime and sin in the same breath, it was startling, an innovation that attracted many minds.

If the reader be curious enough, let him experiment for himself, taking, say, the Members of any Government in power, and applying the Lombrosoan tests to them. He will probably be rewarded by the discovery that between them the legislators exhibit several of the so-called criminal stigmata. The same experiment could be carried out with equally startling results on the House of Lords, or even upon the members of the Athenæum Club.

The characteristics Lombroso described are very marked in degeneracy, but present also in many high types.

It is these types that account for the bulk of certain kinds of offence, which will be referred to presently. But the truth that there is no criminal type is now generally admitted.

Dr Goring<sup>1</sup>, after examining 3,000 convicts, came to the conclusion that an anthropologist would have passed them

<sup>1</sup> *The English Convict.*

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as physically normal individuals. Dr Hamblin-Smith<sup>1</sup>, who takes much the same view, has found in the examination of the convicts of Birmingham gaol, that many delinquents tend to be a trifle below average weight and height. Dr Goring's 3,000 provided the following figures :

### *Comparative Physical Table*

Mean stature of convicts examined :	65.5
inches	
Mean stature of general population :	67.2
inches	

Dr W Healey and Dr A. F. Bronner, who examined 4,000 convicts, failed to find physical stigmata ; nor did they trace any 'cerebral localization' of criminal instincts.<sup>2</sup> The criminal, then, apparently has no type by which he can be detected, and only incidentally is he a degenerate. Major Armstrong, Patrick Mahon, Frederick Bywaters, and Edith Thompson, to take a few names at random, were guilty of crimes, but none of these were either physically or mentally inferior to the persons who brought home to them their crimes.

<sup>1</sup> *Psychology of the Criminal.*

<sup>2</sup> *Delinquents and Criminals : their Making and Unmaking.*

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Lombroso's theory has been abandoned, but, although the old ideas of the criminal type are now rejected after scientific scrutiny, there is plenty of data to suggest a correlation between certain physical attributes and particular types of offence. Thieves are usually below the physical and mental average, while crimes of violence are usually committed by men above the physical average. Fraud, and similar crimes calling for astuteness and audacity, are usually found to be committed by persons up to, if not above, the average, physically and mentally. The general conclusions of several experts may be fairly summarized thus: the majority of criminals are slightly sub-normal; some are degenerate; a minority are average in both physique and mentality.

But here is a difficulty: statistics dealing with crime are actually the statistics of those unsuccessful in crime; for crime, like all other human activities, has both failures and brilliant exponents. "Successful and fortunate crime", as Seneca said, "is called virtue." And Nietzsche: "Merchant and pirate were for a long period one and the same person; even to-day mercantile morality is really nothing but a refinement of piratical

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morality." We may be fairly sure that among the general community, and even among the highly-placed and honoured, there is a certain percentage of undetected delinquency.

Crime-statistics, and the deductions made from them, would be irrefutable only if we knew that the data from which they were compiled gave us the true index of criminality in the whole community; and this is not the case. The general conclusion of experts is that, apart from crimes of degenerates and defectives, most crime is the work of hopeful subjects for reform.

Where, then, is the clue? It is not to be found in physical stigmata but in the mental abnormality, or the abnormal working of the normal mind, or in the collapse of moral resistance under excessive strain, the conflict between the self-regarding and the other-regarding instincts.

The secret of the cure of the criminal has nothing to do with punishment. The solution of the problem of the anti-social individual—that is, of the *curable* anti-social individual—is a problem of psychology. But, since the idea of punishment is the orthodox conception of the majority of people, a few words upon it may not be out of place.

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### *THE THEORY OF PUNISHMENT*

When a judge sentences a prisoner to the cat-o'-nine-tails, to a long term of penal servitude, or to death itself, he acts merely as the instrument of Society. The community desires the revenge which the individual is forbidden to pursue: the judge solves the problem.

By ~~his~~ act the individual has incensed the community: his punishment satisfies it. It is retribution, vicarious revenge. And it is, as truly, the State's regulation of a common moral limitation, and in this way may fairly be compared with the vent provided for vice by some communities. There is no moral sanction, and to pretend that there is, is hypocrisy.

So far, then, as punishment is retributive in character, it remains to us as a relic of that immemorable barbarism from which has grown the civilization we know. Public opinion is always in a state of flux, and the trend is away from wanton cruelty. But sometimes the law changes more slowly than public opinion, and the infliction of retributive punishment, when it does occur, is an illustration of the disharmony between Society and its judicial mouthpieces.

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Consider how easily public sentiment is aroused by a harsh sentence, and the ease with which signatures are procured to petitions in favour of condemned murderers. Yet it is not so long since the executions of even youths and maidens was a public spectacle enjoyed by both sexes without sense of shame or consciousness of inhumanity. The old idea of retribution no longer plays the part it once did. Judges reflect the change of sentiment: they seldom sentence harshly, or sentence at all, if any alternative presents itself.

“No one”, said Plato. “when punishing a criminal directs his thought to the fact, or punishes him for the fact of his having committed a crime; but he who wishes to inflict rational punishment acts with regard to the Future, that all who see him punished may be deterred from doing wrong.”

Plato states only part of the purpose of punishment: it should also deter the punished. To punish so that others criminally inclined shall be frightened from their purpose is a proceeding sanctioned by commonsense; and retaliation, as Plato said, has no part in the punishment inflicted by a wise community. But to keep an individual from wrong

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doing by fear of punishment is an empty victory: he remains morally where he was. Fear holds his hand.

“Punishment,” said Dr Barnes,<sup>1</sup> “can be justified if it bring about moral reformation, and in future it will be used only in those cases where it will be likely to have that effect.” Those cases are not likely to be numerous.

Modern theory postulates three purposes in punishment: prevention, deterrence, and reform. Prevention by imprisonment or death, deterrence by reason of fear, reform by education. It is an advance. But, bad as our prisons are to-day, to appreciate the progress made in the treatment of the offender, a contrast is necessary: it is provided by the prisons of to-day with those of yesterday.

In the eighteenth century, John Howard, an invalid philanthropist, spent seventeen years in a crusade against the prisons of his time, and against the cruelty and corruption of those who controlled them. Howard found cut-throats and debtors, children and aged people, imbeciles and idiots, guilty and innocent, flung together

<sup>1</sup> *Prison Reform*: Howard League Pamphlet.

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in prisons which he described<sup>1</sup> as :  
“ Pestiferous dens, overcrowded, dark, foully dirty, not only ill-ventilated but deprived altogether of fresh air. The wretched inmates were dependent for food upon the caprice of their gaolers or the charity of the benevolent ; water was denied them except in the scantiest proportion ; their only bedding was putrid straw. Every one in durance, whether tried or untried, was heavily ironed. Gaol-fees were levied ruthlessly ”.

What the efforts of Howard, Jeremy Bentham, Elizabeth Fry, and other reformers and philanthropists failed to do was ultimately achieved by a sensational work of fiction. In 1856, Charles Reade published *It is Never Too Late to Mend*. It woke the public up at last. The country became aware of the prison problem.

Men were bad : men went to prison. That was all. What happened to them behind the bleak grey walls, what manner of men they were when finally released, were matters that had formerly troubled only a few consciences. Meanwhile the sore had festered, as neglected sores have a way of doing, and the poison spread through the community.

<sup>1</sup> *State of Prisons in England and Wales*, pp. 210 ff.

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Howard, who saw the horrors of herding, saw in the other extreme the remedy. He is the father of the modern cell system. And now new knowlege tells us that this, too, is no solution.<sup>1</sup>

No punishment that does not leave the subject of it better fitted to take his place in the life of the community is worth inflicting. The only criterion for the practical mind is this: Does the system win victories in the war against crime? If it does, then we have arrived at our destination. If not, then we need to go further: the system stands condemned.

Said Dr Mary Gordon,<sup>2</sup> after thirteen years of experience: "If the system had a good effect on any prisoner, I failed to mark it. I have no shadow of doubt of its power to demoralize or of its cruelty."

Cicero said that no cruelty is useful, and if there were no other indictment to be brought against our prison system to-day, its purposeless cruelty would be enough to damn it. The truth is, the whole theory of punishment, medieval and modern, is based upon fallacies. Far

<sup>1</sup> "The Prisoner", by John Galsworthy gives a vivid picture of what the cell does for the prisoner. *Caravan*.

<sup>2</sup> *Penal Discipline*.

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from helping towards the solution of the problem they are designed to solve, our prisons actually aggravate it. If official statistics have any meaning at all, our prisons are factories for the manufacture of criminals, and very efficient factories too.

That prisons conducted on the present lines must create crime is inevitable. The majority of those who find their way into them are individuals who have been unable to withstand the stresses and strains of life, to face the struggle for existence in an over-crowded community. Others have never possessed sufficient intelligence to prey upon the community within the limits set by the law, as their unrecognized superiors in crime do with impunity.

The prison-system scientifically deprives these subnormal members of the community of the small stock of resistance to anti-social acts possessed by them. It exacerbates the social sickness by segregating the offender from the life of the community, relieves him of the bracing task of the struggle for life, houses, clothes, feeds, and, worst of all, removes the very temptations he must, if he is to be reformed, learn to resist.

Under such a régime moral fibre rots,

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will-power is lost for want of use, initiative is deadened by purposeless toil, self-respect is trampled upon, talent allowed to rust through years of disuse.

The result is the only one possible. Men, subjected to this unscientific treatment, return to freedom defenceless. They have offended against Society. What of Society's offence against them? Whatever latent social sense was once theirs has withered in the prison air. It is these social cripples that, in our wisdom, we let loose upon the community.

The following statistical table shows how the prison draws to itself again all those who have once known its corrupting and morally-enervating influences :

### STATISTICS OF MALE CONVICTS RECEIVED INTO CONVICT PRISONS

<i>Year</i>	<i>First Offence</i>	<i>Inter- mediate</i>	<i>Recidi- vist</i>
1906-11	99	245	948
1911-15	104	160	579
1916-7	18	55	279
1917-8	63	49	298
1918-9	40	70	191

*Note* : First 2, five year groups.

Dr Hamblin-Smith<sup>1</sup> says : " When we

<sup>1</sup> *The Psychology of the Criminal.*

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bring a man before a Court, we should not be content with assigning some penalty for his offence. We should first consider why it is that the offender is in rebellion against Society. It is certainly possible, by means of severity, to suppress many of the outward manifestations of rebellion. But the experience of ages has proved that this course is futile."

An illuminating example of the effect of repeated prison sentences upon the youthful delinquent is provided by the following dialogue between a twenty-one year-old prisoner and a judge.<sup>1</sup>

*Judge* : " If you don't receive a strong sentence, you stand a chance of spending most of your life in prison."

*Prisoner* : " You think that by giving a big sentence you will reform me. Well, I don't."

*Judge* : " Have you anything else to say ? "

*Prisoner* : " What's the good ? It is not how you deserve it. You are here to dish out as much as you can. You had better lay it on."

<sup>1</sup> Mr Justice Roche, York Assizes, 19th Nov., 1927.

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*Judge :* “ You make a great mistake. It may be you ought to go to penal servitude. If you start going to penal servitude you will probably spend the rest of your life in prison.”

A system that makes possible such a dialogue moves one to pity for the prisoner no less than for the judge whose hopeless task it is to inflict the futile sentence.

The late Mr Thomas Mott Osborne, who served a short prison sentence in order to make himself efficient as a magistrate, records this conversation with a fellow-prisoner :

“ Do you know how a man feels when he leaves a place of this kind ? I'll tell you how I feel. I just hate everybody. And I made up my mind I'd get even.”

Scarcely a frame of mind auguring good for the community against whom its venom is directed when translated into action.

And in England and Wales, in 1925, of the total of 42,808 convictions, 19,375 had three or more previous convictions, and 5,220 more than twenty convictions.<sup>1</sup>

<sup>1</sup> *Criminal Statistics : 1925* (H.M. Stationery Office).

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Our prison-system, embodying our idea of punishment, stands condemned by all rational tests. It will disappear. But there is probably some ground for the pessimism of Dr W. F. Geikie-Cobb, who, preaching in St Paul's Cathedral, said: "A penal system which is rooted in the earliest days of savagery, which flourished through the barbarism of the Dark Ages, and the Middle Ages, and has been continued in spite of our vaunted Christianity, is likely to be long a-dying."

But that die it will, is certain. The wrongdoer of the future will not be sinned against by the Society against which he, in turn, has sinned. He will not be thrust down, further degraded, unmanned by barbarous segregation. He will be recognized for what he is—the socially defective member of the community. And the process will not be punishment for wrong-doing; but cure for mental defect.

That useful guide, philosopher, friend, and critic, the visiting Martian, would no doubt regard our neglect of this problem as a curious phenomenon of our terrestrial life. He might remark, and express admiration for the earthly intelligence which produced and developed the science of psycho-analysis.

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"Why", he might blandly inquire, "do you not apply this science of the mind to the problem of the criminal?"

And our answer would be: "Tomorrow we shall."

And it will be the right answer.

The irreclaimable delinquent of tomorrow will receive a lot of attention it will be unwelcome attention. But as for the majority of delinquents, let them take heart of grace: the coming of the psychopathologist need have no terrors for them. He brings nothing but boons.

## *THE IRRECLAIMABLES*

Crime is the disease of the social body; degeneracy is the disease of the race. Crime can be controlled whenever scientific methods of prevention and cure replace the existing crime-breeding prison-system. Degeneracy can also be controlled; but in another way.

Crime springs from many causes, but, of them all, one is predominant: it is the steady tide of delinquency that flows from the degenerate and his brood. Schemes for the perpetual segregation of these unhappy ones are directed towards the effect. Cut off from the

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main stream of life those whose taint is the legacy of a damaged germ-plasm and you strike at the cause.

It is prophylaxis *versus* cure. Segregation looms up to-day as a necessity of the immediate future because in the past we have shrunk from sterilization or painless elimination. Carlyle's 'barrenest of all mortals', the sentimentalist, with his creed of the sacredness of human life, may admit the expediency of the remedy, but will certainly oppose it upon humanitarian grounds. The community, he will argue, has no moral right to destroy life.

Yet the justification for the elimination of the degenerate is based solely upon humanitarian considerations. If human life be indeed sacred, then the life-stream of the race is sacred above the lives of individuals. It must be safeguarded from the transmitter of the damaged germ-plasm. It is the sacrifice of the living few for the unborn multitude.

Extreme remedies are appropriate for extreme diseases, said Hippocrates, and Shakespeare, sharing the thought:

Diseases desperate grown  
By desperate appliances are relieved  
Or not at all.

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It is the offence of certain members of the community that they have been born at all. The sins of the fathers are visited by the gods upon the children. Ruthless elimination is the remedy.

One of the most disturbing facts of the problem of the degenerate is his appalling fertility. Like weeds, he multiplies exceedingly, and to the detriment of good wheat. Dr Goring<sup>1</sup> found that the criminal is the most prolific member of the community, and among the criminal classes are to be found the degenerates. Our prisons and workhouses are eloquent testimony to this menacing multiplication of the useless human material, and to the sum-total must be added the fertility of the feeble-minded, who likewise pass on their taint.<sup>2</sup>

Opponents of the Spartan remedy should bear in mind that along with this multiplication of the sub-men proceeds the voluntary sterilization of the superior citizen. The best strains are being cut off or reduced; the worst have full opportunity to flourish.

<sup>1</sup> *The English Convict.*

<sup>2</sup> £8,000,000 p.a. is the annual cost to the community of maintaining the half-wits alone.

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There is no panacea for crime and degeneracy. There will always be the atavistic individual whose reversion to anti-social ways cannot be explained except by the biologist: there will always be the unaccountable degenerate offspring of apparently sound parental stock. Cases of this kind are known to all medical men and teachers.<sup>1</sup> But such abnormalities are not common and therefore do not really constitute a pressing problem. The bulk of degeneracy is transmitted, and the elimination of the transmitters is the logical remedy.

Would such a policy clash with Christian teaching? "With regard to the problem of population, of degeneracy, and the restraint of crime", said Dr Barnes, "Christ gave no definite teaching. We have, in loyalty to Him, to seek to establish the Kingdom of God. We cannot build that Kingdom of criminal degenerates or of their descendants. The Kingdom will not come so long as our prison-system produces demoralization and mental starvation of those who have to endure its mistaken severity."

<sup>1</sup> *Prison Reform*: Howard League Pamphlets.

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All of which is generally admitted to be true. But how, without extreme measures, are we to achieve this end? Nobody has yet offered an alternative to the suggested method of prophylaxis put forward here.

### *PRISONS OF TO-MORROW*

In *Dr Jekyll and Mr Hyde* Stevenson presented psychological truth in the form of a fantastic tale. In the progress of Dr Jekyll along the downward path to spiritual night his creator depicted the tragedy of every wrong-doer. The progress was gradual: so is the progress of every criminal. No man, said Juvenal, became extremely wicked all at once.

The story is a parable whose meaning is clear. The criminal is imprisoned before ever prison-walls of stone confine him: he is held captive in the invisible prison house of his own spiritual infirmities. To inflict punishment upon Mr Hyde leaves the social problem he presents unsolved, just as it leaves unsolved the personal tragedy: Mr Hyde punished remains Mr Hyde.

The quest is not for the perfect punish

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ment, for that word implies the infliction of suffering, an art perfected by the Inquisitors and abandoned by the Church because experience demonstrated the impossibility of cajoling man's mind by flaying his body.

Suffering, to purify, must be spiritual suffering. The infliction of physical and mental torture does not help. For this reason it seems logical to suppose that we shall direct our energies to mending or ending the Mr Hydes who to-day plague the community. We shall not waste time and money on futile punishments.

The real nature of the remedy is stated by Dr William Brown: "The truth is that psychology as such is not concerned with the central problem of responsibility at all. Its task is the more modest one of attempting to trace antecedent factors of wrongdoing in the criminal's heredity, in his previous mental constitution, and in the conditions of his environment."

To subject all prisoners to a standardized régime of punishment is about as sane a proceeding as it would be to perform one standard operation upon every patient carried into the operating theatre of a hospital. Psychological disturbances

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resulting in anti-social conduct are as diversified as physical disease, and call for as many different processes of cure. The only competent expert yet found to diagnose and treat the mental conditions that give rise to delinquency is the trained psychopathologist, who is the surgeon of the diseased mind.

The prison of the future, then, will be no prison at all. Punishment as an end in itself will disappear. Discipline will take its place, but only as one of many instruments for the correction of psychological conflicts that result in crime.

Work will be part of the cure; but it will not be debasing work. It will be constructive, leaving the worker better prepared to fend for himself by reason of newly-acquired skill when the hour of release arrives.

Swedish prisons have already adopted this system of constructive prison-labour. Readers of Knut Hamsen's *Growth of the Soul* will remember the moving scene when Inger returns to Isak after serving her sentence in Trondhjem prison for infanticide. Inger has been imprisoned; but her sojourn there has made her better, not worse. Prison has been her university, and

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simple Isak is all admiration for the new Inger, so skilful at many housewifely arts.

The word 'prison' and the word 'punishment' will disappear from the vocabulary of the penologist. The objective will be cure in place of punishment; and, where no cure is possible, the remedy already suggested.

Both these policies will be fiercely opposed by the moralist who disapproves of 'being kind to convicts' on the ground that, having sinned, it is in the first place in accordance with religious teaching, and due to the community whom they have outraged in the second, that they should suffer.

Said Judge Parry: "The great bulk of the well-to-do classes still hold by capital punishment and clamour for more corporal punishment, under the impression that these exhibitions of cruelty wreaked upon A and B deter the rest of the alphabet. History is against them."<sup>1</sup>

Judge Parry might have included in that indictment certain judges and magistrates.

The truth is, suffering and sin in this world are seldom correlated. Many

<sup>1</sup> *Vagabonds All.*

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sinners escape suffering, while much suffering, both mental and physical, has been the lot of the saints.

When the delinquent of to-morrow has been found guilty by the type of Criminal Court which it is suggested will one day take the place of the present tribunals, a Court concerned only with facts, he will be passed as physically normal, or his physical defects rectified, and will then enter an institution where his mind will be subjected to examination. He will not be harried as a 'sinner', or degraded as a monster. He will be treated as a sick person, and the psychopathologist who will set about his cure will do so with the detachment of the operating surgeon.

Psycho-analysis is too vast a subject to be touched on here, but work already done indicates that it holds the key to the problem. There is but one argument against it: it is that it will not work. The few experiments so far made in England, handicapped as the experimenters have been by the machine into which they must fit themselves as best they can, have produced results that wipe out this sole objection. In America, where for many reasons,<sup>1</sup> there

<sup>1</sup> Appendix II.

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is an amount of crime that menaces the national life, the claims of psychology have been more willingly recognized, and the psychopathologist set to work.

The Psychopathic Hospital which is now treating delinquency by the new methods on Morris Plains, New Jersey, is the forerunner of the penal institution of to-morrow. That is to say, it is not penal at all, but a place of cure. The object being reform, no factor is ignored that may produce a good effect upon the minds of the inmates—buildings, surroundings, and staff are remote from the suggestion of the prison.

One case is cited because it combines the three salient heads of the problem, namely, delinquency in youth, the physical factor, and the psychological factor.

A was 20 when he was admitted. He was stubborn, sullen, morose, and occasionally venomous. The physical examination revealed chronic septic tonsils, adhesions on the abdominal wall, and a defect in the colon. These physical defects were treated, and A was restored to normal physical health.

Next came the turn of the psychopathologist. The youth's body in good health, there remained the health of his mind. Painstaking inquiries elicited the fact

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that as a boy *A* could not learn from books, and hated school, where he was often punished. This inability to learn, and the punishment in which it often resulted, sowed the seeds of a mental 'kink' and started *A* on the downward path.

In other words, *A* developed an 'inferiority complex' that eventually put him at enmity with the community in whom he saw his enemies and persecutors. *A* was passed out of school as 'feeble-minded'.

Nobody was more surprised than *A* himself when the psychopathologist discovered him to himself. The youth had never dared to dream that he might possess a talent: actually he possessed two. He was a natural draftsman; and he had latent powers of leadership---a trait often found in wayward boys.

At the end of two years *A* was discharged. He secured a berth as engineer's draftsman, and gave no more trouble to the community.

What would have been the reaction of such a subject to the régime of our prison-system? *A* would have continued to suffer the hidden physical disability, since it was of a nature easily overlooked by a perfunctory prison medical examination. As for his psychological trouble, that

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would have been ignored. During the term of imprisonment it would have tended to become very much more pronounced. Released, bitter and more venomous than when he started his punishment, *A* would ultimately have revenged himself upon the community which persecuted him, and so have drifted into the class of professional delinquent, with alternating spells of liberty and crime with prison-sentences, each one of which would aggravate his physical and mental maladies.

Is this American quackery or sound science ?

Speaking of the part played by physical defects in producing mental trouble, Dr Hamblin Smith says : " In considering the evil effects of bad physical conditions, we must remember that it is not only the effect upon the sufferer's working powers which has to be taken into account. . . . Take the case of a boy with very defective vision. The defect may not be known to anyone. But the boy will not be able to do his work at school. Consequently he may be in constant trouble with his teachers, and may be rebuked for carelessness, inattention, and stupidity. Ignorant of the real cause of his trouble, and conscious that he has been doing his best

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a mental conflict will be established.”<sup>1</sup>

The prisons of the future will pay dividends to the community in the shape of reclaimed delinquents, and if there were nothing more to be said in their favour, this fact, with its corollary, the saving of public money, should be enough to recommend it to a sceptical community.

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Should murder,<sup>2</sup> failing extenuating circumstances, as that term is now understood, always be punished by death? Or is there a workable alternative to murder by the State as reprisal for murder by the individual, which is, after all, what hanging or electrocution means?

There is a case for capital punishment, and a case against it, and both may be stated very briefly. The reader may elect for either, or reject both, as the writer does.

The case for capital punishment rests upon two broad bases: first, that the

<sup>1</sup> *The Psychology of the Criminal*, p. 28.

<sup>2</sup> The humanitarian argument is ignored here. Readers are referred to *Murder and the Death Penalty*, by E. Roy Calvert and *Capital Punishment on Trial*, by T. W. Hall.

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death of the murderer is essential for the protection of Society against that particular individual ; secondly as a deterrent to others homicidally inclined who may be deflected from the crime by fear of death. Some add a third justification, namely, the Mosaic law.

That the execution of a murderer rids Society of any degree of danger that particular individual might present to it is apparent. But there are drawbacks to the procedure, in that the murderer takes with him to the grave the psychological secret which can be discovered only by seeking out the causes that lay behind the abnormal act.

This is one of the disadvantages of destroying pathological material without examination. Until murderers are subjected to the probe of the psychopathologist we can never learn by what processes a human soul proceeds to the contemplation of murder, and thence to the act itself.

It is not easy to decide the validity of the claim made for capital punishment as a deterrent, because the evidence is conflicting. All history certainly indicates the persistence of a peculiar error in the judicial mind : it is that punishment is a potent weapon for reform, and an equally

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powerful deterrent. This is not so, though the power of *certain punishment* to deter is well known.

“ In 1800 ”, says Mr E. Roy Calvert,<sup>1</sup> “ there were over two hundred capital offences in England ; you could be hanged for stealing five shillings, for impersonating a Greenwich pensioner, or for associating with gipsies.”

Lord Ellenborough, Lord Chief Justice of England, opposing a Bill to abolish the death penalty for the theft of five shillings from a shop, used the following words :

“ Your lordships will pause before you assent to a measure pregnant with danger to the security of property. The learned judges are unanimously agreed that the expediency of justice and the public security require that there should be no remission of Capital Punishment in this part of the criminal law. My lords, if we suffer this Bill to pass, we shall not know where to stand ; whether we stand upon our heads or upon our feet ”<sup>2</sup>.

That utterance, which seems so ridiculous to us to-day, probably represented the attitude of the majority of the community at that time ; that is,

<sup>1</sup> *Murder and the Death Penalty.*

<sup>2</sup> *Hansard* : May 1810.

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that part of it which possessed property. It throws, likewise, an interesting light upon the extremely solemn view taken by Society then, as now, of the sanctity of private property, a view that still distorts the criminal law.

We know now that the fears of Lord Ellenborough and his judicial brethren were without foundation. One may rob the Lord Chief Justice himself to-day without any fear of the gallows. The error of judgment then made is made now. It is that men abstain from wrongdoing solely from fear of punishment. They do not: they abstain for other reasons of their own. Those reasons are moral ones, a truth not understood by that archbishop and the six bishops who supported Lord Ellenborough in his opposition to that early Abolition Bill.

But Lord Ellenborough, it must be remembered, spoke at a time when crimes against property were rife, when Bow Street runners bargained with thieves for the restoration of stolen goods, and detection seldom followed the crime. Twenty-seven years later the Metropolitan Police Force was instituted, and in the following year the annual loss of property fell from £2,000,000 to £20,000. Punishment had not become

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more severe ; but it had become more certain.

We now know that the abolition of the capital penalty for crimes against property has not fulfilled the forebodings of our forefathers. From the two hundred and more offences once punishable by death, we have come down to five, only one of which is of any importance.

Does the death-penalty deter the murderer ? France provides inconclusive figures, since the death-penalty has never been formally abolished, though clemency has been extended to a degree unknown with us.<sup>1</sup> In Holland, capital punishment was abolished in 1870, while Austria, Columbia, Italy, Lithuania, Norway and Sweden have also abolished it without any rise in the murder rate. In England and Wales, despite the gallows, the rate is slightly higher than for those abolitionist countries mentioned, but not sufficiently so to make deductions of use.

America, where the death-penalty is nominally the law in all but eight of the States, thirty-three others having empowered the Courts to give alterna-

<sup>1</sup> Appendix II.

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tive punishment, has the unenviable distinction of a world's homicide record.<sup>1</sup>

It only seems possible, then, to say that it is doubtful whether hanging acts as a deterrent; but, by analogy with the effects produced by its abolition for lesser offences, it would not seem likely that its abolition for murder would result in an upward curve of the murder statistics.

But in considering a problem of this kind, one vital fact is generally overlooked: the number of murders committed does not represent the State's failure to terrorize the potential murderer from his contemplated deed.

For the vast majority, the thought of murder is so repugnant that it is driven forth from the mind so soon as the idea presents itself. Does the prospect of death deter the few who are homicidally inclined? If it does then there is one argument in its favour. But it seems doubtful.

The murderer is nearly always a happy optimist who believes that his craft is superior to that of Society. He believes in his star when he plots the death of a fellow. Take, as an instance of this amazing assurance, the methods

<sup>1</sup> Appendix II.

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of Major Armstrong, the Welsh wife-poisoner. Armstrong felt so secure that he left the poison with which he committed his crime in the drawer of his office-desk, and that drawer unlocked.

As for the murderer whose act is the climax of passion, the thought of death certainly never deters him. Probably we shall recognize that the real cure for the crime of Cain is not death, but the steady improvement of the social instincts, improvement in the general level of intelligence, and a remedy for emotional instability. The case against capital punishment is based on moral and practical grounds by its advocates, who suggest that it is contrary to Christian teaching; that it imposes on a State official the commission of the very act condemned; and, last, that it is the irrevocable sentence of a fallible court.<sup>1</sup>

Recently the law modified its attitude with regard to the murder by a mother of her new-born child, recognizing that a woman in child-bed is not morally responsible for what she does. The taking of the life of a new-born infant

*The Campden Wonder*, by Hugh Walpole.

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it was also argued, constituted a degree of damage to Society less than the murder of an adult.

Whether the life of an infant is of great or small value to the community, however, depends upon the infant concerned. For, though it is true that a distracted mother might smother a potential degenerate, it is equally possible that she might do the same to a potential Shakespeare.

In the future we shall probably regard it as a meritorious act on the part of a mother that she destroys at birth, say, a Mongol idiot. But the destruction of a healthy, vigorous infant will not be regarded with equanimity, since it will be recognized as a valuable asset to the community.<sup>1</sup>

That 'the gibbets keep the lifted hand in awe' is open to question. We shall probably take a rather more scientific view of the murderer in the future than we do to-day. Essentially, the problem is not a humanitarian one at all: it belongs to the realm of practical sociology, and that is the valid mode of approach to it: it leads us to the murderer himself.

<sup>1</sup> *Infanticide Act* ; 1922.

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The late Professor Bjerre made a minute study of several types of murderer, probably to an extent, and in a temper, never before attempted. His conclusions on that account are worthy of respect. Like all modern students of this problem, the Swedish psychologist approached it from the psychopathological standpoint. And he took the view that to lump all murderers together in one category of vileness is crudely unscientific.

“Moral condemnation”, he wrote, “is directed more and more against the evil rather than against the evil-doer . . . conduct . . . is determined in each case by circumstances, environment and upbringing.”<sup>1</sup>

Substitute the term *heredity* for circumstance, and you have an exact statement of the problem, for you then have the three factors that determine all action.

If one considers the wide range of mental conditions that may culminate in murder, one sees at once that few

<sup>1</sup> *The Psychology of Murder: a Study in Criminal Psychology.*

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members of the community can be excluded from the category of the potential murderer, few, indeed, the men or women innately incapable of the crime.

This is another way of saying that we are all potential murderers, which is true. Why does one individual resist the impulse, while another succumbs to it? That is the problem with which the psychologist is concerned. He condemns murder: but he hesitates to condemn the murderer, because he knows that before he can justly do so he must know the condition of his mind.

The crime may have been the passionate act of a moment of mental unbalance; it may have been the result of an uncontrollable impulse; it may have been the culmination of a deliberately schemed and ruthlessly executed plan; it may be the work of a sex-maniac. But, whichever it be, the seed of the crime lies buried in the mental processes of the criminal.

Motive may be undiscoverable—the blind obedience of a diseased mind—it may be rooted in one of the seven deadly sins; it may be absent entirely, but replaced by impulse.

Of this irresistible impulse Dr Hamblin-Smith says: “The impulse is at first

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resisted, the resistance gives rise to mental pain, the resistance is usually ineffective, the performance of the act is followed by a sense of relief."

The hapless victim of this mental disease, however, cannot advance it at his trial. The law ignores all degrees of murder, and hangs one murderer indifferently with another. In the future we shall separate the types, save those worth saving, and put the others away. The criterion will be the promise of the offender, not the enormity of his offence. For the psychologist is concerned with causes, and too often 'finds, with keen, discriminating sight, black not so black ---nor white so very white'.

Although all who knew him described him as a gentle, inoffensive and somewhat long-suffering little man, Dr Crippen has passed into the history of crime as a monster of iniquity. He killed his wife, and dismembered her body, and these proceedings so shocked the public mind that there was little enthusiasm to support a plea for mercy, despite the manliness revealed by the man in the dock.

Was Dr Crippen an anti-social individual of the type so worthless as to

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make his death essential for the well-being of the community? His was a murder of elimination;<sup>1</sup> he wished to rid himself of a wife to make way for a paramour. It may be argued, of course, that at some later period that paramour would have suffered the fate of her predecessor. Yet Dr Crippen, like so many murderers, was an amateur in crime, and otherwise a decent member of Society. Domestic misery and the mirage of earthly bliss, the evil chance that put into his hands the knowledge that made the crime easy, and the impulse which dethroned his moral controls, resulted in the crime.

He might have been reclaimed—and he might not. Would the experiment have been worth while? To-day we think not; but to-morrow the case might appear somewhat differently.

But whether, taking this case for convenience' sake and because it has always been regarded as a crime of singular ghastliness, Dr Crippen was a worthwhile subject for the psychologist or not, one thing is certain—he was not the monster he has been made to appear in

<sup>1</sup> *Murder and its Motives*, by E. Tennyson Jesse.

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the public mind ; nor is the gulf which divides him from many of those who condemned him so very wide.

There were two courses open to Dr Crippen : to kill his wife and thus free himself to marry his mistress, or to take the course taken by the youthful St Augustine under somewhat similar circumstances. The youthful St Augustine, it will be remembered, newly from an illicit amour, contemplated marriage, but decided to take a new mistress instead of a bride. Is it far-fetched to suggest that St Augustine perhaps toyed with the idea of eliminating the unwanted maiden ? Or that Dr Crippen was a perverted idealist who put the woman he loved above the life of the woman who held him ?

However this may be, it is probable that Dr Crippen was a potential saint, just as it is probable that St Augustine was a potential murderer. And in this connection it is not without interest to observe that this man, destined to become a venerated Church Father, would have been hanged in the days of Lord Ellenborough, with the approval of the then archbishop and seven bishops for his self-confessed crimes of sacrilege and robbery, offences, as it

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has been said elsewhere here, then punishable by death.

Is there anything to be said for a system that would extend to the Dr Crippens the opportunity to expiate their offences; the chance to set forth upon a pilgrimage of purification, as St Augustine did, guided, not by the priest, but by the psychologist? To-day we say: No; but to-morrow we may have other views.

With the crimes of Neil Cream we shift to other ground. Cream was of the type of murderer who menaces Society. Murder was his vice and his foible, his means of self-expression, and the satisfaction of his sadist complex. He was primarily a degenerate; incidentally, a murderer. In future we shall generally discover the degenerate before the commission of his crimes: he will be removed so soon as he is recognized, classified, and scientifically marked by the competent authority as unfit to form part of the community. Thus it may come about that we shall not hang the murderer, but shall take to the lethal chamber some who have no murders to answer for.

If our friendly Martian were suddenly to produce a device for reading the

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hearts of men, who would not bogle at such a test to lay bare the secret places of the heart? Only those who can look into their hearts and return to the court of conscience a verdict of Not Guilty are entitled to sit in judgment either upon the youthful St Augustine, potential murderer, or upon Dr Crippen, potential saint. For, as Montaigne said: "There is no man so good who, were he to submit all his thoughts and actions to the laws, would not deserve hanging ten times in his life." In short, as Professor Bjerre suggests, in future we shall direct our condemnation against the evil rather than against the evil-doer.

## *THE PETTY OFFENDER*

Our Courts of Summary Jurisdiction deal with a tremendous amount of work, as is shown by the figures for 1925, when 499,177 convictions for non-indictable offences were recorded by them. The most common offences were assault, gaming, poaching, motor-offences, offences against the Education Acts, drunkenness, and prostitution.

Sentences consisted of terms of imprisonment or fines, with an increasing

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tendency to take advantage of the Probation of Offenders Act, with the growing conviction of the uselessness, cruelty, and folly of short terms of imprisonment. This tendency to temper justice, so called, with mercy is evidenced by the figures. In 1899, 83,855 persons were sent to prison in default of payment of fine; in 1925 the figure had dropped to 14,542.

For the accused of means, an appearance in these Courts usually involves nothing beyond the ignominy of the inevitable publicity, the fine being too trivial to constitute a 'punishment'. The real penalty for such people, however, may be nothing less than social ruin, if the charge is one involving sex-morality.

The poor defendant, having no particular social position to lose and having no money with which to bribe the State not to deprive him of his liberty, must suffer the alternative, imprisonment, that is, if he is unable, even when given the time, to find the money.

"There are many people sent to prison", said Sir William Joynson-Hicks, "for comparatively small offences. Many of these short sentences are in default of

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payment of fines. Imprisonment as the alternative penalty if fines are not paid cannot be avoided."

But Sir William Joynson-Hicks does not explain why they cannot be avoided for the very good reason that they can be avoided.

To send a defendant to prison as an alternative to the payment of a fine is very much like making poverty in itself an offence, since the sentence is imposed, not for the offence committed, but for the offence of poverty.<sup>1</sup> As to the wisdom or morality of sending a convicted person into the streets to find money to satisfy the demands of Society, our Martian might well regard this as an act calculated to result in a repetition of the offence.

How shall we deal with these petty offenders in the future? It is one of the lesser problems of crime, but a real one, nevertheless. Many of the petty offences that now waste the time of these Courts will disappear with changing habits

<sup>1</sup> Under the law, as it is to-day, Jesus Christ going His way through Christian England, and unable to produce the humble shilling which is the visible means of support, would be liable to be sent to prison by a Bench of County Magistrates as a rogue and vagabond.

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and manners. Already most petty offences are on the decrease, drunkenness, for example, once a national vice, though considered compatible with the behaviour of a gentleman, has ceased to be considered either amusing or good manners.

Public opinion has brought about the change, and the change has been rapid. The indifference of public opinion to drunkenness so recently as the eighteenth century is shown by the literature of that period. Smollett refers to the spirit bars of London with their signs inviting people to "be drunk for a penny, and dead drunk for two-pence", holding out the further inducement of straw to lie upon. For more reasons than one publicans no longer extend to their patrons such invitations.

The part played by public opinion in governing such habits as drunkenness may be seen in the United States to-day, where, the law having outstripped it, inebriety has become the fashion in a country pledged by an amendment of its constitution to sobriety.<sup>1</sup>

<sup>1</sup> Since Prohibition came into force \$42,000,000 have been paid in fines for infringement of the Prohibition Law. There have also been 223,507 sentences of imprisonment. The 17th Amendment was passed January, 1920.

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With us, drunkenness, the breeder of much crime, since it releases the inhibitions of individuals who, sober, are able to control their anti-social impulses, is steadily decreasing, so that, as a problem, it bids fair to cure itself.

So, too, with the sorry processions of street-walkers who now occupy much of the time of the Courts of First Instance in our big cities; for sooner or later we shall sum up the moral courage to give a recognized, if a lowly, place in the social life of the community to the professional prostitute who has always existed, and who will probably always exist.<sup>1</sup>

With the suggested ultimate abolition of our prison-system the short sentence will automatically go; but it is probable that in the quite near future we shall cease to recruit the ranks of crime in this futile way. Probation has not proved entirely <sup>o</sup>successful, nor could it be expected to do so. But at best it has saved from further delinquency all those whose anti-social habits have not advanced beyond the point where human

<sup>1</sup> *Hymen, or the Future of Marriage*, by Dr Norman Haire (To-day and To-morrow Series).

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kindliness, improved surroundings, and a new start are useless.

Much of this minor delinquency undoubtedly arises from incipient mental derangement, much from bad environment, more, again, from rotten heredity.

“Let me make it quite clear”, said Sir William Joynson-Hicks, “that a sentence of less than a month and probably less than three months is useless in every way. It cannot reform and may degrade.”<sup>1</sup>

As an official view this suggests an advance towards enlightenment.

According to Diogenes Laertius, Solon used to say that laws were like cobwebs, for that if any trifling or powerless thing fell into them, they held it fast; while if it were something weightier, it broke through them and was off.

## THE LAW AND THE CHILD

In his *Reminiscences* the late Baron Brampton, better known as Sir Henry Hawkins, relates how, as a small boy, he once saw the corpse of a boy no older than himself borne past on a farm-

<sup>1</sup> 11,210 were imprisoned for debt in 1925: Official Statistics.

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wagon. The boy had been hanged for stealing from an orchard.<sup>1</sup> That orchards should be inviolate, it was then deemed necessary to murder children. It is no longer so considered. The law does not now murder the bodies of children; but the souls of children are still immolated upon the altar of private property. The sanctity of private property has always been the obsession of our criminal law; and even to-day child-life is of less consequence in its eyes than property-rights.

“There are more than two thousand lads sent to prison every year”, said Sir William Joynson-Hicks; “*many of them are committed in default of payment of fines.*”<sup>2</sup>

The law, then, like Shylock, demands its due, or in default, the pound of flesh which is represented by the ruin of a child.

The passing of the Probation of Offenders Act, 1907, and the work that is

<sup>1</sup> In 1833 a boy of nine was sentenced to death at the Old Bailey for stealing two-penny-worth of paint: the sentence was committed.

<sup>2</sup> “There are lads in prison who have been convicted over and over again, five, ten, fifteen and even twenty times before the age of twenty-one.”—Sir W. Joynson-Hicks.

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being done by the Children's Branch of the Home Office, the employment of trained psychologists by the L.C.C., and the medical officers now attached to some Courts as mental experts, reveal a new interest in the welfare of the delinquent child. This is a tremendous advance upon the barbaric system which, no more than eighty years ago, consigned 1,547 children *under twelve years of age* to prison, and 12,255 between the ages of twelve and sixteen.<sup>1</sup>

Since that time the commitments of children to prison have declined steadily. Where formerly the Courts would have had no alternative but to convict, they now have a certain discretion and generally exercise it, though there are sufficient exceptions to prove the need for a more rational way of selecting the personnel of the lay Bench.

To-day children under sixteen years of age must be tried before a Court of Summary Jurisdiction held in a building or room separate from that in which the ordinary sittings are held. The public is excluded. Children under fourteen cannot be sent to imprisonment, and children under sixteen cannot

<sup>1</sup> Official figures for 1848.

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be sent to penal servitude. But they may still be sent to prison where the Court certifies that the child is unfit to be detained in one or other of the reformatory institutions.

The following table gives some idea of how these courts dealt with their problem in 1925.

### JUVENILE COURTS: 1925

<i>All Offences</i>	<i>Convic- tions</i>	<i>Reform'y</i>	<i>Whipped</i>	<i>Prison</i>
12,666	1,933	491	448	4

Modern Society, then, with its vast armoury of scientific equipment, was defeated by four children under sixteen years of age in 1925. Knowing not what to do with them, it decided upon the course of action which assured it four recruits to the ranks of the recidivist class.

In 448 cases it could think of nothing better than whipping, a form of punishment tried and found wanting in our great schools, and therefore being steadily discarded in favour of other methods.<sup>1</sup>

In future we shall recognize the fact

<sup>1</sup> True of all our Public Schools, notably so of Harrow.

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that the overwhelming majority of child-offences could more properly be charged against their parents. Probation, reformatory, corporal punishment, and imprisonment can never solve the problem. Whatever is done to ameliorate the condition of the delinquent child must prove abortive unless we tackle the problem that lies behind it—the delinquency of the parents of the so-called delinquent children.

More than twelve thousand children under sixteen charged with a variety of offences ranging from simple larceny to embezzlement, receiving and indecent assault, is clear proof that we do not take parenthood very seriously.

“The moral conditions of the family”, says Dr Cyril Burt, Psychologist to the London County Council, “is far more important than the material. Nearly seventy per cent. of the cases I have analysed come from vicious or undisciplined homes. Ignorance, indifference, and ill-treatment, constant quarrelling between father and mother, bad boy companions in the tenement or street, a discipline that is too weak or too severe, or oscillates irresponsibly between blind indulgence and brutal punishment—these are far more pro-

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vocative than mere lack of food or pocket money.”<sup>1</sup>

This is an indictment that puts the parents and the State in the dock as the prime causes of child-delinquency. It is another way of saying that bad heredity and bad environment, both factors that could be controlled by the community, result in juvenile crime.

Bad homes and bad parents mean bad children. To punish the children does not touch the fringe of the problem. It is cruel because it is stupid.

“It is not merely desirable, it is an absolute obligation on the community, to see that every child has the opportunity of developing amid surroundings which are as perfect as they can be made”, says Dr Hamblin-Smith. “This is part of what may be termed the parental obligation of the community.”<sup>2</sup>

The problem of the delinquent child, then, is the problem of the delinquent parent.

<sup>1</sup> “We know how to save infant life and build up sturdy boys and girls and stronger men and women, and we have done it where we have chosen to do it, *but all too often we do not choose.*”  
—1926 Report of the Chief Medical Officer of the Board of Education.

<sup>2</sup> *Psychology of the Criminal.*

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In the future it is probable that Society will guard its children as to-day it guards its gold. Parents will no longer enjoy sovereign rights over their children, but will become their custodians as trustees for the race. And their title to their offspring will be strictly limited. Neglect of parental duty will become one of the most serious of criminal offences.

The children of selfish, stupid, negligent, or cruel parents will be confiscated and brought up by the State. But it is probable that such offences will be rare, for with the advent of race consciousness we shall make it a condition precedent to marriage that both parents have learned the scientific facts concerning love, and the children that are the fulfilment of its purpose.

This will be one of the many ways in which the Public Health authorities will be linked with the administration of criminal law. We shall protect children less on emotional impulses arising from the passion of pity than upon purely utilitarian grounds. The State will regard the bad father and mother as criminals because they have offended against the race, the preservation of which will be enforced, among other means,

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by the Criminal Courts and Public Health authorities.

We shall probably regard emotionalism as a retarding influence, just as we are now beginning to recognize that, through the sentiment of pity, we are damaging the race by tolerating the propagation of the unfit and degenerate stocks.

Delinquent children will not be treated as criminals at all. Our way with them will be the scientific way. Already a start has been made that gives the clue to what the future must bring. We have followed America in setting up Children's Courts, and a start has been made to probe down after the psychological causes of juvenile delinquency.

The following examples of the application of the new psychology, which foreshadows the routine treatment of the delinquent child of to-morrow, illustrates both the vital part played by mental factors in the formative period of youth, and the promising method of cure applied by the psychologist. They are reported by Dr Cyril Burt, Psychologist to the L.C.C., and are here summarized.

Stanley, a healthy, well-dressed, absent-looking boy of twelve has stolen a five-pound note, after three years of truancy, petty thieving, and so forth. All Stanley

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will say is: "I wanted to go away. I took it to get abroad."

The boy comes from a comfortable home, but on the paternal side has a bias towards neurosis. One relative had died in an asylum. On the maternal side were indications of the *Wanderlust*, several maternal uncles having emigrated and in the new lands succeeded. The boy's health is perfect, but he is backward. In the ordinary school-subjects his attainments were those of a child of eight.

The psychologist starts upon his quest. It begins at the Zoo where Stanley, still morose, asks: "Why don't they keep the orang in a palm-house, like there is at Kew? You couldn't imagine you were in Borneo in a place like this."

From the Zoo to a cinema, where Stanley watched Charlie Chaplin in silent boredom. What attracted him so strongly to the cinema that he would steal to get there? The answer came when a travel serial appeared: "At last his secret was emerging. All his interest and imagination were absorbed in a life of adventurous make-believe. He was in fancy a hero and a traveller."

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Says Dr Burt: "Johnny, aged six, has had no dinner; and he has been caught stealing bananas from a barrow. The remedy is to give him his meals at school; and, unless his pilfering has already set into a firm habit like plaster, he can be quickly moulded into an honest little citizen."

"Lizzie, aged thirteen, lives in a bad home with a bad mother. She is already being encouraged to smile at strangers, in the hope of earning a few pennies or a bag of sweets. She, too, can be transferred to better surroundings; and, it is general experience that she will speedily reform."<sup>1</sup>

So much, then, for the alternative to prison, reformatory, and whipping.

But there is another aspect of the State's treatment of children, and that is its cynical indifference to their safety. Under modern conditions, every child goes about, whether it lives in the heart of the country or in a great city, exposed to the physical violation and spiritual contamination of the sex-pervert.

Are our values right? Will they be the values of to-morrow? The reader

<sup>1</sup>*Psychology of the Young Criminal* (Howard Pamphlet).

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is invited to ponder the following cases.

Indecent Assault :	
girl aged 7	Bound over
Indecent Assault :	
girls, 5 and 6	Fined £20
Indecent Assault	
girl aged 12	4 days' imprisonment
Indecent Assault :	
(by the father, girl aged 10).	1 month's hard labour <sup>1</sup>
Sacrilegious theft of 8d	5 years' penal servitude
Possessing firearms with intent to endanger life	5 years' penal servitude
Larceny from dwelling- house	5 years' penal servitude <sup>2</sup>

The spiritual and bodily corruption of childhood and youth one day will be dealt with in a very different way. It will be in no spirit of revenge, however, that we shall make for each pervert the first offence also the last. But to-day, by awarding nominal sentences in such cases, while leaving untreated and uncured the mental disease that results in such assaults, we expose children to the daily danger of bodily and spiritual pollution. In one case a man reached the age of sixty-three, with sentences for indecent assault

<sup>1</sup> *Committee on Sexual Offences against Young Persons* : 1924-5 : evidence of Sir Robert Parr.

<sup>2</sup> Court of Criminal Appeal, 25th October, 1927 (sentences as reduced).

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extending over a period of forty years ; he was released yet again to continue his offences.

In future we shall either cure such abnormal individuals, or unsex them, or segregate them for life. We may ultimately decide that it is more expeditious to eliminate them altogether. That we shall continue our present policy of fines or short terms of imprisonment is unthinkable.<sup>1</sup>

We shall possibly be equally drastic with the incorrigibly selfish and unnatural parents who have shown themselves incapable of education or reform.<sup>2</sup> Sterilization will solve that part of the problem. The drastic treatment of the delinquent parent will be a very necessary

	1920-4	1924	1925
<sup>1</sup> Indecent assault on females	1515	1673	1668
Defilement of girls under 13	74	72	98
Defilement of girls under 16	184	200	224

<sup>2</sup> Neglect of child of 8 resulting in gangrene and amputation : Fined £1.

Boy, aged 2½ years, left naked in cold wind, flogged from head to foot, burnt with lighted cigarette . Fined £6.

Boy 6½ years. Flogged until lacerated, bruised, and swollen . Fined £3.

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part of the criminal law, for, as we already know, the seeds of delinquency are sown in bad homes by bad parents.

On the other hand, it is probable that we shall not penalize the natural mother, who, unable or unwilling to take a husband, elects to mate for the sole purpose of begetting children; or the mother whose child is the result of passion. Since healthy children will be the first care of the State, the woman who undertakes the task of rearing them will automatically become the ward of the State. She will no longer be outlawed and driven by a barbarous public opinion to the crime of infanticide. She will be allowed her baby, and, if it be a good baby, encouraged to rear it.

Instances of the leniency of the Bench towards the sexual offender have been cited above. This tolerance is varied now and then by an injudicial display of ferocity arising from execration and abhorrence of the crime. Between these two extremes, both equally unlikely to produce good results, lies the happy mean of the psychological method. For it is one of the greatest assets of the psychologist that he has the courage to examine the human soul without moral indignation or disgust. Surgeons have

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unpleasant explorations to make and revolting tasks to perform; so has the psychologist who will eventually deal with the difficult problem of the sexual offender.<sup>1</sup> He has already unearthed the causes which lie behind juvenile delinquency, and, in the face of ignorance and prejudice, has set about removing them whenever the community has vouchsafed to him the opportunity.

### *CRIMES OF TO-MORROW*

If changing values, as they may, reverse the attitude of Society towards the sanctity of private property and human life, some acts not now offences will become so, and others now criminal will cease to be regarded as anti-social. No odium now attaches to the individual who concentrates his energies upon the pursuit of private gain; the manipulator of money-markets and stock-markets, and other social parasites producing nothing of value to the community, and denying any right in the community to interfere with the disposition of their loot, will be controlled by the criminal law. It is possible that

<sup>1</sup> *Psychopathia Sexualis*, by Kraft-Ebing

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the possession of vast wealth will cease to be a lauded achievement and become, in itself, a 'suspicious circumstance'. Society to-morrow may echo the *Book of Proverbs*, where it is written: "He that maketh haste to be rich shall not be innocent."

Shall we make the possession of wealth, whether inherited or amassed by enterprize and the exploitation of labour, a trust, breach of which will be an offence remediable by the obvious course—its confiscation?

Just as the father of a family regards his estate as a trust for the benefit of his family, and administers it to the best of his ability in their interests, so, beyond the requirements of his private life, the trusteeship of the very rich man will be extended to the community which made it possible for him to enrich himself.

The freedom now enjoyed by the rich to abuse wealth, then, will probably pass, and when wealth becomes a burden, we may teach our children that its acquisition is a very doubtful blessing.

In passing, it is interesting to remark that in America, where the power of the private individual to accumulate vast wealth has made possible a billion-

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'dollar Ford, the same Society has established a world record of homicide and a general lawlessness without parallel in the modern world.<sup>1</sup>

From the hive of the honey-bee and the dark city of the termite, we may learn the wisdom that banishes from a community the idler. The drone is driven from the hive, and in the dome of the termite all work. So the term 'leisured' may one day have a different significance from that which it has to-day. Society may demand something in exchange for its amenities; and the individual who plays the parasite will probably be treated as an offender and made to perform some useful service. We shall banish the drones, and treat as criminal both the shiftless loafer and the moneyed idler.

The writing has already been seen upon the walls of the Chigi Palace: Italy now classifies her drones as those who are out of work, and those who do not mean to work. The franchise is to be denied the latter, while it is incumbent upon the former to prove their right to be included in that category.

Idleness, then, may become a criminal offence in the State of the future.

<sup>1</sup> Appendix II.

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It has been suggested that the State will interfere with the right of the unfit to reproduce their kind unhindered. The corollary would involve action against the fit who refuse to undertake the burden of parenthood. Barren marriage of the fit, when voluntarily so, will perhaps come to be seen as detrimental to the future of the race, and hence an offence.

At a recent session of the Hungarian Chamber, a deputy, drawing the attention of the Chamber to what he termed "the Bolshevization of family life", demanded action. "Decent women are sneered at", he asserted; "the number of childless families is now 347,000, while 314,000 families have but one child. Modern social life is a dance of death which must be stopped."

With this view the Prime Minister, Count Bethlin, declared himself in entire agreement. ●

To cut off the best strains of the race is a dance of death; it is also a dance of death to leave the degenerate and inferior stock to multiply.

On the other hand, Society may find it necessary to persuade the uxorious man, who inflicts maternity upon his wife annually, that his selfishness is

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criminal, since by it he devitalizes her and renders her unfit to beget healthy children.

The infliction of pregnancy upon a nursing mother is barbarous and against the interests of the race. We shall probably borrow the wisdom of the Zulu and make this form of cruelty criminal.

The modern popular Press exercises two diametrically opposed influences on the problem of crime. It assists in the detection of the offender; and it plays a sinister role in the stimulation of the offence.

By its whole-hearted and eager co-operation with the police, it assists in the hunt for wanted criminals, publishes photographs, facsimile handwriting, and so forth. It will even assist at its own cost in criminal investigation, sending out reporters to do, what is, in effect, the work of detectives. It maintains, and will on no account suffer anything to jeopardize the *entente* that exists between it and the police.

In this way the popular Press performs a very valuable public service. But there is another side to the picture. A sensational newspaper interests itself in crime because crime interests its

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readers. *Fiat Justitia!* is not written in letters of gold above the desk of the news-editor: 'Let the story be told' is his fiat.

The exploitation of what are termed 'crime-stories' varies with the particular policy of the newspaper, and the qualities which characterize the particular crime. The majority of newspapers are *balanced*, and reveal a sense of proportion. Crime is reported, but not thrown out of perspective. A crime containing all the elements of melodrama, such as the shooting of Fahmy Bey by his wife in a great hotel during a terrific thunderstorm, or a crime compact with the stuff of romance, even though sordid romance, such as the Thompson-Bywaters case, will be exploited by even the staid newspapers. For here is the stuff of life, and readers are living creatures avid of the drama that is absent from their own humdrum existences. It may easily be maintained that this is legitimate.

There is, however, a section of the sensational Press that stimulates the anti-social instincts of the community. Crime, vice, and folly are its materials to the virtual exclusion of every other department of human activity.

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The question is : To what extent does this unwholesome stimulation of the half-educated and morbid-minded, many of whom are potential criminals, carry criminal impulses across to criminal acts ?

This exploitation of crime for gain is not now a criminal offence ; but it should be ; and it probably will be. The working journalist does not hold it " a baseness to write fair." But he is part of a machine : he must toe the line or find a living elsewhere.

It is only necessary to see how a murder of one type will be followed by others obviously inspired by it, to appreciate the danger of Press liberty debased to Press license. What influence has worked upon these morbid and crime-predisposed mentalities, if not the ubiquity of the printed word ? <sup>1</sup>

The late Professor Bjerre, the Swedish psychologist quoted elsewhere in this book, wrote thus of this exploitation of crime by the sensational Press : " Un-suitably written newspaper-accounts may

<sup>1</sup> A striking murder-sequence . Patrick Mahon, Norman Thorne, John Robinson, the murderer of Mrs Bonati. Each killed a woman, dismembered and attempted to dispose of the body.

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stimulate, focus, and fortify such instincts where they already exist in a sufficiently advanced stage of development. *They may therefore become collateral causes of a particular crime.*"

To debauch the public mind, then, no offence to-day, may be a serious offence to-morrow.<sup>1</sup>

## JUSTICE :

### AN IMPOSSIBLE IDEAL

Our Criminal Courts are concerned to-day with the impartial administration of justice. But it is probable that in the future they will not be concerned with justice at all, that is, as we understand that term now—the exercise of authority in maintenance of right, plus the assessment of punishment.

Justice is an impracticable ideal, and could be realized only in a Utopia where no wrongdoer ever escaped the consequences of his wrongdoing. It is a divine attribute. It cannot exist

<sup>1</sup> "No doubt the marvellous development of journalism in England . . . is due to our subconscious recognition of the fact that it is even more necessary to check exuberance of mental development than to encourage it."  
—*Erewhon*.

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in even a qualified sense until we abolish a system which permits the degree of punishment to depend upon the competence, natural disposition, and prejudices of judges and magistrates; to be gauged on incomplete and imperfect knowledge of all the facts; or to be governed largely by the financial status of the accused.

“In most instances”, says Dr Hamblin-Smith, “the Court is content to confine its purview to that very superficial aspect of the case which is concerned with the particular act with which the man is charged . . . of course the particular act with which a man is charged is only one point in the case, and it may be an unimportant point.”

Acts of Parliament merely indicate the maximum sentences of each offence, leaving it to the Court to estimate what part of that maximum shall be inflicted. • The result is startling, the discrepancies glaring. The following table represents one day's work of the Court of Criminal Appeal—a Court brought into existence as the result of the notorious Adolf Beck case.

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<i>Crime</i>	<i>Original Sentence</i>	<i>On Appeal</i>
Wounding, intent to do grievous bodily harm	12 years	5 years
Theft	5 years	18 months
Possessing firearms with intent to endanger life	5 years	12 months
Sacrilege <sup>1</sup> (theft 8d)	5 years	9 months

So long as the purpose of Society remains first and foremost the punishment of the offender, the old idea of revenge will continue to colour its acts in dealing with him. When we recognize this, our Courts of justice will disappear and be replaced by a different type of tribunal. The administration of the criminal law is stupid, dangerously fallible, nearly always it is cruel, and generally it defeats the ends for which it was brought into being, that end being the suppression of crime.

Obviously, human justice can never take on the attributes of divine justice, and this is, perhaps, the best reason for believing that sooner or later we shall practise the Christian precept: Judge not that ye be not judged, and shall deal frankly with delinquency in

<sup>1</sup> The age of the appellant was 72.

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a scientific spirit as the disease of the social body, and with the single object of its extirpation.

Society may even hold an inquisition upon its own share of guilt in those crimes which can be traced to bad housing, bad conditions of work and so forth. Bad environment for good citizens, and good environment for bad, are neither cause nor solution of the problem. *Au fond*, it is a question of human material. For this reason it is probable that in future the problem of crime will not be dealt with as an isolated problem; for it is but one aspect of the greater problems whose solution the Eugenist is seeking—the ultimate reduction to its irreducible minimum of the defective population.

### CRIMINAL

#### TRIAL OF TO-MORROW

•  
A criminal trial in a British Court approaches more nearly to the passionless pursuit of truth than trial in the courts of any other country in the world. The spirit is the spirit of fair play, with a strong bias where doubt exists in favour of the accused. Better that nine guilty men should escape

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than that one innocent man should be unjustly condemned, fairly represents the attitude of the Criminal Courts towards the accused.

In America, if we are to believe Americans, the Criminal Courts are dishonoured by widespread corruption, corruption upon the judicial bench, which is without security of tenure,<sup>1</sup> chicanery bordering upon conspiracy to defeat the ends of justice among advocates, with the subornation of jurors and faked police evidence making up a sinister picture of justice travestied.

In France the whole proceedings of the Criminal Courts are coloured by emotion inside the Court, and prejudiced by 'newspaper-trial' beyond its walls. And so one might proceed to show the superiority of British Courts over those of other countries.

Both Bench and Bar have venerated traditions, and generally live up to those traditions loyally. The history of the law of evidence is the record of successive devices to safeguard the accused and assure him a fair trial.

All this may be said in truth regarding our Criminal Courts; and yet one may doubt whether they are the best possible

<sup>1</sup> Does not apply to Federal Courts.

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means of attaining the rough justice which is the best man can give to his fellow. For while money is the weapon with which the accused must fight; while it remains a triumph to bring about an acquittal by every forensic subterfuge and histrionic trick; while great trials resemble melodramas played by judge, jurors, counsel, witnesses, and accused before an audience composed of the entire community, one may doubt whether the system is the last word in human wisdom, or the ultimate mode of determining an issue. The law is conservative, clinging to tradition, moving slowly, more slowly than the ideas and ideals of the community.

Are these Courts the best instruments we can devise for their purpose? Are they in harmony with the advances made in mental science? Does conviction follow only upon guilt; and is the degree of that guilt fully revealed by that narrow circle of facts which may be placed within the circumference described by rigid rules of evidence?

These are exceedingly important questions. They must all be answered in the negative.

The theory of the criminal law belongs

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to the pre-psychological era; its definitions are too brittle to stand a scientific test; its criteria of turpitude are those of a barbarian. Yet within this machine good men work; but the machine is stronger than the man, and minds once flexible tend to become saturated in legal empiricism.

A man stands accused of a crime. All facts relevant to the act may be brought in evidence, and all persons having knowledge of those facts be heard. Beyond this the law is blind. Upon these facts stands or falls the case against the accused. He is guilty or he is not guilty, and either fact is to be established by an inquiry centring about that one offence.

Here is a typical case which shows the dangers of the system.

A, an ex-service man, is tried and sentenced to eighteen months imprisonment for attempting to throttle a man in a train. After being tried and convicted and sent to prison, A is kept under observation, and, as the result, certified as a criminal lunatic. At a subsequent period, after his release, he shoots himself. The post-mortem then reveals the fact that he had a piece of shrapnel in his brain. Here, it will be noticed,

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the personal tragedy can be traced to the State itself.

Similar wrongful convictions have been recorded and sentences passed upon the victims of sleepy-sickness, epilepsy, and gland-defects.<sup>1</sup>

This, it is suggested, is the real defect of the system. A single defect, but a vital one, because it invalidates the whole philosophy of jurisprudence upon which it is based. That philosophy ignores the real tests of guilt or innocence, for beyond the surrounding circumstances of a crime, the fact of its commission, and the motives that culminated in its commission, radiate invisible chains of circumstances.

One might liken those radial lines, linking up the remote cause with the crime, to the many tributaries that feed a central lake which is represented by the crime itself. These are the facts excluded<sup>2</sup> by our rules of evidence as

<sup>1</sup> Poverty frequently operates against the accused in our Criminal Courts. An eleventh hour defence is no defence at all: it is unfair to Counsel instructed by a 'dock brief', and it is grossly unfair to the accused. It must inevitably result in a superficial trial, since all facts in favour of the accused cannot adequately be brought before the Court.

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irrelevant. It may be that the accused, born of neurotic parentage, was cast into prison as a child, defiled by contact with debauched and abandoned men; he may, before he descended the steep and easy slopes that lead to murder, have been denied the sunshine, sufficient food, love of father and mother, opportunity to nourish a latent desire to serve.

All these factors are not known to the Court which is concerned with the inquiry into one act and one act alone. His criminal record will, if anything, be held against the unfortunate one when the judge comes to consider the sentence.

Thus, in our Criminal Courts, from those that have not is taken away that which they have.

Yet how surprisingly important these facts are if we would mete out to those offenders who have failed, even to the extent of failing in crime, something approaching a fair assessment of guilt and punishment. But so long as our criminal law excludes all these contributory causes whose sum made inevitable the culminating offence, we cannot escape the suggestion of a 'crime-tariff', calculated in an arbitrary and

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unscientific way, and bearing little, if any, relation to rough justice.

These things being so, it seems certain that our Criminal Courts must go. What manner of tribunal could replace them? It is suggested that their functions will be split up and apportioned to the departments of human knowledge to which they rightly belong. Thus, it is suggested, the Criminal Court of the future will be concerned merely to inquire into and find upon the question of the crime. It has been committed, or it has not : the accused did it, or he did not. The fact will be determined efficiently enough by the present procedure, aided, as that procedure will soon be, by the scientific equipment which becomes yearly more efficient.<sup>1</sup>

Having returned its verdict, the task of the criminal court of to-morrow will be done. It will be concerned in no way with punishment, for the power of assessing punishment will be taken from it. Not, however, to be vested in another tribunal, but to be replaced by the remedy indicated by psychology, that is, treatment. The Mosaic law, the ancient reprisals of Society against the wrongdoer, will pass. We shall

<sup>1</sup> Appendix III.

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have arrived at the Erewhonian system ; we shall treat crime as a disease. And sometimes it will be recognized that Society is itself the cause of the disease it will set itself to cure, since the community that fails in its duty to the individual owes that individual reparation.

The Criminal Court of the future will be a function of Society shared equally by lawyer and psychologist. When the judge has recorded the conviction, his task will be done. The convicted delinquent will then pass on to the physician and psychologist whose functions, as it has been suggested earlier, will be to discover the hidden main-spring of the delinquent impulse.

What is the trouble? That will be the paramount issue: not How much punishment? It may be physical—poison by dental decay, uncorrected defects of eyesight, masked epilepsy, sheer degeneracy: it may be mental, emotional instability; it may be both.

The probe will reach far before the final analysis of the case is made. It will take in family history, social environment, conditions of early life, suppressed emotions, and diverted social impulses. The investigator will not be concerned with the central lake that is represented

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by the particular crime itself : his will be the exploration of the mental hinterland, a trek up the different paths of the past, where the tributaries lead him to the hidden springs of action.

The process (it is already being practised within limits in Birmingham gaol, and in certain parts of the United States) is not an affair of a single sitting. It may take weeks or months before the final diagnosis is arrived at and the appropriate treatment indicated.

Treat a murderer for his homicidal tendencies ! Fantastic ! But as we who have lived to see wireless, television, and many other marvels, know, the fantastic is always happening. To hang the murderer truly places him out of the way of further harming his fellow. But the procedure is scarcely likely to yield us any knowledge beyond the hangman's technique for securing a dislocated vertebra.

But to rid the community of one murderer does not give the clue that might lead to discovery of the causes of homicide, and thus, perhaps, put us on the road to eliminating the type by controlling those elements that go to produce it. Nor, as certainly, will it give the murderer a chance to work

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out his salvation. The pious hope that God Almighty may have mercy on his soul, which is our valediction to the condemned murderer, is small comfort to him.

But to treat a murderer! Yet, why not? If he can be restored to Society as a useful member of the community, as both Mrs Thompson and Frederick Bywaters could most surely have been, what logic in losing these assets to satisfy a Mosaic law? Christ nowhere taught that we should take life for life, or eye for eye.

But it will not always be possible to salve the damaged human material that will pass from what may be called the Court of Criminal Record, to the physician and psychologist. There will always be the occasional monster, the "Ripper", the Neil Cream. The remedy for them has already been suggested. And it may be considered fairly certain that the function of the medical and psychological experts will be to divide the wheat from the tares, the reclaimable from the irreclaimable human material. And that which is clearly irreclaimable will be put painlessly away, rather in understanding pity than in a spirit of vengeance.

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How would such a revolutionary change affect Bench and Bar? It is an interesting speculation. To-day, our judges are hedged about with a pomp that places them above the common people. They are gorgeously arrayed, and, perhaps for the same reason that the priest clings to his 'ecclesiastical millinery', our judges by magnificence impose upon the simple-minded and credulous.

To the savage chief, sitting to adjudicate upon tribal affairs, the feathers of his grade are the equivalent of the wig and scarlet of our judges. The idea is the same in both cases: it serves a purpose, and it is that which is sounded by the trumpeters who blow their fanfares of fear through the ancient streets of assize-towns. The law must strike terror into the hearts of the people, as the Roman father, vested with the *patria potestas*,<sup>1</sup> surely struck fear into the heart of his household.

The judge, his pomp and impressive splendour, heralds the *Dies Irae*. True, few are to be tried; but there are many troubled consciences; and here

<sup>1</sup> Power of life and death possessed by Roman father in early days over wife, children, adopted persons, and slaves.

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is one invested with the power of life and death.

The coming of the judge of to-morrow will be as unspectacular as the arrival of a sanitary inspector.

But even before we divest our judges of their power to inflict punishment, it is likely that we shall cease to draw them from the ranks of practicing advocates. A professional lifetime spent in adopting partisan views in return for monetary rewards seems, when one thinks about it, a peculiarly unsuitable training for the Bench. That it has worked so well is a tribute to the national character and to the legal profession.

That it occasionally fails indicates its innate weakness. It is not necessary to go back to Judge Jeffreys of infamous memory to find an example of the judge for whom all occupants of the dock are guilty, on the principle that were they otherwise they would not be there.

There are other qualifications essential for the Bench beyond mere competence in the law so long as judges have power to pass sentences of imprisonment and death. The judge must be learned in the law; but he must also possess a mind free of psychological taint. Many

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qualities may unfit a man deeply learned in the law for this high office. He may be an incurable coxcomb, with an eye ever to the Press-reporters beneath him. He may be—the late Sir William Grantham was a case in point—a man of violent prejudices that drown judgment in passion. He may be the victim of a sadistic taint, unknown to himself, but apparent to his brethren.

There may be, then, a test for the Bench unrelated to mere professional proficiency. It will be the psychological test. And, beyond this, in the near future it is fairly certain that no man unacquainted with psychology will be allowed to sit in judgment.

What part will be played by the Bar in a Criminal Court divested of the power of punishment? The criminal will be as eager to escape the threatened reform as he is now to escape the punishment it will one day replace. He will still seek the services of the clever advocate, still trust in forensic brilliance to obscure truth and to put emphasis where it has no proper place. In short, to practice all the arts and cunning of the pleader.

But something will have passed. Dare

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one suggest that with the disappearance of the high stakes, play will be less fascinating? To defend a man menaced by two years' medical and psychological treatment may well seem less alluring than to stand four-square between him and the gallows.

In the future, then, the Criminal Bar may decline, attract fewer men of brains, and ultimately become the respectable career of Civil Servants. This would deflect much rich material from what has been called the most doubtful of the professions into channels of greater service to the community.

## CONCLUSION

The great Fabre once observed :  
The insect has no morality.

In the hive, the nest, and the terminary, there is no morality ; but there is, likewise, no crime. These communities of indefatigable workers, whose social systems were ancient before man appeared upon earth, can perhaps give the lord of creation a clue to the solution of the problem which has so far baffled his superior intelligence. For these marvellous communities of bees, wasps, ants, and termites prove that crime is not an inevitable part of all social systems.

If these small creatures teach us anything, it is that, if we would preserve the race, the individual must sometimes be sacrificed. We recognize this already in times of war, when, before the inexorable demands of necessity, our morality cracks and disappears :

One murder made a villain, millions a hero.  
Princes were privileged to kill, and numbers sanctified the crime.

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Shall we go a step further and recognize the same necessity in times of peace? The lesson of the bee, the wasp, and the termite is the efficacy of ruthlessness and the futility of sentimentalism. In those communities the individual must work for the Society of which he is a member; must obey its rules; bow before its inexorable laws. Always the penalty is the same: banishment or death.

Down the centuries, down the ages, the chant of these communities has been: the race, the race, the race. Therefore the weak, the deformed, the lazy, and the vicious are exterminated. Disease is a crime; and crime a disease now unknown.

Between this remedy for anti-social conduct, and the physical defects that threaten the future generations, stands the moralist. Human life is sacred—therefore to take the waste material of a generation and put it away is wrong, and not to be thought of. Better far to let the wreckage survive and breed its kind, for life is sacred.

If we grant the ant some degree of intelligence, and study of its ways supports this belief, then it would seem that the ant, as we do, postulates the

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sacredness of life. But the ant reasons in another way: the race, being the fountain of life, is sacred above all individual lives. The individual must surrender life in the interest of the race.

We are likely ultimately to accept this system of ruthless and relentless elimination of the useless and worthless members of the community. We are likely to claim the right to cut off from propagation the diseased of mind and body.

Hitherto, in the treatment of delinquency we have been content to deal merely with the effects. We have ignored the causes. This is quackery.

What are the causes of crime? They are, by common consent, bad heredity and bad environment. The cure, then, is the elimination of degenerate human stock, the sterilization of all waste human material, the improvement of environment.

As for the curable delinquent with whom we have to deal to-day: the solution lies in mental treatment. It is a tremendous problem, because we are hedged about by our own limitations, and further embarrassed by the legacy of the past.

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Crime is a symptom of the sickness of Society. It is not impossible that, armed with scientific equipment, crime will change from its present guerilla character and assume with us the gigantic proportions with which it now menaces the United States of America, may become, in short, organized warfare upon the community.

Whether it does so or not depends partly on the policy we adopt towards it. The criminal is an imitative individual. Already there are signs that the methods of the American criminal are being adopted in England. The remedy is not reprisals against these audacious enemies of Society: it is their conversion.

The good soldier has to possess certain characteristics. He must be courageous, audacious, resourceful, quick to think, and quick to act. And all these fine qualities are essential to the pursuit of burglary. The burglar, then, to take one type of criminal, is a man of outstanding good qualities. Only something has gone wrong. What? We can know that only by the examination of his mind. Psychology is the one and only way.

We start handicapped by our own

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limitations, to which are added the cruelties, vices and follies of the past. These are, as it were, the wallets with which Jupiter has loaded us: The one, filled with our own vices, he has placed at our backs; the other, heavy with those of others, he has hung before us.

Society to-day stands like a hesitant buyer before the coveted merchandize. Here is the solution to the problem of the delinquent. It is a matter of price. And that price? The renunciation of the desire for revenge, and with it all those barbaric crimes which to-day are done in the name of the community: secondly, the price is renunciation of the soft sentiment that holds our hands from drastic remedies when drastic remedies are necessary: last, perhaps the greatest price of all, the exercise of intelligence upon the problem that has hitherto •been the preserve of judge and gaoler.

The travail of a new idea is long and painful: but birth comes at last. Psyche, with her lamp, awaits the newcomer.

## APPENDIX I

### HOMICIDE FIGURES FOR FRANCE

<i>5 year periods</i>	<i>Con- victed</i>	<i>Sen- tenced</i>	<i>Executed</i>
1870-4	2,858	116	67
1875-9	2,939	134	43
1880-4	2,847	129	17
1885-9	2,822	156	46
1890-4	2,717	150	60
1895-9	2,338	98	33
1900-4	2,242	71	7
1905-9	2,769	150	• 18
1910-3	2,176	117	37
1919-22	2,419	179	5

*Note :* 1914-18 : no figures available.

## APPENDIX II

### *CRIME IN AMERICA*

America is the most lawless country in the world to-day. In 1923 there were 151 murders and homicides in England and Wales. In the same period, in Chicago alone, there were 389, in New York City, 262 ; in Memphis, Tennessee (pop. : 170, 000) 113. While Philadelphia during the same year had 54 more homicides than the whole of Canada.

Police •corruption, however, invalidates these figures. According to the Crime Commission of Chicago, in a single police district the Commission found that in one month there had been 141 crimes of violence, but the Captain of that district had recorded only 37 of these crimes as known to him.

According to Dr Sutherland, who has

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made a study of the problem: "The records of crimes known to the police are apt to be juggled by the police in the effort to protect themselves against criticisms which would be launched if the number of crimes as known to them was significantly larger than the number of arrests."

Writing of the corruption and chicanery of the criminal courts, Sir Maurice Low says: "A man was convicted of stealing a pair of boots. It was proved that he stole two boots, but they were both lefts, hence they were not a pair, and the verdict was set aside. A man charged with having stolen \$159 was found guilty. On some pretext his attorney secured an appeal, the case went to the Supreme Court of Illinois, and that Court reversed the Court below and granted a new trial because the verdict did not state the value of the money stolen!"

## APPENDIX III

### *SCIENCE AND CRIME*

The part played by the highly-trained scientist in criminal investigation has assumed considerable importance during the last few years. There was a time when the appeal was to divine powers: now it is to the precision of the scientist.

The micro-camera has opened up new fields whose exploitation renders error in many cases impossible. Dr Locard, of the Lyons Criminal Laboratory, using the micro-camera, has developed two new sciences: Graphometry, by which he claims to be able to detect forgery; and Poroscopy, which is the application of the fingerprint system to the pores of the hand, now proved to be unique in every individual.

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Toxicology renders error in cases of murder by poison practically impossible ; while pathology is equally the hand-maiden of Justice in nearly every murder trial.

There are also many scientific instruments being tested in America by means of which it is hoped to detect the emotional reactions of accused persons under interrogation ; while scopolamin, a peculiar drug, is said to have the effect of robbing the liar of his cunning.

The development of these and similar devices will eventually eliminate most possibilities of error, in the opinion of those who are advocating their more extensive use.





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