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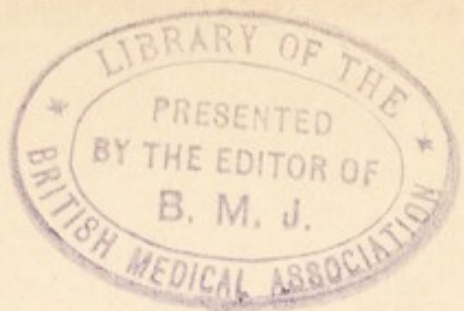
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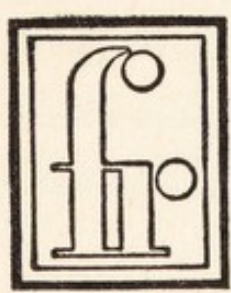
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# CRIMES AND CRIMINALS

by

WILLIAM A. WHITE, A.M., M.D., Sc.D.



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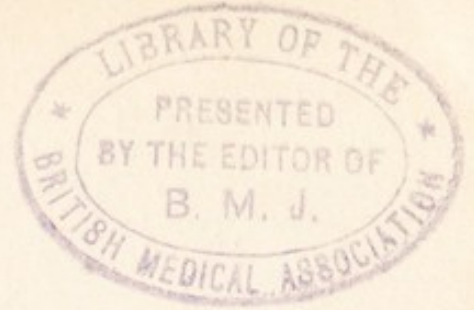


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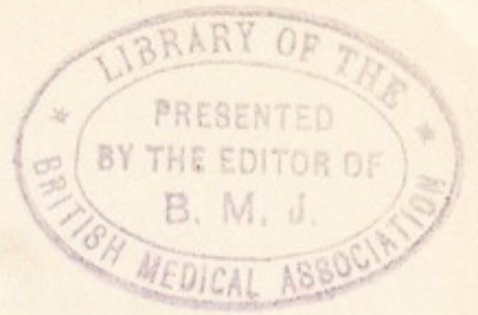
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## P R E F A C E

In deciding to add to the literature of an already overburdened subject, *Crime and Criminals*, I have felt that I was warranted only because I have been deeply impressed with the necessity of certain points of view which I shall endeavor to set forth herein. It is not that these points of view are personal to me or are unique or new. It not infrequently happens, in fact I almost think it a rule rather than an exception, that some of the most important knowledge that we possess is not available when most needed. It necessarily will result, therefore, that I shall say in these pages many things that people may easily feel are already well known: but the plea that I make is not for this recognition of their truthfulness, if they are true, but for the recognition of the importance and the significance of the total point of view, available not piecemeal from time to time but as a whole, when thinking and acting about this great social problem.

In the development of this presentation, however, it became evident after a short while that it was

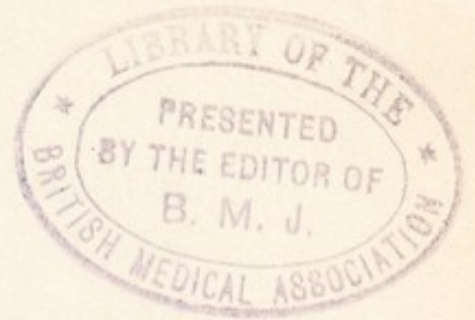
taking on a significance broader than that indicated above, and that while as a matter of fact it continued to treat of the subject matter indicated in the title it had come to be in reality an essay on the very much larger topic of human relations, illustrated, as it were, from the field of criminology, and it is in this sense that I offer it.

W. A. W.

CRIMES AND  
CRIMINALS







## Chapter I

### INTRODUCTION

**T**HERE seems to be a general consensus of opinion that the methods of dealing with crime and criminals have very largely broken down. This viewpoint is from time to time expressed very incisively in relation to certain specific cases, such for example as the recent sentencing of a twelve-year-old boy to life imprisonment, and the also recent sentencing to death of a criminal who had plead guilty to murder and whom the judge acknowledged, in accordance with the testimony offered by the defense, that he believed to be not fully responsible. One gets the feeling from these and like instances that there is much confusion, not only in the minds of the public but in the minds of those whose business it is to handle delinquents, as to what ought to be done in specific cases; and one frequently hears the comment, which seems to be borne out pretty thoroughly by the facts, that the law and the lawyers by and large have continued to think according to the formulas of yesterday and



have failed to take cognizance of the advances that have been made in the medical sciences along the lines of psychiatry and especially in the understanding of human conduct.

When one turns to the suggested remedies one finds very little there that is more hopeful. For the most part, stung by repeated aggressions of the anti-social element in the population and maddened by the failure of existing machinery adequately to deal with such aggressions, there has been a reactionary movement which usually has resulted in "putting more teeth in the law," which means, generally speaking, that the laws have been made more severe, and punishments more drastic, such, for example, as the recent legislation making the fourth offense automatically punishable by life imprisonment irrespective of the seriousness of the offense. If one were to look for some favorable signs of what is happening one would naturally mention the wider prevalence of the employment of psychiatrists by the courts, the rise of the juvenile court with its careful individual and social investigation of the youthful delinquent, the studies that have been made from time to time in prisons and the gradual entrance of the psychiatrist in the prison; but with all these tendencies one still feels more or less hope-



less even to apply the knowledge that we already possess because in almost all of these instances the psychiatrist who represents this knowledge is functioning as a part of an antiquated and worn-out machine which hampers his every move. The same things might be said of many careful criminological studies, some of which are most admirable fact-finding documents but which up to the present time seem to have been relegated to oblivion, partly because of the indifference of the public perhaps, partly because the job of doing the things which the reports indicated ought to be done is too stupendous to be tackled, and perhaps for other reasons. The fact remains, however, that present methods functioning through existing institutions seem to have failed very completely, and that while there are here and there indications of improvement and more adequate points of view still the progress is distressingly slow.

Furthermore, as we watch the process of corrective measures being created by legislatures and being put into operation, it is impossible not to be still further discouraged by what usually takes place. At hardly any time in the procedure is there anything approaching an adequate appreciation of the fact that criminology represents a scientific attempt



to handle questions of asocial and anti-social behavior and to try to make legislation fit in with the established facts of this branch of scientific inquiry. The usual method of procedure, and the one with which we are unfortunately only too familiar, is the procedure which gets its results by way of an emotional appeal based upon the outrages which have been committed and the alleged necessity and determination to stamp out the type of behavior which they represent. Unfortunately action which is precipitated by these methods is all too hasty and the results can not be expected to accomplish great good.

Aside from the fact that there is a recognized department of scientific inquiry known as criminology, it needs to be borne in mind that during the present century there has arisen a very different point of view regarding man and his activities from that which prevailed previously, and that this different point of view, this different way of attacking man's problems with a view to their understanding, has developed a psychology which is quite as different from the psychology of the nineteenth century as are other branches of learning different from the status to which they had attained previously. For example, it seems to be pretty generally known that



the whole material universe in which we live has come to have enormously different aspects from the point of view of recent developments in its study, and exactly the same thing has happened in the field of the human mind and of the understanding of man's behavior. It therefore seems to me self-evident that any consideration of the crime problem in any of its aspects must be backgrounded by these new developments, and, as I have said in the Preface, not by fragments here and there of these new developments but by the whole system of organized knowledge which has grown up about man to the present day. Any hit-and-miss efforts at solving these enormously complicated social questions in terms of expediency for the moment are almost sure to be failures. Who, for example, could possibly have foreseen the multiplicity of vexatious problems that have arisen as a result of our efforts at prohibition, and yet I doubt not that many students of methods of social control were exceedingly doubtful of the successful applicability of the principle involved. At any rate, there does not seem to have been any special effort at a scientific evaluation of the possibilities of going forward in any particular direction, until now matters have come to such a pass that it seems as if nothing that



can be done could possibly undo the evil that has been created. The same thing might be said about other laws conceived with the sole purpose of benefiting mankind. Who, for example, would have supposed that the Mann Act would have turned out to be an unusually effective tool for extorting blackmail? However, in all of these failures such as they are there are concealed lessons which should guide us in the future. It should be our effort to discover these lessons if possible, and although we can not enter the future with any degree of certainty, we can at least use what means we have to prepare ourselves against such mistakes as we have made in the past.

## Chapter II

### MAN A SOCIAL ANIMAL

**W**HILE it has been conceded and quite fully appreciated for a long time that man was in essence a social animal, still one aspect of the new way of looking at man has come about from the further, deeper consideration of this fact. When one considers man in the same way that any living organism is usually considered by the biologist, one visualizes a living being limited by his skin surface and functioning through the various bodily organs. There is in this visualization a sharp delimitation between the individual and his environment, and the various aspects of the organism that are contained in this concept are essentially material, ponderable affairs. Of course this is not an altogether true statement of the case. Environmental conditions of temperature, atmospheric pressure, degree of moisture, and so forth, affect the organism very materially, and the limits between the organism and the environment are by no means so definitely marked as would be indicated by the above descrip-



tion. It would be exceedingly difficult, for example, to point out at what special place food taken into the gastro-intestinal tract or air taken into the respiratory tract ceased to become a part of the environment and became a part of the organism. However, without elaborating in these directions, the fact remains that the description as given if not absolutely accurate relatively at least expresses the situation.

Now when we think of man in his social aspects the whole picture changes. Here there is no question of definite limitation by skin surfaces. The social environment as it exists can be seen historically to have been contributed to, in fact, built up as a result of man's efforts, and in turn to influence him in reciprocal fashion. Man can be pictured as passing through life and individually contributing his mite to the growth of social institutions; and he can be pictured when born as being born into an environment which is essentially made up of the individuals that surround him and the social institutions which have been builded through the generations. These various institutions together with the beliefs, the traditions, the superstitions, the prejudices, the taboos, the customs, in short the mores, constitute in their totality what we know as culture,



and this culture is continuously interpreted to him from the time he is born throughout life by the various individuals with whom he contacts, more particularly of course by his parents.

From this point of view, therefore, in considering the individual as a social being we are dealing not with material ponderables but with immaterial imponderables; and while relatively speaking it did not matter much whether we were able to say at what particular point food or oxygen became a part of the individual, we see here that it is of supreme importance to realize that the mores of the social group in which an individual is born are taken in, "introjected" is the technical term, and built into the pattern of the personality. And whereas this procedure might by analogy be likened to the processes of nutrition and metabolism, still the emphasis here is on the environment rather than on the organism.

There is a further difference between the two concepts which is of significance. In the consideration of the physiological and anatomical aspects of the organism we were dealing with definite organs and their functions. In the consideration of man as a social being we are dealing with man's relations to his social environment, particularly his relations



to social institutions and to individuals. The difference which I have before expressed as a difference between ponderable and imponderable is a difference between things and the relations between them. In the one case we are dealing with actual, ponderable, visible organs; in the other case we are dealing with imponderable, invisible relations, and it is just this aspect of the case which makes the consideration of man in these days so different from his consideration even in the last century.

From the behavioristic point of view of man as an active, functioning animal, we can see therefore that no contemplation of what he does can find adequate explanation without an understanding of this historical background that I have sketched in so few words. Without appreciating the nature and the quality of the psychological constructs which have been stamped into the personality pattern throughout the ages; without appreciating the depths to which these constructs send their roots and from which they receive their nourishment, no understanding of man is possible; and without an understanding of man any effort to control his activities or direct his thoughts is bound to be largely ineffectual in a vast number of instances. An illustration will perhaps make it clear how serious er-



rors may easily be committed by a lack of this understanding. It is not particularly uncommon to hear precedents cited in a trial where the defense is insanity, which precedents reach back one or two or more hundreds of years. I have in mind, for example, an instance in which I heard a lawyer citing a precedent in such a case in order to uphold the theory of the prosecution that the defendant should be executed. The precedent in question was created at a time when children were actually executed for striking their parents and when criminals were subjected to the most horrible forms of torture. In other words, the lawyer citing these precedents was undertaking to demonstrate, by what had occurred under social conditions such as I have intimated, what should guide us today in the disposal of a specific case at a time when all such methods of cruelty and lack of consideration for the young and the delinquent have been put aside in principle at least if not entirely in practice. And yet this discrepancy apparently did not attract the attention of a single person in the courtroom or if it did there was no suggestion to that effect. Such an example as this, however, as we shall see later on, is of relatively minor significance in its temporal aspects at least, for we shall see that



mechanisms vastly older than one or two or a few hundred years are not infrequently brought into action by faulty methods of dealing with human beings and that it is just such unfortunate results that it is the function of civilization to avoid as far as possible.

From the point of view which I have outlined above, namely, of man as a social animal, it can be seen that there are certain implications which necessarily follow by a process of what Keyser has called "logical fate." Conduct that is anti-social is so considered by society, which means that there is a general consensus of opinion to that effect. The example of murder illustrates this very well. Practically everyone will agree that murder is wrong. The attitude towards murder, therefore, has become a part of the mores. It is one of the things about which general agreement has been reached, probably for the very good reason that an agreement upon a point of such significance has survival value, that man could not exist in a social state unless he did have an idea that murder was wrong. If he were permitted to kill his neighbor with absolute lack of criticism or interference society would soon be disrupted and would cease to exist, and man in turn would cease to have all the opportunities which



living with his fellows in a social state affords him. But this attitude towards murder is part of the culture of the social group, and, as I have said, this culture can be conceived as having been contributed to by each individual member of the group as he has passed along his way from birth to death. So that we have the exceedingly interesting situation of man building up a culture and then in turn being controlled by that culture, so that an act like murder for example not only is socially wrong but because the cultural pattern has been stamped into the individual from birth on he responds to it in such a way that murder also becomes wrong for him personally. If he commits murder he is not only in conflict with society but he is in conflict with himself; to be more specific, with that portion of himself that represents that particular aspect of the culture into which he was born which carries on the tradition of the wrongfulness of murder.

This double aspect of the influences that act upon man both from without and within we shall see is of fundamental importance when we take up the discussion of such subjects as punishment and guilt, for man never acts solely as an individual nor solely as a member of society but always as both, and all our concepts of crime and of criminals and our ideas



of what constitutes antisocial or asocial behavior are not just individual ideas nor are they just socially conventional ways of thinking but they are made up from both sources. Therefore the whole phenomenon of crime, and too, and this is most important, the way in which it is dealt with, arises at what I think can best be termed the psycho-social level, which means, in other words, that as between man as an organism with a mind on the one side, and society on the other side, there is a 'tween zone in which what occurs partakes of both components. Sometimes the personal component seems to be more emphasized, sometimes the social, but never is it possible for one to function exclusively and always is it necessary that they should function together in an integrated pattern.

One characteristic of our relationship to crime which it is important to understand grows out of the situation which I have been discussing, namely, the so-to-speak dual origin of the prohibitions to anti-social conduct, and that is that the social institution, the law, has always regarded crime, and still does, from the point of view of the act committed. We can understand this if we can think of society in anthropomorphic terms and realize that the thing that the social order is afraid of is the

destructive act and it takes precautions accordingly to protect itself from such acts at any cost. On the other hand, the individual criminal, either on his own account or through the student who has investigated the motives that have led him to anti-social conduct, has always felt that he should have some consideration, that the causes that led to his downfall were not all within his power of control or even within his ken, that many of them were as a matter of fact causes which could be attributed to society for which he should not be held responsible. And so the individualistic attitude has always undertaken to emphasize the importance of the actor rather than the act. This whole matter will receive further elucidation as we proceed.



## Chapter III

### THE STRUCTURE AND FUNCTIONS OF THE MIND IN RELATION TO CRIMINAL CONDUCT

**C**RIMINAL behavior, of whatever sort, is always the behavior of some individual or of some organized group of individuals, and therefore in order that it may be understood it is essential to have an understanding of the psychology of the individual offender. This is not to say that the social background in its various aspects is negligible or unimportant, but it does mean that after all no real understanding of the criminal act can be had without an understanding of the actor who in the last analysis performs the act. In order that we may arrive at something in the nature of an understanding of the criminal individual it will be necessary briefly to consider a few of the outstanding conclusions to which psychological science has come in the last years. In the first place, during the present century we have for the first time come to some

understanding, inadequate though it may be, of the human mind both in its structure and its functions, and with this understanding has come the realization that we are dealing with perhaps the most complexly organized and intricate system in the universe, certainly a system of structures and functions which by comparison may be said to be equally as difficult to understand or even to describe as those of the body, and we are still far from an understanding of the body. There are, however, certain rather elementary considerations which bear upon the present problem and which need to be discussed.

The fundamental organization of the psyche is for the purpose of providing appropriate mechanisms for relating the individual organism to the environment, on the one hand, and to the instinctual drives with which it comes equipped into the world, on the other. For these purposes the Ego or the "self" of the individual as it develops has to provide certain appropriate and effective mechanisms. In relation to the environment the organism informs itself, as it were, through the various sense organs which, like feelers, reach out and are sensitive to particular aspects of that environment. With re-



spect to dealing with the instinctual tendencies there is developed what is generally known as conscience but what more broadly speaking is better called the Super-ego systems, which are formed in part through the interpretation of the social environment, as already indicated, by the parents or their substitutes and in part through the repercussion of the instinctual systems in their deeper levels. If we were, therefore, to tabulate the important and main subdivisions of the psyche and their functions, we could do it thus:

<i>Psychic System</i>	<i>Principal Function</i>
Ego	reality testing
Id	instincts
Super-ego	Ego-ideal

These three psychic systems are the mechanistic equipment, as it were, with which the individual has to deal with his life problems either as they present from without or within, adjustment to the environment being effected as a result of the stimuli received through the sense organs, adjustment to the Ego-ideal being effected by means of stimuli that are received from the stirrings of the deeper instinctual tendencies on the one hand and the re-



sults of introjection of social traditions as interpreted by parents or parent surrogates on the other.

The three psychic systems, Ego, Id and Super-ego, can be further described and perhaps more clearly understood in this way: The Ego systems constitute that aspect of the individual to which he refers by the pronoun "I." It is that aspect of himself which he knows, with which he is acquainted, and that he feels to be continuous from birth to death. Its function of reality testing is accomplished through the sense organs with which it comes in contact with the environment, particularly with the personal environment, and it relates itself to this environment in an orderly way so far as possible, with definite goals which it endeavors to attain by appropriate action. It is built up through the years as the result of education and experience, and is the repository of the factual matter so acquired. The Id, on the other hand, is a much older structure. It has resulted from the millions of years of life experiences which have antedated the particular individual, and these experiences so far as they have had survival value have been laid down in the organic structure of the living being and are expressed in the instinctual tendencies. Therefore



they have not the variability which is possible in the Ego systems. The two great instincts which are thus structuralized are the food hunger instinct and the sex hunger instinct, which have as their objectives, respectively, the preservation of the life of the individual and the preservation of the life of the species. These are the two most fundamental dynamisms of the living being, and because life itself of the individual and of the species depend upon them they are so structuralized that there can be no doubt about their effective functioning. The Super-ego, finally, is that still more variable and less definitely structuralized aspect of the individual which represents the precipitates of the social system as laid down in traditions, beliefs, superstitions, customs, the mores in other words, and which are structuralized in society in the great institutions of the law, of medicine, of economics, of the church. They constitute the social milieu into which the individual is born, and which is interpreted to him by his parents and his parent surrogates. Here we find those internalized ideals which constitute in their totality what we call "conscience," and, in a more restricted sense, those moral prohibitions which, when we offend them, cause such severe suffering,

suffering which does not cease, according to recent theories, until the individual has suffered punishment sufficient to neutralize them. Roughly speaking, these are the three great psychic systems which are in constant operation and the relations between which need to be unraveled in order to understand any particular psychological problem which presents.

In order that we may have some conception of how this very complicated mechanism works in dealing with life's problems, it will be worth while to discuss some of the more important concepts which have recently been developed in the field of psychology.

### 1. *Determinism*

One of the most important and significant concepts which have been introduced recently in the field of psychology has been the concept of determinism. It is, like many of the other concepts that I shall discuss, perhaps not altogether new in the sense of having first been thought of in recent years, but it is new in the sense of being accepted as an actual basis for working with psychological prob-



lems as they present in the clinic. The theory of determinism in the psychic sphere merely expresses exactly the same idea that has been existent for so long throughout the rest of the physical and biological worlds, namely; that back of every event of a psychological nature there can be found other events out of which it grew and which give it meaning, in other words what is usually called a cause, and that no psychic event happens without such a background or without the possibility of finding such antecedent factors and without having significance and meaning; and, too, that it does not rest within the province of the whim of the actor what he shall do or say under a given set of circumstances, that if a longitudinal section of the conduct of any individual be studied carefully it will be seen that the entire series of acts constituting this section follow one another logically and in accordance with a definite, prescribed plan.

Of course this is putting the whole question much more definitely than perhaps the facts warrant, and yet it is not putting it any more definitely than is necessary to believe in in order that we may approach our psychological problems with the proper attitude of mind. If we believed to start with that



mental events were capable of being varied at the whim of the individual, that they come into existence without adequate causes, then there would be no use in attempting their investigation, or any investigation that was made would have results that could have no meaning. As a matter of fact, by approaching the problems that the psyche presents from this point of view explanations and meanings are found. Techniques that have relied upon this deterministic attitude have been in existence now for some time, and there is a wealth of clinical material which bears out the worthwhileness of this point of view. Perhaps no better single illustration could be given of the operation of determining factors in the creation of mental products, that would carry more weight, than the evidence that comparative philology offers. If any particular word is traced in its meaning it will be found that it can be traced further and further back, with varied changes in the form of the word corresponding to changes in the meaning, and that these changes come ultimately to ramify from language to language and extend their roots not only in all directions but deeply into the languages of long ago and finally into the dead languages. The sig-



nificant sequence of events which philology has demonstrated in tracing the origin of words is precisely analogous to the way in which ideas and feelings have been historically traced by the psychoanalyst.

I have emphasized how necessary it is to approach psychological problems with this attitude of mind which believes that adequate explanations exist for all psychological phenomena. I would only add that if one actually carries through a method which starts with this supposition he will ultimately be astounded to find how detailed and exact the correspondence is between the factors which lie back of the event and the event itself, in other words, how possible it is in practically every instance more or less satisfactorily to reconstruct the event out of its immediately preceding past.

With regard to this whole matter of determinism, it is helpful to bear in mind continually that the mind is a balancing organ, and that when something is lacking in the satisfaction of some aspect of the individual's needs then there is a compensatory effort made to fill the void, as it were. Thus we sometimes find criminal conduct that is, in part at least, explained by deprivation. Children who have



lived a miserable and unhappy life without any of the things which children love, such as toys, sweetmeats, etc., who have been unwanted perhaps in the first place and are considered merely as a burden, whose environment does not offer them love or affection or an opportunity to develop along natural lines, may become delinquent solely as a result of attempting to compensate for these deprivations. For example, they may steal in order to have a few pennies with which to buy candy and toys and to show themselves as at least the equals of other children who have such advantages. Unfortunately these beginnings may lead to very disastrous consequences in later life. Another example of how criminal conduct may have its origin is that of the child who learns to hate one of its parents, for example, the father. This may be due, and probably is always to some extent, to the fact that the father has a similar feeling for the child. Under these circumstances the father's attitude is one of great rigidity. He demands the fulfillment of all sorts of ideals of conduct, particularly work, from his son, and failure will promptly result in a sound thrashing. The boy being very much smaller and incapable because of his size of retaliation in kind,



must find some way to close accounts, and not infrequently in such cases we find these youngsters doing things which on the surface appear to be utterly senseless. For example, such a boy may steal an automobile even though perhaps the family has one, but the object of the theft is really to get his father into difficulty. The father will have to appear in court, perhaps pay the damages or the fine as the case may be, and in this way what appeared to be a senseless act really is shown to be one of revenge on the part of the son on the father. The whole matter is, of course, not quite as simple as this, naturally, but on the other hand these illustrations show how criminal acts which may appear on the surface to be quite senseless are, as a matter of fact, conditioned by very definite experiences in earlier life and are performed for the purpose of accomplishing very definite results.

This theory of determinism, of course, raises the old question of the freedom of the will, and in citing it I am not oblivious of recent discussions touching the principle of indeterminacy and the possible non-compliance of certain physical events with the law of the conservation of energy. But these matters need not detain us here. The argu-



ment regarding the freedom of the will belongs in the field of metaphysics. It has been actively under consideration for some thousands of years and it will probably not be settled now. The other matters are controversial in the extreme and it makes no difference how any of these questions may ultimately turn out; there is no possible doubt but that the approach to mental phenomena in the belief that they have meaning and are explainable is the only practical and effective way in which to deal with them. In fact it would seem that any other method would offer only hopelessness.

The effect of this approach to all questions psychological may be at once sensed if we think of the theory in connection with the problems that the criminal presents, and in our future discussions it will appear how this deterministic attitude must qualify our dealing with these problems in certain very fundamental ways.

## 2. *Emotional Genesis*

The second concept which the psychology of recent years has come to regard as pretty firmly established is the emotional rather than the intellec-



tual genesis of mental disorders in general, and conduct disorders such as those for example that we deal with in the sphere of criminology in particular.

It has been found out, for example, over and over again that no appeal from an intellectual standpoint has very much effect upon disordered mental functionings as they express themselves in the conduct of the individual; and it has also been found that individuals so disordered did not of necessity upon testing out present any notable defects in the intellectual sphere, that on the contrary a certain considerable group of offenders as a matter of fact were found to rate quite high as the result of mental tests. When the more profound methods of study of psychoanalysis were applied to these individuals it was discovered that the disorder lay primarily and fundamentally in the emotional sphere and that disturbances of emotion were at the root of the disturbances in conduct which were under consideration. The crimes of passion had long been considered from this point of view but it had not been common to consider such mental disorders as paranoia, for example, or criminal tendencies which resulted in systematic evasions or violations of the law for personal gain as being other than of an in-



tellectual nature. Careful study of such individuals, however, has shown definite tendencies in the personality of emotional origin and nature, and has shown that the acts which they committed in later life which have this outward appearance of a clearly intentional and deliberate nature were as a matter of fact performed to satisfy the emotional needs that have been created by these early experiences. So that it would be conceivable, for example, that a thief might have his acquisitive tendencies so enhanced through early experience that in later life the emotional needs which these tendencies satisfied were so great as to control his conduct and make it impossible for him to keep within the bounds prescribed by the conventions and the laws. Similarly one might speak of any of the other tendencies, and so it has come to be generally accepted that not only is the genesis of these conditions emotional rather than intellectual but, as in the instance cited, the difference between the so-called insane person or the criminal on the one hand and the so-called sane or normal person on the other is only a difference in quantity, a difference in the strength or weakness and the balanced relations of the various tendencies and stimuli with which he has to deal.



While the above is, I think, a fair statement of the point of view which attributes to psychic disorder an emotional genesis, I have no feeling of conviction on my part that the so-called intellectual aspects of life escape entirely as most workers in this field seem to think. For example, only the other day one of my patients as I was going through the wards with a high official stopped the official to complain that I held her in confinement illegally and improperly, and demanded her release. In order to show the official what was at the basis of her incarceration I asked her a few questions. First I asked her if she had not in fact threatened someone before she came to the hospital, whereupon she acknowledged promptly that she had and went on to explain that of course she had done so and under the circumstances she would do so again, considering what this man had done to her. I then went on to ask her if she had not as a matter of fact armed herself and sought him, and she acknowledged that she had done this and spoke with an appearance of conviction that this had been her right, self-protection, etc. In other words, in a few moments she had disclosed anti-social conduct of



the grossest sort. Its basis was in a delusional system that the man in question had made certain advances to her of an improper sort that required her to take this action. Here, in other words, was on the face of it an intelligent woman of middle age, of attractive appearance, well spoken, perfectly coherent, capable of conversing about the ordinary matters of the day in an intelligent way, who, instantly the subject of her commitment to the hospital is touched upon, not only shows a delusional system which may perhaps properly be said to be of emotional origin but shows a degree of intellectual stupidity, nothing less, with regard to her conduct and its social significance, which it is difficult to see how one can avoid interpreting as a defect in the intellectual sphere quite as great as the defect in the emotional sphere. Whether my interpretation here is correct or not, the theory of emotional genesis is very different from the theory that these conditions arise voluntarily, intelligently and intentionally, and results, as does the theory of determinism, in a very different attitude which one finds one must take toward the whole problem of criminal conduct.



### 3. *The Unconscious*

Another concept with which modern psychology is attempting the unraveling of the meaning of mental symptoms is the concept of the unconscious, which, like determinism, is not at all new but which, also like determinism, has been made a practical issue by Professor Freud through his development of a technique for disclosing its content.

It is important, in fact very important in relation to the subject with which we are dealing, namely, criminal conduct, to have an understanding of what is meant by the unconscious. In the first place, this is meant by unconscious, namely: that there are all sorts of actions and sayings of the individual which while they might appear to superficial observation to have nothing to do with consciousness,—such as the automatic cries particularly during states of clouded consciousness and sleep, and various habitual movements and mannerisms of which most people present examples and which in many instances when called to the attention of the doer can not be explained by him—yet have to be thought of in psychological terms because the more



one studies them the more one discovers that they have a definite purpose which can only be expressed in language such as is used in describing psychological events. Every time an attempt is made to fathom the meanings of such actions it is discovered that these meanings are only interpretable in psychological terms.

To give another example, the words which we use in our everyday conversation, as I have already explained, have roots which carry them back to dead and extinct languages. No one for a moment supposes that the individual using these words has any conscious knowledge of their meanings as disclosed by the study of their origins and the history of their development. Nevertheless the study discloses meanings which can only be expressed in terms which are applicable to the study of language, and this field of inquiry is commonly denominated comparative philology, or the comparative study of languages.

To give a further example to show some of the deeper significances of the unconscious which get into our everyday affairs, it may be recalled that in the course of the development of man from his quadrupedal ancestors he has finally attained his



present stature, among other things, by getting on his hind legs, as it were. He no longer walks on his fore legs except during the period of infancy. In his adulthood he walks on his hind legs. In assuming the erect posture a great many things happened which are of significance in man's development. Among the most important was the freeing of the upper limbs so that the marvelous, intricate and efficient hand could develop; but the particular thing of moment to this discussion was the substitution of seeing for smelling as the most important means of accumulating knowledge of the environment. The quadrupedal animal, as we all know, uses its sense of smell in a marvelous way and must necessarily live in a world where such images of the environment as it forms are largely dominated by this sense. But as man came to walk upon his hind legs the sense of smell became of less importance because the nose was removed from the ground and from the immediate proximity to other animals and ceased to have the significance that it originally possessed, whereas the eye, as it were, was freed from the limited use which was only possible when it was very close to the ground and especially when the visual fields were independent, as they are in the



lower animals where the two eyes look from the sides of the heads and it is impossible for the visual fields to overlap. In standing up, however, the eyes came to have a much wider range of vision. They were placed nearer the center, they became more prominent as the upper portion of the skull developed so that as they were focused upon an object the visual fields overlapped and the world was no longer composed of two separate and distinct visual perceptions but of a united, common visual experience.

This substitution has been so marked that we no longer think of the organ of smell as furnishing us very valuable information about the environment; and the average work on neurology for example dismisses the whole subject of smell in a few brief sentences. Nevertheless those who investigate the emotional side of life know full well the enormous significance that smell plays in life, mostly unconsciously, and if there were need of proof of the significance of this sense one has only to look at the annual expenditures for perfumery. Without going into this matter further it is easy to see that the sense of smell has lost the apparent significance that it had at one time, that it has somehow or other



been excluded from the center of conscious attention and plays its part perhaps no less significantly below the threshold of consciousness in relation to all sorts of emotional situations. It still retains its capacity to warn of danger. Ill-smelling substances are apt to be unhealthy or dangerous to breathe, and the most subtle forms of death are those produced by gases which have no odor and therefore no danger signals.

As further illustrations of the significance of smell, particularly in the unconscious, it may be said that, like all functions that have apparently dwindled in the course of man's advance in civilization, smell is much more important among savages and also much more highly developed in children than in adults. The relation of smell to sexuality is fairly well known, and the use of perfumes is probably a definite example of this relationship. Anatomically we know that the portion of the brain which subserves the function of smell is an exceedingly old portion, and we have reason to believe that certain mental diseases in which hallucinations of smell are prominent symptoms have a bad prognosis. Ideas about odors, while not common, do occur with reasonable frequency in the psychoses,



and when they do it is quite usual for the patients to think that they have a very disgusting bodily odor which repels everyone and results in practically socially ostracizing them. So that, all in all, it can be seen that odors play a very much more prominent part than the average person thinks and that their significance is very important. As to the organ of smell itself, Pascal said very facetiously, though I suspect with much truth, that if Cleopatra's nose had been only a little bit larger the whole political geography of the world might have followed a different course.

The unconscious therefore represents the historical past of the psyche, an historical past which is active in much the same sense that the historical past of words is active, and in the same sense in which the historical past of a nation like ours for example remains active in its traditions that are unconsciously carried forward by the people.

#### 4. *Conflict*

The fourth important contribution of modern psychology is the concept of conflict. I have already dwelt upon this subject by implication in speaking



about the conflict between the instinctive tendencies and the Ego-ideal, and this for the most part constitutes the intrapsychic difficulty to which the term "conflict" is applied. But the concept of conflict itself is very much broader than this and biologically conceived is analogous to the physical law of action and reaction being equal and in opposite directions. It simply means in the last analysis that in the psychological field as well as in the field of the inanimate any movement in any direction, any effort at accomplishment, any tendency, drive or impulse to do something, necessarily has to overcome resistance and in overcoming the resistance the opposite phenomena of reaction make their appearance. So that we have in emotional life, for example, where the phenomena of conflict come so largely into evidence, the examples of paired emotions, love and hate, fear and anger, good and evil, which represent each the ambivalent opposite of the other and which can be found replacing each other oftentimes with great facility. It is proverbial how quickly and how violently love turns into hate if the love is not returned, how quickly fear may turn into anger if the object appears not to be dangerous, and how good and evil are not inherent in the things



themselves but depend upon the way in which they are used.

Conflict, therefore, in my opinion, is a phenomenon which is at the very basis of life itself and represents an ultimate, fundamental character of everything psychological. Conflict eternally and forever is with us as long as we go on living and functioning. On the other hand an equally fundamental function of the mind is, to put it in anthropomorphic terms, to seek equilibrium. The fact of the universality of conflict does not by any means relieve the conflict of the disagreeable features of unrest and fatigue which it produces, and we spend our lives in trying to resolve conflicts, to escape from their unpleasant consequences by seeking equilibrium. In this way we are familiar with the symptoms of what is known as over-compensation. Over-compensation is an unconscious process which automatically undertakes to bring about a relative equilibrium where a great discrepancy existed. One remembers the scene in *Richelieu* in which Richelieu's right-hand man had been conspiring with a group of others for his downfall. That night as he leaves his Cardinal, bowing he repeats his usual phrases. As he passes out Richelieu com-



ments upon the fact that in bowing he bowed too low. What happened was that this conspirator had conspired for the downfall of Richelieu, had turned traitor to his cause and knew full well of course that if he were discovered he would be lost. Under these circumstances, with an extreme feeling of guilt against the man to whom he was saying goodnight he endeavored, as it were, to compensate for this feeling by being over-humble and debasing himself more than usual by his low bow. It is as if he were to say: "I have been guilty, but accept my humbleness and forgive me." All this was unconscious but Richelieu saw it; and it is just such unconscious activities that are constantly going on and which keep the psyche in a state of sufficient equilibrium so that it may function at its best.

It is interesting to note that the equilibrium which is sought and which seems to be so desirable never appears half as wonderful when it has been found as we thought it was going to be in the seeking. In fact equilibrium if ever finally attained would mean death. So that we have the final fundamental basic conflict, which is the conflict which is sustained in order that the equilibrium which is death may be avoided.



5. *Psychogenesis*

The history of the nature of the causes that lie back of mental functioning is an interesting one. The nineteenth century with its materialistic tendencies and its medicine which was confined to a study of the body and left out of the picture entirely the mind, sought always to find as causes of ideas and feelings and human conduct some somatic or bodily factor. Those who were interested primarily in the mind as such thought of it as a function of the cortex, and those who were thinking in terms of disordered feelings and psychopathology thought of it frequently in terms of disordered metabolism. It did not seem to interfere with this way of thinking that these disorders in a large majority of cases could not actually be found and had to remain pure assumptions. Even a large proportion of cases of serious mental disease could not be correlated with any diseased condition discoverable in the brain. People continued to think this way, however, because they had been taught to think this way, and under such circumstances it takes a long time to escape from the thrall of habit.



With the coming in of the new century, however, the theory of psychogenesis made its appearance. It was realized that if somatic factors were to be eternally sought as explanations for psychological occurrences it would be a long time before these explanations could be found even if they existed and that in the meantime it was a perfectly legitimate procedure to consider the events taking place within the region of the psyche itself without any special reference to the body, and by so doing important results of the utmost significance began to be obtained. Ideas and feelings, states of mind in other words, were easily discovered to be antedated and caused by previous states of mind which in turn were the function of certain situations in which the individual found himself at a certain period of his life, and so on. The matter could be traced backward, forming a complete history of the sequence of events and explaining how they came about and giving meaning to what had before been mere description. As soon as this method of procedure was instituted it was seen at once how natural and inevitable such explanations were, and the tendency to seek somatic explanations became less insistent.

Unless one has been identified with the progress



in mental medicine covering the period of the rise of the psychogenic explanation of mental events one can hardly appreciate what a revolutionary thing it has been, how different everything psychological looks from this point of view. In fact when somatic medicine held the field exclusively mental facts not only were not investigated but they did not enter the picture. They were not thought of even as existing. They presented no problems. They were outside the field of vision.

It is rather a similar situation that confronts us in the field of criminology. Until the beginning of the present century the criminal act was the only thing considered. The actor as an individual did not exist. He was merely incidental, as it were. Nobody ever thought of paying any particular attention to him. Then through a long and tedious process of evolution young children, manifestly wildly psychotic people and profound idiots came to be excluded from the operation of the criminal law on the theory of their irresponsibility, and finally this tendency to look at the actor rather than the act, this consideration of the criminal as an individual, came to be definitely recognized by the establishment of the juvenile court at the beginning of this century.



The further ramifications of the theory of psychogenesis lead us into wider circles of interest. We can not follow through our concept of the organism-as-a-whole without realizing that the mental aspect of the organism is not of only occasional occurrence as perhaps we might have thought years ago when the so-called theory of free will was in the ascendant and when it was supposed that a man who was not consciously engaged in doing something might have a mind that was a blank. With our appreciation of the fact that the mind is a constituent part of the organism, that it is as continually existent and active as any other part, that it represents as it were only one aspect of the organism, one facet from which it for the time being may be viewed, to use an analogy,—when all this came to be appreciated it was necessary to realize that every bit of activity in which the organism indulged must necessarily have as well a mental component as a physiological or metabolic, component. So that disease, for example, has come to be thought of not solely as disease of the body as it was for the most part in the nineteenth century, but as disease of the organism and as therefore necessarily having a psychological factor. This whole argument might



be pursued a step further with the realization that the individual is never separate and distinct from other individuals and that there must necessarily also be a social factor involved quite as uniformly as a psychological factor.

Finally the theory of psychogenesis has led us to an entirely different way of looking at conduct and at mental states which are abnormal. In fact the word "abnormal" itself is open to very decided criticism. Just as the surgeons of the early anti-septic period finally came to the conclusion that there was no such thing as dirt, literally speaking, but that what was called dirt was only matter out of place, so we might similarly conclude today with respect to so-called abnormal psychological phenomena that they are not abnormal in their essential characteristics but only because they are out of place, out of their proper relationships.

I will not enter into this subject more fully here because it involves a discussion of the nature of the psyche which is hardly pertinent to the subject of this book, but I will add this especially significant conclusion with regard to the nature of psychopathological phenomena. We have seen that the instinctual core of the Ego necessarily presents



problems to the individual of a most serious nature, problems with which he has to cope whether he will or not, problems which are basically at the source of all of his intrapsychic conflicts. Now the reason for these problems is not far to seek. What I have referred to as the instinctual core of the individual is primitive and selfish. It is for getting its satisfactions by the shortest possible route. Its objectives are direct and uncomplicated. But all of these tendencies, by a process extending over hundreds of thousands of years, have had slowly to become modified to fit social ends. Man must have learned very early in his career that he could not live alone. It was essential that he should join forces with his fellows in order successfully to combat a hostile environment. In doing this, however, he had to make certain concessions to his associates, and here was the beginning of the conflict between his individual desires and his social obligations. This conflict has never ceased, and while in the unconscious man would seek his ends immediately and directly without consideration for his fellows, his Ego-ideal stands as a sentinel to prevent this direct action and to require of him action modified to suit social ends.

From this point of view, therefore, we can see



that the whole problem of psychopathology takes on a very different aspect. Instead of thinking of things as normal and abnormal, instead of thinking of that which is abnormal as outside of natural laws as some thinkers did in the past, we can now see that we are confronted by conduct which for some reason or other has escaped the control of the individual or of society as stamped into the pattern of the Super-ego systems in the form of beliefs, traditions, customs or what not. Such conduct, which results from the escape from control of that which has been repressed through the ages, is therefore not in this sense abnormal in itself, as already indicated, but simply conduct which is out of place, which might have been perfectly proper at one time, a million years ago, but which today in the present order of things is intolerable. Under these circumstances we find what we might very properly expect, that mental disease and disorder and criminal conduct occur by preference at two particular periods in the life of the individual: first, the period of adolescence, which is the period *par excellence* of the struggle of the individual with his instinctive tendencies and during which it is to be determined whether they are to be brought into control for the



service of social ends or whether they are to run riot and destroy the individual in one way or another; and, second, the period of involution, when the control which has been attained is lessened by the physical changes incident to the degeneration of the machinery which is used to bring about this control. On precisely the same principle we find mental disorders cropping out at times of special stress when the capacity of the individual to control and direct the forces of his instinctual tendencies is for the time being impaired. There are many stresses, of course, which will produce such disorders, illnesses either of long duration and exhausting or short and acute, operations which suddenly lower the resistance and result in post-operative psychoses, and more particularly for our purposes various toxic conditions of which acute alcoholism is the type (drunkenness).

#### 6. *Distorting Mechanisms*

It has been said that language was given to us to conceal our thoughts. It might, I think, be said with equal cogency that our reason is given to us for the purpose of enabling us to find a good, logical



excuse for doing the things that we wish to do. Reasons are afterthoughts, as it were. The causes for conduct lie in the emotional field. It is our wishes and desires which move us to do things to satisfy them, and our reason which comes forward with logically constructed explanations of our conduct. This is the process known as *rationalization* and it is of exceeding importance in understanding human beings.

I bring this mechanism of rationalization to the fore because its understanding is fundamental to the understanding of the processes of the human mind. The whole argument of this chapter is away from the old-time conception that man consciously intended everything that he did, was responsible for his conduct throughout and when his conduct was of a certain character which we call bad he was guilty of intentional wickedness. I have tried to show that there is a large component of unconscious factors in all thinking and acting. In fact the unconscious component is much larger than the conscious component; and I now add that the motive forces of conduct reside for the most part in these unconscious factors, which means not only that man is not aware of the things that move him to do and



to think as he does, but because of the automatic tendency to find logical reasons for whatever he thinks and does he is convinced that these reasons which he sets forth explain his acts. So that while he is ignorant on the one hand he deceives himself on the other, and therefore the rational explanations which anyone offers of his acts, no matter how honest they may be and no matter how much the individual may believe them himself, may nevertheless be entirely wrong. Unless these facts are kept in mind our thinking may perforce be chaotic with reference to certain problems that arise in connection with investigating criminal conduct. I have in mind particularly such things as false confessions in which the person confessing is not infrequently largely convinced of his own guilt; and one can not understand many of the things in the history of criminology unless one bears such facts in mind. For example, many of the victims who were accused of witchcraft in the Middle Ages confessed their guilt, and went to their death probably in innumerable instances believing it themselves.

There are numerous distortions other than rationalizations which might be discussed at greater or less

length at this point. I will, however, mention very briefly only a few. There is for example the distortion known as *displacement*, in which the emotional emphasis is shifted for the purpose of disguise from the important element in the situation usually to some trivial component. A usual illustration which covers this point is the blaming of the headache of the morning after to some minor error of diet rather than to too much alcohol. A variation of this mechanism is known as *projection*, in which the whole blame for something which is going wrong is projected on to the outer world. The golfer who makes a bad shot blames it on his club. And finally there is the very important distortion of *symbolization*, which permits the utilization of a symbol, which may be perfectly innocent in its appearance, for a whole host of associated ideas and emotions which may be let loose, all of which appear on the surface to have no connection with it. Here in the field of criminology we have particularly to note the great significance of symbolism in such crimes as kleptomania, where the thing stolen has characteristically nothing to do with the offender's needs or desires and which can only be understood when



his psychic life is investigated and it is disclosed that the stolen object is a symbol that integrates a complex series of emotionally latent experiences. The same sort of thing is true in the phenomena of fetichism, which are responsible for many thefts and for a number of perverse sexual expressions which not infrequently come within the purview of the criminal law.

The whole significance of these distorting mechanisms is for the purpose of softening, mollifying, smoothing over and disguising the various affective tendencies of the individual which emanate from his crude instinctive needs and which have not been adequately *sublimated*, that is, woven into the pattern of his personality in such wise as to result in conduct that is free from social censure and has correspondingly valuable creative ends which are acceptable to the Ego-ideal of the individual as well as to the standards of the society in which he lives. We have therefore a picture of original equipment containing of necessity certain demands for instinctual satisfactions which in the course of growth and development and social integration have to be brought under control and molded into conformity,

and on the other hand the picture is of a certain failure in part of this process and the picking up of the odds and ends of instinctual drives that show their heads here and there at opportune moments distorting, disfiguring and disguising their appearance so as to bring them within the specifications of conventional requirements.



## Chapter IV

### INDIVIDUATION—REGRESSION— HEREDITY

UP TO this point we have considered certain fundamental characteristics of mental functioning which are essential to the understanding of human beings, and in particular are therefore essential to the understanding of criminal conduct. Those who have followed the argument thus far will, however, feel that to a certain extent it has dealt with rather discrete phenomena which by implication only are embodied as parts of an integrated whole, and that this whole has a history of development of the individual and evolution of the phylum which relates it and integrates it with all living things. In other words they may already have suspected the conclusion, which they have probably come to in their own minds perhaps by other means, that psychology is a biological science. It would not be necessary to make this statement except for the fact that in the last century psy-

chology was very closely related to philosophy and to ethics and was taught in these relations, and that its affiliations of the last century have carried over and still influence psychological thinking in certain quarters. More especially is the relation to philosophy still borne in mind by many, so that psychology is always in danger of being thought of more from the point of view of its philosophical relations than its biological relations.

On the other hand, it is essential in thinking about criminal conduct that we should as far as possible bear in mind its relations to the general problems that conduct presents throughout the world of living things and to realize that man is not an isolated being unconnected with others, as it was the fashion to think of him particularly in the Middle Ages, when the doctrine of special creation was in vogue and when man was considered to be the special object of God's concern.

### 1. *Individuation*

During the nineteenth century a fallacy of thinking reigned pretty generally with reference to the ideas that prevailed regarding the growth and development of both the body and mind, more par-



ticularly, with respect to the former, of the nervous system. This way of thinking about development implies that it takes place by a process of repeated additions. For example, the nervous system was thought of as being a tremendously complicated series of reflexes hitched together and interrelated in all sorts of ways. In other words, the reflex was the unit of structure, and by building up reflexes in ever new patterns and combinations ultimately the complexity of the human nervous system came into existence. The same way of thinking was applied to the mind. The mind was thought to be made up of units of sensation and these sensory units were woven into all sorts of complicated patterns of perception. To illustrate this way of thinking about the composition of the mind one can think of the perception of an orange by a child, and how that perception is made up of sensory elements which are united into the pattern which ultimately signifies for the percipient an orange. The child might be thought of as having had the experiences of color, of resistance, of weight, of touch, of taste and of smell, and ultimately certain kinds of taste and smell and color, etc., come to be united into the perception of an orange, which of course is a round object which has weight and is yellow in



color and has a certain very definite smell and taste.

This additive way of trying to understand the increasing complexities of bodily and mental development has given way to a method of thinking which is entirely different and which is in fact quite the opposite in character. It can best be illustrated by bodily movements, which have been so carefully studied by Coghill, particularly in his observations on the development of *Amblystoma punctatum*, a small amphibian which lends itself to laboratory study very readily. In this small animal the unfolding of movement was roughly along these lines: To begin with, when the animal moved the whole animal moved. Later on when progression by walking begins to be developed one-half of the animal moves, first this way and then that way, two of the legs being involved each time. Similarly in swimming the body bends first to one side and then to the other. At first it is a generalized movement in which the different segments of the limbs do not separately take part. Later on these different segments move in harmony with the general objective to be attained, and finally the movement can be seen to involve particular digits apart from the generalized movement of the larger segments of the body and limbs. In other words, the development of the



movement is not by the additive process of simple movements of small parts being added together until finally a movement of the whole becomes possible, but precisely the opposite: an undifferentiated movement of the whole is the first stage and out of this undifferentiated movement more and more specific movements with more and more specific objectives gradually become differentiated.

The same thing happens in the development of the mind. The child does not put a lot of unitary sensations together and then when they are united in a certain pattern see an orange. The child from the very beginning sees the orange but does not when it first sees the orange differentiate all these separate sensations of weight and size and form and smell and taste. These only come later. The first perception of the orange must be an exceedingly simple and undifferentiated thing, not very much more specific than a shadow, a difference in light and shade in a certain direction, perhaps of a certain size. It is a long time before these specific sensations become differentiated from this original, unitary, undifferentiated, vague, non-specific mass perception. Originally the child does not see the yellow color nor know of the taste or smell. One can easily understand this by a simple illustration.



The uninitiated and inexperienced who look into a microscope for the first time and see a tissue sectioned and stained thereunder do not see the various things that the trained eye observes from looking at the same section. The untrained observer merely sees a mass of more or less confusing spots of different colors of which he has no understanding, and therefore he does not differentiate the cells and their nuclei, nor does he see the special arrangement of the cells which is characteristic of the particular organ section, etc. These possibilities all remain latent. They must be subsequently developed as the result of experience.

The reason why I have digressed to indulge in this description of what I have called individuation is because modern psychology is changing its point of view along these lines, and at the same time this way of looking at development in the region in which we are particularly interested is the same way in which we are now looking at it throughout the biological field. In other words, psychology is not only a biological science as above stated but there are reasons for believing that we will ultimately discover that the laws of psychic action and the laws of living things in general can all be expressed by the same formulæ, the change in the direction



of unifying natural phenomena which is taking place notably now in the physical world and which this change of viewpoint seems to bring nearer in the biological field.

## 2. *Regression*

The previous section seems to have very little relation to the subject of criminology but without having presented it this subject of regression, which I wish briefly to discuss at this point, would not have been understandable.

We have seen from the previous section that development takes place from an original undifferentiated state. I sometimes think of it as protoplasmic or protoplasm-like. We have also seen from the previous chapter that conduct which is abnormal is due to the releasing of certain tendencies which the individual has not been able to mold into a pattern that is satisfactory to the social requirements. Now I have to add to these statements the further statement that mental disease on the one hand and criminal conduct on the other both represent kinds of behavior backed up by ways of thinking which are relatively undeveloped, infantile, primitive, as one prefers to call them, but which in each instance



represent stages in the course of development which belong in the past and in the natural course of events should have been left behind in the development of types of conduct and thinking which had proved useful under the conditions of social life which the individual was required by the conventional standards to live up to.

This concept of regression is of great importance to the understanding of aberrant types of thinking, feeling and acting. It takes us back to the illustration I have already given—that there is no such thing as dirt, dirt is only matter out of place. Similarly there is no such thing as abnormal. Abnormal simply means that something is out of place.

Further than this, this concept of regression has great significance from the point of view of therapy. If a given expression of an individual which is ordinarily called abnormal is understood to be merely the result of some form of activity which is relatively less developed, then we have immediately a concept of the situation which enables us to investigate intelligently the symptomatology and see if we can unravel the etiological factors.

There are two ways in which such an undeveloped type of thinking, feeling or acting can come into existence. In the first place, such ways of reacting



may be due to defects in development such as we see in the various forms of idiocy, imbecility, feeble-mindedness, the whole group of mental defectives. Here we have phenomena with the like of which we are familiar in the somatic field, where we see so frequently organs failing to function efficiently because of some developmental defect. The same thing can happen in the region of the mind, and quite characteristically where this defect is very marked we find defect or disease which has interfered with development present in the central nervous system, specifically in the brain.

The second way in which these ineffective and aberrant ways of reacting of a regressive type come about is through frustration. Any interference with or blocking of adequate self-expression means frustration, and unless the particular tendency which is thus frustrated can find some other satisfactory exit in the way of expression we have again the phenomena of regression. Under these circumstances the therapeutic possibilities are much brighter. With so far as we know a normal organic equipment, that is, with normal nervous system, normal brain, by which I mean a brain which so far as we can determine is free from disease and defect in a degree to impair its functions in a serious way, with organic structures capable of functioning at



efficient levels, phenomena of regression therefore signify that we are dealing with what we call a functional disturbance only and one which can be modified and changed in the direction of greater efficiency by giving backward aspects of the personality an opportunity, as it were, to grow up and develop.

These two ways by which regression comes about have always to be borne in mind, but in addition it must not be lost sight of that very possibly a certain symptomatology which has all the appearance of being due to lack of development may be due to frustration; and one can never tell how much of the picture may therefore have a functional background only and be capable of material improvement by an adequate therapy.

The therapeutic possibilities here are to be understood in their broader implications in the terms of differentiation as explained in the previous section, that is, thinking, feeling and acting which is relatively undeveloped, infantile, primitive or archaic in character is in addition relatively undifferentiated; and the therapy which would correct the situation as expressed by these undifferentiated reactions would have to be educative, on the one hand, teaching the individual specifically how more



definitely to differentiate, or, on the other, removing the obstacles which have created frustration and permitting the tendencies to evolve and in the natural course of events differentiate in so doing. The former, the method of education, is applied at the conscious level and for the most part is the method of choice which in the past has been used in attempting to correct the defects of the feeble-minded group or the group that show disorders as the result of defect of development; whereas the second method, the method of removing obstacles so as to permit of the expansion of the personality at those points where frustration has worked, is the method that psychotherapy has evolved within the past few years, more particularly in the field of psychoanalysis. Nowadays it is beginning to be appreciated more and more that this latter method is perhaps also applicable to conditions that heretofore have been treated solely by the process of education, whereas some psychotherapists still cling to educational procedures in situations where the psychoanalyst would use only the methods of psychotherapy. The educational procedure has been used more particularly in children, the analytic procedure in adults, but there is a general tendency to realize that these sharp-cut distinctions are not altogether reliable.



3. *Heredity*

It is necessary to say a few words about heredity at this point in order to round out the whole situation, and particularly because the subject of heredity is so widely discussed in these times and because, also, concepts about heredity have been so inadequate. Heredity has been used to explain all sorts of difficult situations, and has also been used as an excuse for doing nothing about them.

Perhaps the outstanding bit of inadequate reasoning which has been indulged in regarding heredity is to think that because a certain individual has qualities that are like or almost identical with his parents that he must of necessity have inherited them. I am using the word "heredity" now in the usual sense, a sense which I will explain more fully below. It is important to realize that this way of reasoning is exceedingly fallacious and dangerous. Many of the characteristics which individuals present and which are like the parents are from our present point of view purely imitative phenomena, that is, they have come to pass as a result of more or less of an *identification* of the individual with the parent possessing these qualities.

The results of this identification are at times



amazingly accurate copies of the parental pattern, so that we get here the same kind of simulation, as it were, of hereditary conditions as we get in hysteria of organic disease and one which it is exceedingly difficult to unravel and fully to understand.

The whole concept of heredity has been shot through with the widely diffused error of giving a thing a name and then thinking that there is necessarily something very concrete that corresponds to that name. Heredity and environment are frequently placed in opposition to each other and talked of as if they were mutually exclusive and independent. Obviously this is not so and can not be so. In fact there is good reason for concluding, if we start with the assumption that life originally evolved from the not living, that the living organism contains nothing that it has not taken in at one time or another and in one way or another from the environment. If we will consider environment and organism from the point of view of energy systems, it is not difficult to realize that the energy of the environment impinging upon the organism produces certain reactions, the result both of the nature of the stimulus and of the nature of the receptive organism, and that these reactions in this sense are environmental inclusions, that is, they are the



methods by which the organism handles the energy that comes into it, and when this energy by constant repetition over long periods of time becomes laid down in structure then that structure can be thought of in terms of an environmental inclusion.

The whole question referred to in the previous paragraph is perhaps rather abstruse but it is not difficult to understand that there is nothing that the organism develops during its lifetime but might be considered from the standpoint of heredity just as well as from the standpoint of environment and *vice versa*. It is true that the organism adjusts itself to the environment but it is equally and as necessarily true that the organism could not so adjust itself unless it were potentially capable of doing so. A man may be the son of a musician and he may develop great musical ability and the temptation is to call this hereditary merely because his parent was musical. On the other hand, he may never develop any musical ability but this does not mean that he has not inherited the capacity. Perhaps he has never made any effort in this direction and his capacity lies dormant; or he may have great musical ability and his parents may not have had musical ability, and this musical ability may in part at least be the result of very strenuous efforts on his part. So that



it is perfectly possible to call anything environmental and anything hereditary, merely depending upon the angle from which one views it. Musical ability, for example, might be thought of as hereditary where the boy's father was a musician, and as acquired where the boy's parents were not musical. It might be thought of as inherited in the musician's child who did not develop musical ability, but lying dormant, or it might be thought of as environmental in the boy whose parents were not musical and who developed musical ability. Or, on the other hand, the lack of musical ability in the son of the musician might be considered to be purely because of his lack of effort in this direction, and so as an environmentally conditioned failure; or the musical ability of the child of parents who were not musical might be considered hereditary if we could find that some of his ancestors were musical and thus visualize a germ plasm coming over from past generations.

Heredity and environment are ambivalent opposites. The main thing that one can say about heredity is that those experiences which have been repeated practically universally by the race over long periods of time and which are of survival value have ultimately been laid down in structure, and these structures are specifically carried over into the

structures of succeeding generations by special germ plasm devices; and that there is probably every gradation between the most inheritable characteristics in this sense, and those highly individualized responses to unique personal situations which have never before been experienced, to which the race are not universally exposed and which do not have survival value and which are associated with high degrees of consciousness.



## Chapter V

### MALUM IN SE

**A**S WE have seen in the last chapter, those qualities of the organism which have been developed as a result of millions of years of experience and the mechanisms of which have survival value are finally laid down in actual structure and carried over from generation to generation through the medium of the germ plasm. On the contrary, situations which are precisely the opposite of these, which are of individual as opposed to racial significance, which have little or no survival value, which affect very few individuals of any generation and do not extend over long periods of time in their results, are not laid down in structure. As we might suppose, there are all sorts of gradations between these two extremes, and as we have already intimated these gradations can be found in the way in which the mind functions; so that, as we might expect, there are close analogies between the func-

tioning of the mind of the child and of the savage, on the one hand, and people who suffer from mental disease as the result of pronounced regression, on the other.

From the above statement it would appear that we might expect to find indications of ways of thinking in everyone, by examining their unconscious processes, which corresponded to the ways of thinking of less developed individuals, in other words, that we might unearth by the study of paleopsychology, as it might be called, psychological fossils analogous to the more material fossils with which we are familiar in the earth's strata. On the other hand, we might find that a study of the symptoms of the psychoses and the neuroses does indicate their more primitive structure and also shows strong analogies if not actual likenesses with ways of thinking that were generally conceded to be correct during previous ages.

All this introduction leads up to a consideration of what, if anything, through the years in which man has been struggling forward have been considered bad enough to be thought of in the category of crimes. For a long time the lawyers have distinguished between what they have called *malum in*



*se*, which means "evil in itself," and *malum prohibitum*, which while it does not refer to things which are naturally evil, refers to things which have been forbidden. This distinction is an old one but its validity might easily be called in question if those things which are evil in themselves should include a very considerable number of human actions. It would only be proper to include those things which down through the ages have invariably been regarded as most heinous offenses, and acts which are only incident to present social conditions, for example, would have to be excluded no matter how destructive they might temporarily prove to be. In other words, thinking of the mind in the same way that we do of the body, as having a structure and functions, we might inquire whether there are certain concepts, as it were, which have been laid down in the structure of the mind as a result of practically universal agreement throughout the ages and which are regarded as essentially and profoundly criminal.

Professor Freud\* has suggested that the question asked above may be answered in the affirmative by

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\*Freud: Totem and Taboo. Published by Moffat, Yard & Co., New York.

calling attention to the fact that it is generally conceded that there are three great crimes which have followed man from the beginning, and despite the primitive nature of two of them, at least, are still with us in one form or another. These three great crimes are cannibalism, incest and murder (more particularly patricide and fratricide). Let us look at each one briefly.

### 1. *Cannibalism*

Cannibalism, like murder, belongs to that group of crimes which must very early have been considered as anti-social, because man must from the first have been forced to live in community with his fellows in order to have lived at all. The extreme rigors of his early days were such that only by co-operation could he have had any chance at all, and any destruction of his fellows must have very early come to be considered wrong. Cannibalism, therefore, as we see it today, is practiced only where an enemy is concerned; but the cannibalism which is of such profound significance in the emotional life of man was of much more intimate origin and is still preserved to us through the medium of mythol-



ogy, where over and over again we see the motive of cannibalism quite baldly expressed. Here we find an ambivalent tendency in which the significant element is the fact of incorporation—the conflict between generations, the older and the younger, finally results in the incorporation of one by the other, thus, in accordance with the thinking of primitive man, accomplishing two things: the one, taking in, absorbing, all of the virtues and desirable features of the individual incorporated, such as courage, wisdom and the like, and on the other hand destroying the same individual. Without entering into a long discussion of this subject, which is worthy of a volume in itself, it may merely be added that this bivalent attitude towards those who are, in our ordinary expressions, near and dear to us, but for whom, on the contrary, we must of necessity entertain certain fundamental antagonisms, has resulted in a laying down of what might be called a cannibalistic prohibition which has made the eating of human flesh utterly and absolutely repulsive to the thought of the present day.

Notwithstanding the fact that of these three great crimes cannibalism is considered with the greatest repulsion, and that for the average person



indulgence in it is unthinkable, and that most people believe it to have vanished from the face of the earth except for perhaps occasional expressions among some of the more remote savages, it is still with us in actuality from time to time, but in attenuated forms always. We hear quite regularly of tales of this sort wherever men have been marooned far from help over long periods of time, have run out of food and have been threatened with starvation. Whether these tales are true or not their significance is the same: the thought of satiating the appetite in this primitive way under these circumstances and frustrations comes immediately to the surface. I have already mentioned that mythology retains the subject and exploits it in rather pretty stories which might not be understood by the careless reader for what they really were, whereas in our more malignant mental diseases especially delusions and hallucinations not infrequently have their reference to this particular mode of reaction, while in the everyday language with which we are all familiar common expressions of endearment are couched in terms which can be seen to have this reference when one looks at the whole subject by this longitudinal section method. Such expressions,



for example, made with reference to a beloved individual, that the person in question loves that individual so much that she could eat him. Sometimes there is added to this comment the more delicate touch of saying she could eat him with a spoon. Innumerable instances of this sort might be cited to show how the past, no matter what its nature, is invariably dragged along with us as we go our way.

It is surprising when one seeks for evidences of the retention of cannibalistic tendencies in how many directions these may be found. One of my early personal recollections, for example, was that of the story of a medical student who, following an epileptic attack, had torn a piece of flesh from one of the cadavers in the dissecting room and eaten it; while not so long ago there appeared in the papers a story of a German butcher—Haarman, I think, was his name—who had bitten to death a number of boys, and the suspicion was that he had subsequently ground up their flesh and sold it and perhaps eaten some of it himself. The stories of vampirism are still known in the literature; and vampirism is, of course, cannibalism abbreviated, applying only to the consumption of blood and not



to the rest of the body. It would be interesting to trace the origin of our present word "vamp" through its probable many changes and see what, if any, connection the two ideas might possibly have. Dreams not infrequently include cannibalistic material, as do the delusions of the mentally ill. These evidences are often quite obvious, as when there is present the actual delusion that human flesh is substituted in the food. Only recently I went to a movie which was founded upon this whole subject of cannibalism. A number of strange and unexplained murders had taken place and the Professor who investigated them noted that flesh had been torn from the victims, as if by someone with cannibalistic tendencies. One of the investigators in a research laboratory was particularly interested in cannibalism, and, of course, turned out to be the man involved. It was interesting to note that with such a grewsome subject the audience instead of being appalled were rather amused. It was impossible to convey grewsomeness, with all the arts of filmdom. They evidently felt themselves so far removed from reality as they watched the picture that its effect, as I have said, was merely amusing.



*2. Incest*

Almost the same sort of story could be told about incest. It would be fully as complicated and elaborate and would require not only a volume, but volumes. Apparently in the scheme of life advantage has accrued to those forms that have cross-bred rather than those that have continued to in-breed. The phenomena of amphimixis, as it is called by the biologist, which insures the coming together of germ plasms that are sufficiently closely related to result in fertilization but which are sufficiently different so that each parent brings, as it were, a new contribution to the possibilities for the next generation, seems to have been developed to insure this. As life becomes increasingly complicated and the adjustments which the living organism has to make are therefore increasingly numerous, then it is more or less obvious that the germ plasm must offer increasing possibilities in this direction; and mixing it from diverse sources seems to make for this increasing complexity which, for the reasons stated, has survival value, while keeping it less varied, drawing it from sources which are closely related, would seem



to work in the opposite direction. Whatever the explanation, it has long been known that Nature goes to extreme lengths to insure against repeated incestuous unions and this has been true in the history of the development of man.

In accordance with this deep-seated natural urge away from incest there has gone along the development of an emotional attitude towards it that is one of profound antagonism, so that, as in the instance of cannibalism, the average person finds himself unable to contemplate it with equanimity. The more recent explanations of the origin and growth and strength of this feeling against incest, namely, those offered by the psychoanalysts in their development of the theory of the Oedipus complex, probably disclose reasons for its existence of recent origin, relatively speaking, and expressed in terms of human psychology as unfolded under social conditions with which we are familiar. The profounder sources of the emotions which rebel against any tendencies that move us in this direction I have indicated. That there are tendencies, however, that do urge us in this direction should not be forgotten, for here as elsewhere man proves again that all those forces that move him to act are of an am-



bivalent nature, and that while he is moved away from incest on the one hand he is also moved toward it on the other hand. The important and significant fact in this and other similar problems is that the dice are loaded to insure that in the main and in the mass the movement will be a little bit more marked in the forward direction than the reverse, so that man is assured, as is all life, of slow progress, interrupted to be sure from time to time but nevertheless going on through the ages, or at least he is assured of what we have come to know and believe is progress.

It needs very little argument to prove that incest is still with us, and with us much more frequently and much more prominently than cannibalism. It is well known to exist more or less openly in certain regions of the country, particularly among the feebleminded; and in the past it was a recognized procedure apparently, if our records are read aright, of some of the royal families for perpetuating their control of the throne. However that may be, it still crops up from time to time in a criminal action in court, and those of us who have to do intimately with the serious problems of human beings know how frequently it actually happens even if it is only

regarded as play between brothers and sisters, whereas again we find in accordance with the formulæ of the Oedipus complex that it is constantly unearthed in the unconscious of the neurotic and the psychotic.

### 3. *Murder*

Murder, the third of the three great crimes and the least reprehensible and unthinkable and socially destructive, has existed from the beginning of time, so far as we know, and is still with us. In fact, in our wars murder is rampant on a large scale, and under these circumstances is exploited, aggrandized and made a virtue. Ordinarily, however, it is regarded as the most serious of the social offenses, and it is among the very few that are still punished in civilized countries by death.

The anti-social quality of murder, of course, is easily apparent. Each individual in a social organization may very properly be considered as an investment of that society in which it has a vested interest, and each destruction of an individual is a destruction of capital investment, so that in our murder trials it is no longer the members of the



family of the murdered man who are the accusers, but the State.

If we were to undertake to examine the thoughts and feelings of the average individual we would probably find that murder lay nearer the surface than either of the other great crimes when he was angered and felt particularly antagonistic toward certain individuals, so that it is not uncommon to hear a threat which implies the destruction of the other individual; and it very frequently becomes a matter of great difficulty to decide, especially in institutions where people with mental disease are cared for, whether such a threat has any real, profound significance or whether it is a mere gesture and outward exemplification of antagonism with no tendency to action behind it.

However we may look at it, everyone will agree that murder is essentially evil from any point of view, and must also agree that as a crime it is still rife among us and it is impossible to predict that it will ever be otherwise. It is significant, however, in this country that for the most part the States have abolished the obligatory infliction of the death penalty for this crime, which at least is indicative that sober judgment and judicial-minded-



ness are moving away from this method of reaction.

Murder results ordinarily from an extreme expression of the aggressive tendencies of man, especially when it occurs as a result of anger or acute emotional disturbance. Of course under these circumstances a real understanding of the forces which have been mobilized in the individual, and that they have the power to produce this result, can only be obtained by a prolonged analytic study. However, some cases of murder although apparently deliberate are really accidental, as, for example, a young man who needs money and who starts out to rob a car conductor takes a pistol along with him solely for the purpose of intimidating the conductor, and not with the slightest idea of committing a homicide. When, however, he finds that the conductor recognizes him and offers some resistance he shoots, realizing the position in which he stands as a parolee of the criminal court.

Closely allied to and of the same nature as murder is *suicide*. The difference between murder and suicide is a difference in the direction in which the aggressive tendencies are turned. In the former case they are turned outward, in the latter case inward. Their objective in both instances, however, may be



quite the same. A man is made angry by those very qualities in another person with which he himself has difficulty in dealing, and this anger may lead to murder. On the other hand, a man may be driven to attack those same qualities within himself, but unfortunately can only destroy them by at the same time destroying his own life. The same thing needs to be said here that was said with reference to murder. Many obvious attempts at suicide are not such attempts at all. They are intended for something else but eventuate in death accidentally. What I call "attenuated suicide" should also be mentioned, namely, the type of conduct which is on the death side of the equation, but which is not sufficiently violently addressed against the individual to cause death. In this category come all sorts of injuries and illnesses from exposure, which analytic study of the situation will discover were intentionally brought about. And, finally, perhaps one of the most outstanding proofs of the close relationship between murder and suicide is the fact that so frequently following one or more homicides the murderer will make an attempt upon his own life.

Murderers are by no means necessarily dangerous criminals. It very frequently happens that the cir-



cumstances of the homicide are so unusual that it would hardly be possible for them ever to occur a second time. Under these circumstances murderers may be very safe and reliable people for discharge into the community. Especially is this so if the crime and the subsequent punishment have exhausted all the requirements of the emotional situation.

I have no doubt that in the minds of many there would be added to this list of the three great crimes certain other crimes which they would regard as coming under the designation of things evil in themselves, but I doubt very much whether these other crimes could measure up to the specifications which are implicit in the above descriptions, namely, that the crimes in question should have come down through the ages, by which I mean not a paltry two or three thousand years but hundreds of thousands of years, and should have accumulated a significance as expressed by the emotional reaction of the individual of such a profound nature that there should be practically no exceptions to the way in which they are regarded, and that the origin, the significance and the history of these acts and their emotional repercussions should be lost in the uncon-



scious of the individual and in the traditions and customs, in short the mores, of the race, that their significance today should be for the mind as great as the significance of structure for the body, that in other words they should in a sense form elements in the framework of the personality reaching to its very foundations and beginnings.

## Chapter VI

### THE MAJOR EMOTIONS

#### *Love—Hate—Guilt*

**T**HE fundamental instinctive drives that move man to action can be divided into two great groups, the self-preservative tendencies and the race-preservative tendencies, the former having to do primarily with the preservation of life and secondarily with the enlargement and aggrandizement of the individual, and the latter having to do primarily with the preservation of the race and secondarily with the enlargement and aggrandizement of the race. The concrete and fundamental expression of the former instinct is food hunger, and of the latter sex hunger.

The emotions that may grip man and compel him like the instincts may be divided into two great groups, groups which are not coterminous with the two groups of instincts above described. These two



groups of emotions may be designated as love and hate. Let us examine them briefly.

### 1. *Love*

This term is used, in a very much broader sense than that in which it is ordinarily employed, with reference to that whole group of feelings and emotions which are essentially constructive, on the one hand, and on the other lead towards rather than away from the object which may be under consideration for the time being. They are the "sympathic" group as opposed to the "antipathic" group, the group that feels with rather than feels against the object.

This group of emotions naturally includes those that properly belong in association with the mating tendencies and all that that signifies: union with the opposite sex, the protection of the sex partner, and the rearing and care of children; but the emotions that belong here are in a sense relatively elementary although, to be sure, from our point of view exceedingly complex, for they necessarily include all of those emotional components which at bottom make it possible for two or more human

beings to live together in association, related to each other in a way that makes for their mutual well being, and therefore these emotions are not only essential and necessary for the building up of the family but they are at the bottom of the possibilities of social organization.

This love or sympathetic group of emotions has a still further and wider range even than that already indicated. As implied thus far it relates particularly and peculiarly to human relations of a more or less intimate nature, from those involved in mating to more attenuated associations of friendship and mutual aid. The constructive and creative type of emotion, however, extends far beyond human relations which could properly be included under such a description. It includes what have been called the various sublimations of the sex instinct, namely, those activities which while retaining the creative qualities which are incident to the exercise of the sex function nevertheless have discarded, as it were, the immediate sex objective, or at least substituted something in its place. Here we have a tremendous field of human activity, not sex conditioned but still falling in this group of emotions because of their essentially creative and constructive



aspects and because of their sympathetic tendencies, that is, the tendencies that direct the individual's activities along lines which are agreeable toward objects which he desires to approach, to associate himself with, to utilize, to turn to the advantage of his objective, carry out his ideals and through them and the activities involved to express himself not only in the simpler ways but in the higher ways which involve expressions at levels of so-called spiritual value. Here we have, therefore, the whole wide-flung field of constructive and creative activity of man, along the lines of which his development and evolution have expressed themselves throughout the ages.

It will be seen with reference to this group of emotions, as also with reference to the next group, the antipathic, that they are not necessarily attached to any particular material object, or, for that matter, to any particular concept. It depends upon the use to which the object or concept is put, what particular type of emotion goes with it, and it depends too upon the dynamic significance of the moment whether the emotion shall be associated with self-preservative or with race-preservative tendencies. An electric current may be used to turn a dynamo



that provides light for a town or power to run a factory, or the current from the same dynamo may be turned into the electric chair where its purpose is to destroy life. In the same manner the emotions, conceived of in terms of energy, have the capacity for a like multiplicity of utilizations. They may drive in many directions.

## 2. *Hate*

Hate is the ambivalent of love. It is the antipathic group of emotions, those which are opposed to or against objects, concepts, those which instead of being constructive and creative are destructive, anti-social. They represent a group of emotions which are associated with the aggressive, the predatory tendencies of man, and belong to his activities when he is interested in self-exploitation at the expense of others, and so come to be related to egoistic as opposed to altruistic activities. They are responsible for man's cruelty to man, for all of the destructive activities down through the ages which have wiped out whole races and whole civilizations, and in their more subtle and refined expressions they are responsible for those petty cruelties which man



has exercised over his brother from the beginning of time whenever he has had the power and the strength. Here we find all that group of tendencies known as sadistic, where cruelty is the leading thing and which are manifested not only in death-dealing activities and mutilations but in sarcastic, cutting remarks, manners of speech and ways of treatment, socially deleterious, which are of such great significance when they are the result of a concurrence of feeling in large groups of people. Revolutions have overturned the social and political world innumerable times because of the growing quantity and strength of hate which has been the result of continual injustice extending over a long period of years inflicted by a people of superior strength and occupying social positions of advantage.

It is not necessary, perhaps, to elaborate further along these lines, but it is necessary to add that the aggressive tendencies described are not only the ambivalent opposites of constructiveness and creativeness, they are of equal importance and of equal significance. Unless we can visualize a world without evil then we must visualize a world in which evil exists, which evil we must from time to time meet face to face and destroy, and the aggres-



sive tendencies are needed for the purpose of sufficiently mobilizing the individual in the constant necessity which confronts him of destroying those things which are evil. The same things may be said here about this group of emotions that were said about the previous group, that they may become attached to this, that or the other objective, and the same illustration of the dynamo generating its current for creative, social purposes or for human destruction is applicable.

One thing remains to be said that is of importance and significance and which has already been implied and referred to, and that is that apparently the constructive and creative tendencies in the general scheme of things somewhat outweigh the destructive ones. At least we live in that faith and we prefer to think that what happens in the course of the history of the human race is on the whole properly designated by such terms as development, evolution and progress, and that the processes that correspond to these terms are fundamentally more constructive and creative than they are destructive. In this way, if this be true, we are assured a continual going forward, although, to be sure, progress is distressingly slow. Without entering into the



further elaboration of this particular point, it may be said that from what we know of the constitution of human beings and of the nature of their relationships to each other, real progress could not be otherwise than slow because it is only by overcoming difficulties that this progress is effected and the greatest difficulties of all are those that reside within us. We see constantly all sorts of short cuts attempted but we are as constantly impressed with what appears to be the fact that only by long and consistently pursued efforts are the qualities that lead to real accomplishments ever attained. Where short cuts are put into operation the results are either temporary or disastrous. If this is true then progress is assured but at the expense of great travail.

### 3. *Guilt*

The third great emotional experience which is significant throughout life is that of guilt. It is apparently as universal in its distribution as those emotions which have already been described. It can be understood in its deeper significance in accordance with the formula of Jones, namely, that



love leads to hate, hate leads to guilt. This means that love and hate, as already indicated, are ambivalent opposites, a concept not ordinarily held and which will therefore bear a brief examination.

Progress, development, evolution, creativeness in any field is accompanied as already indicated by the emotional quality which, broadly speaking, we classify in the group of emotions designated by the term love. Here, for example, belong the emotions associated and related with the mating state, and here of course we are at once confronted by the Oedipus situation as outlined by the psychoanalysts. To begin with, one hundred per cent. love for another person, extending continuously and indefinitely, seems to be altogether beyond the possibilities. Man is in constant conflict with himself, his higher aspirations, on the one hand, and his more concrete, instinctual tendencies which tend to drag him down, on the other. The love object presents stimuli to both of these tendencies, and where one is more stimulated than the other, the other necessarily is frustrated. We are constantly throughout our lives in this situation of being confronted by two opposing opposites, of solving the difficulty by satisfying both of them and being immediately con-



fronted again by two new opposites of the same general character but at perhaps a somewhat higher level. This means that no love object can fail to incite the ambivalent opposite emotion of hate. In other words, it stimulates those aggressive instincts which produce in the psyche wishes which are directed against the individual and which, because the individual is beloved, incite the sense of guilt.

The guilt emotion is particularly in evidence in the Oedipus situation, where the love of the child for one parent is frustrated by the other and therefore incites the opposite reaction with its accompanying sense of guilt.

The ultimate fate of this sense of guilt differs in different individuals but in the main it may be projected either upon someone else or upon oneself. In the former case it leads to certain kinds of activity which vary all the way from attempts at reforming the world to sadistic types of murder, to say nothing of all manner of superstitions and traditions and beliefs which are carried along in the form of fairy stories, myths, and, in the individual experience, dreams. The common forms that we see in our everyday experience are the criticisms which people indulge in for faults which are their own. People



are peculiarly sensitive to their own weaknesses, and when they see these weaknesses in others it stimulates those tendencies in themselves that are responsible for them and in order to prevent a conscious recognition of these defects the person who stimulates them is criticized for them. So that we see rumors, slanderous rumors, not infrequently started by people who are either actually guilty of the very things that they accuse others of or are guilty in the sense that they would like to do these things. Here we have all that group of people who engage in the petty gossip of the village, which is almost invariably acrimonious and destructive of the character of those talked about, those individuals who write anonymous letters accusing people of all manner of crimes and misdemeanors, and those individuals—some of them—who confess crimes which they have not committed. There is a very large group of phenomena here, many of which come within the purview of the criminal law.

It will be noted all through this discussion that these various emotions occur in pairs of opposites, and that wherever one emotion appears in more or less pure culture on the surface underneath the opposite can always be found in equal strength. This



means that two things are happening in the functioning of the mind: one is a constant effort at establishing an equilibrium, which I have already mentioned, and the other is the relegation to the unconscious of a large part of mental functioning so that those forces that are making for equilibrium are in each instance largely unconscious in their operation.

We have already come to some understanding of how love and hate may oppose each other, love, for example, being in the field of conscious awareness and its ambivalent opposite, hate, appearing in the unconscious only. So here in the field of guilt we see that the tendency to equilibrium as a result of this particular emotional disturbance is met by the *need for punishment*. I have indicated how one of the mechanisms of guilt was the projection of the guilt outside of oneself on to someone else and then treating the other person as if he were the guilty party. This need for punishment represents the other way in which the guilt disturbance produces an effort at equilibrium. If an individual has a certain sense of guilt with reference to a particular situation that sense of guilt can be destroyed by a certain amount of suffering. Here, of course, is the



whole basis for the social concept of punishment for crime, which we will discuss further later on. But here, also, is the basis for all of the very great suffering of the psychotic and the neurotic. One of the reasons why the neurotic maintains his neurosis is because he wishes to indulge in the forbidden things which he is enabled to do by the neurotic mechanism, but over and beyond that he also needs to be punished by suffering for doing so, and so there is a double reason. This sense of guilt and this need for punishment not only show themselves in the ways indicated, but, also, the condition which is the ambivalent of sadism, namely, masochism, is a result of an attempt to satisfy this need. In other words, one punishes oneself, one permits oneself to suffer, one puts oneself in positions which will naturally result in discomfort and pain and suffering.

The enormous complexity of the situation begins to become apparent. The many factors which enter in and can be varied in all sorts of ways make it possible that no two individuals ever present precisely the same picture. So we have here in this masochistic group all sorts of self-pityings and humilities at one end, and more concrete and sanguinary self-mutilations at the other. One patient



in a hospital, for example, deliberately chops off his hand in the tobacco cutter and explains his action by the Biblical quotation, "If thy right hand offend thee cut it off," a literal interpretation carried out literally for the purpose of complying with the need for punishment and executed upon that part of the body which the patient regarded as guilty. This is the sort of thing we see very often.

It would seem that in addition to the illustrations given above there is a group of criminals, perhaps not a large one, but one which seems to be fairly well defined and to which Alexander\* has particularly called attention, who commit crime as a means of being punished. The existence of such criminals is denied but surely if it is true it is very important to realize and understand, for, as is fairly obvious, if such individuals exist increasing severity of punishment does not deter them but rather invites them to the commission of crime. I have known criminals who appeared to be responding to this formula, who, after the commission of the crime, did everything they could think of to help the authorities trace the criminal except actually confess. Such

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\*Alexander and Staub: *The Criminal, The Judge, and The Public*. Published by The Macmillan Co., New York, 1931.



conduct may have another explanation but it would seem that the explanation suggested above must be given serious consideration.

It is interesting to note that this need for punishment, like everything else human, is not at all an individual matter. In order to satisfy this need for punishment the individual exposes himself to the vengeance of the community. The satisfaction of this vengeance in the various sadistic ways that punishment offers permits the community to purge itself of its guilt feelings by projection, so that there is a reciprocal relation between the individual and the community which needs to be borne in mind in relation to this whole subject and which will be further discussed when we come to the question of punishment.

This naturally does not by any means exhaust all the significant and important emotions, but these are the ones that have to do more especially with the problem in hand. There are, of course, particularly *fear* and *rage*, which have to do with stimuli coming from the environment and which are reacted to, respectively, by *flight* and *attack*. These matters will naturally come up for consideration from time to time. And then there is the very sig-



nificant emotion known technically as "*anxiety*," which corresponds to the fear and rage emotions that are due to stimuli coming from the environment but which, contrary to them, is due to stimuli coming from within. The whole question of anxiety is an exceedingly complex and technical one, but it may be said at this point that Freud's researches have indicated that it is closely associated in a casual way with frustrations of expression of the sexual instinct.

## Chapter VII

### THE INDIVIDUAL *VERSUS* SOCIETY

**I**T IS necessary at this point to refer briefly to a conflict which has already been mentioned, namely, the conflict between the individual, as such, and the social group to which he belongs. This is a conflict which has always been appreciated as existent and of significance. It belongs to that great group of ambivalent opposites into which all psychological and psycho-social mechanisms seem to arrange themselves; and as such a conflict it is responsible for failure when its solution can not be negotiated, and for success, which implies development and evolution, when it results in a solution.

It is obvious that the needs of the individual and of the group do not necessarily always run parallel. The needs of a hungry man are that he should have food but if he has no way of getting it except by stealing it, he perforce, if he resorts to this method, offends one of the customs of society, because society would find it very difficult to exist if the



rights of property were not recognized. This is a very simple illustration. More elaborate ones are easy to think of, but the main thesis is so obvious that it hardly needs to be labored. The specific point which I wish to make, as already indicated, is that this conflict between the individual and the group must, in order that progress should take place, be continuously solved and re-solved at ever higher levels. The individual can not find avenues for his self-expression which are satisfying in a group which is organized along primitive lines. The group composed of individuals can not be organized along lines other than primitive ones unless the individuals that constitute it are sufficiently developed to make such organization possible and to develop the sort of leadership which brings it to pass. The individual and the group therefore occupy a reciprocal relation one to the other so that what is good for one is good for the other in a certain sense, in an ultimate sense, not necessarily in the immediate present as, for example, in the case of the hungry man. It becomes a question of the utmost significance whether it is more important to overlook the theft of a hungry man, on the one hand, or to insist upon the tenets of society, on the other. Which horn of the dilemma shall be seized? Which is the



more important, the individual or the mass? This presents one of the unsolvable questions, academically considered, and yet it is generally conceded in practice that where the interests of the individual and the interests of the group cross, the individual must give way to the group. While this seems to be a practically evident conclusion, there are so many exceptions to it actually that it is questionable whether things really work out that way or not. It would seem probable that we are confronted here by a conflict which, like the conflict between the two fundamental instincts—the self-preservative and the race-preservative—must be loaded on one side. Just as we had reason to believe that the race-preservative instinct was just a little bit stronger than the self-preservative because if it were not it would be difficult to see how we would, any of us, be here today, or how progress could have taken place, just so it would seem that with reference to these two opposites the interests of the herd must be a little bit more powerful than those of the individual, otherwise society would not evolve.

Conflict, as we have seen, brings two opposing forces of opposite sign and practically equal strength into the field against each other, and the mere statement of the elements in the conflict would



make it appear that the solution of that conflict were impossible. We see this clearly in man and his relation to society. As has already been indicated, criminal acts take place at the psycho-social level. That is where this relationship breaks down. An illustration will make the meaning somewhat clearer. Primitive man could not exist alone. He was practically defenseless in the face of the forces of Nature that were arrayed against him. It was essential that he should unite with his fellows in meeting this situation. This union with his fellows, however, produces difficulties because it interferes with his selfish satisfactions. Concessions have to be made here and there which he does not want to make. The process of individuation is apparently blocked by this necessity for social amalgamation. However, what happens is that man does form a society out of sheer necessity, but he forms a society which is so organized as to protect him in his individual rights and grant him opportunity for individual expression which he never could have had had he refrained from social organization. It is true that certain of these individual desires have to be subordinated to the greater good. Sublimation has to function and what man wants at the concrete instinctive level has to be modified to suit social



requirements, but this means that only instinctive functions at a relatively low level of organization have to be set aside and that the tendency always is for them to be replaced by activities which while they afford individual expression are at the same time socially useful.

We have here an example of the evolution of man which is based upon his ability to accomplish the impossible. The two forces of practically equal strength arrayed against each other have met. The conflict did not result in a draw but in a readjustment in which both tendencies receive adequate satisfactions. An illustration of what I mean within the biological field: One plus one does not make two. It makes at least three, or perhaps more. In other words, man and society result in certain relationships that raise both by a constant series of solutions of conflict to ever higher stages of integration and development.

A very simple and concrete illustration may make this still clearer. A woman who was the unfortunate sufferer from wide swings of emotion which resulted in attacks of manic-depressive psychosis came to make her will. As in such cases where there is a defusion, to use the technical term, of the emotional components so that love and hate do not exist



in a relationship which has been adjusted but manifest themselves almost in pure culture, each apart from its relation with the other but both existing at the same time towards the same object, this woman both loved and hated her daughter with equal strength. She solved this ambivalent emotional attitude in her provision for the daughter in her will by leaving the daughter all of her money but putting it in trust for the maximum period of time permitted by the law, which in this particular jurisdiction, considering the age of the daughter, made it practically impossible that the daughter should ever get any of it during her life time other than the income. She was able, in other words, in a single act to express both of her attitudes towards her daughter.

We have thus the picture of man functioning as the result of energy provided in his instinctive drives but the way of his functioning limited, as it were, between two walls of prohibition: one outside of himself represented by the mores, and one within himself represented by the introjected social traditions which have been erected into the structure of his Super-ego. When this forward stream of energy is blocked the tendency is for it to flow back and refill some of the old tributaries which in the course of



evolution have been drained. In other words, the individual expresses himself by methods which in the ordinary course of events would have been left behind in the course of development. When this forward stream of instinctual energy is not blocked it is continuously solving the impossible problems presented to it by its conflict with the prohibitions both within and without.

To this picture there should be added the picture of society which, in its attitude and reactions towards socially constructive agencies on the one hand or socially destructive agencies on the other, is quite similar to that of man. The natural tendency is the same, for society to evolve into ever increasing complexities of integration quite similarly to the personality pattern of the individual man. And when for any reason the various avenues through which society as such gains its expression are closed we have similar results, the most tragic and catastrophic of which is war, during which society as a whole and its constituent elements, the individuals that compose it, are thrown back upon primitive, destructive ways of self-expression and as a result all of the things which it has been impossible to negotiate by the solution of the conflicts in accordance with socially acceptable ways have been destroyed. The



slate has been wiped clean, a new start is made, and a new series of integrations are built up which may be quite different from those which have been destroyed and which may result in the end in an actual advance beyond that which had been reached at the time that the destruction commenced.

This book does not undertake to discuss such social problems as war. The opportunity is merely taken at this point to draw the analogy between society and man, and, inasmuch as they are different aspects of life in the process of adjustment, to indicate that neither one of them can be considered out of relation with the other.

## Chapter VIII

### INSANITY AND CRIME

**WE** HAVE seen in the last chapter that there is of necessity a continuous conflict between the interests of the individual and the interests of the herd, but on the other hand the two are mutually intertwined in such ways that they can not be separated one from the other. The heading of this chapter, namely, Insanity and Crime, utilizes two words that have meaning only in the social sense. This has already been indicated but it is important to realize it afresh. Neither word gives us the slightest indication as to the sort of individual who is concerned. They merely refer to certain types of conduct which are considered against the interests of the group passively or actively, constituting the actors in each instance from a certain point of view as liabilities rather than as assets. In this case, of course, they are like any kind of disability which makes the person suffering therefrom of less service not only to himself but to others.



In recent years it has become perhaps more acutely appreciated than ever before that the way to the understanding of existing conditions is by an examination of their past history. Time has come to be veritably a fourth dimension and to be as necessary a component of our appreciation of events as any one of the other three. While it may not be possible sufficiently to understand an existing event by a study of its history to predict the future, nevertheless the past is essential to an understanding of the present. And so we must have some sort of idea of how these terms came to pass in order to appreciate their significance.

If we merely take up the question during the past century we are confronted with one of the outstanding events in the history of the interpretation of the criminal law, namely, the famous McNaghten case, which occurred in England in 1843. This case is familiar to all those who have anything to do with the criminal law, because it set the standards at that time for defining the difference between insanity and crime; and it defined that difference by stating that any person who knew the nature and the quality of the act that he did and knew that it was wrong was guilty of crime and a defense of insanity under these circumstances would not stand. And



this is the interpretation, with slight modifications, which has been followed ever since.

I do not purpose to go into a critical examination of the McNaghten case. That has been done very ably and *in extenso* many times.\* The point is that amongst a great number of different types of human conduct there should be selected out two groups, one of which was labeled "insane" and the other "criminal," and between which it became necessary very carefully to distinguish. This can only mean that acts which were appreciated from the social point of view as being socially undesirable or dangerous were coming to be looked at from another angle, namely, the individual. The McNaghten case was one of murder, and murder committed by anybody, whether he be sick or well, or, to use the designations at the head of this chapter, whether he be insane or criminal, is a type of human conduct that is undesirable, not to be tolerated and needs to be prevented. Now the only possible reason why there should be any question as to whether this particular act in the McNaghten case should be called the act of an insane man or the act of a criminal is because something has entered into the picture that

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\*S. Sheldon Glueck: *Mental Disorder and the Criminal Law*. Published by Little, Brown & Co., Boston, 1925.



is different from the hundred per cent. social point of view, and that something which has come into the picture is a consideration of the individual who performed the act. In other words, the actor is being considered as well as the act.

This consideration of the actor did not arise for the first time in the McNaghten case. I merely call attention to it in this connection because this is the best known and most dramatic incident of the past century where this distinction entered, if only by implication, and because the McNaghten interpretation still governs almost wholly the interpretation of the criminal statutes today when the question arises as to whether or not the defendant is insane.

If we will go back in the history of crime we will find that this culmination into a clear-cut distinction between act and actor which we have before us today has been a long time in progress. We can see this in two lines of development. In the first place, there has been a gradual lessening in the severity of punishment during the years. Torture is no longer indulged in. Boiling in oil, burning at the stake, mutilations of various sorts, are hardly thinkable in these days, much less a part of the penal repertoire. Coincidentally the number of crimes that are punishable by death has lessened



tremendously in a comparatively short space of time until now, to all intents and purposes, murder in the first degree is the only one that remains. Aside from these ways in which it is obvious that some regard for the individual has been gradually coming to the front although perhaps disguised under some other designation, we find that if we go back in history we will discover that the people who were regarded as criminals and punished as such have come to be a much more clearly defined group as certain other classes of individuals have slowly come to recognition as immune from this sort of treatment. For example, men who were manifestly mad, or, to use the old term, "beside themselves," who were raving maniacs, came to be exempted from punishment as criminals, as did young children and the profoundly mentally impaired idiot and imbecile. So that you will see that in spite of the reasons that have been assigned for these gradual changes, they can all be looked upon and interpreted as a gradual appreciation of the individuality of the actor rather than an exclusive consideration of the character of the act. To understand somewhat more in detail the significance of this distinction between act and actor as it exists



in our present-day practice, it will be perhaps worth while to consider some aspects of the question more in detail.

### 1. *Responsibility*

The concept of responsibility is a somewhat difficult one to deal with as it immediately raises the issue of determinism, that is, the question of the freedom of the will, which has been under discussion since the beginning of time and not only never has been settled to the satisfaction of all parties concerned but shows no signs of ever being so settled. It is obviously, therefore, impossible to base our discussion of responsibility upon this elusive concept, although it certainly can not be ignored. The idea of responsibility grew up in connection with the belief in freedom of choice when it was believed that a person in order to be responsible must of necessity have been able to have chosen differently, that as a matter of fact he elected to choose the evil way rather than the good way and that he did so intentionally and knowingly and that this state of mind therefore constituted what is termed in law a *mens rea* or guilty mind. It involves the idea of criminal intent and responsibility. If for



any reason the mind is so diseased that it is incapable of forming criminal intent, of understanding the nature and the quality of the act performed, to use the phraseology of the law, or of knowing that it is wrong, if, in other words, the person is insane within the meaning of the law, or so defective as to be an idiot, or is unconscious, he can not have a guilty mind and the absence of his ability to have a guilty mind means that he can not be held responsible and that if he is not responsible he is therefore not guilty. Stated this way the whole concept is simple enough and is easily understandable upon the basis of its original formulation at a time when there was no question about man's ability to do or to refrain from doing as he chose, and also, particularly, at a time when crime was equated with sin and when most of the things that we now call crimes were tried in ecclesiastical courts with representatives of the church presiding, and the offense was specified as an offense against God in much the same way as we now specify a criminal offense as an offense against the people.

Just as the legal tests for insanity have been said to be "simply obsolete medical theories crystallized into rules of law," so this interpretation of the concept of responsibility as I have set it forth above is



also based upon obsolete theories which have been carried forward from the past through the medium of the word "responsibility"; and although scientific thinking has long since passed beyond the point at which this concept arose, the word, as is so frequently the case, carries on by its subtle implications these same ideas, forming thus a bond between the past and the present.

My own idea of the meaning of the term "responsibility," as it has come to be used in practice today rather than as it has come to be thought about, is that it is functionally a legal fiction. As legal fictions have definite purposes, so has the fiction of responsibility, and it fulfills its purpose, as I see it, in this way: If an individual charged with crime, as the result of his trial and the eliciting of the evidence which shows the circumstances under which the forbidden act was committed and to some extent how those circumstances evolved, excites the sympathy and the pity of the jury, and if this possibility was foreseen by the defense so that they have suggested the explanation of insanity, then the jury will determine that the defendant was insane, and therefore irresponsible, and therefore innocent. If, on the other hand, the defendant, because of the nature of his act and of the various subtle influences



which his actual personal appearance and demeanor together with the testimony evokes, impresses the jury otherwise, namely, impresses them with a feeling of hostility, anger and hate, then in response to this emotional state they will find the defendant guilty. It is but another instance of human conduct being controlled by the emotions, shedding all of the dialectics of the court-room and going straight to its goal.

I have already intimated that while the fundamental causes of the conduct of the so-called insane and so-called criminal are the same, that there is a distinction, broadly speaking, between these two groups, based upon the sort of things which they do; and, as might perhaps be expected, I think it is true also that of those who are declared to be of unsound mind in court and those who are declared guilty of criminal conduct there are distinctions, distinctions which might not at first sight be exactly those which would be expected, but the distinctions in general, as I see them, are as follows.

The emotions of anger, hate, revenge, are stirred against those acts which arouse in the average man, the jury, tendencies to do the same sort of things. It is not difficult for anybody to understand how a person can commit certain of these



acts. For example, it is not difficult to understand, in the sense of being able to feel oneself into the personality of the offender, how he could have committed a theft, or an ordinary sexual delinquency, or an act of violence, against someone who had tremendously outraged him. All of these types of conduct lie very close to the desires of the average person, and it is because they lie close to the desires, because they are near the surface, because they are easily stirred to action, and because we have that within us which makes us feel that these things are wrong, and that we should not yield to them but should resist temptations of this character, that we resent their activation. Their activation means that we must bring to bear our efforts at controlling them very definitely and strenuously. This is an uncomfortable process and we resent the individual who thus adds to or increases our discomfort. And so it is understandable how the average individual will turn with hate against the person who, as it were, discovers the weak point in his armor and stirs in him those tendencies which he already has so much difficulty to keep in their proper place.

This same method of reasoning enables us to understand how the mentally sick individual is thought



of with sympathy rather than hate. It is because in these instances the conduct is so regressive in character that the average person can not feel himself into the personality of the offender. He finds the defendant engaged in this kind of conduct quite alien to him. The things that have been stirred as the result of mental disease lie very deeply buried in the layers of the personality and the average person has no serious difficulty with them, and so he can look unemotionally upon the problem presented by the defendant. He can, in other words, afford to sympathize with him.

There are certain acts which lie in the borderland between these two extremes and may as well result in one verdict as another. Homicide of a deeply regressive character would tend to be considered as the product of a distorted mind, but the acts that accompany the homicide, such as great mutilation of the body or cruelty indulged in by way of torturing the individual before he was killed, tend to result in arousing anger and hate so that there is a great deal of this latter element, even though the situation is manifestly from a scientific point of view that of a very seriously mentally ill person, the danger of a verdict of guilty is very great.



## 2. *Guilt*

I shall touch upon the question of guilt at this point only very briefly. I have already spoken in the previous paragraphs of a guilty mind, the *mens rea* of the lawyers, which is rather a different thing from what I intend to convey by the idea of guilt as here used. Guilt as it is now used as expressing an emotion has similar if not almost identical significance with the theological and ethical concepts of a guilty conscience. It is a state of mind which is the result not only of having done something which is conceived to be wrong, but of suffering in one's self-esteem as a result of having done so. In this respect its difference from the theological concept would be that it may not necessarily, therefore, include any idea of future retribution or suffering. If it differs from the ethical concept it is because the ethical concept holds out certain more or less formal standards of conduct which must be lived up to, whereas in the guilt with which we are interested the standard is a standard that is erected within ourselves and we feel as a result not that we have offended God or a moral law so much as that we have offended ourselves, not that we will

suffer retribution in the hereafter so much as that it is essential for our peace of mind that we should get right with ourselves. This sense of guilt is the result of a stamping into the personality pattern of the mores of the herd, the traditions, beliefs, superstitions, and what not,—the meanings of life as they have been formulated in these various cultural forms by those who interpret the social environment to the child; and it matters not where he is born or raised, he must have certain standards that have grown up within him as a result of this process. It is the offending of these standards that gives the sense of guilt.

We therefore have guilt used in two ways: the "guilty mind" of the lawyers, as explained above, and the sense of guilt of the offender, as just set forth. These distinctions must be borne in mind when it comes to future discussions.

### 3. *Punishment*

Punishment I wish to mention at this place only briefly, because I shall discuss it later in a separate chapter. It is the natural consequence of the determination of responsibility, which means a guilty mind in the legal sense and therefore logically leads



to punishment as a result. Punishment here is of course punishment administered by society rather than by an individual. Just as crimes have ceased to be sins committed against God but have become wrongful acts which are committed against the people, so in the evolution of punishment there has been an evolution from the administration of punishment by those who are immediately injured to the State and the representatives thereof. So that today a man is presumably tried in a situation free from prejudice, where calm and judicial inquiry can be carried out undisturbed and where a purely judicial attitude toward his conduct can be brought into action and he can be judged accordingly. In fact no one is permitted to have anything to do with the case, as judge, prosecutor or juror, who has had any personal contact with the defendant, who has any personal interest that is involved, and, it practically amounts to this, who has any personal knowledge of any sort about the alleged crime.

Punishment has therefore been rather naturally, when we consider the make-up of human beings, the result of this logical sequence of discovering that the individual had a guilty mind, was therefore responsible and did this particularly vicious thing with a full knowledge of what he was doing and

with the intent of doing it. Punishment is a *quid pro quo* for such conduct, it is a payment in kind, an effort to make the individual suffer to the extent that he has made others suffer; and it is only a later evolution that has somewhat euphemistically enunciated the theory that punishment was to deter others from like acts. The barest acquaintance with what actually takes place in the courtroom and in the prisons would make it perfectly clear to the unprejudiced observer that punishment is still meted out on the Old Testament principle of "An eye for an eye, a tooth for a tooth," that anything in the way of prevention that is accomplished is incidental rather than fundamental. However, more of this in a later chapter.



## Chapter IX

### THE SEVEN DEADLY SINS

**T**HE new understanding of man which was ushered in with the beginning of the century and which is represented more particularly by psychoanalysis, is based upon a number of concepts that are of outstanding significance if one wishes to penetrate this exceedingly complicated region. One of the most important of these concepts is the one which allies the events in this field with those that occur in natural science, for it must be remembered that psychology for a long time for all practical purposes stood outside of the realm of natural science. Man was divine in origin, free of will, not subject to the laws of the material universe, and so psychology was for a long time pretty thoroughly enmeshed with metaphysics and philosophy. But natural science came upon the hypothesis of cause and effect, and this hypothesis implies that for every event there must have been a preceding cause, or,

to put it differently, that each event is contained as it were in the events immediately preceding, or, to put it still more generally, that the past contains the explanation of the present.

With the application of the theory of determinism in the psychological sphere and with the acceptance of the hypothesis of cause and effect in the realm of psychology, psychology emerged from its philosophical entanglements and became a natural science, a science that dealt with the conduct of living beings. And when finally Professor Freud actually applied the concept that the explanation for present events can be discovered in their past history to actual cases, and endeavored to unravel the symptoms of mental illness by a species of analysis which disclosed the material of which they were constructed, he not only demonstrated that psychology was a science, a fact which had long since been disputed, but he introduced into this science the hypothesis of psychogenesis, namely, that illnesses may be due to psychological causes, and further than this he for the first time gave meaning to mental events, to mental symptoms, while before the observer had been satisfied with stopping at mere description.



The significance of this change in the way of looking at psychological events must be exceedingly difficult to appreciate for anyone who has not had the experience of dealing with this material in accordance with the methods of the academic psychology of the last century. Psychology at the latter part of this period was emerging from its alliance with philosophy and attempting to become a natural science with the objective of being able to measure its phenomena and express its results in mathematical terms. These methods were naturally applied to the study of the most accessible reactions, such as sensations and perceptions, and some success appeared to follow, a success which reached its peak perhaps in the perfection of Fechner's Law. These methods of procedure, however, while they had academic interest and resulted in the gathering of a lot of detailed information of one sort and another, particularly relating to the time of neuromuscular and various other simple psychological performances, resulted in a psychology that was completely dehumanized. No one would have recognized from the material thus gathered that its source was a human being; there was not the slightest relationship between human beings as we know them, with their



strivings and hopes and ambitions and their aggressiveness and hates and loves and all the rest of it, and this sterile material that came from the psychological laboratories; and it was not until these human beings were appreciated for what we know them to be in our everyday experience that we came to see the futility of such methods as were being pursued for throwing any explanatory light upon the significance of their reactions.

Without tracing the historical factors that entered into this transition from the laboratory psychology of the nineteenth century to the humanized psychology of the present day, it is sufficient to say that probably no single factor played a more important rôle than this factor of understanding the present by interpreting it in terms of the past, and no single individual has been so responsible for this change as Professor Freud.

When we are committed to the understanding of psychological events as interpreted in terms of the past, or, in other words, their causes, and begin to try to understand human beings from this point of view, we get an entirely different picture. Not only that, but we approach our problems in an entirely different way. No longer is it possible to



consider any psychological event as meaningless simply because, for the moment at any rate, it may not have any meaning for us, the observers. This is practically what Professor Freud did with his earlier cases. Instead of assuming that their symptoms were just nonsense or crazy or meaningless, he assumed that they must have an adequate cause, and the moment this cause was sought for and found that moment an immense illumination of the personality of the patient took place. But this is an old story that has been repeatedly told and I will not pause longer to discuss its details but will move forward to more significant points at issue.

We have already concluded in the previous pages that mental disorders, in which term it will now be seen we are including criminal behavior—not because the two are identical but because for the most part, at any rate, they arise by similar mechanisms and can certainly only be understood by using the same methods of approach, although for practical and particularly for social purposes it may be well worth while to make distinctions,—are all of them phenomena that are regressive in nature, in other words, that the individual faced by a difficulty which he can not surmount tends to drop back to a



method of solution which had some value in the past. This being so, it will be seen what very great significance the past has for the understanding of the symptomatology of psychological disorders, how in fact it would be impossible to understand them without its consideration and how much light may be expected to be thrown upon them if it is adequately studied.

We have had a hint of this fact already in considering the three great crimes that have followed man through the hundreds of thousands of years of his evolution from his animal forbears—cannibalism, incest and murder—and if we were to look for a similar category in which to include average criminal conduct we might refer to the seven deadly sins as they have come down to us from the past. They are: pride, covetousness, lust, anger, gluttony, envy and sloth. We will see at once that these various departures from the conventional standards of morality are still with us in full force and if we are honest with ourselves we must admit that none of these deadly sins is so far removed from our own individual nature that it is inconceivable that under certain circumstances we might not be guilty of it. In fact such so-called sins, because here the desig-



nation is somewhat archaic—these are considered sins against God and not against a code of ethics or against man—as pride, anger, envy, represent reactions which I think most of us must confess are quite common to our personal experience.

Does this mean in the language of the old theology that man is essentially sinful, that he was born in sin and that fundamentally he is bad? It means nothing of the sort. It does mean, however, a number of things which are of fundamental importance in understanding the criminal mind. It means that man in his upward progress from the beast has had to fight his way against overwhelming odds. The only advantage which he has had has been the development of his mind. Physically he would have been relatively weak and impotent if he had not had the assistance of his intelligence. What possible chance would he have had of surviving as against such a magnificent beast as the sabre-tooth tiger? He could win in a conflict with such power only by bringing in intelligence, cunning, inventiveness, and all of the things which we know have made him superior through the ages. It has been a fight from the beginning, a fight for life against the powers of darkness and death, and it



has been a bloody fight, a fight of tooth and claw, and one which has left its traces never to be erased. The innate morality or lack of morality of such a conflict is hardly open for discussion because the question of rightness or wrongness, in the old theological sense at least, can not possibly enter. The point is that if man had not engaged in this conflict and had not won we would not be here to discuss it.

As man gradually won the fight against the elements, animate and inanimate alike, his tactics necessarily changed to meet the new conditions which his success gradually brought about. He became successively less cruel, less blood-thirsty, less murderous, in his antagonisms, and also progressively more social, more cooperative, more creative in his tendencies. And thus in accordance with these mechanisms civilization was gradually born and has proceeded to its present estate, but man has never laid aside either the tools or the possibilities of his animality and from time to time we have astounding and terrifying evidence of this fact. Nothing could be more convincing than the epidemic of witchcraft which raged throughout the civilized world and resulted in hundreds of thousands of executions carried out in the most cruel manner and



preceded by torture, nor the recent world war, which is said to have been responsible for forty million deaths. And so underneath this highly civilized, highly socialized, moral individual that we term "man" we see these sleeping forces of destruction which he has carried along with him through the ages and without which he could never have survived in his far distant past.

What, it may be queried, is the fate of these varied and destructive forces in modern civilization, where they have no place and where if one of them outcrops in the behavior of some single individual society takes due notice thereof, calls him a criminal and locks him up. Their fate, to use the psychoanalytic terminology, is the fate of repression. These forces are kept down, locked up, confined, where they can not be seen. They are reduced to the necessity of living in our unconscious. Their existence is not even admitted, much less is it permitted that they be acknowledged and acted upon. Is their possession, therefore, in essence a total liability? By no means. The energy which they represent has not been lost. It is the problem of advancing civilization to recapture this energy, which had previously been expressed in these primitive ways, and to turn it into channels of social



utility, and by so doing the destructive and aggressive elements in our natures instead of leading to violence and bloodshed are directed to the destruction of impediments to progress, to the tearing down of things which are evil and which impair spiritual development. And so these forces are turned from their original purpose and finally made to serve the ends of an advancing culture.

It must not be assumed, however, that because civilization can only take place if these primitive, aggressive and destructive tendencies are turned to social ends that this "transvaluation of values" always takes place in a smooth and orderly fashion. What any individual man does in any particular set of circumstances is dependent not alone upon the circumstances but also upon the sort of man he is, which means from the point of view from which we are now considering matters that it depends upon the nature and the strength of his instinctive drives and the degree and extent to which he has been able to control them and to redirect them into constructive channels in accordance with the best interests of then existing cultural requirements. Thus it will be seen that in the case of any individual man who fails in this transmutation of the baser elements of his character into the pure gold of high purposes,



his failure will necessarily be expressed in terms of past experience. If he is frustrated in his efforts at advance, if success and happiness escape him and he turns from the upward path that leads to all those things upon which society has set its stamp of approval, he can necessarily turn in only one direction and that is in the direction of those experiences which have served him so well at some time in his historical past. He will revert, in other words, to the type of conduct which at one time either in his personal history or in the history of his race has been effective. And thus it will be seen in what a real sense this past figures in his present and what was meant at the beginning of this chapter when the statement was made that all symptoms of crime were regressive.

One additional factor needs to be considered here to make this picture sufficiently complete for our purposes. As has been implied in what has already been said, the designations "good" and "bad" are not absolutistic but are functional in nature. Our simple illustration may be used again from the domain of energy distribution. Electrical energy is neither good nor bad, but it may be used either for good or for bad purposes. It may be turned into the wires that feed the lights that illuminate a city, or



it may be fed into the wire that leads to the electric chair for the purpose of destroying a life. It is the same with psychic energy. It may exhibit itself in constructive, socially useful activities which lead to progress and to satisfaction and happiness, or, if the individual is frustrated in his efforts to use his energies in these directions then regression takes place and the energy is expressed in forms molded in the past. These forms at the time that they were created for the purposes of the individual were themselves constructive, forward-reaching and socially valuable, but the time has passed when the energy of the individual can be used in these ways and produce results of this nature. Mankind never stands still but either goes forward or backward, and when energy has regressed to earlier methods of utilization these earlier methods are out of touch with the times. We speak of them as more primitive, as infantile, or even as archaic. They serve no useful purpose in the present. They result in ostracizing the individual who uses them, in separating him from his fellows as different and as tending therefore to the disruption of that community of purpose which is at the basis of social organization. In other words, such methods though they may once have been good have now become bad. The differ-



ence is a functional one, and it is a difference which is brought about by the lapse of time. Thus can we see the enormous significance of this fourth dimension, time, as it is expressed at the psychological level.

This distinction which I have just made between good and bad not only refers to this particular antinomy. All psychological functions express themselves according to this scheme of what is known as ambivalence. In other words, we speak of the *bipolarity* of all psychological functions. Things are either good or bad, and good and bad stand in closer relation to each other, though they be opposites, than any other intermediate terms. It is the same with love and hate and all other modalities of human reaction. We find always this everlasting swing between polar opposites, as has been illustrated above as between good and bad. By a process of what has been called "logical fate," it then becomes necessary to realize that those qualities which are possessed by the so-called insane or the so-called criminal are the result of reactions which are dislocated in point of time, and that these particular reactions do not designate the individuals who exhibit them as essentially or fundamentally different from so-called normal individuals, at least



in their possibilities. Normal individuals have all the possibilities of the psychoses, the psychotic type of reaction being merely the result of a short-circuiting of psychic energies under the influence of a damming up of the avenues of expression, which we term "frustration." To take a very practical illustration, let us think of the individual who has led a more or less carefree life, doing as he chose and going where he wished and when he wanted to. Suppose such an individual commits a serious crime, homicide, and is sent to prison, one of the old-fashioned prisons of a half century ago, for the period of his natural life. And suppose this confinement is to all intents and purposes solitary, that if he is permitted to work among his fellows he is not permitted to speak to them, that he can not so much as raise his voice in a whisper in the dining hall, that he is practically solitary and alone like a ghost stalking among his fellows but having no communion with them. Life is robbed of every purpose, of every satisfaction, of every possibility of happiness. None of his normal social instincts are capable of being satisfied, and all of his natural tendencies are repressed to the point of frustration. If this procedure could be one hundred per cent. complete there is no doubt in my mind that it would



mean death, but short of that it means quite regularly a considerable abridgement of life and quite frequently a definite psychotic reaction. Lesser degrees of the same types of causes produce lesser degrees of the same kinds of effects.

We see, then, that man in his forward progress literally drags his past along with him, but that perhaps this past, badly as it has been indicted in the previous paragraphs, has some virtues after all. I have already stated that civilization is only possible because the energies which had previously been expended by primitive man in fighting tooth and claw for his life have been recaptured because of his defensive and offensive alliance with his fellows, which had made him superior to his enemies, and turned into socially constructive channels. If these primitive instincts, therefore, did not continue in some form their energies, even by this roundabout method, would not be available. Like the tail of the kite, therefore, they afford a balancing, steady-ing principle in the upward flight. From them comes a steady flow of energy which can be used in this forward propulsion, and to the extent with which man is endowed with energy is the possibility of his accomplishments.

Man, therefore, is the creature of a destiny com-



pounded of that which is without and that which is within, his external and his internal environment. The interplay of forces between these two, the swing of emotions between primitive and spiritual, the balances that are struck, the compromises that are reached and the solutions that are attained, are the measures by which we know him. The criminal represents only one of those slightly aberrant forms of adjustment permitting the outcropping of the past in forms of reaction which because they are out of time are regarded as abnormal, or anti-social, or what not, as the case may be and the exigencies of the situation may dictate. The machinery of correction is automatically thrown into action as soon as such symptoms manifest themselves, and within the individual we find counteracting tendencies such as the sense of guilt and the need for punishment manifesting themselves or we find in the community an antagonism which is calculated to destroy the host of this particular socially destructive type of reaction. Wherever in life we find disturbances of equilibrium we find compensatory disturbances in the opposite direction tending to bring equilibrium about. And so here we find these disturbances at the social level of man's adjustment are immediately met by personal and social



mechanisms for correcting them, and it is the purpose, or should be, of the whole science of criminology to endeavor to direct these corrective influences in the channel that will produce the maximum of benefit for all interests concerned and the minimum of damage.

## Chapter X

### THE WORLD WITHIN\*

**I**T WOULD seem that at this point in our discussion it would be worth while to undertake to gather the ideas which have been opened up from the several points of view which we have taken thus far, to make an attempt as it were to envisage man briefly from the point of view of the interest which we have in him at the moment, namely, as an offender.

The integrating thought that it occurs to me may best be utilized to group all these various points of view together is the thought that in contrast to the last century we are in this century living in a world of ideas. In the latter part of the nineteenth century the physicist, with his feet firmly planted on

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\*The substance of this chapter consists of an after-dinner speech that was made to the Section on Child Delinquency of the White House Conference on Child Health and Protection and is printed in the Report of that Section by the Century Company.



matter, believed, and so expressed himself, that the major problems of the universe had been solved and that it remained only to fill in some of the details. Since that time the whole foundation of his universe has been swept away. The X-ray and radium have destroyed his concept of matter, and he is now even doubtful of his nineteenth century ideas of cause and effect, one of his most firmly founded and deeply entrenched positions, and is talking about the principle of indeterminacy.

I can illustrate what I mean when I say that we are living in a world of ideas by citing again very briefly certain illustrations pertinent to the matter in hand. Years ago, in the Middle Ages, what we now call crimes were thought of as sins against God, and they were tried by the church in an ecclesiastical court. Later on when the church came to lose much of its control over political and secular matters the ideas regarding these various forms of conduct also changed and these crimes were thought of as offenses against the State and were tried therefore in civil courts administered by officers of the State. Now in these latter days crime itself is coming to be regarded as an abstract concept no longer having any material existence. It is only criminals that



exist. The emphasis has been shifted from the act to the actor and the individual delinquent is the object of attention, and instead of his acts being thought of as sins or as crimes—they are still thought of as anti-social, it is true, but they are thought of as maladjustments at the level between the individual and society; and the ideal is correspondingly coming to be an effort not to punish an offender but to salvage a maladjusted individual, both for his own sake and for the sake of the society of which he is a part.

While this is all very true and is historically illuminating, it is important to relate these changed ways of thinking to the scientific developments of recent years. One of the most important and significant things that happens in the course of science it is always well to bear in mind. When we go to scientific meetings and hear the mass of detailed information which various thinkers and workers give out as the result of their experiences, we might easily become confused and discouraged and feel that it was never going to be possible to master a subject so intricate and so complex. But let us remember that progress has always taken place first by the gathering of facts, and facts are always dis-



crete and multitudinous, but after the process of gathering facts has gone on for a certain period then somehow with the aid of some brilliant thinker these facts fall into molds which we call laws. I have only to recall that a few hundred years ago the falling of a pebble, the movement of the tides and the maintenance of the planets in their orbits were, along with millions of other facts of observation, discrete and disconnected until Newton's genius saw the common element in all and formulated the law of gravity, the common mold into which they all at once were seen to fit, and out of what had previously been an amazing complexity there came as a result of this law an equally amazing simplicity. Now we must believe that that is what is actually going on at the present time. The facts are being accumulated, and here and there we are beginning to see indications that these facts may, like the facts of gravity, be measurable by a common yardstick.

What has science to offer somewhat more specifically along these lines so that we may feel that we are in a territory where at least we can hope to see the facts of mind emerge from their present confusion into a state of orderliness?

I am reminded of a theory of the origin of the blood. Millions and millions of years ago, so runs the theory, the unicellular organism out of which all living things have by some species of magic evolved imprisoned within its cell walls a tiny droplet of sea water, and this sea water, holding various salts in solution and perhaps dissolving others that it found in the cell, became a circulating medium for the transportation of chemical substances from one portion of the cell to another; and out of this simple beginning there has developed that infinitely complex and wonderfully efficient circulatory system made up of so many different parts about which we know and never cease to wonder. It seems hard to understand how such extensive changes have occurred but it is not more difficult to understand the development of the circulatory system in this way than it is to understand the evolution of any of the organ systems from the simple cell. We are reminded of the fact in this connection that this process is occurring in abbreviated form every day when a human ovum is fertilized.

Now it is my thesis that the distinction between the organism and the environment is a purely arti-



ficial one, one manufactured for convenience purposes only and one maintained by words rather than by factual evidence. If we believe in the theory of evolution one hundred per cent. we must realize that in the beginning and somehow, some way, when life started on its course it was born out of inorganic matter; and even today if we will study the conditions of the environment as related to the organism we will find strong evidence of this supposition by discovering that the environment is not only *a* favorable place in which the organism may grow and develop, but that any aspect of the environment that we may study is not only favorable for the support of life but is *the most* favorable environment conceivable for the support of life, "a fit organism inhabits a fit environment." \* So that

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\*L. J. Henderson: *The Fitness of the Environment*. The Macmillan Co., New York, 1913.

In this book Henderson discusses the properties of water, carbon dioxide, the ocean, and the three chemical elements, carbon, hydrogen, and oxygen. As an example of the nature of this discussion I will give the list of properties of water considered. They are: *a*, specific heat; *b*, freezing point; *c*, latent heat of fusion; *d*, latent heat of vaporization; *e*, vapor tension; *f*, thermal conductivity; *g*, expansion before freezing; *h*, expansion in freezing; *i*, solvent power; *j*, dielectric constant; *k*, ionizing power; *l*, surface tension. He ends his chapter on water with the statement that "the following properties appear to be extraordinarily, often uniquely, suited to a mechanism which must be complex, durable, and dependent upon a constant metabolism: heat capacity, heat conductivity, expansion on cooling near the freezing



we have a right to assume from such facts that environment and organism are only two aspects of a given phenomenon, the phenomenon as I would describe it being the nucleation of certain forces at certain places and then the apparent development

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point, density of ice, heat of fusion, heat of vaporization, vapor tension, freezing point, solvent power, dielectric constant and ionizing power, and surface tension." He concludes the chapter thus: "In truth, and Darwinian fitness is a perfectly reciprocal relationship. In the world of modern science a fit organism inhabits a fit environment." In fact his conclusion amounts to this: That all of the properties of matter investigated, for all practical purposes, are of maximum significance for life. His final conclusions are these:

"I. The fitness of the environment is one part of a reciprocal relationship of which the fitness of the organism is the other. This relationship is completely and perfectly reciprocal; the one fitness is not less important than the other, nor less invariably a constituent of a particular case of biological fitness; it is not less frequently evident in the characteristics of water, carbonic acid, and the compounds of carbon, hydrogen, and oxygen than is fitness from adaptation in the characteristic of the organism.

"II. The fitness of the environment results from characteristics which constitute a series of maxima—unique or nearly unique properties of water, carbonic acid, the compounds of carbon, hydrogen, and oxygen and the ocean—so numerous, so varied, so nearly complete among all things which are concerned in the problem that together they form certainly the greatest possible fitness. No other environment consisting of primary constituents made up of other known elements, or lacking water and carbonic acid, could possess a like number of fit characteristics or such highly fit characteristics, or in any manner such great fitness to promote complexity, durability, and active metabolism in the organic mechanism which we call life.

"It must not be forgotten that the possibility of such conclusions depends upon the universal character of physics and chemistry. Out of the properties of universal matter and the characteristics of universal energy has arisen mechanism, as the expression of physico-chemical activity and the instrument of physico-chemical performance. Given matter, energy, and the resulting necessity that life shall be a mechanism, the conclusion follows that the atmosphere of solid bodies does actually provide the best of all environments for life."



and evolution of these forces at these places on their own account.

In order that we may understand the significance of this point of view and these facts, the same principle may be illustrated in another way. Every individual is born into the world, not only the world of things and events but the world of individuals that surrounds him and the world of culture which these individuals have builded up. Everyone in passing through this life makes his personal contribution for good or ill to this cultural mass; and the institutions of culture are, I believe, in every way comparable to the organs of the body. They are, like those organs, responses to the problems that life has presented as it has unfolded, and they have grown up as more or less successful attempts at the solution of these problems. And so when the child is born into the world he is born into this world of culture. Now more than this and of the highest significance is the fact that inasmuch as this culture is of hundreds of thousands of years of growth and the child has only a few insignificant years of life to live on this planet, there must be here, as we find in the body, an exceeding speeding up of the processes which have in their origin and growth taken



so long, and that is what as a matter of fact we do find. We find that the cultural environment does not have to be learned by the child without assistance but that it is interpreted to the child first by its parents and next by all those individuals throughout its life who stand in the parental relationship to it. In this way there is built up within the child the standards of the social milieu into which it is born, lives and has its being. It is by the process of what the psychoanalysts call "introjection" that this is accomplished, but in order to preserve the analogy with the blood I should prefer to say that it is by a process of inclusion. So that here, at the other end, as it were, of the development of the individual, millions of years after the origin of life at a time when man, the social animal, has found his way to existence, we see that the bonds that hold him together with his fellows are made up of this intangible relationship one to another which is born of this process of inclusion. The mind is therefore, like the blood, an inclusion of the environment, and, like the blood, it builds up its structures and develops its functions in accordance with the problems that are presented to it. To use a psychological terminology, the mind is a stamped-in inclusion, an



inclusion which has become set in a more or less common mold, or, to use a biological term, it is an inclusion which has become more or less structuralized in its different parts. Mind, then, would represent the accumulated wisdom of millions of years of experience, of trial and error, of success and failure, and of the preservation of those reactions at the psychological and the psycho-social levels which have had survival value. The fact that the cement substance which holds people together is of this tenuous and intangible nature which has been described makes it none the less real. "What is more real than a wish in the heart of man?"

The conclusion from all this which I wish to bring to conscious realization is that in the course of evolution and development the accumulation of facts is followed by the formulation of laws, and that, further, we are at the present time at a tremendously important and significant stage in the development of our ideas about mental phenomena; and I conceive that that stage is no more nor less than the stage of the beginning realization that the same laws will be found to govern in the sphere of mind that govern in the sphere of body, and in turn,



even, that govern in the sphere of the inorganic world. If we have been following the recent developments in science in other fields we shall have noted that this is what is occurring elsewhere. It can not be that the phenomena of mind are to stand apart and be isolated from the other realms of science. Psychology is a biological science, although it has only come recently to be so recognized, and as such it must in the last analysis fit into the schemes of all the other sciences. And so, although our field may look tremendously complex, too complex in fact for us ever to expect to be able to master it, still if the principles above laid down are true we have a right to hope that out of this chaotic condition will issue laws that will result in such an amazing simplification that the problems of today will drop into common molds of law and their solution will thus be rendered infinitely easier. To be sure, when this day comes and the laws have been formulated and all of our problems which we are now struggling with have been solved, we will be no nearer the final goal than we are now; in fact, we shall in all probability be further removed, for the solution of a problem has always raised a hundred



problems in its place. "The greater the sphere of our knowledge, the larger is the surface of its contact with the infinity of our ignorance." But such a probability need not deter us, for after all that is in the direction of progress, that is development, that is evolution, that is civilization.

## Chapter XI

### PUNISHMENT

**H**AVING proceeded thus far with an outlining of the fundamental psychological principles that need to be understood in order to appreciate the meaning of anti-social conduct, both as regards the individual and society, it is important now to discuss the reaction which this kind of conduct has produced, in order that it may be further illuminated. This reaction can briefly be termed the reaction of punishment although, as we shall see, this is comparatively a modern designation.

In order to understand the present situation it is necessary again to recall briefly the historical developments. In the first place, there is very good reason for believing that aggressive conduct fundamentally and primarily and originally called out corresponding aggressive or retaliatory conduct in return: that if a given individual or group was injured in any way by the conduct of another indi-



vidual or group the emotion which we may term vengeance was stirred up, and retaliatory measures were taken and injury was inflicted sufficient to satisfy the feeling of vengeance which had been aroused. In this early stage of development it will be noted that there is no relationship between the object upon which the vengeance wreaks itself and the person or persons who were originally responsible for the aggressive acts, that there is here merely a relation between an emotional imbalance created by an aggressive act which has produced pain and a retaliatory act which produces sufficient satisfaction to neutralize this feeling of pain. We find the remnants of this sort of situation in the feuds as they occur in some of our States. When a member of the Smith family kills a member of the Jones family, the Jones family retaliates by killing a member of the Smith family. It is true that here we have already advanced to a considerable stage of differentiation. The aggression of the Smith family is revenged by an act addressed against the Smith family, but, on the other hand, it is not necessary that the particular individual in the Smith family who did the killing should be killed in return. It is necessary only that somebody should be killed. There is no specific relation be-



tween what we would call today the guilty individual and the act of vengeance. Even such a comparatively short time ago as during the Middle Ages inanimate objects that had injured people were destroyed, so that the cart-wheel that ran over a man might be burned for having done so. Here there is a specific relation between that which does the damage and the retaliatory act, but it is based upon an infantile attitude toward an inanimate object. Animals during this same period were from time to time tried, sometimes excommunicated, sometimes executed. The main fact that stands out from such illustrations is that the relation between the individual who performed the act of aggression which led to the disturbance of emotion or equilibrium, and the retaliatory act of vengeance, was originally an indistinct, vague or non-existent relationship, and that the present-day punishment addressed against the individual who actually did the thing which we call a crime is a comparatively late development. This is a conclusion which no doubt will be rather astonishing to most people who read it for the first time, but it is quite in harmony with the position taken thus far that the outstanding function of the mind is to attempt to bring about a state of equilibrium. Its tendency is to equalize



stresses, to release tensions, and to move in the direction of those harmonious adjustments which give one a sense of repose. So that the first effect of a disturbance of equilibrium is not an intellectualistic effort to discover the source of the disturbance and to do something intelligent about it, but is, on the contrary, to relieve the disturbance by a reaction which can be brought to pass as rapidly and as effectively as possible. So that in the early stages of development this is exactly what happened, and it has taken many thousands of years slowly to develop a specific relationship between the offender and the act of retaliation, vengeance or punishment.

It is essential to understand these fundamental emotional mechanisms to discuss at all intelligently what may adequately be expected to be accomplished by punishment now or what may be hoped for in the future, in fact to understand the significance of punishment at all. From this point of view it will be seen that punishment is really a present way of expressing what is at bottom vengeance and retaliation. It is the Mosaic law of an eye for an eye, a tooth for a tooth, which has been modified by intellectualistic processes, or what we call "rationalizations," so that we now believe these various acts of punishment to be inflicted for beneficent



reasons, namely, for the protection of society and for the reformation of the criminal.

If we were to examine in detail these theories upon which punishment is now justified, namely, the protection of society and the reformation of the individual, we would find many reasons for doubting their intrinsic honesty. Prisons for the most part are literally horrible places in which the prisoner can find little or no self-expression, few or none of the satisfactions of life, and can be expected to remain continuously uncomfortable if not in actual suffering throughout his stay, while the rules which have governed the administration of prisons have been calculated to the same ends, namely, to make the prisoner suffer. He has been placed at hard labor of the most monotonous character. He has been refused the privilege of even speaking to another human being, and in some instances he has been kept for prolonged periods of time in solitary confinement where he not only could not speak to anyone else but where he could not see anyone else, except perhaps his jailer. These are all methods of frustration which, applied to the prisoner, have made it impossible for him to gain any kind of self-expression and which have therefore in the end undoubtedly been responsible for much of the psy-



chotic reactions among prisoners which are so well known, for much of their reactions of hate and vengeance against those who are in immediate authority over them, and, I feel quite sure, have had much to do with the actual shortening of their lives. As for the protection of society, the most that can be said with any degree of certainty is that while the prisoner is locked up in prison society on the outside is free from his depredations, or at least comparatively free, for it can advantage no social group to maintain within itself a center where hate and cruelty rule, even though such a center be surrounded by stone walls. The influences must necessarily escape these boundaries, and it is by no means unimportant that the men who give over their lives to the care of prisoners in such places have their aggressive and sadistic tendencies stimulated so that they may become much less desirable members of their community. As for the ultimate effect upon society of such types of prisons, one may refer to recent efforts to discover what happens to the discharged prisoner. Confronted by studies of this sort one feels that any reformatory influence which the prisons may claim needs to be pretty carefully examined before it is accepted as fact, and one feels also that a great amount of the claims that have



been made for reformation have been founded upon all too inadequate evidence.\*

I have called attention to the fact that the criminological theory of so-called punishment is that it protects society and has a reforming effect upon the criminal. In the days of the Pennsylvania Prison System, which was a system which required the solitary confinement of the prisoner in a separate cell, the theory of the religiously minded gentlemen who evolved this plan was that the prisoner confined in this way, free from distractions of all kinds and descriptions, would have time and opportunity and would of necessity be forced to meditate upon his sins, and that the result of this meditation would be good for his soul, that he would realize his wickedness and that he would have an opportunity to commune with God and to save himself from damnation hereafter. That was the type of reasoning, which one perhaps all too quickly thinks of in terms of pure hypocrisy. It is probably true that these gentlemen religiously minded as they were were

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\*Sheldon Glueck and Eleanor T. Glueck: 500 Criminal Careers. Published by Alfred A. Knopf, New York, 1930.

If the results which Professor Glueck has discovered by an examination of the output of the reformatory are as discouraging as the conclusions of this book indicate, one can imagine the results from a prison where no comparable attempt at reformation is carried out.



nevertheless giving expression to those aggressive instincts within themselves which led to such cruel and inhuman methods of treating their fellows; but nevertheless beneath even such manifestations, as beneath the theory that holds that we protect society and reform the criminal by punishment, can be seen the desire that such ends might be brought to pass, and although the methods were born in ignorance and perhaps carried out with a large component of hate toward the offender, still because of the fact that two opposing desires may occupy the field at the same time we must not lose sight of the other aspect of the situation and must realize that it is perhaps because of this constructive component that matters have not remained at a standstill. The prisons, as bad as they are, are better than they used to be, and those that are being built at the present day are trying to improve upon those already existing.

We can see from what I have said thus far how complex is the group of motives that are necessarily brought to bear upon any particular anti-social aggression. There is the reactive aggression of the individuals immediately injured, the reactive aggression of society as represented by the whole system of penology, the further activation of the



anti-social tendencies of the offenders by these reactions of vengeance, and the injury of the representatives of society thereby. We see, therefore, a network of hate and vengeance spreading itself out in all directions and tending to ensnare all those who come within its meshes. But that is not all. The criminal himself, unless he be an unusual and I believe rare specimen, has his own sense of guilt because his own standards, such as he has, have been acquired from the social group and these he must have offended more or less by his anti-social act, and so he, in order to gain emotional equilibrium, feels the need for punishment and may actually take steps to see that this punishment is inflicted upon him. The same thing may be said perhaps for all those who react in vengeance towards him. Their reactions produce, in many at least, this same feeling of guilt and need for punishment, so that we have actions and reactions taking place in accordance with this pattern. Then on the other hand there is the opposite or ambivalent creative tendency which I have already referred to and which, while not so obvious and evident, quietly, continuously, works to leaven the whole situation, to bring order, intelligence, efficiency out of this welter of the emotions, to help to readjust and rehabilitate the



offender and through returning him to society as a useful member to thus assist society to become more effective by improving the quality of its constituent units.

If I have made myself clear thus far it would seem that the pathway along which future development should take its course is fairly clearly outlined. The everlasting meeting of aggression by counter aggression is a losing process. A Smith kills a Jones, a Jones kills a Smith. Back and forth the process goes until the Smith family and the Jones family are practically annihilated. If anything comes out of such a method it comes after a long time and at terrific cost. It would seem that we ought to be able to develop a pathway that would lead more directly to constructive results, now at least that we know the factors that are involved, or at least know them sufficiently to avoid the more serious mistakes. It would seem that we ought no longer to hide behind the theory of punishment, nor even the term itself, that we should give up this effort to bend others to our will by making them suffer if they do not obey. We have long since abandoned such methods in our educational system, as applied to children particularly, and have come to believe that character can unfold at its best when it has oppor-



tunity for expression and when it is attracted by love rather than when it is driven by hate. This does not mean, of course, that everybody should do exactly as they please from the moment they are born, that there should be no restrictions, no prohibitions, but it does mean that restrictions and prohibitions must be based upon a different understanding of human beings and their possibilities, and that punishment instead of being inflicted in an aggressive spirit of retaliation and consisting in the positive infliction of pain would probably be quite as adequate if it were intelligently utilized purely for the purpose of undertaking to modify human behavior along certain lines that were socially acceptable by mutual agreement, and that if instead of inflicting pain it took the form rather of withdrawing certain privileges which the behavior of the individual indicated that he was not capable of utilizing without abusing. Confinement in an institution, therefore, would not be for the purpose of punishment but would be primarily for the purpose of withdrawing an individual from the social group whose influence there was destructive, and of having an opportunity to modify his reaction patterns so that he might go back into the group again, if such a modification were possible, and if



such a modification were not possible of continuing his residence in the institution under as comfortable circumstances as possible with as large an opportunity for self-expression as could be safely and economically permitted.

The plan which I have advocated of doing away with punishment, even with the use of the term, is not so radical or far fetched as it might seem. The movement for the more humane care of the so-called insane, which arbitrarily dates from the last of the eighteenth century but which got under way in this country approximately about the middle of the last century, and which has only become vitally active during the past twenty-five years as represented by the mental hygiene movement, has many points of analogy with what I advocate. These unfortunate victims of mental illness are anti-social in much of their conduct, and some of it seems to be dictated by very clear-cut desires to make themselves as disagreeable and as annoying as possible to those about them. Under these circumstances it can easily be understood that those who are untrained in their care and do not understand the manifestations will retaliate reflexly, and the result is the not infrequent tales of abuse in institutions for the care of the mentally ill. Human nature seems to have its defi-



nite limitations, and the ignorant, the untutored and those that are not naturally kind and considerate respond in kind to aggressive tendencies even though they be the obvious signs of illness.

The story of the campaign for the more intelligent and considerate care of this class of patients, and particularly for the removal of restraint, is an oft-told tale, but even yet its fundamental principles seem hardly to have been grasped. When the problem was really tackled energetically and with intention to succeed, when restraint was really done away with, the miraculous result which practically everyone believed could not occur was that the restraint was no longer found to be necessary. And so one after another have the various superstitious traditions regarding what these patients will or may do been broken down, with the result that one after another of the restrictions and restraints and frustrations have been removed until one can now envisage the institution for mental disease of the future as differing very little if at all in equipment, type of personnel, construction, etc., from other institutions for the treating of human ills. The thing that is needed above all else is a sufficient understanding of what the phenomena mean, because in the face of such an understanding it becomes in-



creasingly difficult to arouse into activity aggressive tendencies. The prison, however, is the last stronghold among the public institutions of man's inhumanity to man, and yet even here there are signs of improvement. These improvements will be brought about slowly, of necessity, but that they will ultimately come to pass no one can doubt.

## Chapter XI—*Continued*

### CAPITAL PUNISHMENT

**I**N CONSIDERING a question of this character it is well to begin by making a survey of the existing state of affairs and acquainting oneself with the history of the subject, at least to an extent sufficient to identify the main tendencies along which development has been proceeding. In the first place, there is no question of doubt but that the general tendency throughout the years has been along the lines of a gradual lessening in the severity of punishment. This is manifested in two ways: First, the nature of punishment itself has changed. Capital punishment, instead of being inflicted by every conceivable method of cruelty, such as boiling, burning, breaking on the wheel, drawing and quartering, has gradually taken the form of execution by the speediest, the most reliable, and the most humane methods. Second, the number of crimes for which capital punishment is reserved has gradually and progressively lessened, until today no one



would think of capital punishment in the same breath with petty crimes, for which it was only a relatively short time ago prescribed. The state of affairs today, which has grown out of this gradual change, is that capital punishment, by the comparatively humane method of either hanging or electrocution, is reserved for but one single crime, and for only the most extreme degree of that crime—namely, capital punishment is reserved, to all intents and purposes, for murder in the first degree. This is not quite the whole truth, for kidnapping in Illinois may be punished by death, as may also rape in the District of Columbia; but kidnapping and rape are crimes which, because of their enormity, are equated in the public mind with homicide. This practically completes the list, except for such crimes as treason and desertion, and certain other military crimes which are incident to actual warfare.

Now as to the present status of capital punishment in the United States. Forty states of the Union retain the death penalty in their criminal codes, eight states of the Union have abolished capital punishment, but more significant than either one of these statements is the fact that of the forty states that retain capital punishment, thirty-two of them retain it only conditionally, the court or the



jury having the power to choose between the death penalty and imprisonment. What is the outstanding significance of this state of affairs? I think its significance is more or less obvious to anyone who has given the matter much thought, and I think that the significant thing indicated will be generally accepted. It is this: that throughout the years there has not only been, as indicated above, a falling off in the severity of punishment, but, where the statute provided for severe forms of punishment for specific crimes, there has been a growing disinclination amounting at times to refusal on the part of juries to convict and judges to sentence. The retention of the death penalty, therefore, by thirty-two states, giving the court and the jury authority to use discrimination and to choose, is the expression laid down in the statutes of this growing disinclination to administer cruel and inhuman forms of punishment.

The gradual disinclination of courts and juries to impose the death penalty has led many who have studied the subject and who hold no brief for the abolition of the death penalty as such, still to advocate life imprisonment in place of the death penalty because in their opinion, if this were done, there would be a larger percentage of convictions and



more actual murderers would be behind bars. They argue that a jury will often, where there is no alternative permitted, bring in a verdict of not guilty in a case where there are mitigating circumstances rather than one of guilty which would necessarily involve death by execution. If, therefore, the object of punishment is primarily to protect society and not one of vengeance, then society would be better protected, according to this argument, with capital punishment abolished and life imprisonment substituted.

That this is no idle speculation is borne out by the statistics so far as they can be obtained. For example, in seven states, where the jury or the court has the choice as between capital punishment and imprisonment, there was a ratio of one sentence to every nine and three-tenths homicides. In the other group, five states where there was no alternative, the ratio of sentences was one sentence to every twelve homicides. In other words, where there was an alternative the figures clearly indicate that, assuming that life imprisonment works equally with capital punishment, which I will discuss later, society was better protected from this particular type of anti-social offence than where there was not.

All of this goes to show, not only the general



tendency towards lessening the severity of punishment, but in addition that capital punishment, even as it is retained,—practically only for first degree murder—is, as a matter of fact, going out of use. The fact that there are eight states in the Union at present which have abolished capital punishment is, in my opinion, not as significant as the fact that there are only eight states in the Union where it is retained unconditionally.

Now as regards the social value of capital punishment. The only value which can be claimed for it, naturally, is that it will serve to prevent crime, for in its nature it can have no reformatory influence upon the offender. So far as its preventive effect is discoverable through the utilization of statistics, that effect proves to be practically nil. If a statistical study is made of the states having capital punishment and those where it has been abolished, the former group certainly can not be shown to have any advantage over the latter. The homicide rate, if there is any appreciable difference at all, is less in the states which have abolished capital punishment than it is in those states where it has been retained. The significant thing, however, regarding the homicide rate throughout the United States is that the rise and fall of the homicide rate in the



various states runs along parallel lines irrespective of whether they have retained or abolished capital punishment.

Among some other conclusions which grow out of a study of this question there is another very interesting one which I am sure the public has little suspicion of, and that is the comparative youth of prisoners who are sentenced to death. In the state of New York, from December 1889 to October 1923, there were 458 prisoners sentenced to death. Of this number 160, or approximately 35 per cent., were under 25 years of age, while 253, approximately 55 per cent., or over half, were under 30 years of age. The other 45 per cent. were scattered over the various age periods, the number gradually decreasing with the increase in age. This is a statistical indication of what I believe to be certain very significant facts. In the first place, homicide is essentially a crime of youth. This is perfectly comprehensible when we think of youth as that period of life when the passions are at their maximum and when those forces which are subsequently going to control those passions and press them into the service of socially useful conduct are not yet developed. Secondly, those that come finally to execution represent a highly selected and a small



group of individuals who remain practically defenceless, because they lack one or all of the following qualities: intelligence, determination and fighting qualities, money, influence (religious—political—personal). The fellow who is finally executed is unable, because of inherent weakness, lack of all the weapons with which to fight, to impose any material obstacle between himself and the progressive sweep of the procedure of the criminal law to its final chapter. This is easily seen in regions where there is great prejudice against certain races which have been kept in political and social subjugation and have been too weak and incompetent to extricate themselves from this position of social inferiority. Let one of their number commit a homicide and execution follows swiftly.

Finally, when Mr. Bye wrote his thesis\* on capital punishment in 1919 he estimated roughly that of 80 homicides committed in the United States only one person was executed, whereas I see that by a more recent inquiry of the Metropolitan Life Insurance Company, of 146 homicides taken at random only one person paid the death penalty. Even assuming that a very considerable number of these

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\*Raymond T. Bye: Capital Punishment in the United States. University of Pennsylvania, 1919.



homicides are of the justifiable variety,—even if we cut the figure in half and say that approximately only 1 person in 40 or 75, as the minimum and maximum limits, pays the death penalty, then we see an added evidence of the statement I made above that those who are finally executed represent a highly selected and relatively small group of, for the most part, youths. In other words, only a relatively few persons who commit homicide are ever apprehended,—only a relatively small number of those who are apprehended are ever convicted,—then of the number convicted still a lesser number are finally executed,—and those who are finally executed are for the most part youths who are defenceless, without money, friends or influence, not infrequently mentally defective, or else they are persons against whom there is at the time a prevailing great popular prejudice.

It seems, without proceeding further, rather useless to argue for the maintenance of a form of punishment to the credit of which practically nothing can be shown and which on the face of it is so sporadic and uncertain in its operations, and even when it does operate bears so heavily upon the already over-burdened, inefficient and more or less defenceless members of the social group. It is ob-



vious from the foregoing that capital punishment is really dying the natural death of increasing inefficiency. The heyday of its youth is long past, it is now senile and decrepit and nearing the end of its career. Whether we wish it or not capital punishment will be, before a great many years, a thing of the past. Whether by definite legislative repeal of existing statutes, or the gradual becoming inoperative of existing laws, either by ignoring them or by reinterpreting them until they meet existing demands, makes little difference. I might only add that perhaps something really constructive would be accomplished if a definite step were taken and capital punishment were actually stricken from the penal code. The reason I say this is because it seems to me that the death penalty is just one of those remaining concessions to our brutal instinctive passions. It is just a reaction of avoidance which we prefer to make, and as long as we are willing to think we are solving the problem of homicide by such simplistic means we will never solve the real problem,—we will never appreciate the actual factors that are involved, and therefore can never undertake an intelligent consideration of how these factors can be dealt with effectively. If we should actually abolish capital punishment we would be



deprived of this indulgence of our blood lust and be brought by that same token face to face with the social problem of homicide and be forced by necessity to do something about it, and what we did would perforce have a better chance of being intelligent and constructive because by the abolition of the death penalty we would have deprived ourselves of recourse to passion.

If capital punishment is to be abolished, however, the public is entitled to a substitute which will give it an equal feeling of security from further anti-social activities on the part of offenders. One of the principal arguments that have been adduced for perpetuating capital punishment has been that if it is substituted by life imprisonment there is a large chance that the prisoner may ultimately be pardoned through bringing to bear political or other influence and the public be again endangered as a result. That this fear is a more or less instinctive one and is not founded upon an actual knowledge of the facts is indicated by Warden Lawes, of Sing Sing, in his little book "Man's Judgment of Death," \* from which the statistics quoted in this article are taken. Nevertheless, the public is en-

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\*Lewis E. Lawes: *Man's Judgment of Death*. Published by G. P. Putnam's Sons. New York, 1924



titled to some assurance that life imprisonment means adequate protection, and Mr. Lawes offers a solution of this difficulty which seems to be a practical one. He suggests that a law be enacted providing, among other things, that no prisoner serving a life sentence shall be pardoned or his sentence commuted until he shall have served at least twenty years. During this time there shall be no allowance for good behavior and at the end of this time the Government can only act provided the Court of Appeals shall make an order or decree, in which the majority of its members concur, to the effect that new evidence indicates a doubt of guilt or that facts or circumstances exist which in their opinion make a case for the consideration of executive clemency. Of course it should be provided that the case can always be reopened if there is new evidence indicating the innocence of the convicted one. That this would be adequate protection is evident if the statement in a newspaper article, I believe by the Warden of Joliet, that the average life prisoner lives only ten years, is correct.

Added to the above is the knowledge that every psychiatrist and prison warden must have that people who are obviously seriously mentally diseased, sufficiently so to be classed as insane, are not infre-



quently executed, and that people who are fundamentally and deeply defective so that they have only the mental development of little children are also not infrequently executed. It is essential that a civilized community should have a system which works better than this. The method suggested is certainly equal to capital punishment in any protection of society that it offers, and in my opinion it is superior because it will result in increasing the number of convictions, preventing hasty and early pardons, and forcing a better understanding of the factors at work.

Warden Lawes has made a study of the executions in Sing Sing Prison since 1889, when electrocution for murder was legally established in New York State.\*

Since that time there have been 415 individuals committed to Sing Sing for execution. Of these 261 have been electrocuted. Fifty-five had their convictions reversed by the Court of Appeals. Of this number 5 were re-convicted and executed, while 30 persons were acquitted and 18 others convicted in a lower degree. This makes a total discovered error in the lower courts of 11% of the original commit-

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\*Lewis E. Lawes: *The Death Penalty at Sing Sing, What the Figures Show*. *The Survey*, October 15, 1927.



ments for murder, first degree. Fifty-four per cent. of those who were re-tried were acquitted. Of course many cases never were appealed nor re-tried. If they had been the percentage of error would have been larger. Naturally, of course, this statement has to be corrected by remembering that the re-trial of a capital case is not so likely to result in conviction because witnesses may be dead or dispersed, facts are not so easily available, etc., but the startling percentage of error is too great to be overlooked.

Of this total of 415 only 3 have been pardoned and 6 discharged by special commutation. This shows that the frequent statement that life prisoners are pardoned in large numbers and therefore life imprisonment does not really mean life imprisonment, so far as these figures go at least, has not much to stand on.

Mr. Lawes further takes up the question of the possible causes of homicide and shows that from 1850 on the races that contributed the greatest number of murderers shifted from the Irish to the Germans to the Italians and now to the Negro, as these races in turn were respectively most heavily burdened with the problem of social readjustment.

Mr. Lawes also discusses the general assumption that the murderer is inherently a dangerous person.



The figures show that 90% of the men and women who committed first degree murder had no previous criminal record, nor is there a single instance in which a person convicted of first-degree murder who was pardoned or whose sentence was commuted ever returned to Sing Sing Prison because of homicide.

Charles Platt in his review of Calvert's work on Capital Punishment\* calls attention to the fact that there is no crime where the penalty is so little considered as that of homicide, as such an overwhelming number of homicides are the result of sexual passion, hatred, jealousy or other emotions that preclude such consideration.

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\*The Survey, *loc. cit.*

## Chapter XII

### PRESENT TENDENCIES AND FUTURE POSSIBILITIES

**I**N THE previous pages I have indicated, briefly, to be sure, but with sufficient explicitness I trust, the fundamental principles which must be taken into consideration in order that we may be able to think and act intelligently with regard to problems of criminology, be they the problems presented by crime in the abstract or by the criminal himself in the flesh. At this point I desire to indicate the bearing of these present and existing necessities, as I take them to be, upon our attitudes toward the future, and the possibilities of accomplishment along the lines of development thus indicated.

In doing this it may be that I shall to some extent restate what has already been set forth in the preceding chapters, but in so doing I shall restate it for the purposes of the present exposition and in a somewhat different way.



The first thing that it is necessary to remember, it seems to me, for all persons who are interested in the welfare of the race and of human society is this, I believe, universal principle, a principle in fact that is no other than the principle which we are familiar with in the realm of physics, namely, that action and reaction are equal and in opposite directions, but which finds a somewhat different formulation when transferred to the field of energy which we know as the psyche. This principle I would state approximately as follows: Wherever we find a destructive or dysgenic force at work we will also find that a constructive or eugenic force of equal strength is working in the opposite direction. The reason this principle has not generally been appreciated is the fact that the destructive force is so much more apt to be prominently in evidence. An illustration will make clear what I mean. I take it from the realm of social hygiene. The disease gonorrhoea is generally conceded to be an unmixed evil. This is because its destructive aspects, the pain and suffering it causes, are all so prominently in the foreground. If we examine its results a little more carefully, however, we discover that one of them is its sterilizing possibilities, and we learn that a great number, particularly, of women are permanently



sterilized by this disease. If we carry our investigations a little further we will learn that a large number of these women are prostitutes and that a large number of prostitutes are feeble-minded. And so we see without entering into the details of a really quite complicated medico-social problem that among other things that result from gonorrhoeal infection is the sterilization of a not inconsiderable number of the feeble-minded. Obviously this is eugenic in its results, and I suspect that this sterilization is done about as wisely in the last analysis as we are capable of doing it with all our scientific knowledge although this perhaps might be questioned. Still the illustration is sufficient to indicate the principle as I have set it forth. Here we find definitely a counter force to the destructive influences of this particular kind of infection, which is working in the opposite direction, namely, to correct the evil which the infection is generally presumed to be unequivocally responsible for, by destroying the kind of persons who become infected.

Now the principle as set forth above is true in the more definitely psychological territory. For example, the individual who is shocked beyond measure at certain sorts of conduct which involve, in ordinary language, loose morals, or perhaps what



are ordinarily termed perversions, is quite apt to be an individual who does not feel altogether safe beyond the protection of his repressions. He has the same inclinations and tendencies and drives that he inveighs against and they are so strong that he has difficulty in dealing with them, and so he resents any activation of what would, he feels, be destructive to him if he lost control of them. He therefore is violent against those people who express themselves in these ways and whose expressions are brought to his attention. Here again we have a destructive influence in the individual which is a danger to him operating by a force in opposition to it to protect him from its disintegrating possibilities.

The most important illustration of all from the point of view of the field that we are exploring is represented by the phenomena of guilt and the need for punishment. We have already discussed these phenomena somewhat but it is well to refer to the subject at this point and to call attention to the fact that any instinct that breaks through the repressions and gains satisfaction at the instinctual level must necessarily cause a feeling of guilt, because the existence of the repression is an indication of the activity of the Ego ideals and a breaking through is an indication of conduct which is counter



to these ideals. We find also in individuals such as are described in the last paragraph, who have their instinctive tendencies under the control of repression but where these tendencies are very strong and the repression has to be correspondingly strong, that these impulses because of their great strength have to be met by powerful prohibitions, and this tension and that aspect of it which is felt by the subject as a pressing forward of the instinctual tendencies which have to be met by these over-emphasized prohibitions—this existence within themselves of this demand is associated with a feeling of guilt. And so it can be seen that guilt may be a psychological phenomenon even though no outward act of the individual has been, according to his standards, morally wrong, which emphasizes again that psychological facts are as real as any other facts. This has been recognized by the folk mind for thousands of years,\* and is one of the very important and significant elements that frequently creep into the total picture of crime as it is represented by the criminal, the trial and the punishment. Defendants are probably not infrequently convicted of crimes

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\*"But I say unto you, that whosoever looketh on a woman to lust after her hath committed adultery with her already in his heart."—Mat. 5:28.



which they never committed, partly because it is appreciated that they have led criminal careers and that they ought for the good of everyone concerned to be prevented from continuing in this way and partly because by that extraordinarily acute and discerning organ, the unconscious, they are appreciated by those about them as being essentially evil individuals. The emotions of those who have to deal with them are arraigned against them from the very beginning and they do not get what would ordinarily be called a fair hearing and a judicial consideration. And yet in certain instances, at any rate, the net result, even though it appear not to be just, may when all of the facts are uncovered as to inherent character traits and past performances be on the whole in keeping with the best interests of society. This of course is not to be understood as a brief for convicting people of things that they did not do, but as an indication of the way in which certain apparently aberrant decisions may receive an explanation.

The need for punishment which I have mentioned is the natural corollary to the sense of guilt. If as I have indicated the outstanding function, if such language may be so employed, of the mind is to equalize stresses, relieve tensions and make for equi-



librium, then a sense of guilt can only be adequately compensated for by an amount of suffering which is measurably sufficient to counteract or neutralize that feeling. Punishment, therefore, must of necessity be sought by those who feel guilty, and this necessity accounts for the suffering of the neuroses, for example, and it also accounts for some of the conduct of criminals which is otherwise so baffling, such, for example, as false confessions.

This picture as we have developed it thus far in this chapter presents to our vision primitive instinctual drives of enormous force operating in every individual, drives which are fundamentally selfish, pleasure-seeking, and inimical to the maintenance or even the formation of a social group. On the other hand, and over against these primitive forces, we see society with its age-old organization and its numerous institutions built up for the apparent purpose of controlling these instinctive tendencies, of diverting their energies to social ends, of pressing these drives into the service of society—a series of counter-forces, in other words, as powerful as the drives themselves but arrayed against them on all fronts. And then we see the extraordinary phenomena of the individual incorporating within himself, by the so-called process of introjection, these



counter tendencies, building within his psyche an organized structure known as the Super-ego, which is representative of and reflects these counter tendencies in society, now governed by an authority which dictates his conduct and which seems to the individual to come from within and which as a matter of fact does. An internalization of the social counter tendencies has taken place and the original primitive instincts are held in the grip of the outer social organization, on the one side, and the internalized Super-ego which has been set up within, on the other side, and are compelled to manifest themselves in channels which are directed by these restraining influences. Here is the basic reason already indicated for the expressed divergent interests of society and the individual. Here society, expressing itself through its institutions, criminal law and the courts, is primarily interested in the act, while for the students of psychopathology the primary interest is the actor, again a conflict between opposing tendencies which needs to be resolved after the manner of the most effective solution of all conflicts, namely, by satisfying both tendencies equally.

What is meant by the last sentence, the solving of conflicts by giving equal expression to both opposing tendencies? Expressed in the language of



physics it means a solution of the conflict on the pattern of the parallelogram of forces. Two forces oppose each other at right angles. The resultant can be expressed by bisecting the angle, namely, can be expressed by a line making an angle with each of the other lines, of forty-five degrees. This is the common problem presented to the student of physics to explain how a sailing vessel can make a port in the teeth of a wind by the process of tacking. We have a similar proposition in the psychological frame of reference. A person, for example, who has a particular tendency that insists with especial force that it be recognized and the recognition of which in its crude, primitive form would result in conduct that was anti-social, can find a solution of his difficulty by a sublimation of the instinct which will permit its expression but in activities which have social value. As an example, a person who has a somewhat excessive development of the sadistic tendency may become a perfectly useful individual and express his sadistic tendency at the same time if he follows the trade of a butcher, or, at a much higher level, if he becomes a surgeon. Each one of us has a sadistic component. We need such a component in order when necessary to destroy those things that threaten us with destruction, to



destroy that which is evil; and so where disease and illness require, as they frequently do, the infliction of pain in order to bring about conditions which will lead to recovery, such an individual as we have indicated is the sort of individual who is capable of bringing himself to do such things and to do them skillfully and well. Similar illustrations could be given of every trade, every profession, every human activity. The regressive tendency, for example, in certain types of people of studious habits leads to an interest in ancient history and archeology and thus prevents the individual from having a regressive psychosis, while if they are successful in their particular specialty it not only interferes with their regression as ordinarily expressed in terms of lack of association with their fellows but it not infrequently results in an increased social activity because of the demands made upon such people for papers before learned societies, lectures, teaching, etc. So we ought to feel that this conflict, as we have expressed it, as between the importance of the act and the importance of the actor, or the relative importance of the act and the actor, should be capable of resolution in an equally satisfactory way, one that will take care both of the drives and interest of the



individual and be protective and constructive for society.

To accomplish the result of resolving the conflict between the claims of the act and of the actor each as of first importance, the first essential, as has already been intimated, is to move in the direction of abandoning as far as possible the concept of punishment in all of its ramifications. Punishment is the most significant and the most powerfully entrenched remnant or component of the original vengeance motive which was at the bottom of all criminal legislation, and its abolition as an objective is essential to get that judicial viewpoint without which the relative importance of these two aspects of the question can not be determined. Our own feeling about this matter is expressed in the view that the individual represents an investment by society, an investment in time and energy expended, in education and preparation for citizenship, which society can not idly disregard. One of the earliest lessons that the mental hygiene movement learned when it entered the field of industry and which gave it its status with the employers was that it was an exceedingly expensive thing to discharge an employe at the end of one or two or more years of service, that the firm had an investment in that employe



represented in his experience over these years which in the face of an increasingly acute competition it could not afford to neglect. And so mental hygiene was called upon to attempt to solve this problem in the interest both of the employe and the employer, to make some kind of readjustment that would salvage this experience for the employer and at the same time save the employe from losing his job. An individual in society is in exactly the same kind of situation. Society can not afford to throw him on the scrap heap and let the matter rest there. He has potentialities which must be salvaged if possible. And after that there may be added parenthetically this by no means unimportant comment, that every offender is—or at least a great number of them are—closely related by family or love ties to a more or less considerable group of relatives and friends. Society in its rather naïve and childish exploitation of what is conceived to be abstract justice as expressed in the so frequently quoted saying, “Let justice be done though the heavens fall,” takes no cognizance of these relatives and friends. It considers the individual as if he were disconnected entirely from the social group, and in undertaking to fix his responsibility and define his sentence it not only does not consider the investment that so-



ciety has in him but it likewise fails lamentably to consider the investment that society has in all these people who are related to him by bonds of love and affection of greater or lesser strength and whose peace of mind, whose possibilities of efficient functioning, will not only be disturbed by the ruthless consideration of the offender as if he had no connections, but whose very lives may be endangered and sacrificed because the caretaker, the provider, the head of the family, the ideal of the children, has been taken away from the home. It is not difficult to continue the process of visualizing the ramifications of such methods of procedure in terms of the effect which the disgrace of the head of the family will have upon the oncoming generation in destruction of ideals, impairment of the feeling of security, and in other ways that can be glimpsed by those who daily see the human wreckages and have occasion to attempt to fathom their causes. Over against the cry that is raised by the crowd when homicide has been committed and the clamor is for justice, "Remember the family of the victim," there might equally be raised the cry, "Remember the family of the offender." Society has an equal investment in both. Neither has done wrong and neither should be made to suffer unnecessarily.



Let no one assume for a moment that it will be a simple matter to eliminate the concept of punishment from the picture. If the sense of what has already been written is appreciated it will be understood that both society and the individual will cling like grim death to the opportunity which the penal system now holds out for the satisfaction of their lust for vengeance. Primitive instinctual tendencies can not be made to be non-existent, and they can not be forced arbitrarily into new channels of expression. If punishment is to be wiped off the map as an end of so-called justice it will only be when other ends have been visualized which are more desirable. We can expect, therefore, that society will perhaps never adequately appreciate the necessity for protecting its investment in the individual until the protection of that investment becomes a necessity. If, for example, instead of having more people in the country than we know what to do with we had a less number than could satisfactorily meet the needs of employment and national defense, then the value of the individual would be so much enhanced that more or less automatically his conservation would rise to a conscious purpose.

As it stands today, perhaps one of the best argu-



ments against the ordinary methods of incarceration, and particularly we have in mind also capital punishment, is the essential stupidity of such methods for the ends which it is claimed that they serve. Every indication is that capital punishment is practically valueless as a preventive of crime, and also every indication is that a prison as now used is practically valueless for the same purpose. If, therefore, the conservation of the individual and the salvaging of his capacities and the increasing of his efficiencies are to become ends, as we believe they should be, then it will become obvious that the methods now being pursued must be very radically modified. It is perhaps fitting to interpolate here a bit of experience which, reflected in the history of penal methods, will give some idea of how they have come to be what they are today. It is generally conceded that a large number of laws that are put upon the statute books from time to time are enacted for the sole purpose of correcting abuses. There is for example a good deal of picking of pockets going on in a city. A special law punishing pickpockets with extra severity is enacted under the stimulus created by the publicity and the resentment of this particular wave of anti-social conduct. The naïveté, almost childishness, of expecting any such



action on the part of the legislature to correct such a situation gives some idea of what a difficult problem confronts the individual who would undertake to improve conditions in any adequate, constructive way. And yet this method of procedure is one that is well known and constantly resorted to. Prohibitive measures seem to be almost the sole measures which rise in the mind of the citizen when he is outraged by crime. It is precisely by such mechanisms that the present system of prisons has largely come to pass. The prison population by and large is not made up of men who are essentially, fundamentally and profoundly vicious and incapable of influence for good in any possible way. The majority of the characters who occupy the prisons are weak characters rather than strong ones. The danger with which they threaten society is the danger of weakness, not of strength; and yet the whole prison is built and it is administered under a set of rules and regulations which are directed against the powerful, vicious type of criminal who will stop at nothing, who is a killer, perhaps, and perhaps an inciter of riots, and all of the prisoners have to suffer the frustrations which it is conceived to be necessary to put into effect in order that the very few individuals who have these qualities may be



adequately restrained. It is perhaps unnecessary to comment upon those aspects of human frailty which produce such conditions. They are universally distributed and the statement of the case implies no criticism. The only question is, Can the job not be done better, and is the time not ripe for methods of improvement?

One of the vital and essential difficulties of the whole scheme of the administration of justice and of the penal law is that no consistent or adequate effort is made to secure specially trained and efficient individuals in the various key positions. No manufacturing firm would think of employing a chemist without inquiring into his qualifications and satisfying itself that he was competently qualified so that he might be expected to satisfy its needs. And yet judges who preside over criminal courts, wardens who have charge of prisons, and countless other officials of major or minor significance, are appointed for no better reason than that they are more or less prominent members of the prevailing political party. We do not like to compare the situation with that of medicine on the assumption that medicine has reached any degree of perfection, because there are many things which it does which are just as bad, but at least a physician



who expects to qualify in his particular specialty undertakes at great expense of time and money and of energy to acquire a background of learning and experience which is obviously necessary. His qualifications are an academic education, graduation from a Grade A medical college, internship of one or more years in the wards of a general hospital, and then from one to three years spent in the study of his specialty perhaps including special studies abroad. When such a program is compared with that which qualifies a judge to sit on a criminal court bench, a district attorney to engage in the specialty of prosecuting public offenders, a warden to have control of the lives, bodies and minds, and the souls, of hundreds and thousands of men, nothing comparable is discoverable. Dealing with offenders in any capacity in which the State is called upon to deal with them requires the same high degree of specialization and the same intensive preparation both by education and experience as that now in force by common consent and understanding in the practice of medicine. It can not be expected that conditions as significant for the welfare of society as crime can be adequately dealt with or even understood by the novice, the aspirant for political preferment, the casual office holder who



merely wants the protection of an assured wage, and until we are willing to change these conditions we can not hope for either material or rapid progress in this field.

Added to the difficulties implicit in the comments thus far made on the administration of criminal jurisprudence, there should be the additional one to the effect that the organization of the forces of society against crime and criminals is hopelessly inadequate. In view of the methods that are employed, to the shortcomings of which attention has already been directed, this loose organization of society's forces perhaps serves as a corrective. It operates in various ways. The district attorney, for example, in some jurisdictions at least, seems to have practically complete authority for quashing criminal proceedings addressed against any particular individual, and he is not infrequently accused of doing this for selfish or political purposes. The net result is that although only a relatively small proportion of offenders are arrested compared with the number of offenses, of those that are arrested only a small proportion have their cases sent to the grand jury, and subsequently, of course, convictions, serving of sentences, continue in diminishing ratio. The jury system itself is exceedingly lax in



many respects although perhaps this particular laxity is one that should be conserved rather than destroyed. The juries have the power to bring in a verdict of a lesser degree of crime than that charged, even though the testimony most obviously warrants no such conclusion. This is what happens when the verdict is returned in accordance with what is popularly known as the "unwritten law." The jury under these circumstances brings in a verdict contrary to the legal definitions as laid down in the statutes and contrary to the evidence, but because the defendant has excited their sympathies and they believe that he was morally justified in what he did they exercise their right by bringing in a verdict of not guilty. This leeway which the jury has of departing from the strict letter of the law is one of the very great assets of the jury system and helps to prevent the absolutely rigid enforcement of the law as technically interpreted irrespective of mitigating circumstances.\*

Judge Cockrell has pointed out very interestingly the number of individuals the criminal has to meet in his passage from arrest to conviction or liberty. There is first the police officer who arrests him.

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\*For example see Chapter XIV.



Then there is the jailer who temporarily confines him. There is the judge before whom he is tried, the district attorney who prosecutes him, and the twelve men on the jury who pass judgment upon him. Then if he is found guilty there is again the warden of the penitentiary, and finally the governor of the State to whom his case may be referred for pardon. All of this leaves out of consideration the parole board, if there be one, the various police officers who transfer him from place to place such as the jail to the court, the jail to the penitentiary. Now Judge Cockrell points out that the criminal has to beat only one of these individuals in order to escape the consequences of his acts as now formulated in the criminal code. If he can escape from the custody of the policeman or the jailer or the warden, if he can make one juror believe in his innocence, or convince the parole board or the governor that he is worthy of release, he wins. It is a little as if two opposing armies were drawn up against each other and the killing of one man on one side by the other side constituted a victory. This gives a rather vivid picture, although perhaps a somewhat distorted one, of the odds as they exist in favor of the offender. Of course these odds are still further multiplied by what seem to be, to the



layman at least, the absurdities of the rules of evidence and the absurdities that require the form of language in which indictments are drawn. Instances of this sort have been reported over and over again in magazine articles until the archaic methods of procedure of the criminal law, its cumbersome entanglement in infinite technicalities and details, and its careful avoidance of the real merits of the situation, have made it rather ludicrous, and lawyers and judges themselves are becoming progressively more alert to reform in these directions. Probably these absurdities have crept in largely as a result of attempting to protect the prisoner from being found guilty of offenses which he has never committed because of the improper use of evidence. This naturally occurred in the old days when the punishment for so many offenses which we even consider rather petty nowadays was the punishment of death. Under these circumstances it was but natural that all of these safeguards should be taken; but as the tendencies to punishment have become mitigated and death is only rarely exacted and the various kinds of torture have been for the most part, in their more obvious forms, eliminated, the necessities for these detailed protections have become less and it seems as if it might be time for the considera-



tion of the criminal case on the merits of all the interests involved rather than upon the technical details that may be raised from a consideration of the particular section of the penal code that has been violated.

One thing seems to be obvious, and that is that the severity of punishment is being gradually, one might even say rapidly, lessened. It is not so long ago that, literally speaking, almost hundreds of offenses were punishable by death, and it is not so long ago either that witches were burned at the stake in the public squares of Europe and of this country. The tendency is therefore in the direction of the mitigation of the severity of punishment, and with the advent of parole laws, the improvement in the construction of prisons, the building of different kinds of prisons for different classes of offenders, the entrance of the social worker and the psychiatrist upon the stage, and the widespread interest in the new developments in psychology, it becomes necessary that the old formulations as they appear upon our criminal codes, and the old methods as they have been developed by our courts, should become modified in accordance with these changing standards. The anomalous condition exists at the present day of a set of laws and methods of proce-



dure which are already quite out of date in the face of the advances which have been made along the scientific frontier in the study and understanding of man, particularly in his criminal activities.

And finally certain suggestions should be added that are still more definite as regards steps that might be taken, or more properly, directions that might be mapped out and goals that can be more or less well defined, toward which effort would be advantageously expended. Of course with reference to all these and with reference to the other matters that have been discussed the most important consideration is the clearing away of the underbrush of misapprehensions, false ideas, superstitions, prejudices, all born of that ubiquitous function, wishful thinking.

In the first place it is naïve, almost childish one might say, to suppose that public opinion and prejudice, the clamor of the mob as it expresses itself in flaring headlines and editorials, should find no avenue of entrance to the courtroom, should exercise no influence whatever upon the judge, the jury, the witnesses, the lawyers. Anyone who has half an eye and who looks observantly to see evidences of such influences will find them on all hands. One even reads in the papers of trials that are conducted



under the protection of the military forces that have been called out to suppress possible disorder and mob violence, and I have myself testified in a court which was surrounded by police and where there was constant talk of the possibility of bomb outrages. To assume that these things have no influence is, I say, childish, at least if the assumption were made by one who had the most elementary information regarding the way in which the human mind functions.

Aside from the influences that get into the courtroom from outside, which have merely been hinted at in the above paragraph, there are the influences that are already there, embodied in the personal prejudices of every individual who has anything whatever to do with the case, and one can only say that the whole performance of choosing jurors, of setting up standards which will insure an unprejudiced judge, and all the rest of it, while not to be decried in the least, merely lessens the possibilities of outward and evident and gross prejudice but by no means does it eliminate it and keep it out of the picture. No human being can approach any problem in life that has any significance for him whatever without prejudice, which means nothing more nor less than that he has a leaning toward a solution



which is to him more satisfactory than any other and which does not by any means necessarily consider what would ordinarily be called the justice of the situation or the welfare or the concerns or the best interests of others. Every lawyer knows this, every lawyer tries to have his case tried before a justice who will listen sympathetically to his arguments, a justice who because of his past experience is arraigned on the side that the lawyer represents; and yet, like the proverbial ostrich, the court and the public continue to be blind to the existence of prejudice and to assume that trials are conducted by a judge with a "judicial attitude of mind"—that is the phrase, which means that he can see clearly all the issues without his own personal interest getting in the way. This in spite of the fact that judges are frequently beholden to others for political preferment of one sort or another, and that the issues that are tried before them are not infrequently related in some indirect way to the issues that interest these others. Modifications of judicial decisions are obviously made in the face of these personal interests, and it would even appear from time to time as if the judges played fast and loose with human life and that sentences involving the death penalty were imposed for reasons that could



hardly be called judicial. Of course it is not intimated that such things occur in the field of clear conscious awareness. Like all such disagreeable eventualities, they are brought to birth in that hazy and indistinct zone of psychic functioning which permits the unpermittable. If one doubts that such things go on, surely if one reads the newspapers, one can gather from these accounts, written as they usually are from an entirely different point of view from that which the investigator has in mind, that the pardoning power certainly functions from time to time in this way. I am not now arguing that this way is necessarily wrong, but to suppose that the governor of a State who is up for reelection should not be influenced by that fact when the question of a commutation of the sentence of a condemned murderer comes before him for action, and when the public of the State are clamoring through the press for this murderer's execution, is again to be blind to the simple facts of human experience. In fact herein rests one of the arguments for the abolition of capital punishment which has not before been mentioned in these pages. Such considerations as are adduced above are commonplaces in the knowledge of those who deal in their practice with psychological affairs.



It might seem to the reader at this point that what was being advocated was very much like attempting to pull oneself up by one's bootstraps. To abolish prejudice in a criminal trial when prejudice is the natural and necessary aspect of every human being who takes part in it, might seem an impossible task, and perhaps it is; but that does not mean that bad matters can not be made better, that gross departures from obviously desirable practice can not be done away with and substituted by other practices in which the departure from the desirable is not only much less obvious but less distorting, less destructive and more in line with objectives which it is desirable to attain. One needs to bear in mind constantly that man has arrived at his present estate because he has been enabled to accomplish results under just such adverse circumstances. The conflict which has been described between the instinctive tendencies and the counter tendencies arrayed against them, both within and without, has been described as a conflict between forces of equal strength and expressing themselves in diametrically opposite directions, and it might very properly be assumed that the solution of a problem so constituted was impossible. But life has progressed, mind has come into existence, man has developed and



evolved just because, paradoxically, he was able to find a way to do the impossible. He has been able to find a solution for such conflicts, which solution gives adequate and equal consideration to each opposing force. Under these circumstances it is by no means necessary to be hopeless but to realize that progress is possible and is in fact taking place. An illustration of what is meant here may not be out of place as otherwise the point of the whole argument may be missed. I have in mind a prisoner who was convicted of first-degree murder and sentenced to be hanged. He was sent to the hospital for observation and returned to the prison. Shortly thereafter he was sentenced to death but within a very few hours of his execution, at the last minute, his sentence was commuted to life imprisonment and he was returned to the hospital as "insane." This diagnosis was amply justified by his subsequent behavior. I desire to mention only one of his characteristics and the reasons, as I see them, for this symptom. To lead up to the symptom by giving the reason first: He had been to the hospital before and he had talked with the physicians. He had then been sent back to the prison and he had come very close to being hung. Then when he came back to the hospital it was quite natural that he was not



altogether sure of the friendliness of that institution as represented by its medical staff. He had talked freely with them before and shortly after had succeeded in escaping the gallows only by an hour or two, just how he did not know and in fact had no way of knowing. He was naturally, therefore, suspicious and disinclined of necessity to talk to those with whom he had talked before and who for aught he knew had betrayed his confidence. He did not want to talk for fear he might in some way disclose himself or that he might say something that would lead to the formation of the opinion in somebody's mind that he was guilty and ought to be hung, or in some other way would work to his disadvantage and his disadvantage meant to him execution. He did not trust people enough to talk to them and therefore the natural solution of his problem would have been to remain silent. But this man had Latin blood in his veins. He was an exuberant, extraverted, bubbling type of personality who needed self-expression, just as we all do, but perhaps in his isolated and restricted environment more than many of us, and he was unable to maintain silence. He found that he had to talk in order to gain self-expression, in order, one might almost say, to keep



from going mad. He was confronted, therefore, with an apparently insoluble conflict. He did not dare talk, therefore he must remain silent: it was necessary for him to get self-expression through talking, therefore he had to talk. Certainly on the face of it and as stated this is an insoluble problem. But he solved it. He invented a language and he talked this language to his heart's content, and no one could understand him. So he both succeeded in talking from his point of view, and in not talking from everybody else's point of view, because what he said was incapable of being translated by those who heard him for his language did not serve the function of conveying thought or ideas from the talker to the listener.

It is hoped that the above discussion has rendered obvious what was meant when it was said that the most important thing to do in the first instance to insure development and advance and improvement in the administration of the penal law, in fact in its creation in the first place, is to clear away the underbrush of prejudice, and, it might be added here, to become conscious of the fact and the results of wishful thinking. The natural corollary to all the above considerations is that which has already been indi-



cated, namely, that whoever undertakes any one of the functions connected with the handling of crime or criminals should be especially qualified by a background of education and experience and should be appointed to his particular office because of those qualifications. Now it may be added that it is necessary that those qualifications should be of a particular kind, and it has been suggested that those, for example, who handle child delinquents require to be especially qualified, to the extent even as has been suggested that they should be analyzed by the methods of psychoanalysis, in order that they may have their prejudices as far as is humanly possible removed, so that they may understand the functioning of the child mind and see clearly the problems as the child presents them and be able to undertake their solution free from those prejudices which otherwise would get in the way and interfere to the detriment of all concerned.

It has been very appropriately and well said that, "When the emotions are sitting as judges, facts make poor witnesses." So long as prejudice and wishful thinking and a blind disregard of the existence of these facts continue to dominate the criminal law, criminal procedure, the criminal court, and the prison, and otherwise to envelop the criminal



in a haze of misconception, ignorance, lack of understanding, so long, of course, will it be impossible to attain reasonable social and individual objectives which have the mutual interest of the offender and of society at heart and so long will it remain impossible, relatively at least, to secure the dominance of reason in dealing with these questions.



## Chapter XIII

### SUGGESTED PENOLOGICAL PRINCIPLES

**I** HAVE already argued against capital punishment on the grounds that its claim as a preventive is nothing more than a rationalization which permits the indulgence of the spirit of vengeance, and that it is essentially a stupid method to employ, and, finally, that unless it is abandoned the chances of evolving a better method are seriously impaired. Very much the same arguments might be introduced against imprisonment, or at least imprisonment in our prisons as they exist for the most part today. Prisoners are concrete examples of exceedingly difficult social problems of which society is glad to be rid, and when they can get such an individual locked up somewhere and forget about him that seems to be about all they demand. It takes much more initiative, personal interest, continuity of application, consistency and indefatigability to pro-



ceed with the matter beyond that point, and few people have these qualities. The prisoner locked up in the prison, therefore, and forgotten by society is easily subject to the tyranny of whoever is in charge of that particular institution, and the apathy of the group is rarely overcome in the effort to correct conditions that thus arise. Beyond this there was no consistent effort made to determine what if any value a prison had as a social agency, or what if any value the various methods that were employed in the entire penological armamentarium might have. I have already quoted the exhaustive study of Professor Sheldon Glueck to show that the results that were obtained in the reformatory were diametrically the opposite of what it was thought they were. What the results were supposed to be is undoubtedly an example of wishful thinking. What they actually were was practically a complete failure.

In the last book from the pen of Mr. Clarence Darrow he advocates the abolition of all prisons, and if the general condition is as bad as it seems one can have a good deal of sympathy with such a point of view. If, for example, an administrative officer who had charge of all the public institutions



of a great state were convinced after a survey of these institutions that certain ones of them were serving no useful purpose, in fact might actually be doing harm, it would be quite in order in such circumstances to cease making appropriations for these institutions and to simply let them pass out of existence, close them up, do away entirely with their activities. If the prisons are as a matter of fact doing practically no good, and I must confess that I never have seen much if any good come out of the prisons, and if they are on the contrary doing a lot of harm—and the testimony has been universal throughout the years that they are, by contaminating first offenders by association with chronic criminals, then why not close up the prisons and do away with these centers from which radiate all sorts of bad influences? Of course unfortunately the whole matter can not be settled so easily. All of us who have to do with deranged individuals and with social offenders know that there is a certain group of them who are exceedingly dangerous. I have in mind, for example, a young boy who was hung here in the District of Columbia many years ago, who was a gunman and who killed in the most casual fashion, apparently largely for the joy of



killing and much in the same spirit as a hunter would shoot down a bird. I have no idea how many lives had been sacrificed to this boy's irresponsible, anti-social tendencies, and I can not quite believe that we will ever be justified, or that it would ever be practicable, to turn such a boy loose without let or hindrance and let him continue on his mad career. Such individuals have to be restrained in some way, and naturally they have to be restrained in a way which makes the lives of others at least reasonably safe.

To be sure, the number of dangerous anti-social individuals such as the boy mentioned in the last paragraph is not really very large. In fact the number of really dangerous individuals, that is, dangerous in the sense that they would commit bodily violence, maim, murder or endanger the lives of others wantonly, as a result of uncontrollable temper, or because of vicious tendencies—the number of such individuals in any given prison population is very small. The majority of so-called criminals are criminals because of weakness of character, inability to stand temptation, lack of real initiative and resourcefulness. The very few who have initiative, resourcefulness, courage, become



leaders in desperate enterprises such as bank robberies, racketeering, and the like. It naturally happens, however, that because laws and regulations are made largely to correct abuses prisons are built and ruled in accordance with standards that are set by this minority. The rules of silence, the single heavily-barred cell of concrete and steel, were made for these desperate men and not for the average run of the prison, who are for the most part rather helpless and inadequate individuals, often boys or decrepit old men. But that was the natural development and it is only beginning to be realized that the prison system as the very minimum of its requirements must develop different types of institutions for different types of individuals. However, there is at the bottom of the whole scheme of imprisonment a profound failure, in practice at least if not in understanding, to appreciate the principles that I have tried thus far to develop, and to realize that every individual represents an investment of society and that he presents certain assets in the way of good qualities, and certain liabilities in the way of bad qualities, and that when for one reason or another he has drifted into the prison it becomes an obvious opportunity of the state to endeavor to



develop the good and suppress the evil so that in the end he may become a good citizen, his value to the state enhanced thereby and his capacity for individual happiness correspondingly increased.

Far from realizing this simple principle, the spirit of vengeance has so dominated the entire penal system that, as I have already indicated, the prisoner is sentenced irrespective of any one thing except the conformity of his offense to the specific definition of his crime as it appears in the penal code and the application of the sentence prescribed therein by the court to his individual case. No thought is taken of the fact that he is a social unit, no attempt is made to arrange his punishment, if punishment it must be considered, so that the least damage will be done not only to him but to others; and it not infrequently happens as a result of this blind attitude, this conviction of the prisoner, as I like to put it, *in vacuo*, as if he had no connection whatever with any other human individual, that the carrying out of the sentence imposed produces in the last analysis a greater hardship to society than the crime of which the prisoner was convicted. Schopenhauer called attention to what he conceived to be an absurdity many years ago when he pointed out that people



were convicted and imprisoned for attempting suicide. Obviously, had they succeeded they could not have been punished. But the same sort of thing is happening all the time. For example, my attention was only recently called to a man who was arrested and sentenced to imprisonment for not supporting his wife. In other words, he was supposed to have committed a crime by not supporting his wife, and his punishment was to be placed in a position where, of all positions in which society can place a man, this one stands out as the only one in which he could not possibly carry out the thing for the failure to do which he was being punished. On the other hand everyone knows, as I have already pointed out in the case of capital punishment, that the carrying out of a sentence not only of death but of imprisonment often works untold hardship upon others. The family of a man who is put in prison, over and over again is pauperized as the result of this act, and not only is the prisoner required to be supported at the state expense but sometimes a numerous family in addition.

The above are somewhat pessimistic and critical comments on our penal system. Their object, however, is to call attention to what appear to me to



be fundamental principles that are involved in this whole question and which can be approached perhaps better from this angle, can be understood if their present lack of consideration is first pointed out. Let me make a comparison with the ideals that govern the practice of medicine. An individual who is very ill or badly injured comes to the physician or surgeon. He is temporarily out of commission as a result of his disease or injury. He no longer is able to function adequately in any capacity. Now the physician's job is to patch this man up, to get him as well as the circumstances of the case permit, to get him back on his feet, to get him again in a condition in which he is competent to function and function as adequately as possible, and he should take into consideration in doing this all the circumstances of the case. If, for example, the individual has a contagious disease the physician takes care that this disease is not communicated to others. He does not permit him to have contact with others so that this may happen. He instructs him in sanitary and hygienic practices. If the patient is crippled he provides some sort of instrument, a crutch or a brace, that compensates for this disability. In other words, the physician conserves



everything that is possible and that is worth while in this man's physical and mental make-up, and where loss or deficiency exists he tries to bridge it over or compensate for it by some artificial means. His business is to save the individual to a life of as great usefulness as he is capable of. Now the object of the state in dealing with the criminal is to punish irrespective of anything else, even though the punishment may destroy the offender, even though it may destroy his family; and it is because the state acts in this way that we have a right to say that it is the spirit of vengeance that controls, and that it is not the wish to prevent like offenses which is the controlling principle. "Actions speak louder than words." What the state does is of more significance than what it says it is trying to do. I have in mind, for example, a learned decision of a high public official who claimed that all the disabilities which a prisoner might suffer as a result of imprisonment, including physical ill health, breakdown, mental disorder, death, and all the rest of it, were intended in the original sentence because they were the natural results that inevitably flowed from the application of imprisonment to that particular individual. This is scholasticism at its worst, com-



pletely dehumanized. Here the claims of society receive one hundred per cent. consideration and the claims of the individual none whatever, whereas the principle as I have laid it down is that a conflict must be solved by giving adequate and equal consideration to the needs for expression of both ambivalent and opposite tendencies. The problem of crime, therefore, can not be solved by leaving the individual out of consideration, nor, on the other hand, can it be solved by leaving society out of consideration. The claims of both must receive adequate attention.

Under the circumstances as set forth it is obvious that inasmuch as reforms do not come to full fruition overnight, what may properly be expected is a gradual evolution of the prison into a group of institutions of varying functions which meet the several needs of the problems presented. This evolutionary tendency has already been recognized formerly, particularly in Germany (Prussia) and in Mexico. In the former country, for example, the prisons are divided into several classes. The newly convicted offender is received in a receiving prison where he is given almost no liberty or opportunity for personal expression, where he remains for a



period of some months under the most careful study and detailed scrutiny of his behavior. From here at the completion of this study he is classified in accordance with the results which that study arrives at, and he goes in the direction of some sort of industrial occupation with always the opportunity of improving his condition by good behavior and by assiduous application to his tasks and the skillful performance thereof. So that he may be transferred to better and better quarters until finally before his discharge he may be actually only boarding, as it were, at the prison, having taken a job in some nearby factory and returning each evening at the completion of his work. An attempt is made, in other words, to fit him for life in the community after his discharge. This method is quite contrary to that usually pursued in this country, where the prisoner at the expiration of his sentence is given a cheap suit of clothes and a five-dollar bill and goes out with the stigma of the prison weighing heavily upon him, with no provision for work so that he can be self-supporting and with every temptation to return to his former life wide open to him.

These suggested changes are more or less generally conceded to be desirable, although the inertia



of the people and the opposition which they feel towards doing anything for these peculiarly handicapped individuals is so great that it seems almost impossible to bring about such results. The principle is there, however, but in connection with it other principles need also to be considered. If it is essential that the prisoner be confined, he should certainly be at work. The fact that he is a prisoner should not mean that society should have to penalize itself still further by reducing him to idleness and not only losing the results of his labor in the immediate present but crippling him so that perhaps he never again will be able to go to work. He should in addition be considered as nearly as possible as a self-supporting citizen. He should be paid for his work a reasonable wage, one that will enable him to contribute something to the support of those for whose support he is responsible, and at the same time save a certain amount against the time of his discharge. In addition to this principle, which is being carried into effect here and there with some success, there should be no question about the right of the prisoner to produce during his confinement and about the right of the state to avail itself of his productions, at least so far as other state-



supported institutions and agencies are concerned. Those who are confined of necessity in public institutions who are physically well and able to work should at least produce food and clothes and furniture for those who are sick and physically or mentally incapacitated. There is no reason why the state should have to support this whole group of ill people in idleness as it is detrimental to their welfare not to be usefully employed, but it is essential that there should be some return from their employment which they feel as a personal gain to themselves in order that employment may have its maximum beneficial effect. In addition to this principle it has been suggested, but we are apparently a long way from this possibility, that the criminal should be obliged to make restitution for the damage he has done. Obviously this is frequently utterly impossible, but at least it seems that where this is possible it should be considered, and that it might well be considered in every case as an element in the situation that should receive attention. There needs to be a closer connection between what is now called punishment and the deed for which punishment is inflicted, to the end that the damage that is done shall be repaired if possible. In



other words, the social physician, so to speak, needs to look into the whole situation from its broader social aspects. Not only does he need, like the physician of the body, to attempt to repair the individual, but he should have in mind the possibility of attempting to repair damage wherever it has been produced.

Perhaps the most radical suggestion that has been made with reference to the entire penal system is that prisons and punishment should both be abolished. The whole argument of Mr. Darrow points in this direction and there is much to be said for it because as already indicated scientific progress has long since advanced beyond the point that justifies vengeance, pure and simple, as a solution for any social problem. We are confronted by the hangovers of the days that have passed existing deeply imbedded in our social system, with prisons, criminal law and procedure all based upon this fundamental emotional reaction and with the net result that the whole system impresses one as being hopelessly inefficient and not addressed at all to any adequate attack upon the problems with which it deals. If after hundreds and thousands of years this is the best we can do it is understandable that



men like Mr. Darrow should feel that the only alternative is to wipe the slate clean and begin all over again. Social revolution is surely one of the mechanisms of bringing certain things to pass but one can not easily be resigned to it as the only method. If it is, then our democracy has failed at the most significant and important moment when deep-seated changes become necessary.

The argument against doing away with punishment and prisons might better be further qualified so that the implication does not exist that it means that people of anti-social tendencies are to be permitted to exercise their destructive instincts free from interference. The psychiatrist has been advocating directly and by implication now for some time that individuals who are so constructed that they can not function effectively and safely as social units should be removed from society and properly cared for in institutions under conditions of intelligent management and direction where various talents may receive adequate and useful expression and at the same time society be protected from their depredations. This program is based upon an appreciation that some people are so constituted that they either have instinctive tendencies that are stronger than their powers of resistance or their



powers of resistance are too weak for the ordinary instinctive forces which all of us have imbedded within us, and that this fundamental weakness makes them social menaces. The psychiatrist has appreciated, as everyone must who knows anything at all about human beings, that the definitive sentence is an absurdity and that such people ought to be confined for the safety of society during the existence of their social disability in such degree of malignity as to render them a menace if at large. It is generally recognized that while under confinement such individuals should be utilized in constructive and productive labor both for their own good and for the good of everybody else, as a part of their education and as a part of their contribution to society. The more advanced penologists believe that where such individuals can work they should be paid a moderate wage, certain portions of which may accumulate against the day when they are turned free, certain other portions of it to be used for the support and maintenance of those dependent upon them. Such a scheme not only tends to do away with the pauperization of the family of a man who has to be restrained because of his anti-social tendencies but tends to build up a feeling of responsibility, which is one of the factors that enter



into the inhibitive forces that operate to control and direct the instinctive tendencies.

Such a plan as that outlined above would involve a radical change in ways of thinking about the criminal classes and in certain legalistic modes of reaction. It would be necessary to do away with such metaphysical concepts as responsibility as it ordinarily becomes a subject of controversy in a criminal trial, such foolish ways of taking testimony as are involved in the hypothetical question, and to deal with human beings as such, recognizing that anti-social tendencies, for the purposes under consideration, are just as abnormal, just as much evidence of disease so far as the objectives of socially acceptable and useful standards of conduct are concerned as are the symptoms of mental disease usually recognized when the objectives of control of individual behavior and peace of mind are considered; that there is no more reason for interning an anti-social individual for a specific period of years than there is for interning a mentally sick individual for a specific term of years, and, to follow the analogy still further and to indicate its absurdity more clearly, the same principle would hold for physical disease. Because the average duration of hospital



residence for typhoid fever is, say five weeks, no one would think of passing a law that typhoid fever patients should be confined to a hospital for five weeks. Everybody with the slightest experience knows the enormous range of individual variations, the great number of unexpected things that can happen, the complications and reinfections that prolong the course of such illness, etc., etc. It is equally absurd to deal with conduct disorders on any such basis. The legal argument that people can not be interned under sentence unless found guilty, that they can not be found guilty unless they are responsible, and that they are not responsible if they are insane, and all that belongs in this category of legalistic reactions, is no longer effective in dealing with human situations, and some way must be found to circumvent the necessity of submitting indefinitely to these archaic methods of thinking and acting.

Everyone who has had to do with the criminal classes knows that a large percentage of them as they are ordinarily met with in prison are not dangerous in the ordinary sense, and could be cared for with much less complicated and much less inhumanly conceived structures than the average prison.



We have near the City of Washington\* prisons for approximately one thousand prisoners. There are no walls about these prisons. There are no cell blocks; in fact, there are no cells except perhaps a half dozen for disciplinary purposes which are used only rarely and then in homeopathic doses. There are no rules of silence in the diningroom or elsewhere. The men are well fed. They sleep in great dormitories where they have perfect freedom of communication. They go to their work each day like any day laborer. They are decently treated and the prison as a whole in its methods under all the handicaps of existing law is a success.

One of the simplest of the rules of human reaction is that violence breeds violence. Attack breeds first resistance and then counter attack, and the vengeful attitude of society as expressed in its penal system reacts upon itself.

On the other hand, however, we must remember, as already indicated, that the Super-ego, the Ego-ideal of the individual, is built up very largely as a result of prohibitions, the prohibitions of the parents, more particularly of the father or the father substitute, which prohibitions were enforced

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\*Occoquan and Lorton.



by the superior power, size and strength of the parent. And we must expect to find these prohibitive tendencies reflected in society and its institutions, and that is precisely what we do find in our penal system. But whereas we have come to believe that paternal prohibition can be reasonably and kindly and understandingly administered, our penal system represents the cruel father of hundreds of years ago who exercised the power of life and death over his children like the old Roman head of the family. This ideal has been superseded in our thinking and feeling and should be superseded in our institutions. Anti-social conduct should not be met in kind but should be met by the automatic segregation of the offender in an adequately supervised institution by such methods as would make him feel that his conduct led naturally to such results, that as near as it is possible to so express it he shut himself up in the institution because of the way in which he conducted himself outside and was not shut up by somebody else in order to make him suffer; and that he can get out, back again into the world of free men, by modifying his conduct, and that his conduct can be modified if he is able and willing to cooperate with the plan looking to that end which the institution stands for and adminis-



ters. During the period of his incarceration he is encouraged to be a productive member of that section of society to which he now belongs, and he is also taught that by virtue of his anti-social conduct he can not expect to escape the legitimate responsibilities which he has acquired during his lifetime. This is the direction, it seems to me, in which we can hope to advance not only in our ways of dealing with anti-social offenses and offenders but in our ways of thinking about the penological problems they present.



## Chapter XIV

### SOME INFORMATIVE EXPERIENCES

I SHALL not take up in this chapter many things that are commonly discussed in works on this subject, such, for example, as trial methods that make it possible to throw out indictments because of minor technical errors, which have presented numerous absurd situations that have been sufficiently dilated upon in the popular literature; nor shall I speak of the proverbial battle of experts, which is a part of the present system because the system is what it is rather than because of the fault of the experts as some people like to think. I shall, on the contrary, refer to certain actual cases that I have contacted in one way or another in the course of my experience and which illustrate certain of the principles that have been hereinbefore set forth.

There is a popular fallacy that there exists such a thing as a "judicial mind," which means a mind



that can approach a given problem without prejudice. It would be an unthinkable thing if any human being were so constituted that he could approach a problem of one of the major crimes like murder in any such state of mind. What we think or believe at any particular moment is the result of our entire past experience; and so it must of necessity be true that everybody approaches every problem of his life, if it is a problem that has any personal significance whatever, with a tendency that leans more heavily in one direction than another, and that is precisely what is meant by prejudice. Every trial lawyer knows this and seeks to have his case brought before a judge who by past experience and past performances, it is fair to suppose, would naturally incline in his thinking toward the solution which he is seeking. In fact analyses have been made of judges' decisions, and to those who are not accustomed to the results of the analyses of human conduct it would appear astonishing how true to form these decisions run in cases of like nature. It would be almost possible, as a matter of fact, to predict the percentage of a certain kind of decision that a certain judge would make with reference to a certain type of case.



To say that everybody approaches every significant problem of life with a prejudice instead of a judicial mind does not argue that an attempt should not be made to have the presiding judge as free from marked prejudices as possible. The greatest interference, however, with any effort in this direction is due to the assumption that a man because he is robed with the authority of a judge is necessarily judicially minded and that therefore any assumption to the contrary casts an aspersion upon his judicial character. If it were generally appreciated that prejudice is the universal rule and that judicial-mindedness is an abstraction that has no real existence, it might be much more possible to secure results where the margin of undesirable components would be cut down to the minimum. I have, for example, seen a judge get up and leave the bench because in the course of a trial the fact had been disclosed that at one time he had spoken with one of the counsel upon the subject of the case though he had himself forgotten this incident, and yet on the other hand we see judges who are permitted to preside in criminal court year after year who are markedly and obviously sadistic characters and who take joy in meting out sentences that



produce the maximum amount of suffering to those convicted in their courts. People who are constitutionally disqualified from acting in a judicial capacity at all go right on functioning and no one seems to appreciate the inappropriateness of what is happening.

That a sadistic, cruel, vengeful judge should mete out what is euphoniously called "justice" in a criminal court is perhaps no more remarkable than many other things that happen every day. The most inconspicuous of the things that surround us are frequently the most obvious when our attention is once drawn to them, but it seems to be necessary to have our attention drawn to them before we can see them at all. For example, as I write I have before me the case of a young boy in military service who was court-martialed because he refused to carry out orders and his refusal was disrespectful to his superior officer. As a matter of fact, he was directed to get up and go to work and he replied, "Nothing doing." The records of this court-martial extend over many pages. All of the rigid formality and dignity of the court was preserved in its correspondence to the detailed requirements of military law and procedure. The boy was formally tried, witnesses were heard, counsel examined them, and



all the rest of it, and the court in the full panoply of its augustness and in the maturity of its wisdom sentenced this boy to a period of seven years' imprisonment at hard labor, and this was not during a period of war. Shortly after this impressive exhibition of what in this instance was futility the boy appeared for examination by a psychiatrist and it became obvious that he was suffering from a malignant mental disorder, namely dementia precox, that he had undoubtedly been so suffering for some time, that he was so suffering at the time of his trial, and that his alleged misconduct was merely a symptom of that disease. No criticism is intended of these serious-minded officers who had been outraged by the abnormal conduct of this boy. Their education did not involve the recognition of the various types of mental disorder, nor did the traditions of their profession call upon them to be alert to recognize it. They simply did not see what to the psychiatrist was perfectly obvious, that this boy was manifestly mentally seriously ill, and not seeing it they acted in accordance with their conviction such as it was.

If this case seems either astonishing or unimportant, I am reminded of another instance which will bring home the significance of these, as they have been called, "psychological blind spots" with refer-



ence to the type of phenomena we are discussing. I have in mind one of the outstanding legislators of one of the important states of the Union that was concerned with a re-codification of the criminal laws of that state. He was a member of the committee that was influential in bringing to pass this re-codification, which included many very significant changes in existing law and procedure. In talking to me on the general subject of capital punishment he described a young offender who had been arrested and, I believe, convicted on a charge of murder, and to illustrate the reasons for this belief that the young hoodlums who go about shooting people ought to be put out of the way as promptly and as thoroughly as possible he told me of his conversation with this boy. Now what happened was that the boy in his effort to impress the legislator showed not the slightest respect for either him or his position. He was egotistical and he was impertinent, and the legislator in detailing his conduct mentioned these facts as evidence of the perfect impossibility of dealing with such human material and the obvious desirability of closing accounts with it in the most complete and effective manner possible. What happened was that this legislator permitted himself, because of his psychological blindness, to



be personally offended by the lack of respect and the impertinence of a poor, miserable ragamuffin of a youngster who had been led into crime probably partly as the result of his own necessity in an impossible situation for maximizing his ego, as Stanley Hall used to call it, by doing something that would give him a sense of power. It was precisely such a reaction that he indulged in with the legislator, and such a reaction was a symptom of the very type of psychological and social ineffectiveness and inadequacy of a personality struggling against impossible odds. Why should a legislator understand these things? And yet how difficult it is for one who has a little understanding of them to make his voice heard.

While we are on this subject of prejudice let us proceed a little further. I remember very well the case of a mechanic, steady, hard-working and skilled, who had a daughter approximately eighteen years of age. She was apparently an attractive young woman and the day came when a young man became interested in her, and his interest resulted in his seduction of her. When the law-abiding, worthwhile, very good citizen, her father, learned of this he without hesitation procured a gun, went after the young man in question, and when he found



him he shot him dead. He made no effort to escape or to excuse his act. In his own mind it was fully justified. He came to trial and the lawyers naturally were put to it for a defense, because the homicide was a fact which could not be denied. It had to be accepted. The only defense under the circumstances, therefore, would be a defense of insanity, and this they entered. Now the jury listened to the evidence and brought in a verdict, and their verdict was not guilty because of insanity, whereupon the defendant was sent to an institution for mental disease where he of course belonged if he was in fact mentally diseased. It became perfectly evident after a reasonable observation in this institution, however, that he was not mentally ill in any way, nor had he been. He was the same perfectly well balanced individual that he always had been. A report was made back to the court that he was not mentally ill and he was returned for the court to dispose of the case. The court had no choice but to discharge him. The presiding Justice was the same one who had presided at the trial, and in discharging him he made the comment that he had never had any suspicion that the man was crazy. I think we may assume that the jury never had any such suspicion either, but it is one of the privileges



of a jury under our system that they may find a verdict for a lesser degree of the crime than that charged, or they may find the person innocent if they wish, whether or not there is any relationship whatever between the nature of the evidence and the verdict. In this case there was no real evidence that this man was mentally ill. The thing that undoubtedly happened was that each juryman said to himself: "The man who was killed got what he deserved, and that is what I should do, or should like to do, myself, under similar circumstances." In other words, the jurymen sympathized with the defendant, which, as I have expressed it in a previous chapter, is the only difference between a verdict of guilty and a verdict of mental disease. They did not propose, in other words, to see a man hung who was led into the commission of a homicide as the result of the vicious conduct of a young man in seducing his daughter. They proposed to bring in a verdict that would let that man go scot-free and I have little doubt that in the last analysis their verdict was a wise one, because this man undoubtedly went back to his work and so far as I know he never made any further trouble.

We see here again an illustration that judicial-mindedness is sometimes very far removed from the



court-room in which a criminal trial is taking place. If we still have any doubt of this fact we can recall the instances that have been not infrequently cited in the newspapers where soldiers have had to be called in to do duty in and about a courthouse to prevent acts of violence. Is it conceivable that judicial-mindedness if it originally existed, could continue to exist under such conditions of emotional stress, conditions which are brought about by the constant threat of violence which may be expected to break out at any moment? Can a judge presiding, an attorney conducting a case, or a jury attempting to arrive at a solution of the merits thereof,—can any of these people calmly and judicially consider the problem which the defendant presents under conditions of this sort involving an immediate threat of personal injury unless certain very definite conclusions are reached—because the temper of the mob under such circumstances is made very manifest and their desires very obvious?

That the seepage of popular opinion as it exists outside of the courtroom and is expressed in the public press is a very real influence in the trial of a case and the conclusions reached is still more graphically demonstrated in those occasional celebrated cases which arouse the antagonism and vengeance



motive of the people of an entire country. Two types of such cases are those in which the crime was of a particularly atrocious nature, and those in which an attack has been made upon some public person, particularly a ruler, King or President. I have reported elsewhere\* the case of Father Johannis Schmidt, a priest who murdered his mistress, Anna Aumuller, dismembered her body and distributed it in the river. The hideous details of this homicide and the fact that the man was a priest overshadowed his obvious mental disorder and the fact that he had previously been an inmate of a hospital for mental diseases. He was condemned to death and promptly executed. In the second group of cases one might pick many but the Guiteau case is an outstanding example, as is also the Czolgosz case in which the attorney for the defendant, appointed by the court, actually apologized for the function he was called upon to perform. No one can possibly avoid the conclusion that in such instances public opinion is dominant and to all intents and purposes compels the results it desires.

The inadequacy of existing definitions of crime and the attempt to handle human material in ac-

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\*In my book on *Insanity and the Criminal Law*, published by Macmillan & Co.



cordance with these restricted concepts can be illustrated in several ways. To refer again to the case of Father Schmidt. At the time he murdered Anna Aumuller he did so in accordance with what he believed to be the direct command of God. Nevertheless the prosecution undertook to demonstrate that though that might be the case it might not involve his knowledge of right and wrong and at least it did not impair his knowledge that homicide was in fact prohibited by the law of the land. The application of the crude and very much antiquated right and wrong test can be seen, therefore, in such an instance to present serious difficulties. In fact in this case I testified that the defendant knew the difference between right and wrong and knew that he was right, which is precisely the state of mind I believed him to have been in when he as a priest carried out the direct command of God. There is no question but that such a man makes distinctions between right and wrong but in this particular instance and in like instances this distinction is not the conventional one. In fact right and wrong have varying significances, as everyone knows who has had at times in his life to struggle with a certain complicated situation which presented to his mind an ethical problem. Right and wrong becomes



really, at least in a large proportion of human activities, an individual question. I remember, for example, a judge telling me after having sentenced a fourteen-year-old boy to death that the whole case was perfectly simple, that the boy knew the difference between right and wrong and that was all there was to it. Of course the boy knew the difference between right and wrong, but he knew the difference from his point of view and with the mind of a fourteen-year-old boy. Is that what the law means when it propounds this test? Volumes have been written on this subject, and this fact alone is sufficient to indicate that there is no unanimity of opinion. The law and lawyers apparently are exceedingly slow to acknowledge that man and his activities and functions can not be pressed into rigid definitions with unequivocal interpretations. To follow the example a little further, imbeciles, especially those that have been carefully trained in educational institutions, will in response to a direct question tell you that they know the difference between right and wrong. They will tell you that they know it is wrong to steal, etc., down through the category of ordinary offenses. If the questioner stops at this point it is very simple to say that the individual in question knows the difference between



right and wrong, is therefore responsible and if he does any of the prohibited things is a proper subject for punishment. But the slightest effort at the elaboration and elucidation of these simple replies will show how utterly inadequate they are, how quickly they break down under cross-examination and disclose the infantile, childish roots in which they are founded. There is no comparison between the concept of such an imbecile child as to the nature of and distinction between right and wrong and that of a well developed adult; and yet on the other hand I suspect that if the average man in the street were questioned with any degree of incisiveness as to what he believed to be the distinctions between right and wrong, what he thought was the inherent nature of these ethical distinctions, that he would not show up to very great advantage, and probably, like the child, he also would finally have to rest in certain dogmatic statements; only these statements would be at a higher level than those of the imbecile. We talk very glibly about these distinctions. We seem to feel them very definitely, but the moment we try to press them into the form of a definition or a statute they seem to escape us. The efforts of legislatures to make statutes unequivocal in their meaning are sometimes almost



pathetic. Their repetitiousness seems like a childish effort to grasp certainty where no certainty exists. It is an expression of what I have called "the safety motive," the feeling that we all have that we should like to repose in a state of safety, of certainty, of freedom from the unexpected and the unknown. It were better to acknowledge from the start that such things are impossible. It would seem that life would be simpler if this acknowledgment were frankly made instead of insisting upon living as though it were not true and certainty and safety were in fact attainable.

The unattainability of certainty as set forth above is still further illustrated by the fact that many crimes are not at all what they seem to be. The mental mechanism of the average crime is quite similar to if not identical with the mechanism of the neurosis, as has been set forth by Alexander.\* This has been known for a long time with reference to certain types of criminal activity, particularly such types as kleptomania, exhibitionism, obscene letters. In these and in other instances the abnormal conduct either appears senseless or seems to have a purpose which in fact it does not have.

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\**Loc. cit.*



Stealing, for example, might be presumed to be an expression of satisfying certain wants that because of lack of means could not be satisfied in the usual way, but when stealing is indulged in by those who have plenty of means and who could buy the thing stolen then this interpretation begins to lose its significance, and if finally the things stolen are of no earthly apparent use to the person stealing them it loses its significance entirely. Then we appreciate that we are dealing with a neurotic form of behavior in which the thing stolen is a symbol for the thing desired, and unless that which hides behind the symbol can be discovered the true reason for the delinquency will remain unknown.

The symbolic nature of criminal conduct is well illustrated by the seven attempts that were made, or it might better be stated apparent attempts that were made, to assassinate Queen Victoria. Speaking of these attempts Strachey says in his *Life of Queen Victoria*,\* after describing the attempt of an Eton boy named Maclean to shoot the Queen: "This was the last of a series of seven attempts upon the Queen—attempts which, taking place at sporadic intervals over a period of forty years, re-

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\**Queen Victoria*, by Lytton Strachey. Published by Harcourt, Brace & Co., New York, 1921.



sembled one another in a curious manner. All, with a single exception, were perpetrated by adolescents, whose motives were apparently not murderous, since, save in the case of Maclean, none of their pistols was loaded. These unhappy youths, who, after buying their cheap weapons, stuffed them with gunpowder and paper, and then went off, with the certainty of immediate detection, to click them in the face of royalty, present a strange problem to the psychologist." It should be said that it is a fine example of the sanity of the English nation that none of these youths was executed and that in several instances their mental derangement was recognized. These acts were obviously symbolic, and as obviously, as Strachey very well says, were not murderous in intent. "Actions speak louder than words" holds true psychologically and though a pistol was clicked in the face of royalty the fact that it was a harmless weapon must necessarily carry the conviction that there was no intent that it should have fatal results. In fact it would seem that the robbing of the pistol of its capacity for injury was the very means by which the perpetrator of the deed protected himself from the consequences that a superficial observation of his act might seem to indicate would have naturally resulted. This is



a well known protective device that the psyche over and over again employs.

Thus we see that crimes are not always what they seem to be. Here as elsewhere the real motive hides behind the symbol and therefore any attempt to formulate definitions which are based upon objective data obtained at the high level of clear conscious awareness must necessarily fail to express what is really occurring in the individual offender at the time of the commission of the prohibited deed. And it is for this reason that there is so much in the law, in the trial and in the decisions about motives, so much that is obscure and misunderstood, because the law has not yet learned to deal with human beings as they are but deals only with fictional creatures of the imagination. The responsible citizen who definitely chooses to do a criminal act when he might as well have chosen either to avoid doing it or to have done something socially valuable instead is as much a fiction as is the usual representation of a confirmed criminal with his small ears, his heavy jaw, his beetling brows, his thick neck, his unshaven face and general bestial expression. It is a sad commentary upon our present society to realize that the defendant who is tried in a criminal court in the ordinary course of events is merely



present in person, while he watches a purely imaginary individual being dealt with in accordance with the methods of criminal procedure and being measured over and against the average responsible citizen who is equally imaginary. The whole proceeding from this point of view is a rather ghostly one from which, naturally, few material, concrete and useful results could be expected.

In further reference to the fictitious character of the criminal I would add the fact that not infrequently the murderer is very far from exhibiting any of the brutal characteristics with which he is usually credited. I have in mind a young boy, who has already been mentioned in these pages, who shot down human beings apparently in much the same spirit that one shoots rabbits. He was a little, undersized fellow who had the face of a cupid and yet was one of the most socially dangerous individuals, judged from his past conduct, that I have ever known. In prison, however, he presented no problem.

I have also in mind another boy whose history had been one of almost hopeless inadequacy. He had never been able to care for himself or to regulate his life in any reasonable way. He had always been supported by his father, was always getting



into trouble, always out of money. All the efforts that were made to get him on his feet seemed to have been wasted and were of no avail. One evening this boy wanted some money and he decided to get it by holding up a street car conductor. He took two or three drinks of whiskey, got a revolver, took a car and rode to the end of the carline, at which point he was the only remaining passenger, got out of the car while the trolley was being changed to make the return trip, pulled out his revolver and demanded that the conductor hand over what money he had. Unfortunately the conductor recognized him and called him by name. This was too much. There flashed through the young fellow's mind the probability of certain conviction because of this recognition, with subsequent imprisonment, etc., and he pulled the trigger, killed the conductor, and subsequently was sent to a hospital for mental disease where he has remained since. Quite the contrary to what is usually thought, this case illustrates that murder may not be the result of an aggression by an individual who has initiative and courage but may be the result of weakness and cowardice. The boy was frightened by the vision that was suddenly flashed before him when the conductor spoke his name, and it was because he was frightened that he



pulled the trigger. This boy, too, is a passive, pliant individual and presents no problem in prison.

I have in mind still another boy who was tried for murder in the first degree on the basis of the technical interpretation of his crime as coming under this category. He was the lookout for a gang that broke into a jewelry store and when the owner appeared on the scene shot and killed him. The boy had nothing to do with the actual homicide, had no idea that one was contemplated, as it was not as a matter of fact, and was merely used as a chauffeur because of his knowledge of the city and to remain with the car as a lookout while the others broke in. Technically, however, he was guilty because he was engaged in the commission of a felony in the course of which homicide occurred. On examination he proved to be a feeble-minded boy who had never gotten along outside except to earn a bare existence at laboring work. In the prison for the first time he had a decent bed, three good meals a day and freedom from the stresses of the outside world which he was illy constituted to bear. He made a model prisoner, got along with everybody, improved in health and gained in weight. The prison seemed to be a much better environment for him than the outside world.



Finally I have in mind a woman who shot and killed a man who was making advances to her. She immediately became obviously psychotic and was sent to a hospital for mental disease. The real story of this woman was never quite clear in my mind. She had two children. The suspicion was that one of the children was not her husband's although I never was prepared to believe this aspect of the story. What I think happened was that this woman, who was a most vital person, probably indulged in some flirtatious passages with the man she finally killed. This man apparently took these signs too seriously, believing that they could be realized upon in accordance with his desires, and when he attempted to do so the woman became frightened, much as our boy in the previous illustration did, and shot him. Like the boy, again, there was nothing vicious in her character. She was not a murderess at heart and the thing that happened was the unexpected dénouement of a little foolishness on her part which ordinarily would never have had any such result. Faced with an indictment, the possibility of a trial and execution for murder, the psychotic reaction is understandable. She remained for a number of years in the institution to which she had been sent, during which time the acute danger



of her trial gradually subsided, and she slowly gained a feeling of confidence and gradually climbed back to a condition of mental health and was finally discharged as recovered,—a good citizen who had paid a terrible price in guilt and suffering for a lapse from her own inner standards and finally won her way back to the right to be accepted again as a member of the group. She has picked up all of her responsibilities adequately and is living a useful life. Thus can such problems be solved when the conditions render it possible, and thus could many more undoubtedly be solved if the public and legal attitude towards these delinquencies and these delinquents would permit. Contrary again to the generally held opinion, murder is not necessarily the worst of crimes so far as it reflects the psychology of the individual. It not infrequently is a single expression, within the lifetime of the individual, of a lack of self-control and does not repeat itself, although of course this desirable result has all too many exceptions.

I have in mind another case that illustrates a number of aspects of the present way of dealing with crime and shows the inadequacy of existing methods and the certainty of some results in a very dramatic way. A woman some years ago shot and



killed a Senator in a State Legislature and was promptly indicted for murder in the first degree. It appeared when the matter was gone into that this woman had served as this Senator's secretary over a considerable number of years, that she had managed his office and had even managed his political campaigns for him. When, therefore, I was asked to see her by the defense in order that I might qualify to testify to her irresponsibility, I found a woman not only with none of the signs and symptoms of mental disorder, not only without any indication that could be used to bolster up a theory of irresponsibility, but a woman of unusual intelligence, brilliancy and efficiency. As a result, in the face of protests and importunings, I refused the case. Nevertheless the defense was able to secure two excellent physicians of my acquaintance who did take the stand, who did hold that this woman was irresponsible, on the theory that she had been so driven by the emotional stresses to which this Senator had subjected her over a period of years that she was literally beside herself at the moment. This is what the testimony disclosed: During the period that this woman had acted as this Senator's secretary she had been his mistress. Both of them were married so that a legitimate relationship was



impossible. During the years of their association she had borne him two children and had had a number of interrupted pregnancies. The whole story of the relation between these two people was brought out by reading the letters of the defendant from the witness stand. Their intimate relations were disclosed in these documents, and the whole sordid story in its details reflected the callousness of the man and the long suffering of the woman. It seems that they had had an understanding for a considerable period that if Fate ever ordained that they should be free that they would get married. Now as a matter of fact the Senator's wife and his secretary's husband died, and the freedom which presumably both of them had long looked forward to became a matter of fact. At this juncture the woman reminded her employer of their understanding and agreement and asked him to abide by it. He refused. The shooting followed shortly thereafter. At the summing up the attorneys for the defense did not even mention the psychiatrists or their theory of the case, and the jury brought in a verdict of not guilty and the woman went free.

The atrocious manner in which the medical experts for the defense were used in this case is an outstanding aspect of it. These two men were in-



duced to testify, apparently, for the sole purpose of getting the defendant's letters admitted in evidence. These letters would have had no standing as evidential material except upon the theory that they would tend to throw light upon the mental condition of the writer. A defense of insanity made all evidence bearing upon the mental condition of the defendant admissible, therefore the letters could be read. The letters were so written that obviously they would create a strong feeling on behalf of the defendant in the minds of the jury. The experts inadvertently permitted themselves to be utilized in this way, although I am convinced that they acted in good faith on the theory that this woman was so thoroughly outraged by the refusal of her employer to carry out an understanding and agreement of years' standing which meant her rehabilitation in her own feelings and in those of society that at the moment of the homicide she was in their opinion irresponsible. Is it not a sad commentary upon our methods of legal procedure that an attorney charged with presenting the case of a defendant on trial for homicide should have to resort to such tricks in order to present the actual pertinent facts related to the situation? No understanding could be had of this homicide without the incorpo-



ration of all of the facts that these letters recounted, and no intelligent plan of dealing with the defendant could be projected without this understanding. I am not technically qualified to criticise the rules of evidence, which have undoubtedly grown up for good and sufficient reasons to be what they are, but it is quite obvious in a situation of this sort that their application results in an absurdity. Human affairs can not be dealt with by limiting the amount of light that may be thrown upon them. We know all too little about the complexity of motives that animate human actions, and there should be every effort made to release all available information that will help in dealing intelligently and usefully with the problems they present.

There is one other aspect of this case which is of significance in relation to what has already been set forth in these pages. It will be remembered that I have indicated that standards are built up in society much as the ideal is built up within the psyche of the individual. If this is so, the offending of social standards will bring social disapproval as surely as the offending of the Ego-ideal will bring a feeling of guilt. Now that is exactly what happened in this case. Although this woman had been acquitted and declared not guilty, when she went back home



she found herself ostracized. Her intimate relations with the Senator may have been suspected but they had not been accurately known as facts, but the necessities of the trial required that they be detailed as I have indicated and they became, therefore, matters of public knowledge. When this occurred her previous associates were forced, as the result of the standards which they felt required to measure up to, to disclaim her. What the history through the years has been I do not know. Whether she was able to rehabilitate herself I can not say. I can only say that I have known instances where people under similar circumstances have so rehabilitated themselves. A lawyer of my acquaintance had at one time served a sentence for forgery and instead of running away from the town in which the forgery had occurred and from which he had been sent to State prison, he came straight back to that very place and faced the music and through the years reconstituted himself and built for himself a position of respect at the bar.

All of this goes to show that such punishment as is just, if we may be permitted the use of these rather vague terms, is the punishment that comes from within, and that that sort of rehabilitation which is worth while also has its standards within. I trust



that from the argument that has been pursued through these pages it will be apparent at this point that though changing social conditions may change these standards socially and individually, still certain standards will always exist. Social life would be impossible without them, and herein lies the virtue in the suggestion that punishment be abolished. This means punishment administered from without. The punishment that comes as a result of the sense of guilt and as the reaction of the herd, are things which are at least at present, and probably will be for many years to come, beyond our control. The punishment that is administered from within can never be escaped, and it is much more nearly calculated to be effective in causing rehabilitation. It is much more adequately adjusted to the nature of the defection. Anyone who has suffered in this way knows how much more harassing and inescapable such suffering is than physical discomfort or even physical pain. And then again, as has already been indicated, it must be realized that punishment inflicted by others, largely because it can not be adequately measured against the defection, because the inner psychological state can not be fully known, is almost invariably felt as unjust and instead of causing efforts at rehabilitation it results in



activating the antagonistic, antipathic, aggressive tendencies. If, therefore, the whole matter of anti-social conduct could be approached in the scientific spirit, which is the really judicial one as near as it is ever attained, and if as I have suggested the individual could be made to appreciate that he was not put in prison to make him miserable because he had done something that somebody else did not approve of, but that he had put himself in prison by his own conduct, which rendered it impossible for him to be a constructive member of the social group,—if the whole scheme of thinking towards these problems could be changed along these lines, punishment would not go out of existence but would remain conditioned from within as the outward evidence of a biological effort in the psychic systems to reconstitute a state of equilibrium, or relative equilibrium, which had been disturbed by the anti-social act and the offense to the inner ideals.

The following case, very briefly stated, shows the radical differences that exist as between the medical and the legal ways of thinking, and also shows how inadequate the law is to deal with questions of mental illness through existing methods of procedure. The lawyer and the doctor talk in different languages. They see life from a different point of



view, and they do not understand each other. It is to be hoped that efforts that are now being made by committees of the American Psychiatric Association, the American Bar Association and the American Medical Association, which are acting in conjunction with one another, may result in outlining some practically utilizable suggestions. This case illustrates several differences in view between the legal idea of mental disorder and the medical one: This patient when first admitted to the hospital was a 48-year-old retired sergeant in the Army, who had recently developed delusions of persecution. Shortly after his admission to the hospital, as he had accumulated considerable funds and was receiving retired pay, he was brought into court to have a guardian appointed. At the legal hearing several physicians testified as to his unsoundness of mind, as did his wife, but the jury, for some reason, brought in a verdict of sound mind. Nevertheless, the judge ordered him sent back to the hospital as he held the hearing had not been as to legality of commitment but as to competency. This legal opinion was reviewed, however, by counsel for the hospital, who felt that the man should be discharged as he had been declared of sound mind in a properly constituted court and this was accordingly done.



Several months later, while going along a crowded thoroughfare in Washington, he shot a passerby through the back. His victim fortunately survived. The patient was arrested, but as his mental condition was obvious he was found of unsound mind and sent back to the hospital, where he remained for several years. Then through the machinations of an ex-patient who had been discharged by court, a lawyer was secured for him and he was brought into court. The jury again found him of sound mind and he was discharged from the custody of the hospital. As the charge of assault with a dangerous weapon was still in existence against him, he was taken to jail, where he remained several months and then was brought up for trial. At the trial a hospital physician was summoned and the judge asked him if he thought the patient was of unsound mind at the time of the trial. When the physician replied that he did, the judge ordered the case dismissed. As there were no further charges against the patient and as he had been declared of sound mind, he was necessarily released into his own custody. He remained in contact after this for some time with the lawyer who had secured his release. Then, developing persecutory ideas toward this lawyer, he shot



and killed him and was committed to a mental hospital in Virginia.

I trust that it will appear obvious to those who have followed these pages through that so-called criminal conduct is the result of an incapacity on the part of the individual to make an adequate social adjustment, or, to put it in other words, criminal conduct is a maladjustment at the psycho-social level. If we approach it from this point of view then the whole realm of criminology becomes one for scientific investigation, search after causes, an effort to apply remedies, which is done empirically at first, then experimentally until the best results are obtained. This is the unimpassioned, judicial attitude of science, which does not label conduct by opprobrious names but undertakes to understand it and if possible to guide it into useful channels. From this point of view, therefore, the criminal is just as sick as are those who are ordinarily recognized as being mentally ill, only his sickness is of a little different character and is notable especially because of its obvious aggressiveness and destructiveness to the social structure. It is true that many people who are mentally sick and who are so recognized and who are without so-called criminal



tendencies, may be, at least within the realm of their immediate influences, just as destructive. Many a family that might lead a worthwhile and useful social existence has been destroyed by the presence within it of a psychopathic individual.

It would be perhaps useless to call attention to the scientific aspects of criminology at the end of this book except for the fact that I often wonder whether, if the individual who is guilty of anti-social conduct and who is ordinarily labeled a criminal were as a matter of fact labeled differently, if he were considered to be sick and treated accordingly, such a method of procedure might not take a great deal of the heroics out of criminal conduct. Many a criminal faced with the alternative of a term in prison or adjudication as "insane" has chosen the former, because somehow he feels that to be labeled a sick man would operate seriously against his prestige. Whether this would turn out to be so or not, nevertheless the changes that are occurring in the care and treatment of the criminal and in his understanding point in this direction.





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