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CRIME AND  
CRIMINALS  
CHARLES MURPHY



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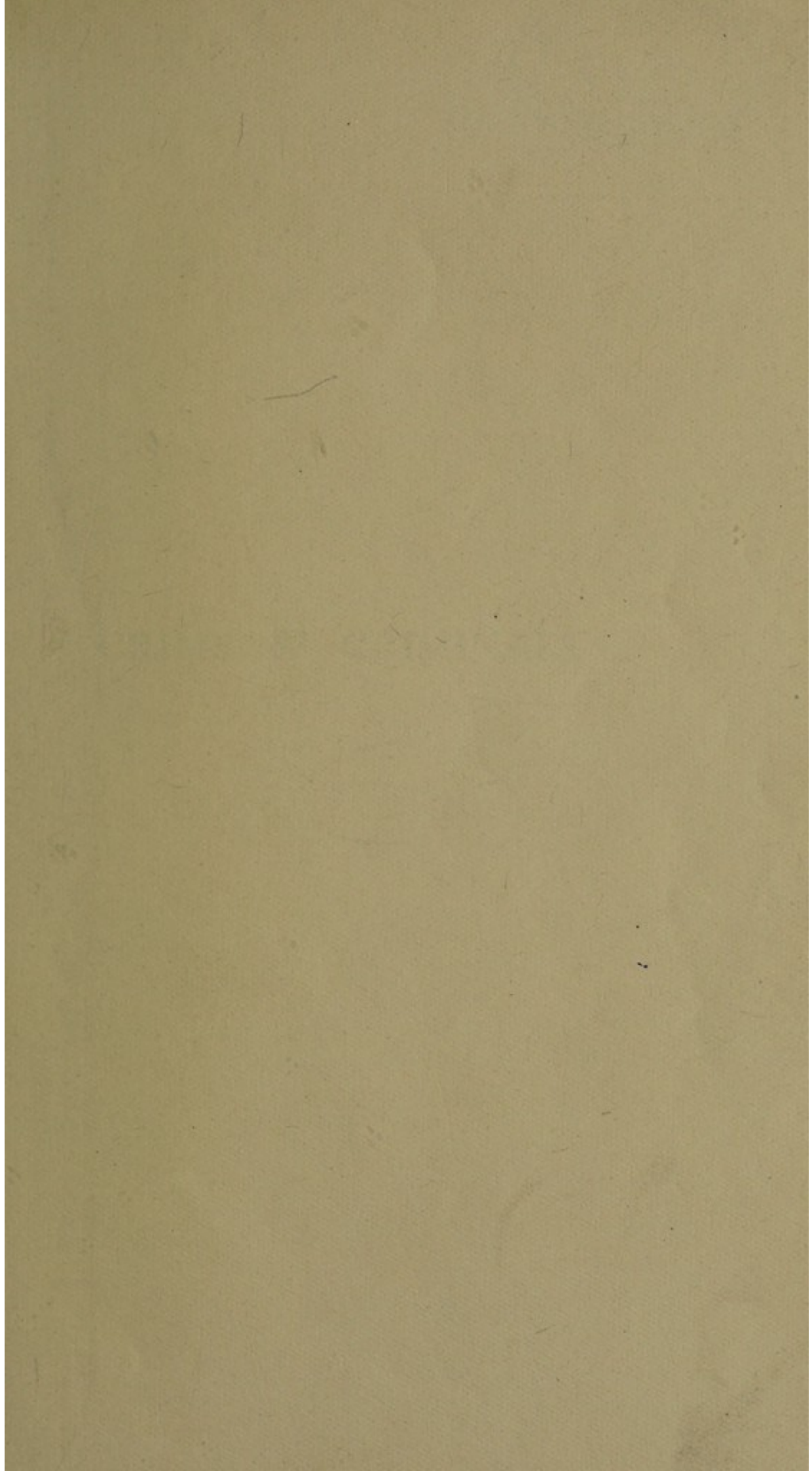
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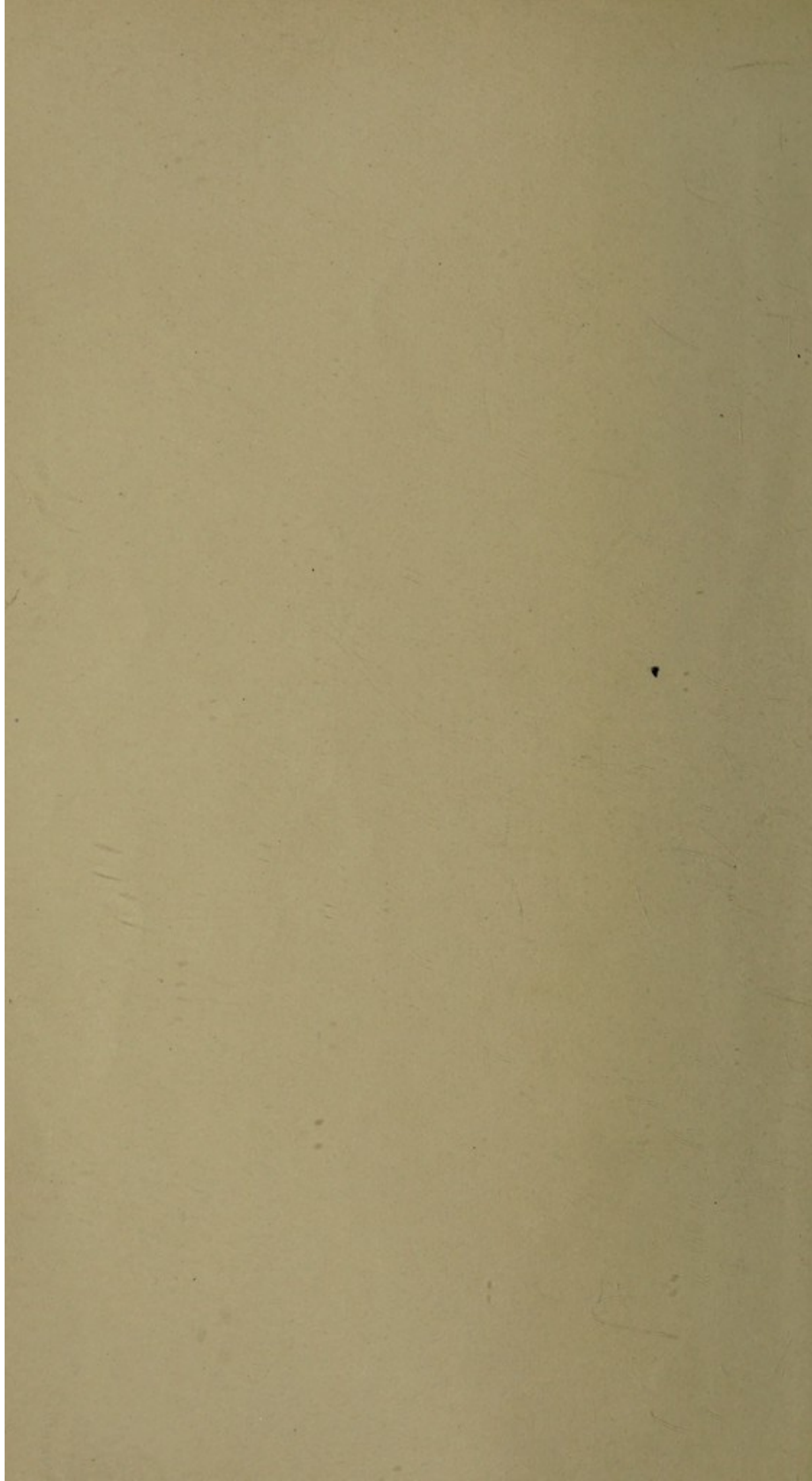
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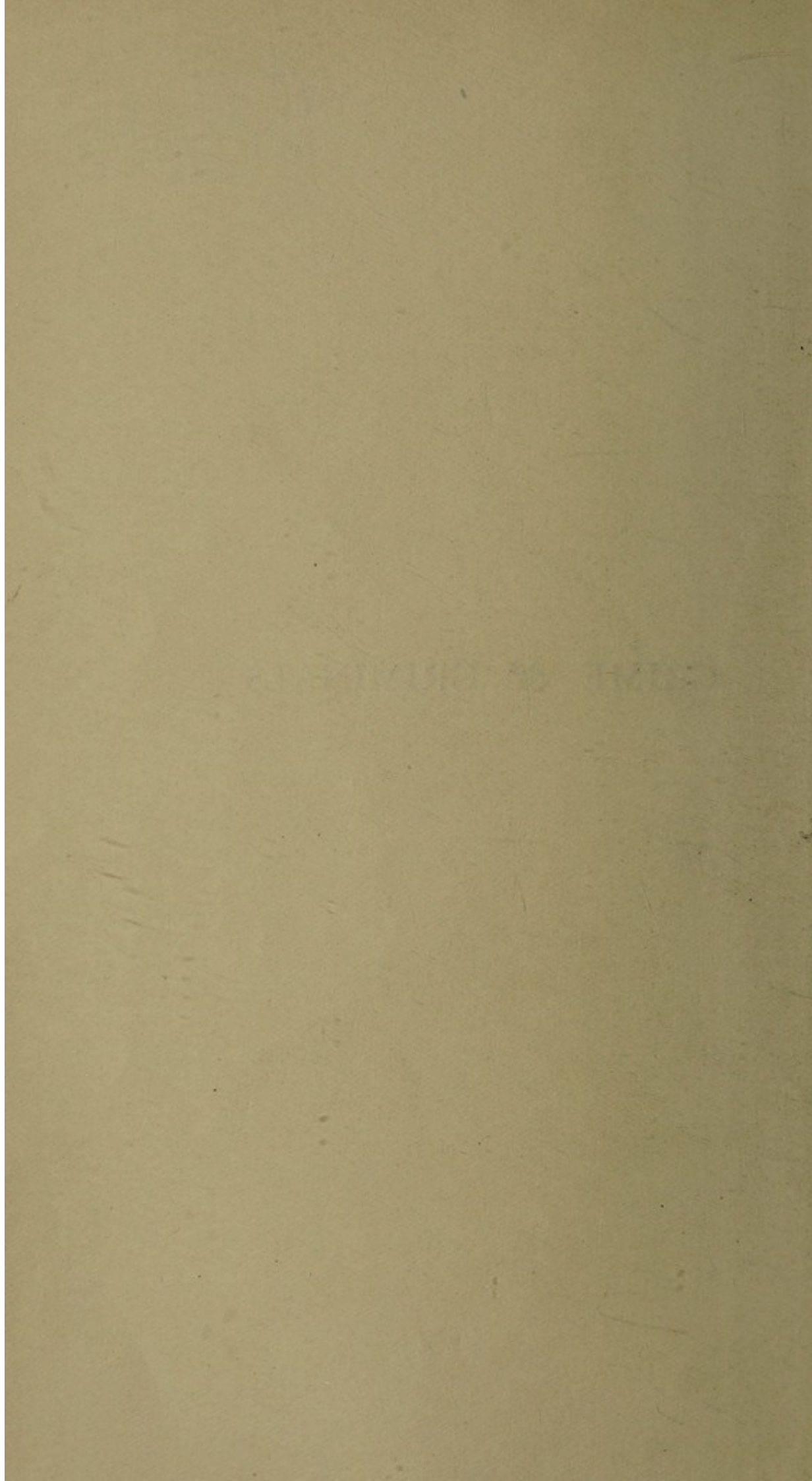








CRIME & CRIMINALS





# CRIME & CRIMINALS

BEING

THE JURISPRUDENCE OF CRIME  
MEDICAL, BIOLOGICAL, AND PSYCHOLOGICAL

BY

CHARLES MERCIER,  
M.D., F.R.C.P., F.R.C.S.

AUTHOR OF

"CRIMINAL RESPONSIBILITY," "CRIME AND INSANITY," "CONDUCT AND ITS DISORDERS,"  
"PSYCHOLOGY, NORMAL AND MOREID," "THE PRINCIPLES OF RATIONAL  
EDUCATION," "A NEW LOGIC," ETC. ETC.

WITH AN INTRODUCTION BY

SIR BRYAN DONKIN,  
M.A., M.D. OXON., F.R.C.P.

MEMBER OF THE BOARD OF DIRECTORS OF CONVICT PRISONS,  
LATE ONE OF H.M.'S COMMISSIONERS OF PRISONS



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# INTRODUCTION

BY

SIR BRYAN DONKIN, M.A., M.D. OXON., F.R.C.P.

MEMBER OF THE BOARD OF DIRECTORS OF CONVICT PRISONS

LATE ONE OF H.M.'S COMMISSIONERS OF PRISONS

I WELCOME the opportunity of writing a few words of introduction to Dr Mercier's important work on the Jurisprudence of Crime. I have especial pleasure in so doing, not only from long friendship with him, and from my own great interest in the subject, but also from my conviction that his present book is pre-eminently sound in its principles and valuable in its application to practice.

It is now thirteen years since the author published his well-known work entitled *Criminal Responsibility*, which deals especially with the psychological aspect of crime, or the states of mind that accompany criminal actions. To that highly original and light-giving work—the first to establish firmly the doctrine and practice of taking into account grades of *responsibility* or *just liability to punishment*, in all decisions on criminal charges—this new book is a signally scientific and useful complement. Although it treats with noteworthy relevance of the medical, biological, and psychological aspects of crime, its most distinguishing marks, setting it beyond and above all other books on the subject that I have seen, are to be found in the chapters named “Kinds of Crime” and “Criminals” respectively. It is here indeed that



the claim of this work to be an important contribution to the study of criminal jurisprudence is particularly justified, and that its wide difference from the numerous and unsatisfactory writings on crime and criminals becomes apparent.

Dr Mercier shows clearly that the part of Jurisprudence, in this relationship, is to regard criminal action not merely as it is deemed such in law, but rather as it ought to be so deemed in the light of scientific study. In illustration of this contention he instances certain acts or omissions to act, which in legal practice are either wrongly placed in the category of crimes, or else wrongly excluded from it. Stealing the use of a thing ought certainly to be recognised as a crime and punished as such. At present it is either not punishable at all, or when money is the thing whose use is stolen, the crime is looked upon as that of stealing the money itself, a very different and much more serious crime. Dr Mercier considers that breach of contract and false imprisonment also should be crimes; and he seems to have reason on his side.

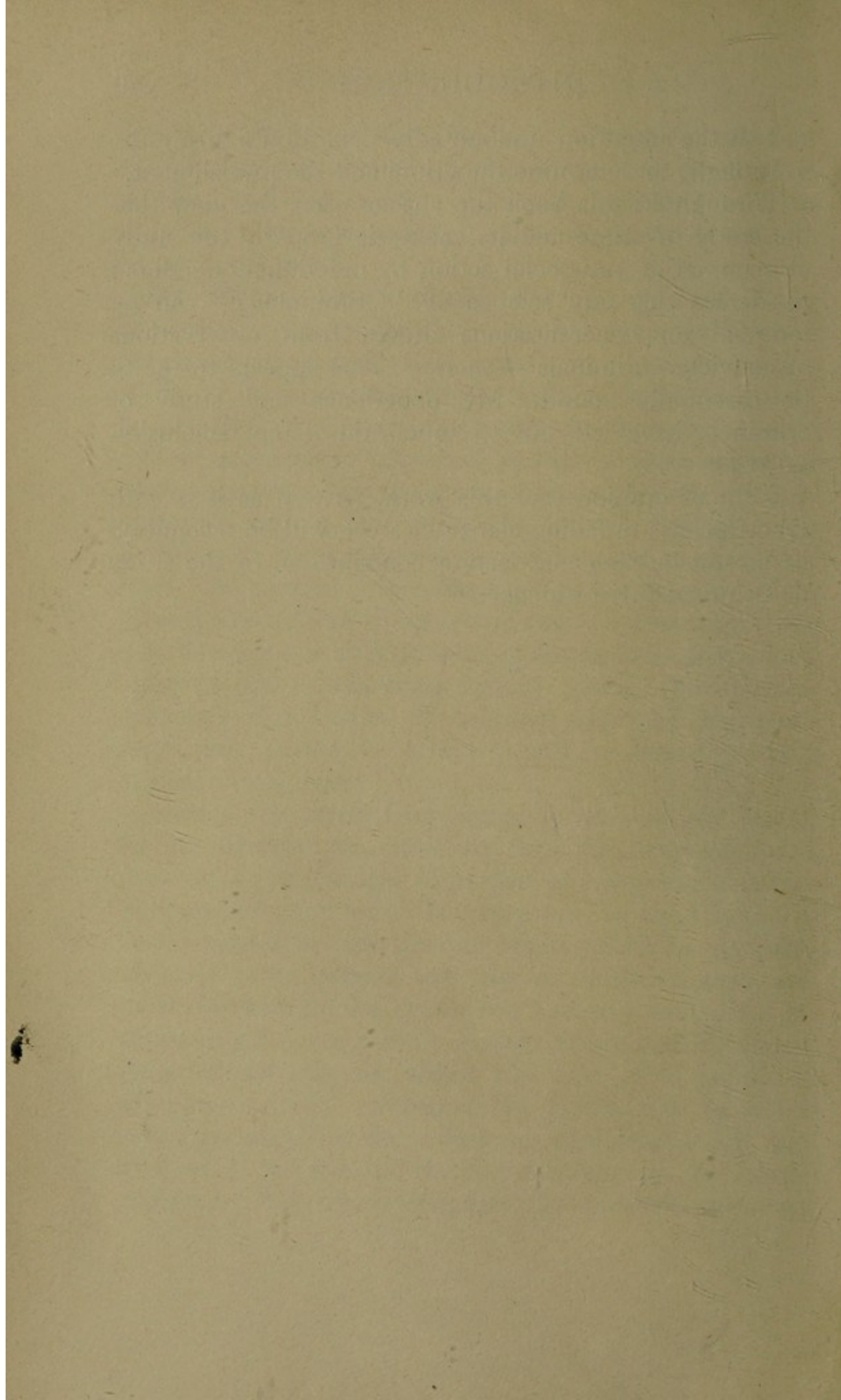
Among the many fresh lights thrown on his subject by Dr Mercier the doctrine that the turpitude of a criminal differs widely from that of the crime deserves very special attention. The turpitude of the criminal is to be judged by the intention with which he performs an act. If he intends and tries to murder a man, and does not succeed, he should be hanged; and if he intends to kill a dog and by mistake kills a man he should be punished only for killing the dog. This applies to all other crimes. Whether the victim dies or not is often an accident depending on the accessibility and skill of a surgeon, or on the accuracy of aim of the criminal. But the *intention* is the same in any case,



and as the intention undoubtedly determines turpitude, so it ought to determine the crime and the punishment.

Throughout this book the author takes the view that the study of crime and its causes is properly the study of criminal or anti-social action by individual offenders ; he denies that any science of "Criminology" can be founded on generalisations drawn from observations of convicted criminals *en masse*. This appears to me to be essentially sound. My experience and study of criminals have led me to much the same conclusion as his.

I am of opinion that this work, written as it is with Dr Mercier's unfailing clarity of style, will be recognised as an outstanding and lasting contribution to the study of Criminal Jurisprudence.





## PREFACE

WITH the exception of logic, there is no subject on which so much nonsense has been written as this of criminality and the criminal. The books of the criminologists of the Continental school are extremely numerous and of vast bulk, but we rise from their perusal dazed and stunned by the clamour of assertions of the wildest and most improbable character, advanced without proof, and with scarcely any evidence worthy of the name. A supercilious Oxford critic of my teaching on another subject has objected that my "pose" of common sense becomes tiresome, and I daresay it is tiresome to those to whom common sense is foreign and abhorrent; but I am impenitent. I still think that common sense is the proper touchstone by which the validity of doctrines should be tested, especially those doctrines that have a direct bearing upon practice; and it is by the light of common sense that I have examined the subject of criminology. The results at which I have arrived are not startling. They are indeed widely discrepant from those of most of my predecessors who set up to be "scientific," but I trust they will commend themselves none the less to those whose business it is to prevent crime and to counteract the activities of the criminal. If I have made little reference to the writings of my predecessors, it is not because I am unacquainted with them, from Beccaria and Bentham to Dr Goring. It is partly because I have derived little assistance from them, and



partly because I think that a display of learning made by constant references to authorities is dearly bought by the interruption they cause to the attention of the reader.

My acquaintance with criminals and their doings is of long standing. As medical officer of lunatic asylums I have had criminals under my charge ; as surgeon to the police and as consulting physician I have conducted many personal examinations of the mental constitution of criminals, both sane and insane, have attended many trials, and given evidence in many cases ; and considering the notorious reputation of expert witnesses, I may record with satisfaction that I have been complimented by three judges of the High Court on the fairness of my evidence. My study of conduct in general, as embodied in my book *Conduct and its Disorders*, stands alone as the only study in existence of the subject ; and of conduct in general criminal conduct is a part. The study of the human mind, including the criminal mind, has been the chief study of my life. Although, therefore, I am neither a police official, a criminal lawyer, nor a prison official, I can claim to have some first-hand acquaintance with the subject ; and although my knowledge of any one department of it must be less than that of a person directly engaged in that department, it is perhaps on that very account less one-sided, and may enable me to take a more comprehensive view, less trammelled by precedent and deference to authority. The fact that to my book on *Criminal Responsibility* was awarded the Swiney Prize, on the adjudication of, among others, the then Lord Chief Justice, shows that the view of an outsider may sometimes deserve consideration.

Sir James FitzJames Stephen, the most clear-headed jurist that this country has produced, says in his



*History of the Criminal Law of England* (vol. iii. p. 17), "In homicide, as in all other crimes, the definition consists of two parts, the outward act and the state of mind that accompanies it." If this is so—and I think that it cannot be gainsaid—then crime presents to the student of it a twofold problem: a problem in praxiology, the science of conduct, and a problem in psychology, the science of mind. As I am the only writer upon praxiology, and perhaps the only person who recognises that there is such a science, certainly the only person who has studied it systematically and so written of it, I come to the study of crime with a certain equipment for grappling with the first of these problems; and as I have devoted the greater part of my life to the study of the mind in health and disease, I have a certain equipment for tackling the second problem also.

Crime, in so far as it consists of acts, and of acts prompted by purposes and in pursuit of ends, is a special part of conduct at large. It is subject to the laws that regulate conduct, and should be studied with reference to these laws. Unless so studied, its study must be, if not altogether barren, yet founded on no firm basis, and incapable of reaching wide conclusions well fortified in reason. In fact, it has not been so studied, and for the good reason that the laws that regulate conduct are known to but few, and as far as I know have gained no general acceptance. Another reason why crime has not in this country been systematically studied upon general principles as a special department of conduct at large is the abhorrence of the English mind for general principles. The English genius is predominantly inductive. It revels in facts, values facts for their own sake, irrespective of their bearing on general principles, and looks upon the discovery of a new fact as the highest achieve-



ment of science. Research has in this country scarcely any meaning beyond the discovery of fact. A characteristic illustration of the contempt with which the discovery of general principles is regarded in this country is afforded by the Fellowship of the Royal Society. This distinction is freely awarded to men who are never heard of outside of their own narrow specialty, if in that specialty they have detected and described a new mathematical formula, or a new grouping of stars, a new disease, a new point in the anatomy of an insect, a new chemical compound, or a new instrument or process for the observation of facts ; but the greatest discoverer of general principles of modern times, perhaps the greatest discoverer of general principles of all time, Herbert Spencer, was never a Fellow of the Royal Society. Late in life, indeed, when he was indifferent and could not enjoy it, when he was solitary and could not impart it, when he was known and did not want it, it was offered to him ; but it was not offered to him until his fame had gone out into all lands, and the estimation of his genius in foreign countries was so universal and so high that his exclusion from the Royal Society cast a slur upon that body. Then the Fellowship was offered to him, and was declined. The Fellowship would have added lustre, not to the recipient, but to the Society. It is curious that the English should look so askance upon general principles and be so distrustful of the deductive method, for the two greatest discoveries of the human intellect, Gravitation and Evolution, were both made deductively, and both by Englishmen ; and no other discoveries have so profoundly influenced human thought and human conduct. However, so it is, and I cannot anticipate for this attempt to investigate crime upon general principles, and to discover the laws, if any laws there be, to which



it is subject, any greater immediate welcome than has been accorded to other workers by the deductive method.

It is true that the deductive method is far more difficult to employ in a trustworthy manner than the inductive, and therefore is far more liable to go wrong, and to lead to results that are even ludicrously erroneous. In this very field of the investigation of crime, have we not the results attained by Lombroso and other criminologists as a warning? But it is also true that induction is of value, and that the collection of facts is of value only as they illustrate and tend to establish or confute a general principle; and general principles are reached only by deductive reasoning. I make no apology, therefore, for the method that is almost exclusively employed in this book. A method that in the lands of Newton and Herbert Spencer has produced such stupendous results must, after all, have some merit; and even in the study of crime, though in the hands of Lombroso and his many followers the inductive method has given us nothing of value, it must not be forgotten that the greatest and almost the only fruitful results of the study of crime have resulted from the labours of Beccaria and Bentham, both of whom worked by the deductive method.

In various parts of this book I have drawn freely on my previous writings, for it consists for the most part in applications to crime of the principles I had previously arrived at in the larger field of conduct in general. And, moreover, this is not the first time I have published a study of crime. The first chapter contains considerable extracts from my book on *Conduct*, and the chapters on "Kinds of Crime" are reproduced in substance from my book on *Crime and Insanity*. For permission to reproduce them here I am indebted to the courtesy of Messrs Williams & Norgate.

CHARLES MERCIER.



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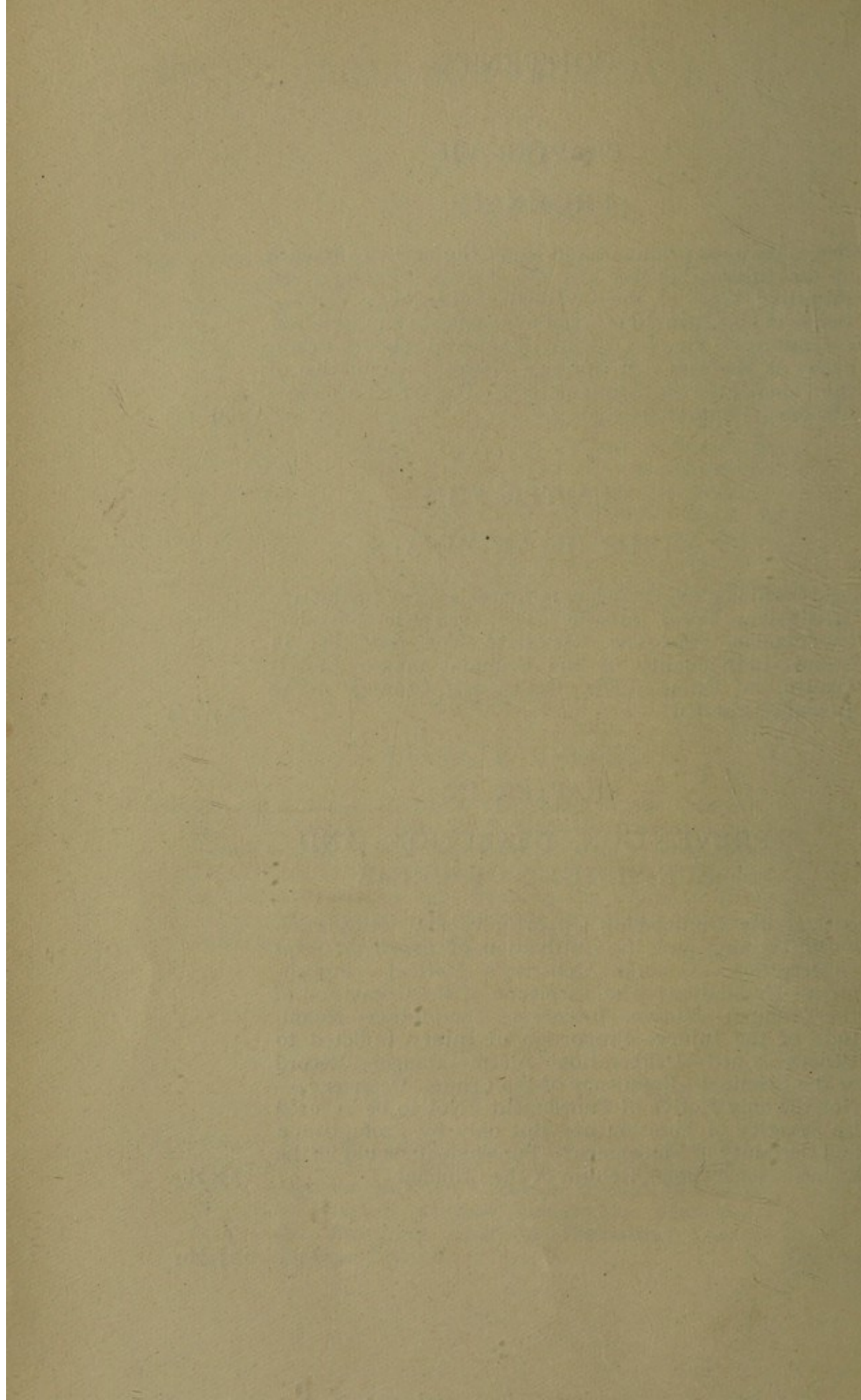
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# CRIME & CRIMINALS

## CHAPTER I

### THE FACTORS OF CRIME

CONSIDERED in the broadest and most general way, crime consists in action for the attainment of a purpose, and this is the definition of conduct at large. Of course, crime is a special department of conduct, marked off from the rest of conduct by certain differences, which will be considered in a later chapter ; but still, crime, at any rate in its external and observable aspect, is conduct, and therefore is subject to the laws that regulate conduct, is marked by the characters of conduct, and is analysable into the elements into which all conduct can be analysed.

Crime, in common with all other varieties of conduct, consists of acts in pursuit of ends, and in common with other modes of conduct may be contemplated with respect to the action, or with respect to the end or purpose. All action, criminal as well as harmless, presents certain complementary pairs of qualities, ranging in degree from the maximum to the minimum of each quality, which is the same thing as from the minimum to the maximum of the complementary quality. Thus, all action is in some degree spontaneous or elicited by circumstances, scanty or abundant, instinctive or reasoned, self-indulgent or self-restrained, impulsive or deliberate,



voluntary or involuntary, novel, habitual, or automatic, original or imitative, crude or elaborate, skilful or unskilful, play or work. In describing conduct at large, each of these pairs of qualities must be examined, and action described according as it presents more of one of these complementary pairs than of the other ; but in the description of criminal conduct this minute examination is unnecessary. Certain peculiarities of action must, however, be described here.

The key to the understanding of criminal action is the recognition that it is the resultant of two complementary factors, which enter in varying proportions into its composition. These are the internal factor and the external factor, the one inherent in the constitution of the criminal, the other imposed upon him by his circumstances. Every criminal act of man, in common with every other act of man and with every act of every animal, and not only of every animal but of every plant, is the product of these two factors, the internal or inherent and the external or imposed. Each factor enters in some degree into the composition of every act, but the proportions in which they enter into different acts are extremely various. An act may be due almost wholly to the internal factor, with a minimum of action of the external, or, *vice versâ*, may be almost wholly due to the external factor, with a minimum of influence from the internal ; but in some degree both enter into the composition of every act, and the more of the one factor that is present the less of the other is needed. The gross blunders that have been made in the estimation of the criminal and of criminal action have been almost wholly due to the want of a proper appreciation of the existence, nature, and combined action of these two factors. On the one hand, the school of Lombroso and



the Continental criminologist has completely ignored the external factor, and has misunderstood the internal factor ; on the other hand, a more modern school has ignored the internal factor, and misunderstood the nature of the external. The one attributes criminality solely to innate qualities, or tendencies to action derived solely from heredity, which constitute only a part of the internal factor ; the other ascribes criminality wholly to education or the want of it, to upbringing and untoward environment in early life, which constitute only a part of the external factor. In order to understand the true sources and springs of criminality, it is necessary to take account of the whole of both factors, and to apportion the part which is taken by each. This cannot be done unless we take a wide survey, and regard criminal action as a part, a specialised and peculiar part, of action at large of human beings generally ; or unless we allow our purview to take a wider sweep, and regard both criminal conduct and human conduct at large as special and peculiar instances of action in animals generally, and even in plants also. It is necessary to take wide and comprehensive views ; and if such a view as I have suggested seems unnecessarily comprehensive, at any rate it errs in the right direction, and will save us from the perpetration of such absurdities as characterise the Continental school on the one hand, and what may be termed the limited environment school on the other.

As simple a combination as could well be found of the internal and external factors of action is witnessed in the germinating seed. The radicle strikes downward : the plumule springs upward. The action is fixed, inevitable, predictable, certain. The respective directions of these two primary elements are due to something inherent in the constitution of the seed. We may say,



indeed, that they are tropisms, but calling them by this new name does not alter the nature or origin of the action. Nor do we gain help from the supposition that the radicle is attracted and the plumule repelled by gravity. That merely brings in an external factor as adjuvant, and does not dispense with the necessity of the internal factor ; for without this factor there is no reason why the plumule should not be attracted and the radicle repelled, or why both should not be attracted or repelled. In this simple case we see in their barest and most elementary form the combination of the internal and external factors of action. The one is inherent in the organism, and prompts to action that springs from within, action that must and will take a certain direction. It is the escape, or rather the expulsion, of energy from the store contained in the organism ; and the direction in which it escapes is determined by the structure of the organism. The energy is there in store, struggling to escape, and can make its way out only through paths and in directions predetermined by the structural constitution of the organism. The other factor is external to the organism, and acts upon it from without in such a way as to determine the time, manner, and quality of the action. Until it receives from without the necessary warmth and moisture, the seed will not germinate. When it receives them, it takes advantage of them to act in its own predetermined way. If it lies upon an impervious stone, the seed cannot drive its radicle directly downwards : it must go round. And if a stone lies upon it, it cannot protrude its plumule directly upwards : again it must go round. If the soil in which the seed finds itself is uncongenial, or contains some deleterious substance, first the radicle and then the seed withers and perishes. The action is determined in every respect by the combination of the



two factors, the internal and the external. Given a certain vigour of the seed, the success or failure of its action depends on the favourable or unfavourable character of its circumstances; given favourable circumstances, the success or failure of the action is determined by the vigour of the seed. The action is the product of the combination of the internal and the external factors.

If we transfer our attention from plants to animals, we shall find that the same rule holds good. All action is the combined result of an internal factor and an external factor. It is the action in certain circumstances of an animal having a certain nature or constitution, and the respective parts played by the internal constitution and the external circumstances vary between very wide limits and are complementary to one another. The more of the one that enters into the composition of the action, the less of the other is needed, and the less of the other is possible. This is displayed most conspicuously in the relative shares taken by instinct and reason, which must now be considered with some care.

### INSTINCT AND REASON

Reason was considered by the ancients the distinctive possession of man, and all animals below the status of mankind were denied the possession of any share whatever of reason. The division, by Porphyry, of the *genus animal* was into *rationale* and *irrationale*, the former including man alone, and the latter comprehending all the rest of the animal kingdom. An echo of this ancient dictum resounds from time to time in the columns of the *Spectator*, in which instances of reasoned acts done by cats and dogs are given, and are adduced as evidence that here and there, in isolated instances, some of the



lower animals have evinced a modicum of reason ; but the thesis that will presently be maintained here, that every animal in every one of its acts exercises reason to some extent, is one that would startle even the zoophilists of the *Spectator*, and to their antagonists would partake of the nature of blasphemy. The curious thing about the discussion as to whether animals can reason—by which is usually meant whether or no a single animal here and there, of the higher grades, has attained the ability of importing a modicum of reason into his usually instinctive action—is that it proceeded for generations without any attempt to define what was meant by instinctive action or by reasoned action, or what is the difference between the two. Lately an important symposium on the subject has been published ; but as it would be too long to reproduce here, and as my own view does not agree with that of any of the contributors to this symposium, I propose to state my own view without reference to the views of my predecessors.

That pigs do not fly is a truth with which we are familiar from our earliest years ; and equally true is it that chickens do not swim nor ducklings scratch, that men walk on two legs and horses on four. In other words, the way in which the inherent motion of the organism is expended is determined largely by external conformation. But it depends not only on external conformation : it depends also on internal organisation. If ducklings do not scratch the ground as chickens do, it is not only because their feet are not adapted to scratching, but also, and mainly, because they are wanting in the nervous organisation that actuates the movement of scratching. If men walk upright upon two legs, while horses walk prone on four, it is not only because the whole external organisation of men and horses is



adapted to their several modes of progression, but also because men possess the nervous arrangements necessary for preserving the balance in the upright position, and moving the legs and body harmoniously together for that end ; while horses possess different nervous arrangements for moving the four limbs in alternation.

What is true of the differences in conduct between one species of animal and another is true also of the differences between one individual and another. If one man expends his accumulated motion in laborious bodily exercise, while another expends his in internal rearrangement by working out some abstruse mathematical or chemical problem, it is because the nervous organisation of the one is adapted to expend motion in the one direction, and that of the other is adapted to expend it in the other. All that we speak of as "tastes," "capabilities," "aptitudes," and so forth, are embodied in the structural organisation of the nervous system ; and according to these differences of nervous organisation, different modes of conduct will be manifested.

Nevertheless, in this matter also circumstances play their part. The external factor as well as the internal factor is potent. A man would rather play cricket than golf. For the one he has a natural bent and aptitude ; the other he cares little about, and plays much less skilfully. But it requires the common consent of twenty-two people to play cricket, and just now that consent is not to be had ; and he can play golf by himself : so, rather than sit idle at home, he goes off to play golf. In such a case the external factor determines the direction in which motion is expended—the character of the action. No man can become an accomplished musician who has not a natural bent and aptitude for music, a capacity for feeling certain emotions and giving expression to



them by musical sounds ; and in so far the action of the musical performer is determined by the internal factor. But, however highly developed his aptitude for music may be, the musician cannot play without his instrument ; and in so far the action is determined by the external factor. However highly a man may be endowed with natural dexterity and the capability of nice manipulation, he cannot do accurate work without suitable tools. Whatever his skill in the breaking of unmanageable horses, he cannot exercise it in a land in which no horses are. However great an orator may be, he can neither convince nor persuade those who do not understand the language he speaks. In every case the external factor as well as the internal helps to determine the nature and character of the action.

So far, while we have found that conduct is determined by the combination of the internal factor and the external factor—by natural aptitude working in circumstances—we have not reached the problem of the difference between instinctive conduct and reasoned conduct.

The web-spinning of the spider, the nest-building of the bird, and the comb-building of the bee, are usually considered among the most perfect types and examples of instinct. It is worth while to examine them, to seek the quality that is peculiar and characteristic of instinctive action ; and I think it will be found in their fixed and invariable character.

The web constructed by every individual of a species of geometrical spider agrees very closely in its main features with the web of every other individual of that species. Each web consists of a few main supports, attached by their extremities to surrounding objects, and enclosing a polygonal area ; of spokes radiating at equal angles from the centre of this area, and attached



at their peripheral extremities to its sides ; and of two sets of spirals attached to the spokes—an inner set, fine and closely approximated, and an outer set, thicker and in a wider spiral. The striking feature of the web is its geometrical character. The spokes are set at equal angles ; the spirals are set at equal intervals. In the features enumerated, the webs of all such spiders are alike. They do not vary. We can predict, before the spider has spun an inch of line, that its web will, when finished, have these characters. As far as these characters are concerned, the web is completely determinate in structure. Its construction is determined, as far as these features are concerned, by the organisation of the spider ; and the animal cannot construct a web of any other pattern. Moreover, we can be quite certain that if the young spider survives to a certain age, it will construct a web. Such action is called instinctive. We give the name “instinctive” to action which is determinate ; which is executed uniformly by every individual of the species ; which is predictable. Instinctive action, therefore, is that which is determined entirely by the internal factor—by the organisation of the animal ; not only as to its initiation, progress, and conclusion, but also as to its direction, form, or character.

Another mode of action that is by universal consent regarded as a characteristic example of instinctive action is the comb-building of the hive-bee. The comb is built of hexagonal cells with parallel sides and with pyramidal bases composed of three rhombic plates. The cells are all of the same dimensions, the walls of the same thickness ; the sheets of comb are flat, and hang vertically from the roof of the hive. Every cell in the comb is a perfect geometrical figure, and every cell is similar to every other cell, not only in that comb but



in other combs in the hive, and not only in the other combs in that hive, but in every comb in every hive of the same species of bee. The cells are made uniformly by every individual of the species ; their shape and size and material and disposition are all determinate. They are predictable. They are due to a certain mode of action that is predetermined by the organisation of the bee. The nervo-muscular apparatus of the bee is so constructed and so conditioned that, when it is actuated or set in operation, it turns out work of this nature and this pattern with mechanical regularity ; and this is the character of instinctive action.

A third mode of action that is typically instinctive in character is the nest-building of birds. Every bird of the same species builds its nest in a position, of a form and mode of construction, of a size, and of materials, similar to the nest of every other individual of the same species. The rook always builds, at the top of a tall tree, a loosely constructed nest of live twigs. The tailor-bird always builds in the hollow made of leaves that it has sewn together. The kingfisher and the sand-martin always build in holes excavated in the ground. The wood-pigeon never builds on a cliff, nor the rock-pigeon in a tree. The magpie and the long-tailed tit build domed nests opening at the side ; the tern and the ostrich scoop holes in the ground. Each bird in nidification follows a course of conduct that is fixed, invariable, determinate, predictable, the same for every individual of the species. Like the spider in spinning its web and the bee in building its comb, the bird does not need to learn from experience how the instinctive act is to be done. It is done by the operation of an internal mechanism, which, when put in operation, can act in only one way ; and the product of the mechanism is almost as



determinate as the product of an automatic lathe or a loom. It is this fixed, invariable, unmodifiable character that is the mark and the differentia of instinctive action.

But although the webs of all spiders belonging to the same species are precisely alike in all their main features, save only in size, yet there are in every web features which are peculiar to it alone—features in which the web of every individual spider differs from the web of every other, and in which even the second and third webs made by the same spider differ from the first and from each other; features which are unpredictable, and are determined, not by the internal organisation of the spider, working in a predetermined manner, but by external circumstances, to which the action of the spider is adapted. The objects to which the main supports of the web are attached differ in every case. Their distance apart is never the same. Their number varies widely. In consequence of these differences, the size and shape of the polygonal area that bounds the web are never alike in any two webs—not even in two successive webs built by the same spider in the same place. The construction of the web up to this stage, and in these respects, is adapted to the individual circumstances of the place and the occasion in which it is made; and the adaptation is often ingenious. The thickness of the main supports of the web is made proportional to their length. Their anchorage to the fixed point to which they are attached may be single or multiple. When the wind is so high as to endanger the structure, a spider has been known to hang a pebble to the lower edge of its web, to afford a yielding support and tightener. Again, the operation by which the spirals are affixed to the spokes is fixed and invariable, and never undergoes alteration; but the operation by which the main supports



of the web are attached is subject to much variation. The spider may float the web in the air, and allow the wind to carry it across the intervening space; or she may run round with it, giving out thread as she goes, from one point of support to the other; or she may drop from one point of support and, suspended at the end of a thread, allow herself to be swung by the wind until she reaches the other point of support. The method she adopts is determined by the circumstances in which she is. In still air she does not depend on the wind to carry her. The precise position of the web, the number of the prime supports, the precise shape of the polygonal area that they enclose, the objects to which they shall be attached, the mode of reaching these objects, the method of anchoring the supports thereto—all these are variable. They are not the same for any two spiders. They are not the same for any two webs. They are specially adapted to the particular circumstances in which the web is built. They are determined by the choice of the spider on the particular occasion; and choice is the distinguishing mark of reason. In these respects, therefore, the action of the spider in spinning its web is not instinctive. It has none of the marks of instinct. It is reasoned. Thus we find that, if instinctive action is that which is invariable, determinate, predictable, unmodified by external circumstances, the same in every individual of the species, the product of rigid organisation acting under fixed conditions; and if reasoned action is variable, indeterminate, unpredictable, the product of choice in adaptation to circumstances; then, into an act so thoroughly and typically instinctive as the web-spinning of the spider an element of reason enters. Part of this instinctive act is reasoned.



Although the structure of the comb of the hive-bee is determinate in the respects enumerated, yet it is not completely determinate. In some respects it is variable, and is modified in adaptation to circumstances. Sometimes, to fill up a corner, or to avoid a projection, the sheet of comb is not flat, but is curved ; and in that case the cells are not parallel-sided, but frustums of pyramids, those on the convex side having mouths larger than their bases, and those on the concave side having bases larger than their mouths. When a comb is in danger of dragging away from its supports, or if it has actually fallen, buttresses are built to sustain it, and in these buttresses the shape of the cells, while generally conforming with the shape of the type, is yet modified and subordinated to the object to be served. The cells of drone-comb are larger than the cells of ordinary comb ; and where the two adjoin, the intermediate cells are modified in shape to suit the circumstance. A bee will sometimes pull down and rebuild a piece of work, it may be more than once, until the work is to her satisfaction ; and one bee will pull down the work of others and reconstruct it in better form. In all these cases the instinctive action is modified to suit the exigencies of particular circumstances, and such modification is guided by choice of one out of several alternatives—is determined, not by the unalterable action of the internal factor, but by the requirements of the external factor, and is therefore not instinctive, but reasoned.

It is the same, *mutatis mutandis*, with the nest-building of birds. The rook always builds, of live twigs, a loosely constructed nest at the top of a tall tree. In these respects its action is fixed, determined, predictable, unmodifiable, instinctive. But which particular tree, and which branch of the tree, shall bear the nest—these



are not predetermined. These are not the same for every individual of the species. There is an internal compulsion in the rook to build a nest, and to build it of live twigs at the top of a tall tree ; but there is no internal compulsion in the rook to select one tree rather than another, or one branch rather than another. Were it so, the result would be disastrous. If every rook built on the same branch of the same tree, the branch and the tree would be broken down. Nor is there any internal compulsion in the rook to select one twig rather than another for his purpose. He settles on any tree that has a likely branch, and proceeds to twist it off ; and in all the details of nidification—in placing the sticks and interlacing them with one another—he is guided by what has been already done, and by the particular direction and conformation of the branch which is his foundation. In these matters his action is modifiable. It is subject to variation, to choice, to alteration in adaptation to external conditions. Here it is the external factor that determines the mode and direction of his action.

It is the same with other birds. While some make their nests, like rooks, on tall trees, other species have other instincts. All the individuals of one species make their nests in dense parts of thick bushes ; all those of another in holes in the ground ; all those of another in inaccessible cliffs ; and so on. But as to the particular bush and the particular part of the bush, as to the particular cliff and the particular part of the cliff, in which the nest shall be made, these are not predetermined. One bush is more suitable from its greater density ; another has a branch more suitably shaped ; which of the two shall be the locality of the nest is a matter for the decision and the deliberate choice of the nesting bird.



It is not predetermined. It is uncertain. It varies. It is determined by choice. So in the matter of materials. The rook builds its nest of live twigs, the thrush of fibrous roots and stems, the chaffinch of moss and lichen; but what particular twig, or fibre, or bit of moss shall be used is not predetermined. It is a matter of selection—of choice; and choice is reason. Some trees, limes for instance, are preferred by the rook, but he is not restricted to limes; nor, where there are several limes, is he restricted to any one. And the choice of suitable twigs on any one tree is almost limitless. Yet on each visit he chooses one. He does not always choose the same. He does not necessarily take the nearest, or the easiest to break. His action varies according to circumstances. It is determined by external conditions. That is to say, while the act of nest-building is determined in its main features by internal organisation, and is in this respect instinctive, it is subject in its details to the operation of choice in adaptation to circumstances, and is in this respect reasoned.

It would be easy to extend indefinitely this brief review of instinctive action, and to show that, however rigidly invariable the main features of the instinctive action may be, there is always a margin that is modified by reason in adaptation to circumstances. Enough has been said, I think, to show that no act is wholly instinctive. Into every instinctive act there is an intrusion of reasoned action. However paramount may be the action of the fixed organisation of the actor, it is never sufficiently complete, at any rate in the higher animals, to cover the whole field and account for the whole of the action. However dominant the action of the fixed organisation may be, there is always a margin to which it does not extend, in which choice is free, in which action is no longer deter-



minate, but is modifiable in adaptation to circumstances ; and such modifiability is the mark of reasoned action.

I do not deny that in animals whose conduct is of primitive simplicity such conduct may be wholly instinctive. The conduct of a fixed bivalve, for instance, is almost limited to the opening and closing of its shell ; and the latter operation takes place, no doubt, reflexly, in response to stimulus ; but it is not impossible that some choice is exercised by the animal in the time of opening. My position is not in the least invalidated, however, if there are actions wholly determined by the organisation of the actor, and unaffected by any element of choice or reason. All I contend for is that, in the higher animals at any rate, and in elaborate instincts, an element of reason is always present. In them there is no such thing as a wholly instinctive act. Generally, it would be correct to say that, while the end is dictated imperatively by instinct, the means by which the end is attained are, to a varying extent, sought by reason ; and this is as true of the action of mankind as of that of the animals below mankind.

The conduct of men is usually contrasted with the conduct of animals and looked on as wholly reasoned, while that of animals is regarded as wholly instinctive. But on examination we find that, as the conduct of the lower animals is not wholly instinctive, but always, at least in its higher manifestations, contains some element of reason, so the conduct of man is not wholly reasoned, but contains always some element of instinct. In the lower animals the internal factor greatly predominates, and little margin is left for the choice of means to attain the end that instinct dictates ; in man the reasoned factor encroaches more and more in discovering means to attain his ends, but the ends, the ultimate ends, are



always instinctively determined. In contemplating the conduct of man, we regard mainly the means by which he achieves his ends, and when we take account of purposes, we regard mainly the proximate and intermediate purposes, which, as well as the immediate means, may be dictated by reason ; and thus we are apt to regard the whole conduct of man as reasoned, because we confine our contemplation to that part which is reasoned, and neglect those fundamental and underlying purposes that are not reasoned, but instinctive. In truth, and on close examination, it is found that instinct is no more excluded from the conduct of man by the prevalence of reason than reason is excluded from the conduct of animals by the dominance of instinct. The difference is one not of kind, but of degree. In lower animals, instinct dictates the end, and not only the end, but to a considerable extent the means by which the end is achieved, and leaves but a margin, larger or smaller, to the guidance of reason. In man, instinct dictates the main ends only, and the reasoned margin is so greatly increased that it seems to occupy the whole area ; but it does not. The central area is always occupied by instinct. The black border of a sheet of white paper may be a mere line round the edge ; or it may be a margin so broad that the main area of the paper is black, and only a small patch of white is left in the middle ; but the two very different sheets merely present extreme variations of the same arrangement.

The business man, examining the plans of his new premises, adapting them to his new machinery, his increased staff, the order in which the processes of manufacture are to be conducted, the reception of raw material, the packing and delivery of the finished product, and many other considerations, is performing a series of



highly reasoned acts. But these highly reasoned acts are but means to the attainment of an end—the end of acquiring income to supply his wants. And action for the supply of his wants—to keep him in house, warmth, clothing, food, comforts, and even luxuries—is not reasoned action. It is instinctive. It is certain and predictable that every normal man will endeavour some action to supply himself with necessities to support himself and his family. He is impelled by instinct to act in some way for the attainment of this end; but here the impulse of instinct terminates. Instead of finding, as in the case of the bee, an elaborate course of action for the supply of food and shelter dictated by a rigid instinct which, willy nilly, he must follow, instinct dictates merely the end that must be attained, and leaves it entirely to reason to find the means of attaining it.

The lover who schemes and plots to find opportunity of meeting his beloved, who presses into his service the telegraph, the postal service, the railway, visits here and letters there, the exigencies of his business, and the demands of his employer, is conducting a series of operations of highly reasoned character. All these acts are reasoned acts, the subjects of deliberation and choice, not predetermined, not predictable, subject to modification from hour to hour and from moment to moment under the influence of obstructing circumstances. But the main action, to which these are all subsidiary, the end for which they are the means, the primary course of conduct of which they are the details, that is to say, the seeking the association with a person of the opposite sex for the purpose of courtship—that is not a reasoned act. That is a matter of instinct. It is certain. It is inevitable. It is determinate. Instinct demands that some object of association shall be sought. Instinct



determines to some extent the choice of the particular individual. But when instinct has done this much, reason is left to fill in all the details, to find or make opportunities for that association which instinct imperatively demands. The internal factor supplies the main direction of activity ; the external factor is left to do the rest.

The man of science who conducts some prolonged investigation for the solution of a difficult problem, say in physics or biology, immerses himself in operations of the most highly reasoned character ; but these highly reasoned operations are means, merely, to the attainment of some end that is dictated by an imperious instinct. Is he working for ultimate pecuniary reward ? The dictation of instinct is manifest. Does he work for fame ? The desire for fame is a high development of that desire for the esteem of his fellows which is the common instinctive possession of all men. Does he work for the pure love of investigation, and to find out the secrets of nature ? Then he is actuated by the same instinct of curiosity that prompts the girl to disarticulate her doll, the boy to rip up the bellows and pull his watch to pieces ; that draws the deer to the decoy, the magpie to the jewel, the salmon to the torch, the moth to the lamp.

In these instances, which might be multiplied indefinitely, the instinctive factor in conduct, while it really dominates the whole and determines the ultimate end that shall be pursued, yet leaves so completely to the guidance of reason the means by which the end is to be attained, that the reasoned action absorbs the whole of the attention, and the conduct of mankind is commonly supposed to be governed by reason alone. So far does the ultimate instinctive end recede into the background, and so complicated and prolonged becomes the reasoned



action by which that end is sought, that in many cases the ultimate end of conduct disappears altogether from the view of the actor, who pursues some intermediate end, not realising that this intermediate end is but a stage towards the attainment of the ultimate aim to which his instinct impels him. When the business man is making plans, raising capital, and organising his arrangements to extend his business, he looks only to the improvement of the business itself and the prospective profit that it will bring him. He is not directly concerned, he is scarcely conscious of the fact, that his ultimate motive in all his work is to secure himself against want ; to clothe and educate his children, and to see them established in the world and able to provide for themselves. When the lover is arranging to meet his mistress, he thinks only of the pleasure that the meeting will afford him, and would be outraged to be told that his ultimate motive is that she may become the mother of his children. And when the man of science is poring over his problem, the only motive that is present to his mind is the interest of the pursuit, the overcoming of difficulties and the avoidance of fallacies. He does not stop to consider the motive at the back of what he is doing.

The more purely instinctive an act remains, the more immediately and directly does it serve its purpose ; and the introduction or extension of the reasoned element in the action necessarily postpones the attainment of the end. When the spider is seeking an appropriate position for its web, and determining on the best points of support ; when the bird is seeking an appropriate position for its nest, and weighing the comparative advantages of concealment, security, and ease of construction ; the building of the structure is in each case suspended, postponed, and delayed by as much time as



is consumed in the search and the choice. The end in view, however—the construction of a secure web in a position adapted to the capture of flies ; the construction of a secure nest in a place concealed from enemies, or inaccessible to them—is so much more successfully attained as to compensate for the delay in its attainment. When a hive of bees sets about to modify the disposition of its comb by making passages here and building buttresses there, the time thus occupied is taken from that which is devoted to the collection and storage of food, that the young may be reared and the colony maintained through the winter ; but while the attainment of the end in view—the intermediate end of storing food—is thus suspended, postponed, and delayed, the ultimate ends are more completely attained by the easier access to stores, and by the security of the comb from fracture and waste of its contents. When a colony of beavers excavates a canal for the transport of the logs on the bark of which they feed, the collection of the logs is suspended, postponed, and delayed ; but the end in view, the collection of the logs, is greatly facilitated.

This power of suspending and postponing the immediate pursuit of an end—this postponement of motive, as we may call it—becomes, in the higher manifestations of conduct, one of its most distinctive characters. It is the mark of reasoned action to forgo the immediate gratification of a desire for the sake of obtaining a greater future advantage. This ability to postpone and suspend the direct pursuit of instinctive ends, and to interpose action which delays this gratification while it secures for the actor greater advantages, lies at the root of all progress, all civilisation, all morality.

It has been said that the man who first contented himself with abusing his adversary instead of assaulting



him took the first step in civilisation ; and the saying exhibits appreciation of the principle under discussion. If a man gives up years of his life to the acquiring of some difficult trade or profession, it is because the deferred reward that he will thus obtain will be so much greater than that of an occupation that is immediately remunerative. If he invests his gains, he forgoes the instant pleasure of spending for the future gratification of a fixed income. If he insures his life, he forgoes the same pleasure for the advantage of his family, as well as for his own contentment. The substitution of courtship for rapine, the postponement of marriage for reasons of prudence, the continual advance in the average age of marriage, alike bear witness to the same principle.

The first result of the importation of reason into instinctive action is, then, this suspension of the immediate or direct pursuit of the end. It imports a power of suspending, checking, controlling, restraining, or inhibiting instinctive action. This power of inhibition is inseparable from the exercise of reason. It is an integral part of reasoned action ; and the more of reasoning employed, the more and more of inhibition is involved in the action.

Reason means, first of all, choice. It implies a selection between alternatives ; and however rapidly the choice may be made, there is always some interval of time occupied in making the selection. The instinctive impulsion to take action directly conducing to the end in view is overcome by the power of voluntary suspension until the course that seems best adapted to secure the end is decided upon. For the time being, action is arrested ; and this arrest or suspension of action is one of the most striking characters of reason. This power of suspending, or arresting, or inhibiting action, once



initiated by the necessity of taking time to allow of the operation of choice, becomes, bit by bit, detachable from the operation of choice ; so that, at length, the power is acquired of arresting or suspending action irrespective of immediate choice. The action is arrested ; and not merely is the attainment of the end thereby postponed, but the choice itself may be postponed, and the end itself may be postponed indefinitely, or altogether abandoned. Thus arises the power of self-restraint, or self-control, as it is called ; a power which, first exercised in the most pronounced forms of instinctive action, gradually attains a larger and larger sway, until at length it prevails even over those trifling movements of facial expression which are the inseparable accompaniments of emotion, and are the most difficult acts of all to control.

A remarkable character of action, both human and animal, is that motives become anticipated, and that which was once a means to a further end comes to be pursued as an end itself. This is true in greater or less degree of all means ; and is true of the mode of action that we are now considering. Self-restraint and self-control are cultivated as ends in themselves ; the arrest and suspension of the pursuit of ends is exaggerated into the abandonment of these ends ; and thus arises the practice of asceticism, in all its degrees and in all its forms. Asceticism is primarily the renunciation of pleasure ; that is to say, the renunciation of instinctive gratifications. It is the inhibition or arrest of the action by which pleasure is pursued ; and becomes possible only by the power of self-restraint, which enters into action as reason is applied to the modification of instinct. Self-denial and self-restraint, as ends in themselves, are no more desirable than burying bones, or ringing church bells, or learning Latin. They are of value only for the



ends that can be achieved by means of them, and as they facilitate the achievement of ends. But, since they are the common condition of the better and more complete attainment of all ends of every description, their acquirement and cultivation, apart from their application to any particular end, are of great value and importance ; and the practice of self-denial and self-restraint, in and for themselves, and apart from their application to any particular end, is the practice of asceticism. Any quality that is cultivated for itself alone is liable to be cultivated to excess. As soon as it becomes an end to be pursued for its own sake, its utility as a means to further ends is *ipso facto* forgotten and lost sight of, and it may then be pursued to an extent that actually militates against the attainment of these further ends. Self-denial and self-control are valuable only as they enable us to attain, more completely than we could without them, the gratification of instinctive ends. But, in the cultivation of self-denial and self-control, this value is altogether ignored, and they are cultivated, often, to the extent of delaying or rendering impossible the very ends that their purpose is to serve. Nay, they are cultivated to the point of renouncing and repudiating these very ends themselves. Mere rapine, by the cultivation of self-control, becomes mitigated into courtship ; the further cultivation, in excess, of self-control secures the abolition of courtship and of the end that courtship is intended to serve, and results in celibacy. The gluttonous orgy of the savage becomes, by the cultivation of self-control, the decorous and orderly meal of the cultivated man ; but the cultivation, for its own sake, of self-denial, leads to fasting, which may become as great a danger to health as gluttony. The instant indulgence in riotous expenditure that we call prodigality is restrained by the cultivation of self-



denial and replaced by thrift. By the further pursuit of self-denial for its own sake, and without regard to the end to be attained by its means, thrift is exaggerated into miserliness.

Self-control is the voluntary renunciation of immediate gratification for the sake of greater subsequent gratification. Self-denial is the voluntary renunciation of gratification for its own sake, as an end, and without regard to any future gratification to be gained thereby. From the voluntary renunciation of pleasure to the voluntary enduring of pain is but a short step—it is, in fact, a matter merely of degree, or even of nomenclature; and the voluntary enduring of pain, or the self-infliction of pain, is asceticism. At one end of the long chain is the momentary suspension of the pursuit of gratification, in order that choice may be made of the most effectual mode of attaining it; in the middle is the dour indifference to sensual pleasure of the Puritan; at the extreme end are the self-tortures and self-mutilations of the Eastern devotee, who suspends himself by a hook passed through the muscles of his back, gazes open-eyed at the sun from the rising up of the same until the going down thereof, or takes his repose in a barrel set with spikes.

Like all other action, criminal action is prompted by instinct and guided by reason. I do not say that its criminal quality is in all cases instinctive, even in part; but I say that criminal action is action whose ultimate purpose is dictated by instinct. How far the criminal means by which this purpose is attained or pursued are instinctive and determined, and how far they are reasoned and dependent on the choice of the individual, are matters for subsequent inquiry. What we are now concerned to recognise is that criminal action, like all other action,



is compounded of the two factors—instinctive impulsion, which dictates with imperious command the end that is to be pursued ; and reasoned action, which takes into consideration the circumstances, and finds such means of dealing with these circumstances as appear adapted to attain the end.

## THE INTERNAL FACTOR

### *Mental Constitution*

The internal factor, as far as we have at present discovered, consists, therefore, of the group of instincts inherent in the actor, and the degree and kind of intelligence with which he is endowed. These are the chief constituents of the internal factor, but they are not all. Certain others must now be considered.

An act is novel when it is done for the first time by the actor ; and the degree of novelty is marked by the extent to which it differs from the previous acts of that actor. Thus, in speaking of an act as novel we are not now considering its novelty with respect to acts at large, or acts done by members of the human race, but solely with respect to the acts of the particular actor contemplated. So regarded, an act that is widely different from all previous acts may be spontaneous or elicited ; it may be instinctive or reasoned ; it may be impulsive or deliberate, crude or elaborate, work or play. Whatever its other characters may be, a novel act is, *cæteris paribus*, less nicely adapted to the end in view than an act that is not novel. A novel act is, according to its degree of novelty as above defined, inferior in applicability to its purpose to an act that is not novel. It is also less economical of effort. It needs more exertion, both mental and bodily, in proportion to the result, than an established



act. It is, as a rule, slower, less facile, and less successful. The first efforts of the chick or the newborn colt or calf to stand or walk are made with manifest effort. They are uncertain ; they include sprawlings and unnecessary movements. They are not very successful. The animal is apt to sway about and fall. Nor is it only the first essays at instinctive movement that are thus characterised. The same peculiarities are observed in reasoned acts. The child learning to write performs the action slowly and laboriously, with much exertion, with unnecessary movements of its mouth and tongue ; and when all is done, the writing is not as good as that of the practised penman. So the novice at skating sprawls and falls about. He uses his arms as much as his legs ; he goes through far more exertion than the practised skater, and the result is much less successful. He does not cover anything like the same ground in the same time ; nor can he execute the intricate figures achievable by the other. So with him who is learning the bicycle, the typewriter, the musical instrument, or any other exercise needing complicated action. The first efforts are awkward ; they include many unnecessary movements ; they include many wrong movements ; they are slow ; they are attended by much voluntary effort ; and the result is inferior in accuracy to that achieved by the expert.

As the action is repeated, it loses these characters with the frequency of repetition. The more often it is repeated, the more facile it becomes, the less of extraneous and unnecessary movement enters into it, the more rapidly and accurately it is performed, the fewer the failures and the better the result. When an act has been repeated sufficiently often, it merges from the habitual into the automatic, and the distinction is marked not



so much by the greater facility and accuracy of the automatic movement, as by the degree to which it becomes independent of the exertion of the will for its continuance. As a rule, it needs an exertion of will for its initiation ; but, once started, the movements continue mechanically, and any intrusion of volition into their performance rather hinders and impairs than increases their efficacy. When we start for a walk, we do so by an exertion of will ; but, once the action is initiated, we do not attend to the movements of our legs, and any attempt to regulate the length of the stride or the position of the feet by an exertion of the will is an embarrassment and a hindrance to the facile performance of the act. It is the same in any action that is become automatic by long continuance. Whether it is playing a musical instrument, or bicycling, or typewriting, or skating, or any other complicated movement that has once been so thoroughly acquired as to be automatic, volition is needed for its initiation only ; and, when once it is started, any further intervention of the will impairs the speed and accuracy of the performance. In this respect an automatic act is involuntary ; that is to say, the several movements of which it is composed are involuntary, in the sense of not being actuated by separate exertions of the will ; though the whole action is voluntary, in the respect that it is initiated, continued, and terminated by voluntary exertion. Nevertheless, if the attention is distracted and the will falls into abeyance, the movement may continue without any very active exertion of will, perhaps without any at all. The mechanism, once set in action, continues to act, as a clock continues to go, without any further interference from outside. To alter or to arrest it requires exertion of will, but to continue it needs little or none. Hence such actions may proceed



in the abeyance or absence of consciousness. In the unconscious state of post-epileptic automatism, elaborate acts of the automatic class are done, without, as far as can be ascertained, any consciousness at all on the part of the actor.

The similarity between automatic action and instinctive action will not have escaped the notice of the reader. Action that is thoroughly automatic is determinate. When a person has learnt a verse of poetry so thoroughly that its utterance is become automatic, its utterance is determinate, and, once begun, will not vary from time to time, but will always be repeated in the same words. The operations of undressing and of dressing, when they are become automatic, are undertaken in the same order and performed in the same way. The man who is accustomed daily to compare his watch with a standard clock as he goes to his work, will do so at last automatically when he comes to the accustomed spot, and will perhaps not know, the moment after, that he has done so. We can predict that at that spot he will take his watch out and look at it. Indeed, some acts, such as walking, may be regarded from one point of view as automatic, from another as instinctive ; the fact being that the facile performance of an act is conditioned by the existence of a nervous mechanism whose activity actuates the movements that compose the act ; and the difference between instinctive action and automatic action is that, in the former, the mechanism is inherited ready formed, as the structure of the arm and the eye are inherited ready formed, while the mechanism of the automatic act must be laboriously constructed by the exertions of the individual, just as the lever and the lens must be constructed before they can be used. For this reason, automatic action is never as completely mechanised as instinctive



action. It remains to the end more modifiable, less certainly predictable, less rigid, especially in detail. Yet that it does, in cases, attain a high degree of mechanisation is seen in the extreme difficulty that is found in breaking a person off a bad style of doing a thing. One who has once thoroughly acquired an erroneous style of performance can scarcely ever be diseducated and re-educated into a good style. The provincial accent learnt in childhood clings to the man to extreme old age, in spite of his efforts to correct it.

The internal factor by which action is prompted and regulated is therefore compound. It includes, first, a group of instincts and instinctive desires, properly so-called, that are inherited by each man from his ancestry, and are the same in all men, though not equally strong, either absolutely or relatively to one another. Every man possesses in some degree the instincts of self-preservation, of sexual attraction, of social attraction, of recreation, of curiosity, and so on, and every woman the instinct of maternity. Every man possesses also the minor instincts subsidiary to these, such as resentment of injury, pugnacity, emulation, sympathy, conformity, jealousy, and so forth; but the strength of these several instincts varies very widely in different persons, so that no two have precisely the same make-up or constitution of instinctive motives. All possess the same group, but in some one instinct or set of instincts will be dominant or powerful and another subordinate or weak, while in others the dominant or powerful will be a different set and the weaker will be a different set. In some people some instincts are so attenuated as to be almost evanescent.

In the second place, the intellectual make-up or constitution of every person, which is the second ingredient



in the internal factor of his conduct, while it has much in common with that of every other person, yet in its precise combination is peculiar to himself. In grade he may be of brilliant intellect, or dull, or feeble-minded, or imbecile, or idiotic ; and, even if brilliant, his brilliancy may show itself in one of many directions : his intellect may be preponderatingly inductive or deductive ; his ability may be in practical affairs or in abstract speculation ; his bent may be to discovery, or to invention, or to classification, to the investigation of the mechanics of dead matter, or to the habits of living things ; his ability may be in the acquisition of languages or in the construction of clocks. Whatever the degree or amount of his native ability, and whatever the bent of his genius, his tastes, his interests, they all form a part of his general make-up or constitution or temperament, they all contribute to the composition of the internal factor in his conduct.

In the third place, the degree in which he is prone to self-indulgence on the one hand or self-restraint on the other is an important ingredient in the internal factor of his conduct. It is manifest that it will take an important part in the determination of his conduct on many occasions, and may be a dominating factor in his conduct.

In the fourth place, and lastly, a very important portion of the internal factor in conduct at any time of life lies in the habits and automatisms that the person has acquired in the previous part of his life. All that very extensive domain of conduct that consists in or depends upon writing is impossible for those who have never learnt to write ; that which consists in or depends upon reading, riding, playing on musical instruments, drawing, painting, fly-fishing, and a thousand other arts



and crafts, is impossible to those who have never acquired the habits and automatisms concerned in them, and is modified by the kind of habits and automatisms acquired, and by the degree in which they have been acquired. Conduct as a whole, and each several department of conduct, is profoundly modified by this constituent of the internal factor.

### THE EXTERNAL FACTOR

#### *Opportunity and Temptation*

The external factor in action consists, of course, of the circumstances in which the actor is, and that act upon him and control, elicit, or modify his action. They may be divided for the present purpose into two groups: the one consisting of the circumstances that have acted in the past, and that have taken their share, often a large share, in modifying the internal factor.

The tendencies to action of every man and woman are, as we have seen, due partly to inherited instincts and aptitudes, partly to habits and automatisms; and the habits and automatisms are due to action in circumstances, and are profoundly modified, and in large degree created, by circumstances. Everyone but a fanatic blinded by prejudice and preconceived dogma must admit the large and important share that education, training, and upbringing have in constituting what I have called the make-up or temperament, what is often called the character or the disposition, of a person. He who has learnt to read and write will act every day on fifty occasions differently from him who has not; and the difference in the mode of action depends much less upon even such important accomplishments as reading and writing than upon the ideals that have been



inculcated and the moral tone that has been imparted by education and training. The brutality, treachery, greed, and slavish subservience to authority that are characteristic of the German are no doubt in part racial, innate, and inherited from an ancestry in which the same characters predominated ; but they are in larger part, probably in much larger part, due to systematic training and inculcation from early youth, just as the spirit of loyalty and freedom of the English public-school boy are due to no innate proclivities, but are inculcated and fostered by his training.

So it is with the restraints of morality that militate against criminal action. They are to some extent innate instincts inherited from an ancestry that has for countless generations lived a social life for which the fundamental restraints of morality are vitally necessary. Morality is social adaptation. Animals, or men either, that live solitary and are parts of no social system have no need of morality, and no opportunity of being either moral or immoral. Morality and immorality are terms without meaning except in relation to the social state ; and man has lived for so many generations in the social state, his survival has depended so predominantly upon the maintenance in its integrity of the social body to which he has belonged, that his instincts as well as his inclinations are become adapted to the social state. The adaptation is not complete, or there would be no criminals. It is as yet very imperfect, and criminality is one manifestation of its imperfection ; but it is begun, and has proceeded to an extent which varies much in different people. In the philanthropist the instinct is well developed, though its guidance by reason is often sadly defective. In the criminal the instinct seems to be in some cases wholly absent, in many but little developed,



and in some, in whom it may have been moderately developed, it is swamped and overborne by vicious training and habitual self-indulgence. But even in normally constituted persons, in whom the social instinct or instincts are developed up to the existing standard of the race, they are not of themselves sufficiently strong to keep their possessor in the path of rectitude. They need to be supplemented by other influences ; and this has been recognised in practice in every society that has survived and prevailed. The chief of these influences are custom and religion, and both depend for their efficacy upon training, especially in early life, when the character is plastic and easily retains what is impressed upon it. In the absence of a moral training, a high degree of morality is impossible, an ordinary degree is not to be expected except in exceptional natures in which the moral instinct is unusually strong ; and without this training, the person of average moral instinct is a ready-made criminal *in posse*. It may be that the training, so far from strengthening and reinforcing the innate restraint of morality, is in the opposite direction, as in Fagin's school for thieves. Rarely, but occasionally, such schools are discovered now, and, short of the deliberate teaching of the young to steal, the mere association of criminals with one another reinforces and confirms in each one the tendency and habit to commit crime. It was the discovery of this result of associating criminals with one another, and with persons, especially young persons, who were not as yet criminals before the association, that more than anything else led at length to the tardy reform of our prison system. Every prison in which criminals and non-criminals were indiscriminately mingled together was found to be a nursery and school of criminals ; but it is evident that in this way circum-



stances act, not as a direct factor in producing action of a certain kind, but indirectly by reinforcing or weakening the internal factor. Training and education go to modify the disposition of the trained and educated person. They produce, not separate and individual acts, but a modification of the way of acting. They make possible and easy ways of acting that without them would be impossible or difficult. In short, they modify the internal factor. They alter the nature and disposition of a person, and render him more likely or less likely to commit crime on a given occasion and in given circumstances ; but in thus regarding them we regard them as contributing to the general constitution, disposition, temperament, or make-up of the person, and not as affording occasion and circumstances for any individual crime. This is not what is meant by the external factor in action.

The external factor in action consists of the circumstances in which the action takes place ; and it is evident that these circumstances are as important and as necessary to all action, and to every special kind of action, as the disposition of the actor ; and that their influence is complementary to that of the internal factor in the production of every kind of action, and therefore of crime. However ardently a man may desire to catch fish, he cannot do so where there is no water. If fishing were a crime, it would be a crime of which the Arab of the Sahara could not be guilty, however strongly his instinct and training urged and impelled him to fish. In the same circumstances the most accomplished, assiduous, and enthusiastic burglar could not follow the profession of burglary. Nor could he follow it if he were transferred to the North or the South Pole. Burglary cannot be committed where there are no houses ; and even if



there were houses at the Poles, burglary would be impossible for six months in the year, for burglary is a nocturnal crime, and at the Poles for six months in the year there is no night. Without going as far afield as this for instances, it is manifest that crime depends as much on the external circumstances as on the internal disposition of the criminal. The external factor is, upon the whole, as important as the internal factor, and should be as much taken into account in tracing the origin of crime. Certain crimes have died out, and are no longer practised, because the circumstances that made them possible, or easy, or profitable, have ceased to exist. Fagin's pupils were taught to steal silk handkerchiefs from gentlemen's tail-pockets, but no thief now steals silk handkerchiefs from gentlemen's tail-pockets. For one thing, tail-pockets are gone out of fashion ; for another, silk handkerchiefs are gone out of fashion together with the snuff-taking which made them desirable ; for a third, silk handkerchiefs no longer have the value they had in Fagin's day. If it were easy to steal them, it would no longer be worth while ; so the stealing of silk pocket-handkerchiefs is gone out of fashion. In the seventeenth and eighteenth centuries the profession of a highwayman stood at the head of all the furtive occupations. It was an extremely profitable and extremely frequent mode of robbery. Every heath on the outskirts of London—Blackheath, Hampstead Heath, Hounslow Heath—had its gang of highwaymen ; and the robbery of a mail-coach was of weekly occurrence. Mail-coaches are not robbed now, and highwaymen are as extinct as the great auk ; and the reason is manifest. The circumstances necessary for the execution of the crime no longer exist. In the third quarter of the last century there was a brief period of a



few months in which garrotting was a fashionable crime. It soon ceased, for the activity of the police and the enactment of the punishment of flogging soon put a stop to it. In the eighteenth and the early part of the nineteenth centuries smuggling was probably the most frequent of all crimes. Practically the whole population for a breadth of several miles round the southern coast of this country was concerned in smuggling or in assisting or conniving at smuggling; but it is now among the rarest of crimes, and why? Because the removal of duties from a great multitude of commodities has made smuggling no longer profitable. In each of these cases the influence of favouring circumstances on the commission of crime is paramount. It is gross as a mountain, open, palpable; and yet, in treating of the origin of crime, writers have entirely ignored the external factor in its production. They have gone about to seek for the origin of crime in all kinds of internal factors, most of them purely imaginary, and have resolutely shut their eyes to the external factor, which is in every case a most important determinant, and is in some cases, as in that of smuggling, practically the sole determinant.

For, as I have said, smuggling was practised, or assisted, or connived at, by practically the whole population of the area in which smuggling could be carried on. Every fisherman was a smuggler, either regularly and by profession or casually and occasionally as opportunity served. Every inhabitant of a fishing village was eager to gather information as to the movements of the excise-men and to keep the smugglers informed of them. Every lady in the district looked to the smugglers for her tea, her silk, and her lace; and every gentleman depended on them for his tobacco and his brandy. The clergy acquiesced in a system from which they profited, and which



they had neither the power nor the wish to alter. The very magistrates whose duty it was to enforce the law, suppress the crime, and commit the criminal, evaded their duty and reaped their reward. Some of them, it was alleged, embarked their capital in the business. If the doctrines of the Continental criminologists are true, we must admit that every man and woman, and even many children, within some miles of the southern coast of England was marked with the stigmata of the criminal. All their heads were misshapen. They were oxycephalic or brachycephalic. All their noses were too long or too short ; all their chins projected or receded ; all their foreheads were high or low, or bulging, or receding ; the men had no beards and had a peculiar air of *bonhomie*, the women had angelic faces or were small and pale and haggard. They were all stupid, inexact, lacking in foresight, and astoundingly imprudent. They were cunning, hypocritical, delighting in falsehood. They all talked slang, and tattooed themselves, and so forth and so on ; and they owed their proclivity for smuggling to these peculiarities, or to the same inheritance that endowed them with these peculiarities, and not in the least to the facility and general impunity with which smuggling could be practised. Well, as old Herodotus says, if anyone can believe this, by all means let him do so ; for my part, I do not find it easy. We must ask ourselves what happened when the customs duties for most commodities were abolished, smuggling ceased, and the criminal population returned to virtuous ways of life. Did their heads assume a normal shape ? Did their noses alter in length and elevation ? Did the receding chins come out and the projecting chins go in ? Did the bulging foreheads recede and the receding foreheads advance ? Did the men's beards begin to



grow and their peculiar air of *bonhomie* disappear? Did the angelic faces of the women become human, or even diabolic, and did their figures swell out and their complexions improve? Did both men and women lose their stupidity, their inexactness and imprudence, and become clever, exact, and prudent? Did they cease to talk slang, and did they erase their tattoo marks? Did they, in short, revise their parentage, and become descended from an entirely new line of ancestry? Did they find that they had all been changed at birth? It appears that if the doctrines of Lombroso, Garofalo, and the rest of the Continental criminologists are true, they ought to have done so; but did they?

Or, if we follow a subsequent school, we must suppose that all these people became engaged actively or passively in the occupation of smuggling because they were brought up in bad sanitary conditions. They were poor, they were ill-housed, they were uneducated, they were brought up in slums, they were ill-fed, and so forth. No doubt sanitation was less carefully observed in those days than in these; but in this matter the population of the whole country lived under much the same conditions, and the smugglers were restricted to the maritime counties.

There is no need, therefore, of the voluminous statistics accumulated for so many years by the prison officials, and digested and elaborated with such labour by Dr Goring, to disprove the absurd assumptions of the Continental school and the equally absurd assumptions of the environmental school of criminologists. The chief result of these statistics is the disproof of these two doctrines, and to achieve these results the statistics are labour thrown away. A very moderate acquaintance with the history of crime is enough to disprove them completely and finally, without any aid from statistics;



and a very moderate amount of consideration is enough to show that no one but those who put their minds in blinkers could possibly entertain either of the doctrines. They have no plausibility, and make no appeal except to those who resolutely cull instances that seem, however slightly and partly, to accord with them, and who resolutely shut their eyes to the immense number of prominent and striking *instantia contradictoria*. The two doctrines are now of interest only as showing the eager gullibility with which the general public, and not only the general public, but grave professors who devote their lives to a study, will swallow the grossest absurdities without any attempt to examine them critically.

Rightly estimated, the external factor is a most important factor in the commission of crime; and, rightly estimated, its direct influence, as distinguished from that indirect influence in modifying the make-up of the criminal that we have already considered, is twofold, or rather it exists in two degrees—as affording opportunity, and as presenting temptation. Given a constitutional make-up or disposition to which crime is possible, then, whether crime will or will not be committed must depend in the first place on whether there is opportunity for its commission, and in the second on the strength of the temptation that the opportunity presents. Without opportunity for crime there can be no crime. That is axiomatic. It needs no proof, for it carries its truth in the face of it. A man at sea cannot cut down fruit trees, damage fences, steal a horse and cart, or fire a stack of wheat. A pirate, however confirmed in his piracy, cannot commit true piracy at Nottingham or Derby, though no doubt in either place he could “pirate” books, or inventions, or trade marks; nor could he in those places scuttle a ship or commit any maritime offence,



any more than in the Sahara he could commit a burglary, or among the naked aborigines of the Amazon pick a pocket. For crime to be committed there must be opportunity. The conditions necessary for the crime must be present. All this is of course very obvious, but my researches in various fields have taught me that it is the obvious that is overlooked, and that many of the grossest and most prevalent errors of doctrine are due to blindness to the obvious. It is obvious that madness consists, not in what a man thinks, but in what he says and does ; but it has taken me thirty years to compel alienists to admit it. It is obvious that there are more verbs in every language than the verb "to be" ; but for ten years I have tried to convince logicians that there are, and I have failed completely. It will no doubt take twenty more years to convince them. It is obvious that a state of mind that is unconscious is not a state of mind, any more than a solid body that offers no resistance is a solid body. It is nothing. The words are without meaning. Yet books, many books, have been written about the unconscious mind, many learned societies have discussed it, and many sick people have suffered torment and degradation at the hands of physicians who have built their practice on the doctrine of the unconscious mind. I make no apology, therefore, for insisting upon what is obvious.

The external factor in the genesis of crime is the circumstances that favour the commission of crime ; and these circumstances are presented in two aspects to the criminal *in posse*. They may present themselves as opportunity or as temptation, and the difference between opportunity and temptation is this : opportunity is absolute. It is independent of the nature and disposition of the person to whom it is presented. It is independ-



ent even of the existence of any person. It consists in the existence of circumstances which make a crime possible, and especially of such as would render a crime easy, if there were a criminal handy to take advantage of them. Still, opportunity does not imply the presence of a criminal, or his knowledge, or the knowledge of anyone, of the circumstances that afford the opportunity. If the circumstances are such and such, they afford opportunity for crime, and they still afford opportunity whether there is or is not anyone ready to take advantage of it, and whether there is or is not anyone who knows of it. Opportunity is not necessarily relative to person.

It is otherwise with temptation. Temptation is strictly and solely relative to the person tempted. It consists in circumstances that constitute an allurement to some particular person or persons, or some kind of persons, to commit a crime. To some persons opportunity is temptation. The same circumstances that afford opportunity constitute temptation also ; but not unless they are known to the tempted person. Opportunity is opportunity, whether it is known or not ; but opportunity does not become temptation until it is known ; and, even when known, it may still remain only opportunity and not become temptation, for temptation is strictly relative to the person tempted, and that opportunity that is temptation to one may be no temptation to another. Moreover, there can be no temptation where there is no opportunity. What is to be remembered is that both opportunity and temptation are furnished by the circumstances. They constitute the external factor in crime, and are as necessary to crime as is the internal disposition of the criminal.

An unfastened window on the ground floor of a house, especially of an unoccupied house, constitutes an oppor-



tunity for housebreaking and burglary, and constitutes this opportunity whether there is or is not any criminally disposed person to take advantage of it, and whether the circumstance is known to anyone or not. The opportunity is absolute. It is there in any case, and is not relative to any person. To an ordinary moral and law-abiding person it is no temptation. He may notice it, and recognise that it constitutes an opportunity for housebreaking or burglary, but it does not tempt him to commit either crime, for towards these crimes he has no disposition. To a pickpocket, the circumstances, if they were known to him, would afford not only opportunity but also temptation. He is already accustomed to commit crime and to help himself to the property of other people, and hence his internal disposition inclines towards taking advantage of any opportunity of so acquiring property ; but to him the temptation is not strong. He is unrestrained by any instinct or training of morality, but he is not inclined towards the crime by habit, and his disposition does not include the necessary courage. He is tempted, but he is not very strongly tempted. He may even be constrained by considerations of morality. Human nature is so queerly constituted that there are many criminals, accustomed to commit crime of one kind, and who never trouble themselves about the wrongness of this kind of crime, and may even persuade themselves by some sophistry that it is not wrong, who yet would regard crimes of a different kind as wrong, and would be restrained by morality from committing them. In experience we find that a pickpocket is never a housebreaker or burglar, and therefore we may be pretty sure that, though the knowledge of an unfastened window on the ground floor of an unoccupied house might constitute something of



a temptation to a pickpocket, it would not be a very powerful temptation. But to a professional burglar the temptation would be irresistible, nor would he make any effort to resist it, except to postpone to a more convenient time the act taking advantage of the opportunity. To him the circumstance would afford both opportunity and temptation, for he has the disposition, the internal factor, which converts opportunity into temptation. Temptation is relative to disposition, and that circumstance which is strong temptation to one is but weak temptation to another, and no temptation at all to a third.

Opportunity may, as we have found, exist without being known, may be known without affording temptation. We are now to notice that the knowledge, or at least the possibility, of opportunity is necessary to temptation. A burglar or a jewel thief may view the magnificent Crown jewels in the Tower, and may very strongly desire to possess them; but this desire is not temptation. Temptation consists, not in desire, but in the appeal made to desire by circumstances, and in these circumstances the possibility at least of success is a necessary constituent in the temptation. As long as the burglar considers it possible that he may steal the Crown jewels, as long as he is meditating and casting about for opportunity to steal them, they are a temptation to him; but when he finally makes up his mind that it is "no go," that they are beyond his reach, that there is no chance of his stealing them, it would be a misnomer to speak of them as a temptation to him. Temptation is temptation to act, and if action in pursuit of the object is seen to be impossible, then, though the desire may persist, the temptation is removed. Temptation is therefore the presentation of opportunity to desire. Given the



opportunity, the stronger the desire the stronger the temptation. Given the desire, the more manifest and facile the opportunity the stronger the temptation. Opportunity that is unknown can be no temptation. Nor is opportunity, even if known, any temptation in the absence of desire. Nor can desire, however powerful, lead to crime in the absence of opportunity.

Thus we find that desire and opportunity, the internal factor and the external factor, are the necessary ingredients in the commission of crime ; and these two factors are complementary. The more powerful the desire, the less of manifest opportunity is needed. The more manifest the opportunity, the less of desire is needed. If desire is powerful, opportunity will be sought ; will be diligently and painstakingly sought ; will even be made where it does not exist. If opportunity is manifest and conspicuous, if it obtrudes itself and thrusts itself upon the notice, a very small modicum of desire will be enough to bring about the commission of the crime ; but in every case there must be the combination of desire and opportunity, or there will be no crime. Even when both exist, it does not necessarily follow that crime will be perpetrated. The restraints of morality or of prudence may intervene and prevent ; and therefore it is more correct to speak of disposition than of desire as conducing to crime, for disposition includes the whole of the internal factor ; it includes not only desire, but also the sum total of all instinctive desires, both crude and elaborate, selfish and social ; it includes the degree of intelligence, and all the results of training, education, upbringing, habit, experience, and so forth.

From what has been said it will appear that the external factor, constituted by the circumstances that



conduce to the commission of any crime, is quite as important as the internal factor, constituted by the disposition of the criminal ; and that in any investigation into the origin of crime the circumstances ought to receive as much attention as the disposition of the criminal. In every investigation that I know of the circumstances are wholly ignored, and the only matter treated of is the disposition of the criminal ; and even this is usually treated of in a partial and one-sided manner, by concentrating attention upon only one aspect of the facts, forcing them to fit in with a foregone conclusion, and ignoring every fact that militates against this preconception. Even Dr Goring's investigation, laborious and painstaking as it is, takes account solely of the disposition of the criminal, and leaves out altogether consideration of the circumstances that conduce to any crime.



## CHAPTER II

### THE PSYCHOLOGY OF CRIME

As criminal conduct is a branch of conduct at large, and is subject to the same laws and influenced by the same circumstances, so the psychology of crime is but part of psychology at large, and no more special to the criminal than the psychological or mental make-up or disposition of any one man differs from that of every other. Nevertheless, in order to understand and take full account of that mental factor that Sir FitzJames Stephen speaks of as a necessary constituent in crime, we must approach the psychology of the criminal from a certain point of view, and treat even of psychology at large in a way that, as far as I know, it has not been treated of before, except in my book on Insanity.

In my view, the mind of any person is one whole ; but, like many other totalities, it need not be contemplated as a whole. It consists of several components or faculties, sufficiently distinct to be separately described and separately estimated, and each of these faculties may be further subdivided in contemplation for convenience of description and estimation. The several primary departments of mind are Desire, Intellect, Feeling, Will, and Memory. It is the fashion in psychology now to depreciate and despise the division of mind into faculties that prevailed until about seventy years ago, but it seems to me a mere fashion. I have examined with care the argu-



ments against it, and they seem to me very unconvincing. Neither madness nor criminality can be understood without some such division as I have indicated above.

### DESIRE AND AVERSION

Desire and aversion must be taken together, for as motives to conduct they are inseparable, and in many cases but two sides of the same mental state. Desire for food, for instance, is but the obverse of aversion to hunger, and in most contexts we may substitute the one expression for the other without disturbing the argument. Before conduct of any kind can come into existence, there must be a *motive*, a prompting, an internal urging to action. It should be said here, as is fully explained in my book on Conduct, that action is not the same thing as movement. Action may be the suppression and avoidance of movement. I have defined action as movement, or arrest or suppression of movement, for the attainment of a purpose. Unless there is some reason why action should be undertaken, unless there is some purpose to serve by it, there will be no action ; and the purpose for which an action is undertaken is always the satisfaction of some desire or some aversion. Desire and aversion are properly called the motives to conduct, since they set the body in motion, or alter or arrest or suppress its motion, for the attainment of some purpose ; the purpose being the satisfaction of the desire or the aversion—the production of a state of things desired or the removal of a state of things disliked. Desire and aversion are to human conduct what the pressure of steam is to the steam engine. They supply the motive power.

The directions in which human conduct proceeds, the kinds of acts that go to make up the conduct of man-



kind, or even of any one man, are virtually infinite, are at any rate incalculably numerous ; but all these immensely diversified acts are prompted by a small group of ultimate motives. I say ultimate motives, because there is a profound difference between ultimate, proximate, and intermediate motives. Proximate motives, the immediate motives to action, are almost as numerous and diverse as actions themselves ; and one and the same action may be prompted in one person by one motive and in another person by another, or even in the same person at one time by one motive and at another time by another. One man may stab his neighbour from furious blind rage, in the provocation of the moment, his motive being little more than the letting off of steam. Another may stab his neighbour from cold and settled hate, long cherished and premeditated. Another may commit the same act from the benevolent motive of ridding the neighbour of a tumour. Yet another may do the same thing reluctantly and sorrowfully at the neighbour's own entreaty ; and many other proximate motives may easily be imagined, and have in experience been found, to prompt to action of the same kind. But if we trace these proximate motives back to their source, we find that every one of them may be assigned to one of a very small group of ultimate motives or instinctive desires that are the same in every man, though they are not in every man combined in precisely the same proportion, nor have they in every man the same absolute strength. The variation is, however, not great. Every man possesses every one of this small number of instinctive desires, and from their promptings, singly or combined, in harmony or in conflict, springs in the last resort all the conduct of every man.

When a starving man steals a loaf of bread to satisfy



his hunger, the act is due directly to the prompting of hunger or the desire for food, which is a part of the instinctive desire, common to all animals, to preserve his own life. If, instead of stealing the loaf, he works for the money to buy it, his action is prompted, though less directly, by the same desire. If he presents himself as a candidate for Parliament, with the view of increasing his influence, advertising himself, forwarding the schemes in which he is interested, and so in the long run increasing his business and making more money, his ultimate motive is still the same—self-preservation, now, perhaps, reinforced by some additions from other fundamental motives. To some extent he is moved by the desire to benefit his children and establish them in the world, an offset of the fundamental desire of parenthood ; to some extent he is influenced by ambition, and the desire to be esteemed and respected by other men, an offshoot of the fundamental instinct of sociality ; to some extent he is influenced by the desire of accumulation, which is itself a derivative of the desire of self-preservation. But whatever the motives that prompt him—and he would himself be unable to trace them to their source and apportion them among the few fundamental motives that actuate conduct—they are all assignable ultimately to the very small group of fundamental instinctive desires.

The loaf may be stolen, not to satisfy the thief's hunger, but to satisfy the hunger of his children ; and in this case the act is prompted directly by the parental instinct, the desire for the preservation and welfare of his children, another of the small group of primitive or instinctive desires. If he works for the money to buy food in excess of his own requirements, or to buy clothes or toys or what not for his children, he is prompted indirectly



by the same motive ; and when he makes inquiries to discover the best school, extends his business so that he may afford to send his sons to the university and his daughters to complete their education in France, he is prompted indirectly by the same motive.

Whatever the motive for any act—and it is often impossible for the observer to assign the motive, often difficult or impossible for the actor himself to do so—no one doubts that every act of every sane human being is prompted by some motive, which is all that we need insist upon now. We can always assign some motive for every act we perform or witness, and, though we may not be correct as to the particular motive we assign, we take it for granted that the act had some motive ; and if we cannot assign any motive at all, we regard the act as mad. The perpetration of a motiveless act, by which we mean an act for which no motive is apparent, is always regarded as a sign of madness ; and this of itself shows how constantly and inevitably we take it for granted that acts are prompted by motives. And by a motive we mean a desire or an aversion.

Motives, as we have seen, may act directly or indirectly. In the first case the act is predominantly instinctive : in the second it contains an infusion of reason ; and the more indirect the motive—that is to say, the longer the series of acts by which it seeks satisfaction—the larger is the share of reason in the whole operation. We have already seen that instinct, by which we now mean instinctive desire, dictates with imperious necessity the ultimate end to be pursued, and that reason discovers and devises the means by which the end may be compassed. We have seen, also, what a long series of successive steps may be required to compass one of these ultimate purposes and satisfy one of these primitive



desires. When a young man falls in love, the yearning that he feels for the presence, the association, the company of his beloved is a purely instinctive desire. This desire cannot be satisfied directly. He cannot rush into her presence regardless of time, place, and circumstances. To satisfy his desire he must proceed indirectly. He must get a holiday. He must procure an invitation. To commend and ingratiate himself he must have new clothes. He must seek opportunity, or make opportunity; and for this purpose he must cultivate an acquaintance here, seek an interview there, write letters, go journeys, remain late at his office to get through his work, intrigue and finesse in a dozen different directions. In all this he is employing reason to seek the means of satisfying the primary instinctive desire that prompts the whole train of acts; but it is important to notice that more than reason is involved in the process. As soon as he has determined by a process of reasoning that a holiday will advance him towards the attainment of his purpose and the satisfaction of his desire, he feels a desire to obtain a holiday. As soon as his reason tells him that an invitation will facilitate the attainment of his purpose, he experiences a desire for the invitation. When he finds the invitation is not to be obtained without an introduction, he has a desire for the introduction. If to obtain the introduction he must write a certain letter, he has a desire to write the letter; and so on throughout the whole series of operations. Each step is devised by reason, it is true, but reason is not the only faculty employed. Each step, as it is decided upon, becomes an object of desire, and all these subsidiary desires derive their strength and efficacy from the primary desire. If his affection for his lady cools, and he no longer affects her society, straightway the whole train of desires



diminishes in intensity and fades. The letter that he was so eager to write now seems superfluous. The interview that the letter was to bring about no longer interests him. The invitation that he was to obtain from the interview is become indifferent to him. All the successive desires that grew out of the primitive desire and are dependent on it fade and weaken with the fading of the primitive desire.

Of all these secondary, tertiary, and successive desires, more and more remote from the primitive desire, and more and more directly concerned with the act that is being performed or about to be performed, one alone has attracted the attention of jurists, who assign to it a special importance and distinguish it by a certain name. This is the very last of the series, that which prompts to the very act that is done, and that which must have been in the mind of the actor at the time he did the act. For it is to be noticed that the previous desires in the train lose their vividness for the time being as they are superseded by the subsidiary desires that grow out of them. The desire for an introduction is strong as soon as it is seen to be a step towards the attainment of the further purpose of associating with the beloved ; but as soon as it is determined that a certain interview is necessary to obtain the introduction, the desire for the introduction is superseded and placed temporarily on one side. It goes out of focus, and desire is concentrated on obtaining the interview. When it is seen that to obtain the interview a letter must be written, the desire to obtain the interview goes out of focus, which is occupied by the desire to write the letter. Now, of all the long train of successive desires that may precede the accomplishment of any act, an observer cannot be sure of any but the last. When we see the lover writing the letter,



we may be sure that he desires to write the letter, but we cannot be sure of any other of the desires in the train that have induced him to write the letter. When we find the letter written, we may be sure that when he wrote it he was prompted by the desire of writing it, but we can be sure of nothing further. If he gives us the letter to read, and we find that it solicits an interview with the addressee, we may infer that it was prompted by a desire for this interview, but we can draw no further inference, unless we can discover it from the terms of the letter. We can rightly infer from the doing of any act that the actor had in his mind when he did it the desire to do that very act and to bring about the consequences that must, in the natural course of things as known to us, result from that act. If he throws an egg violently to the ground, we must infer that he desired to throw the egg to the ground, and, more than this, that he desired to smash the egg, for smashing of an egg is the consequence that must, in the natural course of things as known to us, result from throwing it to the ground. If the egg was about to be eaten, then we may rightly infer that one desire in the mind of the person who threw the egg was to prevent the eating of the egg, for that again is the natural consequence of his act. Further back than this we cannot go with safety from the mere observation of the act. From other information we may be able to guess what desire lay behind the desire to prevent the eating of the egg, but we cannot infer anything about this desire from the act itself. Whatever desire was and must have been in the mind of the actor at the moment the act was done is distinguished from all other desires that led up to the act, and is called the *intention* of the act. The intention of the act is therefore the desire to do the act, and to



bring about those consequences that, in the natural course of things as generally known, must result from the act. The previous desires are termed *motives*. They must have been present in the mind of the actor at some time previous to the act. They may have been more or less vividly present in his mind even at the time the act was done ; but we cannot infer them from the act itself, because their connection with it is not apparent from the nature of the act. The result desired does not ensue, as far as we can judge, inevitably and necessarily from the act.

Intention is necessary in crime. If an act has consequences that were not desired by the actor at the time the act was done, then for those consequences he is not to be held responsible. But as we cannot look into the mind of another person and discern what desires were present therein, we are obliged to infer the intention from the act ; and we may, and indeed must, infer that he intended those consequences that common knowledge declares must result, or are very likely to result, from such an act ; and when we say that this was his intention, we mean that this was the desire in his mind at the very time that he was performing the act. For this intention he is responsible, and must take the consequences.

### INTELLECT

The part played in action by intellect or reason has already been examined. Intellect devises the means to compass those ends that desire dictates ; and as soon as intellect has pointed the way, desire declares that that way must be followed. Intellect discerns that the end is to be attained only by a series that may be so long that the stages most remote from the primitive desire—



and these stages are the first to be traversed—may be quite out of sight of the ultimate goal, and may appear, even to the actor himself, to have no connection with it, and to lead anywhere but in that direction. The high-souled, ardent youth, worshipping his mistress from afar, and cudgelling his brains for rhymes to “angel” and “perfect,” has no suspicion that the ultimate motive behind his rhyming is the primitive desire to replenish the earth and save from extinction the race to which he belongs. The middle-aged spinster, rising at an uncomfortably early hour on a winter’s morning to attend “early celebration,” would be indignant if she were told the truth—that her action is prompted by that craving for self-sacrifice which is part of the fundamental instinctive desire for motherhood. A desire deprived of its natural means of expression will find what means of expression it can; and a tame beaver, removed from its natural habitat, will build a dam in the corner of a bedroom with boots, books, and hair-brushes. The rhymes of the ardent youth are boots, and the genuflexions of the spinster are hair-brushes.

Primitive desires thus ramify in unexpected directions, and their ramifications may or may not be directed by the intellect. Whatever the stage, however, at which an instinctive desire comes to the surface, manifests itself, and demands expression in conduct, it seeks the aid of reason to direct it; and whatever action intellect may devise is prompted by a desire that may be traced back to one of the small group of primitive desires, but that is, at the stage at which it is arrived, a desire to do the very act that reason discovers as likely to contribute to the satisfaction, at however many removes, of the primitive desire.

Intellect devises the means of attaining those ends.



that are dictated by desire, and the means are crude or elaborate according as the intellect is of low or high development. Intellect, therefore, takes a large share in determining the kind of crime a person commits. It is evident that stupid people are debarred by their stupidity from committing very intelligent crimes ; but it is evident also, and it is confirmed by experience, that intelligent persons are by no means debarred from committing crude and even stupid crimes. Dr Webster was a highly educated man, and a man of sufficient intelligence to obtain the position of professor of chemistry ; but his murder of Dr Parkman was a very crude crime, and also a very stupid crime. It was committed in a way that rendered discovery of both crime and perpetrator so extremely likely that the crime was not worth while. On the other hand, a modern safe robbery requires great practical intelligence. It needs most careful forethought and preparation, and utilises elaborate scientific apparatus that require considerable knowledge and skill for their employment. Company-promoting frauds require a very high degree of intelligence—so much, that it may need the skill of half a dozen able counsel to unravel their perplexities. From such crimes stupid persons, and even persons of average intelligence, are debarred by want of the necessary mental equipment. The great majority of crimes, however, are of a very crude nature, and need but little intelligence for their perpetration.

Want of intelligence may, and in some cases does, contribute to crime by rendering the criminal incapable of recognising the difference between right and wrong. In its extreme form this inability is rare, and the universal experience of mankind shows that persons of dull intellect are often capable of a high standard of



rectitude ; but not only are there a few persons, such as the man described by Dr Quinton, who are too stupid to appreciate the difference between right and wrong in any case, but also there are very many who have not enough intelligence to appreciate how wrong a given wrong act is. They appreciate that serious crime is not quite right, but they look upon it as a peccadillo, whose wrongness is of no great importance. This inability to appreciate the degree of turpitude of an act is very frequent, and has not been sufficiently recognised either by jurists or by psychologists. The only writer besides myself who has paid any attention to it is Sir FitzJames Stephen, who recognised it very clearly. Its importance in contributing to crime is obvious. Very many persons who would never commit what they considered serious crime would think nothing of perpetrating what they consider a mere peccadillo. An extreme case is adduced by Sir FitzJames Stephen, of a mischievous lad who cut off the head of a sleeping man to witness his surprise when he should wake. No doubt the lad realised that he was doing a mischievous trick, which his elders would discountenance and reprove him for, as they might discountenance and reprove him for pulling the tail feathers out of a pheasant for the same reason ; but undoubtedly he did not recognise that the one act was of more serious import than the other. An incapability as great as this of estimating degrees of wrongness of acts is no doubt rare, but less degrees are very frequent, especially among those who are insane in various degree, or mentally deficient. It is this inability that vitiates the famous doctrine laid down by the judges in 1843 with respect to the responsibility of madmen. The madman is responsible, they say, if he knows the nature and quality of the act, and that it was wrong.



This supposes that there is not only a sharp and unmistakable division between right and wrong acts, but also that there is but one degree of rightness and wrongness. According to the dictum, an act is right or wrong and there's an end on't; but this is a very crude and imperfect view. There are innumerable degrees of rightness and wrongness of acts, ranging from acts of the purest and most unselfish philanthropy and acts of sternest duty to acts of German wickedness and depravity; and very many acts are near the border line, so that it may be difficult to say, not merely how right or wrong they are, but whether they are right or wrong. They may be right in some aspects, or in one set of circumstances, and wrong in others. They may be right for some people and wrong for others to do. An act may be of mixed nature, and may be to some extent right and to some extent wrong; and to decide which prevails may be difficult. Hence, to recognise fine shades of rightness and wrongness may require a keenness and subtlety of intellect that few people possess; indeed, it may be differently decided by different intelligent people of approximately equal intelligence.

Intellect, as has been frequently asserted, devises the means by which the attainment of desired ends is sought; and intellect may take this share in crime, that it may devise a criminal means of attaining an end that is itself innocent. Indeed, criminality scarcely attaches to any of the primitive instinctive desires. There is nothing criminal, or necessarily tending to criminality, in the desire to obtain food or drink, to avoid personal injury, to seek warmth and shelter, to gratify sexual and parental longings, to indulge in recreation, or to satisfy curiosity. The laudability or criminality of the acts prompted by these primitive desires lies, not in the nature of the end



pursued, but in the means by which the end is attained ; and the choice and devising of means is effected by the intellect. It is an affair of reason, and, if instinctive at all, is only secondarily instinctive, or is settled by habit and automatism, which are themselves ultimately the products of reasoned action. In a sense, therefore, criminality originates in the intellect and not in desire ; though, of course, without primitive desires there would be no action at all, and therefore no criminal action. Still, it is evident that criminality consists, not in primitive desire, nor in the gratification of primitive desire, but in the choice of the way in which the gratification is obtained or sought ; and choice means reason. It is determined by the intellect. It involves comparison, and comparison is a purely intellectual process.

The chief part that the intellect plays in crime, however, is in determining what may be called the intellectual grade of the crime. Crimes of great elaboration, demanding high intelligence in the criminal, are necessarily restricted to persons of high intelligence. Crude crimes, such as most crimes of violence, most sexual offences, and most crimes of destruction, may be committed by anyone, but are more likely to be committed by the dull ; and some crimes are in their very nature so unintelligent that they would never be committed by persons of even average intelligence, much less by the highly intellectual.

Another important part that intellect plays in crime is undoubtedly in aiding to secure the criminal from discovery and from connection with the crime. How far it contributes to his success in this respect we have no means of knowing precisely, but that it does play a considerable part is an inference that may be drawn from Dr Goring's figures, though it is one that he does



not draw. He finds that a very large proportion of criminals are of weak intellect ; but then his figures refer, not to criminals as a whole, but to convicted criminals ; and without going into statistics, it is surely a fair and obvious inference that the more stupid a criminal is, the less likely he is to be successful in eluding the police. It appears from official statistics that there is a very considerable proportion of crimes, as large a proportion as six-sevenths, that are never brought home to their perpetrators. All the criminals who have committed these crimes are excluded from Dr Goring's statistics, and it is a fair inference that they include the more intelligent criminals. Obviously, too, the more intelligent criminals are the more dangerous criminals ; dangerous, not in the sense that they are more addicted to crimes of violence, but in the sense that it is more difficult to take effectual precautions against them, so that their crimes are at once more difficult to prevent and more difficult to bring home to the criminal after they have been committed.

### WILL

But, though choice involves comparison, and cannot be made without comparison, yet in choice there is something more than comparison and the appreciation of likeness and unlikeness, which are pure ingredients in thought. Strictly speaking, comparison is antecedent to choice, and is not an integral part of choice. Intellect discerns two or more alternatives, compares them with one another, marks the differences between them, decides upon their comparative advantages and disadvantages, but can do no more. To make actual choice between alternative modes of action, a new mental



faculty, different from both desire and intellect, must be employed. This faculty is Will. Will or Volition is not definable, and is not easy to describe ; but this is of little consequence, since everyone knows what it means. It is a movement of the whole mental personality in a certain direction, or we may call it an out-pouring of mental energy in this direction. Sir Fitz-James Stephen calls it " a kind of crisis of which everyone is conscious, but which it is impossible to describe otherwise than by naming it."

Will or volition manifests itself in three ways. The first of these is in choice. Comparison is, as has been said, the function of the intellect. When things are compared, they are discerned to be alike or different, and this discernment of likeness or difference is again a purely intellectual function. When they are discerned to be alike or different, the respect in which they are alike or different is discerned at the same time, and this also is effected by the intellect alone. All these operations are in the realm of intellect or thought alone ; but when things are compared with a view to action upon or about them, and the difference discerned between them is a difference in desirability, then a new mental faculty comes upon the scene and takes up the action. Then choice is made, and choice is made by an exertion of will. This, then, is the first function of will. It selects. It decides, not that one thing is more desirable than another—that has already been determined by intellect—but that the more desirable thing shall be taken up and cherished, while the less desirable shall be rejected and discarded.

The second function of will is the initiation of action. When two modes of action are before the mind, intellect compares them, notes the difference between them,



and decides that one is more desirable, better calculated to attain the end in view, than the other. Thereupon will intervenes and chooses the more desirable as the action that shall be taken. *Shall* be taken—shall be taken at some future time, either the immediate future or the more distant future ; but mere choice does not issue in action. The action is chosen, but is not begun by the operation of choice. For its actual execution a further exertion of will is necessary, and it is to this further exertion of will that the term “volition” is usually restricted. Volition is that activity of the mind by which bodily action is, or appears to be, initiated or set going. Whether the mental exertion of the will actually does produce bodily action, or whether it only appears to do so, is the subject of controversy between the vitalists and the mechanicians, but it need not be discussed here. The decision one way or the other does not affect in the least the responsibility of the willing person for his voluntary acts. The discussion is in this connection a purely academic one, without any practical bearing. For all practical purposes we may take it that every act of every human being is set agoing by an exertion of will immediately preceding the act, and this exertion of will we call a volition. It is the volition that makes the act what we call voluntary—that is to say, assented to by the mind of the actor.

Volition may follow immediately upon choice, so that the two are fused into a single act of will ; or they may be separated by an interval of almost any duration. I may choose now a course of action to be followed presently ; I may choose to-day a course of action to be followed next week, next month, next year, or not until several years have elapsed ; and my choice will not take effect



until a volition has been exerted to give effect to it. In the meantime, the choice remains in my mind as a determination, which is a choice, and something more than a choice. When the action chosen is postponed to a future occasion and volition is suspended until the occasion arrives, a certain bent or modification of mind endures from the time of the choice to the time of the action, and this bent or modification of mind is called a determination. Determination is something more than choice, for choice is momentary, while determination endures for a certain time, it may be a long time. We may regard determination as due to a momentary exertion of will of a third kind, intermediate between choice and volition; or we may regard it as a permanent exertion of will, lasting from the time of the volition. Probably the former view is the correct one; but which view we take matters little as long as we recognise that determination is an exertion of will, or is due to an exertion of will, of a third kind, intermediate in nature, as much as in time, between choice and volition.

In each of its kinds, aspects, or phases, will is an exertion of the whole self. It is the activity of the whole human being; and it is to this that its importance is due. It is on this account that when will is exerted, responsibility is incurred or merit is achieved. It is to will, and to will alone, that praise or blame can rightly be awarded. As long as will has proceeded only as far as choice and determination, the rightness or wrongness of the act contemplated is a moral rightness or wrongness. The case is triable only *in foro conscientiae*; and however wrong the contemplated act may be, the law takes no cognisance of it. It is already a sin, but it is not yet a crime. The moment volition is exerted and the act is begun, or an endeavour is made to begin the act, or a



preliminary or preparatory act is done or begun, criminality is incurred : crime is committed.

It is sometimes said—and I have myself held the view in former years, before I had fully thought the matter out—that action is determined by the balance of desire ; that of two opposing desires, say to do an act and not to do it, the stronger will prevail. This is true, but it is not the whole truth, and may be very misleading. Careful introspection shows that when two desires are in conflict—for instance, the desire to do an advantageous act that is wrong, and the desire to preserve one's self-respect by abstaining from the act—the choice may fall upon that which is not the stronger. In other words, will has the power to overcome desire. Will may weight the scale and compel desire to kick the beam. But when will has thus exerted herself and taken a choice in defiance of desire, desire ranges itself upon the side of the chosen course. Whether or no it was desired before the choice was made, the chosen course, as soon as it is chosen, becomes an object of desire. To desire to do a thing is not necessarily to will it ; but the moment it is willed—that is to say, chosen and determined on—it becomes desired, and desire reinforces will. The desire that precedes the volition is the motive of the act : the desire that accompanies the volition is the intention of the act. Hence it is that volition is never divorced from intention. It is not the same as intention, but it is inseparable from intention. When an act is willed, there is an intention—that is to say, a desire—to do the act, and to secure those immediate consequences of the act that naturally and inevitably result from it.



## FEELING

By feeling is here meant feelings of a certain class. In one sense, desires are feelings, and we may speak quite correctly of desires being felt ; but there is a clear difference of class and nature between such a desire as hunger, or such an aversion as that from cold, and such feelings as those of anger or fear or admiration. The difference consists in this, that desires well up spontaneously from the depths of our nature, are in origin independent of circumstances, and in their primitive and general form will be felt whatever the circumstances are ; while feelings of the second class, now to be considered, feelings in the restricted sense, are elicited by circumstances, are dependent on circumstances, and in the absence of their appropriate and several provocations would never be felt at all. The desire for food, the desire for exercise and for rest, the desire for sleep, the desire for companionship, the crude sexual desire, the desire of women for motherhood, all these are spontaneous. They need no circumstances to elicit them, though no doubt they are susceptible of direction, focussing, and intensification by appropriate circumstances. Hunger, for instance, makes itself felt without any provocation from the sight or smell of food, though the sight or smell of food may make the desire more prominent, may draw attention to it when it is but subconsciously in the mind, may sway the desire in this direction or in that, or concentrate it upon a visible article of food present in the circumstances. Still, hunger is felt quite independent of circumstances, and whether food is accessible or not. But anger does not well up in this spontaneous way without any provoking agent in the circumstances. For anger to be felt, it



must be provoked. The angry man does not become angry, as the hungry man becomes hungry, by merely sitting still *in vacuo* and waiting for the feeling to make itself felt. He must be acted upon by some agent external to himself, or, what is the same thing for the present purpose, he must believe that he is acted upon antagonistically, or threatened with antagonistic action, before the feeling of anger appears. The feeling will never come into being, even in the most general and undirected form, until it is stirred up and elicited by action from without. No doubt the capacity to feel anger must be inherent and innate, or no provocation will elicit it ; but however great the capacity, the feeling will not arise in the absence of provocation, or of what is regarded to be provocation. The difference is even clearer with simpler sensations. A man cannot appreciate colour if he is colour-blind. He must have the innate and inherent capacity to feel colour, or he will never experience the feeling ; but however completely developed may be his capacity for feeling green or blue, he will not experience either of these feelings in the dark ; nor will he experience these in the light unless light-waves of the proper wave-length impinge upon his retina. The occasion of the feeling is its provocation and elicitation by actions from without.

Elicited feelings are of two main classes : the crude and simple feelings that are called sensations, due to direct action on the organs of sense, such as contact, colour, taste, sound, smell, temperature, and so forth, with which we are not here concerned ; and the more complicated and elaborate feelings that we call emotions, which differ from sensations in that some knowledge of the agent that produces them as well as of the action must enter into the composition of the emotion ; and



the feeling has a special direction towards the agent whose action provokes it, starts a special reaction on the part of the person who experiences the emotion.

The chief crime-producing emotions are anger, fear, and jealousy ; and the jurisprudence of every country admits the existence of these emotions in the criminal as to some extent an excuse for his crime. The French appear to regard the *crime passionnel* as a mere peccadillo, even when it amounts to murder ; and in our own law, unpremeditated homicide, committed in the heat of anger upon adequate provocation, is reduced from murder to manslaughter. And so it is with the emotions of fear and jealousy. When in fear of his life, a man may do without incurring punishment that which, done in other circumstances not provocative of fear, would be punishable as a crime ; and the same is true of jealousy in certain circumstances.

In other cases, the emotion under whose influence a crime is committed aggravates the turpitude of the crime. This is specially true of hatred and vindictiveness, which supply in its highest intensity that "malice aforethought" which is a necessary ingredient in the crime of murder. Anger and hatred constitute the states otherwise called respectively hot blood and cold blood ; and crime committed in hot blood is always regarded as of mitigated turpitude, while cold blood intensifies, all the world over, the crime committed under its influence.

These, then, are the main factors in the psychology of crime, and it will be seen from our examination that there is no special psychology peculiar to criminals. Criminal psychology is but a part of general psychology. In order to account for the commission of crime, there



is no need to call in aid any new or special factor in the mental constitution of the criminal that is absent in the ordinary law-abiding citizen, or to suppose the absence of any mental factor with which the ordinary law-abiding citizen is provided. The mind of the criminal is constituted of the very same elements, that act in the very same way, as those that constitute the minds of other people ; the only difference, when there is a difference, being that, whereas in no two persons are all these factors severally of equal strength and combined in equal proportions, in some criminals some of the factors are unusually well or ill developed, and the constitution as a whole contains them in proportions differing rather more widely from the average or mean than do the mental constitutions of other men. In what respect these proportions differ we shall consider presently ; in the meantime all that is necessary is to note that the differences are differences of degree and proportion, and not of kind.



## CHAPTER III

### THE NATURE OF CRIME

THE word "crime" is used in very various senses by different persons on different occasions. Stephen, following Austin, defines it as an act or omission that the law punishes ; and this definition has in a high degree the merit that every definition ought to possess, that it does define. It is a clear and unmistakable definition. But it is not the only one in use. In English law the term is often understood as restricted to those more serious acts and omissions that may be the subject of indictment, and are triable at assizes and quarter sessions ; while all unlawful acts and omissions that are of a minor gravity, and are triable at courts of first instance, are distinguished from crimes, and called offences. There is a certain incongruity in applying the term "crime," as it must be applied in Austin's and Stephen's definitions, to the act of a pedlar in pursuing his trade without a licence, or the omission of a bicyclist to keep his lamp alight after dark. In popular language such offences would not be called crimes, and in popular language the terms "crime" and "criminal" are frequently applied to acts and omissions that arouse the moral reprobation of the writer or speaker, but are not punishable by law. Politicians, who are much addicted to the use of expressions stronger than the facts warrant, frequently speak of the acts of their



political opponents as criminal, meaning, not that they are infringements of the law, but merely that they are to be disapproved. The omission of an ambassador to transmit some important piece of information to his government has been called criminal, though it infringed no law. The word is used as a term of strong condemnation, and not in any legal sense. Charles I. and James II. have been said by excited historians to have been guilty of crimes, though of course the word is misapplied to any act or omission of an English sovereign, who is by the constitution of these realms incapable of illegality, and amenable to no law. Again, the term "a criminal" is sometimes, as by Dr Goring, restricted to a person who has been convicted of indictable crime. Austin and Stephen would mean by the term a person who, whether convicted or not, has been guilty of any offence against any law. Lombroso means by it the kind of person who is in Lombroso's opinion likely to commit crime, or marked with certain stigmata or characters, physical or mental.

My own definition of crime coincides in the main with that of Austin and Stephen, but with this difference, that I shall regard it as consisting of acts and omissions that are infractions of the law, not as it is, but as I conceive it ought to be ; and I shall define a criminal as a person who has committed any such act or omission. Nevertheless, as there is a certain incongruity in speaking of trivial breaches of by-laws as crimes, I shall often use the term "offence" in the sense in which Austin would use "crime."

"Much discussion," says Sir FitzJames Stephen, "has taken place on subjects connected, or supposed to be connected, with criminal law, which I leave on one side because it seems to me at once idle and interminable.



The subject in question is usually called the Right to Punish. On what ground, it is asked, and under what limitations, has society a right to punish individuals? These questions appear to me to be almost entirely unmeaning, and quite unimportant. Societies are stronger than their individual members, and do as a fact systematically hurt them in various ways for various acts and omissions. The practice is useful under certain conditions. What these conditions are is a question for legislators. If, all matters being duly considered, the legislature considers it expedient to punish a given action in a given way, I think they would be guilty of weakness if they did not punish the actors in that way although they had no right to do so. If they consider it inexpedient that the act should be punished, they would be cruel if they punished it, however great a right they might have to do so. On this account the whole of the discussion as to the right to punish appears to me superfluous. I think, indeed, that from the nature of the case any conclusion as to any right alleged to exist antecedently to and independently of some law from which it is derived must be arbitrary and fanciful."

Sir FitzJames Stephen wrote as a lawyer, and the book from which the foregoing extract is taken is a book on law—on the *History of the Criminal Law*,—and no doubt from the point of view of a lawyer he was right. Such discussion would be quite out of place in a book on law, but it is by no means out of place in a book on jurisprudence. It is the function of the legislature, as Sir FitzJames Stephen says, to enact punishments for those acts and omissions that it is expedient to punish; but the question of expediency is for the jurist. It is for the jurist to instruct the legislature as to what acts and omissions ought to be punished and what



ought not, and a jurisprudent would neglect his duty, a book on jurisprudence would lack its most important factor, if this instruction were not imparted. Idle and superfluous as such discussion is in a book treating of law as it exists, it is neither idle nor superfluous, it is of great importance, in a treatise on jurisprudence—that is to say, on the science of law, which discusses not only what the law is, but also what it ought to be. What the law ought to be cannot be determined without going back to first principles and discovering the foundation upon which the law rests.

Law consists of a body of regulations imposed upon the members of a nation by some person or body of persons ruling the nation; and it will be generally admitted that these regulations are right or wrong, just or unjust, according as they do or do not conduce to the welfare of the nation as a whole, and do not or do exclusively favour any individual or class or body of individuals, to the detriment, or even to the exclusion, of the rest. For ages past, mankind have been familiar with the concept of a nation as a separate and distinct individual thing, distinguishable on the one hand from other nations, and on the other from its own component individuals. For generations past, men have been accustomed to speak of the welfare of the nation, the prosperity and adversity of nations, the successes and disasters of nations, the growth and decay of nations, and generally to speak of nations, not only as separate individual things having each an individuality of its own, but as living things, as live individuals. No doubt, in thus speaking, our ancestors meant it to be understood that they were speaking metaphorically and by analogy; but the genius of Herbert Spencer has taught us that “the life of a nation” is a literally accurate expression—that a nation is



a living organism, subject to all the laws of growth, reproduction, and decay to which other organisms are subject, and, like all other organisms, engaged in the struggle for life. It may seem a far cry from the promulgation of a law to the struggle for life, but in truth the first is but a phase of, and an incident in, the second.

It is pretty generally understood that every organism, whether animal or plant, and every race of organisms, whether of animals or plants, is engaged in a ceaseless struggle for survival. Every individual and every race must maintain itself against the depredations of other individuals and other races, against the competition of the rest of the organic world for food and space and other necessities of existence, and against the incidence of destructive inorganic forces to which it is constantly or occasionally subject. It is perhaps less generally understood that every society is similarly compelled to struggle for its life, and in especial that the assumption of the social state by both animals and plants is an incident in the struggle, and a device adopted as an aid to survival.

The devices adopted by animals and plants for this purpose are innumerable. Some owe their safety to speed and agility in pursuit, or in escaping from pursuit; some to strength and formidable weapons of offence; some to spiny and prickly weapons of defence; some to impenetrable armour, which renders them invulnerable. Some are protected from attack by the acrid taste of their skins or bodies; some to an appalling stench, which repels attack; many depend on concealment; many on parasitism on some larger and more generally efficient host. Some forms of life survive by reason of their astounding fertility, which speedily makes good whatever inroads are made upon their numbers; others by reason of their intelligence, which enables them to



compete successfully against competitors far superior in speed, strength, and other qualities ; others again by reason of poisonous weapons ; and so forth. The tricks, devices, and stratagems that are pressed into the service of survival are endless and innumerable ; but, of them all, none is more efficacious, none is more successful, none is adopted by so large a number and variety of different kinds of organisms, as that of living together in communities. By this additional safeguard the elephant, the bison, and the hippopotamus supplement their bulk and strength ; the antelope and the deer their speed ; the bee and the wasp their poisoned stings and their intelligence ; the ant her minuteness ; the wolf his speed, wind, strength, and ferocity ; the beaver and the rabbit the inaccessibility of their haunts ; and many other animals supply the place of qualities in which they are wanting, or supplement qualities that would seem alone to be efficient. Mankind in especial has neither weapons of offence nor weapons of defence ; neither the strength, the swiftness, nor the agility of other animals of his size ; neither habits of concealment nor inaccessibility of haunts ; neither spines nor defensive armour : yet he has achieved the mastery over every other organism on the face of the earth with the exception of certain microscopic parasites, and he has already rendered some of these innocuous, and is in a fair way to obtain the mastery over others. Moreover, he has attained to a relative immunity from the action of inorganic forces, and an ability to utilise them for his own purpose, that is not even distantly approached by any other animal. This superior valency over every other form of life man owes mainly to his social habit. It is the habit of living in associated numbers, in organised societies, that renders him powerful, and enables him to utilise



his superior intelligence ; nay, it is to the same habit that he owes in great part his superior intelligence, and almost entirely his mastery over the forces of inorganic nature. Supposing it possible for man to revert to the solitary habit, he would soon revert to the status of the gorilla. Every conquest of man over other animals, every success in competition with them, every conquest over inorganic nature, has been due to organised combination ; that is to say, to a combination of effort in which several individuals, acting in different ways, combined their efforts to achieve a common purpose. Every human achievement of moment has been due to specialisation of effort and of employment, and specialisation is not possible except in social life. When life is lived in solitude or in pairs, everything necessary for preservation and survival must be done by each individual or each pair ; and excellence in any department of effort is unattainable, because effort must be dissipated over many departments, and cannot be concentrated upon any one. Hence neither sufficient thought nor sufficient practice to obtain high proficiency can be given to any one object. In an organised society, functions are divided ; and by the devotion of some to one employment and some to another, each is performed more efficiently, and the sum total of product is increased. When some make tools, others cultivate the ground, and others weave cloth, not only will the tools be better made, the crops and the cloth be of better quality, but there will be more tools, more vegetable food, and more clothing for the three than if each divided his time between tool-making, cultivation, and weaving. And there are innumerable things that could never be done at all except by the organised and concerted action of many men ; and many other things that could never be done unless leisure for



some were provided by the work of others. If every man had to collect his own food, build his own house, make his own clothes, prepare his own food, and make his own furniture and utensils, there would be no roads, no bridges, no houses, no vehicles, no ships, no wells, no mills, no forges. There would be no literature, no art, no science, no commerce, no law, no medicine, no wealth, no leisure ; nothing that makes the life we live worth living ; nothing that raises man above the level of the beast. But for the social habit, man would never have risen to the status of man. He would never have attained even to the stage of advancement of the Stone Age. He would have remained an anthropoid simian, and would never have needed to concern himself with the nature of crime, for to him crime would have been impossible.

Crime is an incident of the social state. A solitary person cannot commit crime, for the mark and characteristic of crime is that it is detrimental to the society in which and against which it is committed. Apart from a society to be injured by it, there can be no crime. Abandon a man to himself in a desert, or maroon him on an otherwise uninhabited island, and, whatever other disadvantages he may suffer, he is freed from the temptation to commit crime. He cannot murder, steal, or defraud ; he cannot commit treason, or rape, or burglary, or riot ; he cannot beg, or rob, or wreck a train, or pick a pocket, or fire a stack. As far as crime is concerned he is condemned to a blameless life.

In the scheme of Nature, the individual animal or plant does not count, or scarcely counts, except as a means of perpetuating the race to which it belongs. If we permit ourselves for a moment to personify Nature, we may say that the individual is in her eyes only a link



in a chain, only a means to an end, valued only as a parent, to be fostered and cherished until the parental function is accomplished, and then to be flung aside as of no more worth. If the young require parental care, then the life of the parent must be prolonged after the young have come into existence ; but if they do not, and if the arrangement made is that but one brood is produced, then as soon as this brood is produced the parent is of no further value, and dies. Thus, annual plants die as soon as their seed is ripe ; annual animals, such as the ephemera, die as soon as their eggs are laid.

Every animal has been provided by Nature, or, to drop the metaphor, has acquired by natural selection in the course of evolution, such instinctive desires as shall impel it to those acts and that course of conduct best fitted to attain the purposes of its existence ; and as the main purpose of its existence is the production of offspring, so the primary and fundamental instinctive desires of every animal are those which conduce directly or indirectly to the production of offspring—desires for courtship, exclusive possession, sexual union, parenthood, and so forth.

In order that reproduction may be successfully performed, a certain preliminary course of conduct must be pursued ; and since this course of conduct is a necessary antecedent to reproduction, the instinctive desires that prompt to this course of conduct have been acquired, and for a time take rank of those directly conducting to reproduction, supersede and overpower them, or form preliminary substitutes for them. No animal is born fit to reproduce its kind. It is born immature, and especially sexually immature. Even when reproduction is not sexual, a certain interval devoted to growth and development must elapse before reproduction can take



place. If reproduction is to take place, it is manifestly necessary that the organism should survive this interval, that its life should be preserved until the reproductive age and power are attained. For this interval to be safely tided over, such conduct must be pursued as shall conduce to self-preservation, and such instinctive desires or motives must exist as shall prompt the animal to pursue the appropriate modes of conduct. Hence a second set of instinctive desires has been acquired by natural selection—the desire of self-preservation, and the desires and aversions that actuate conduct conducing to this end. In those cases in which a reproductive act is not an isolated one, but is repeated from time to time in the history of the individual, it is necessary, if reproduction is to be full and copious, that the life of the individual should be preserved as long as the power of reproduction persists; and hence in these animals the instinctive desires conducing to self-preservation come to be a permanent possession. In early life, in immaturity, the desires of this class are paramount; and when the reproductive age and power are attained, they divide the supremacy with the reproductive desires. Hence every animal is furnished with two primary sets of instinctive desires—those that conduce to self-preservation and those that conduce to reproduction; and each set is from time to time paramount, takes rank of the other, and preponderates over the other.

The next point to be noted is that, although the self-preservation instincts are necessary to the attainment of reproductive age and power, and therefore ultimately conduce to the same end, yet there is a decided antagonism, and at some times a strong antagonism, between the two. The function of reproduction cannot be exercised without some damage, or at least danger, to the life of the



parent ; and while conduct conducing to self-preservation is being pursued, reproductive conduct must be in abeyance. Each mode of conduct demands for its fulfilment a certain sacrifice of the other. This is very clear in many of the lower animals, in which the deposition of eggs by the female is immediately fatal, as is also the execution of the function of fertilisation by the male. In mankind, not only are pregnancy and parturition attended by many dangers and disadvantages, but also the duties of parenthood constitute for years a drain upon the resources of both parents, which diminishes their life-worthiness, exacts from them sacrifices of time, labour, and nutriment that might otherwise go to the prolongation of their own lives, and so is antagonistic to self-preservation. In situations of danger, the impulse of the parent is to incur the danger, and even to sacrifice life, in order to preserve the life of the offspring ; and if the parent were sedulous to preserve its own life, the life of the offspring would often be sacrificed. Hence there is always a certain antagonism between the two sets of activities, and therefore between the two sets of instincts that prompt them. The welfare of the race demands that a proper proportion and balance should be maintained between the two, and that sometimes the one and sometimes the other set should preponderate and take the lead. Since, *cæteris paribus*, the strength of an instinctive desire is proportionate to the length of time during which it has existed in the race, and to its importance for the preservation of the race ; and since both the desires conducing to reproduction and the desires conducing to self-preservation are primordial, have existed from the earliest dawn of animal life, and have persisted throughout the whole long ancestry of man ; and since, moreover, they are



both vitally necessary to the preservation of the race ; they are of approximately equal power, though, as has been said, sometimes the one and sometimes the other assumes the predominance and determines the mode of conduct.

In social animals, a third set of activities, and a third set of instinctive desires prompting to these activities, is added to the two already considered. These are the activities, and the instinctive desires actuating them, that conduce to the preservation of the society to which the animal belongs. Social life has been adopted as an aid to survival. Of course, I do not mean that it has been consciously, deliberately, or intentionally adopted with any such purpose in view. I mean that as association did in fact aid in the survival of the race, and in less degree of the individuals, that adopted the social habit, those who showed an inclination to live together would survive in greater numbers and prevail in the competition with those who lived solitary ; and thus the inclination would be confirmed and increased with every successive generation. The inclination—that is to say, the desire—to live socially would gradually become intensified until it became inescapable, and in some animals paramount, as we now see it.

The social habit is, as we have seen, the most powerful and efficient of all aids to survival, and is capable of superseding and replacing all others. It conduces to the survival both of the individuals that compose the society and of the race to which they belong, and thus has a double potency. Social conduct is therefore extremely important in social animals ; and in them there has grown up a set of instinctive desires that prompt to social conduct, and this introduces us to a new aspect of organic life.



The society has a life of its own. It may be contemplated as in itself a separate organism, living its own life, subject to the struggle for existence, passing through stages of inception, growth, maturity, decline, and death, and reproducing itself either by budding or by the commingling of two societies, in strict conformity with the life of an individual. Nay, the similarity extends even further. As the cells composing the multicellular animal have their own lives, and are born, become mature, die, and are shed by the animal, which still lives on and thrives after it has shed them, so the individuals comprising the society have their own lives, and are born, live to maturity, decline and die, and are shed by the society, which still lives and thrives in spite of their loss. As the cells composing the multicellular animal combine, like with like, to compose the several tissues performing several functions in the life of the animal, so the several individuals composing the society combine, like with like, to compose the several classes performing several functions in the life of the society. The analogy—or rather the similarity, for it is much more than an analogy—may be pushed much further, but it is unnecessary to do so here. All that we need notice is that, while every cell in the animal must live its own life, assimilate its own nourishment (in which it competes with its fellows), preserve its own integrity, and pursue its own activity, yet it must do so in strict subordination to the welfare of the whole animal, or the animal will die, and with it will die all the cells that compose it, including the insubordinate cell. If any part of the animal, any cell or group of cells, misbehaves or fails to perform its duty to the whole, it must be cut off and cast out of the body, or it will imperil the life of the animal, together with the lives of all the component cells.



It is the same with the social body. Every component individual must live its own life, find its own means of living, in which it competes with its fellows, and pursue its own activity, but always in strict subordination to the welfare of the whole society, or the society will perish, and with it will perish all the individuals composing the society, including that one or those that fail in duty.

Hence every social animal possesses an additional group of activities, an additional range of conduct, and an additional set of instinctive desires prompting to conduct of this additional order. In addition to the common desires of self-preservation, self-welfare, and of reproduction that every animal possesses, the social animal has a new set of desires, prompting it to conduct conducive to the welfare of the society to which it belongs and of which it constitutes an integral part.

Two most important features of this mode of conduct, and of the desires which prompt it, are to be noted. In the first place, as self-preservative conduct is antagonistic to reproductive conduct, and in some respects or in some emergencies the two are incompatible, so social conduct is antagonistic to both, and is in some respects and in some emergencies incompatible with either. In the second place, we have seen that instinctive desires are, other things equal, proportionate in power and intensity to the time during which they have existed in the race and to their importance in survival. Now, the social instincts are of the highest importance to survival, both directly to the survival of the society and indirectly to the survival of the individual, and therefore we may expect on this account to find them highly developed and powerful ; but, on the other hand, they are of comparatively recent origin. As long as man has



been man, ever since he arrived at the status of manhood, and probably for long before this stage in his evolution, he has been a social animal ; but this stage in his evolution is comparatively modern. It is modern in comparison with the inconceivably long duration of his pre-human ancestry, during a great part of which he had not yet assumed the social habit. Hence on this account the social instincts are likely to be defective. In experience we find that in many men they are defective. As they are of great importance, they are likely to be strongly developed ; as they are of comparatively recent origin, they are unlikely to be fully developed. In experience we find that in some they are developed strongly and even to excess, and that in others they are developed feebly and in defect. Let us now examine what these instincts are.

The fundamental social instinct (I here use instinct as short for instinctive desire) is the desire of each social animal for the companionship of beings like itself. Every social animal is ill at ease in solitude, and desires the companionship of its fellows. I do not say that it is never content to be alone, but I assert emphatically that prolonged solitude becomes first irksome, then painful, and at last intolerable. The craving for companionship may be in abeyance for a short time, but only for a short time ; and the longer the solitude is continued, the more imperious does the craving for society become.

But society can be had only on terms. He who associates with his fellows must conform with certain conditions, or his companionship will not be permitted. A society is an integrated whole, an aggregate, and the existence of every aggregate requires and implies a limitation of the intrinsic independent motion of the constituent elements of the aggregate ; and *vice versâ*,



to diminish the cohesion of the constituent elements of an aggregate, it is necessary to increase the intrinsic and independent motion of its constituent elements. When a blacksmith desires to divide an iron bar, he heats it until it softens, and then he finds the division easy ; but to heat a thing is to increase a motion of its constituent molecules or atoms. When a housekeeper finds her butter smeary and soft, she puts the pat upon ice, and thus hardens it ; that is to say, she diminishes the movement of the molecules, and thus secures a more coherent aggregate. What is true of these inorganic aggregates is true of every aggregate of every kind. If the individual constituent members of a flock, a herd, or a shoal move independently of one another, if they move at different rates or in different directions, each at his own will, the flock or herd or shoal will cease to exist. It will be disintegrated. For the maintenance of the aggregate, in this case the *grex*, a certain surrender of freedom of action must be made by every constituent member of it. On no other terms can an aggregate persist.

The solitary bee makes its cell of wax in cylindrical or somewhat oval form. It has complete freedom of action, and can fashion its cell into any shape it finds convenient. But the gregarious bee, crowded on every side by its associates, has much less liberty of action. If it were to make a cylindrical cell, its cell would encroach upon all sides on the cells of its fellows, and would interfere so much with their liberty of action as to render this action nugatory. Hence its cell cannot be cylindrical. Where its activity meets that of its fellows, where the activity of its fellows meets its own, where each cylinder would, if completed, encroach upon its fellows so much as to spoil them for their purpose, there the activity of all is checked. A compromise is effected.



A bargain is struck. A *via media* is found. Since neither of two adjacent cylinders may encroach upon the other, each constructor gives way to an equal extent with the other, and a flat partition is built between the two. Each bee so limits the extent of her own construction as to leave her neighbour a range of activity equal to her own. The result is an organised structure far better adapted to the purpose than if each bee had pursued independently and untrammelled her own devices, and had built an isolated cylindrical cell. Space is economised ; time, labour, and material are saved ; and the resulting structure is stronger, more convenient, and better adapted to the purposes of egg-laying, rearing of brood, and storage of food. The instance is typical, and shows, first, the great advantage of combined action in pursuit of a common purpose ; second, the necessary condition of combined action, viz. that each individual must surrender some part of his freedom of action, must exercise self-restraint, forbearance, in the presence of his associates ; and third, that a member of a society must be content to work, not so much for his own individual profit as for the welfare of the society to which he belongs, and to reap his profit in common with the rest, as part of the general prosperity to which he has contributed his share. The first condition of social life is, in short, unselfishness. The condition presupposed by social life is a voluntary surrender of some freedom of action, some purely selfish purposes, and the diversion of self-regarding effort into effort for the common welfare.

Society holds together by virtue of the self-control, forbearance, and unselfishness of its members. It exists by the subordination in due proportion of the self-regarding and reproductive instincts to the social instinct.



The man who is marooned on a desert island, and lives a solitary existence, may do as he pleases. He may appropriate to his use anything that he may find. Myrrh from the forest or gold from the mountain, pearls from the ocean or gems from the mine, are all his for the mere labour of gathering. He may go where he pleases and do what he pleases. But the same man as a member of a society finds his activity checked at every turn, limited in every direction, by the mere fact of his membership. Like the bee in making her comb, he is surrounded on all sides by his fellows, whose activities tend to encroach upon his as his tend to encroach upon theirs ; and, as in the case of the bee, the only possible *modus vivendi* is the compromise effected by forbearance. He may no longer go where he pleases if by so doing he encroaches on the privacy of others. He may not take what he chooses if by so doing he invades the proprietary rights of his fellows. He may not interfere with his neighbour's manservant, nor with his maidservant, nor with his ox, nor with his ass, nor with anything that is his. He may take nothing to his own use that is not freely given, either for nothing, or in return for goods, money, or service rendered. And the reason is that if every man in a society pursues without restraint his own self-regarding desires, the society falls to pieces, is disintegrated and destroyed ; and as man is now adapted only for living in societies, the destruction of a society involves the destruction of all the individuals in it, unless they form a new society or join some other in the neighbourhood. The destruction of a society always, in fact, means the destruction of many lives, and to that extent the attenuation and diminution of the race.

Social conduct means, therefore, primarily and before anything else, forbearance and self-restraint, the limita-



tion of the self-regarding activities. It means more than this, however. Not only must each individual in a society so limit his activity that it does not interfere with or limit to a greater extent the corresponding freedom of action of others, but he must be prepared, in case the needs of the society demands them, to make still greater sacrifices. If he is to preserve himself, he must be prepared to defend himself when attacked. If he is to preserve his children, and thereby his race, he must be prepared to defend them, and to sacrifice his life, if need be, in their defence. And if his society is to be preserved, he must be prepared to defend it also when it is attacked, and to lay down his life, if need be, in defending it. Unless each citizen is prepared to sacrifice his own life for the safety of the society, the existence of the society is but precarious, and when occasion arises will come to an end. As in the scheme of Nature the welfare and even the life of the individual count for nothing in comparison with the preservation of the stock, so, in the case of social animals, the welfare and even the life of the individual count for nothing in comparison with the preservation of the society. "The individual withers, but the race is more and more" expresses but one-half of the biological truth. It is equally true and equally pertinent to say that the individual withers and the society is more and more. Thus the self-regarding instincts and the social instincts are of necessity in frequent conflict, and it is vital for the society, and therefore for the race also, that when this conflict arises, the social activity should conquer and prevail. In the frequent conflict between self-assertion and forbearance, the touchstone of rectitude is not, "Which is best for me?" as the selfish man would put it; or, "Which is best for my antagonist?" as the saint might



put it; but, "Which is best for the society to which I belong?" And this is the true test of moral conduct in every emergency. It is virtually the same as Kant's maxim: "Act so that your action may be a law for all." That is to say, act so that if everyone were to follow your example, the integrity and cohesion of society would not be impaired.

There is discrepancy, and occasional incompatibility and conflict, between the social and the racial instincts also, though the conflict is less frequent. It is less frequent because the society is founded as the family, and the family is itself a small society and a stage in the formation of the larger society. Solitary animals, as soon as they attain an age at which they can fend for themselves, at which their faculties and powers suffice for their own preservation, separate from their parents, with whom they have already begun to compete for food and other necessities of life. In some cases, as for instance with the robin of our gardens, as if realising this, the parents drive them away when they reach this age. The first beginnings of social life are made when the dispersal of the offspring is delayed; and when it ceases, social life is established. Society is held together by the bonds that unite the family, for the family also holds together by the mitigation of competition, by mutual forbearance, and by the help that each affords to others in the pursuit of common ends. In the beginning, the family is coextensive with the society. The family is an incipient society. As, with successive generations, the family increases into the tribe, the bonds of the family are enlarged and modified. The families have a certain distinctness within the tribe, but they are held together one with another by the bonds of kin, and the society is founded upon kinship. The family is the



unit out of which are built up, first the tribe, and then the nation ; and anything that interferes with family life, or slackens its bond, is disintegratory of the tribe, and of the nation also. Hence has arisen a set of instinctive desires safeguarding the integrity of the family. Parental and filial affection not only secure the welfare of the offspring, and thus subserve the purpose of securing the survival of the race, but also at the same time assist in binding the members of the family together. Sexual jealousy tends to keep the family intact and pure. Chastity and its auxiliary, sexual modesty, have the same effect, and at the same time help to keep down internal strife within the community.

But these racial and semi-racial instincts, though in the main they strengthen the bonds that held the society together, yet upon occasion are disintegratory, and therefore conflict with social instincts. Jealousy leads to strife, and strife is of course disintegratory. Sexual love, the ultimate foundation of society, may be so directed as to break up the family, and in this way tend to disintegrate society. Parental affection may lead in various ways to acts that are anti-social. It may lead to acts that, favouring the children unduly, are dishonest to other members of the society. It may lead to withdrawal of the children from their social duties ; it may lead, for instance, to the parent inciting the son to evade his military service. It may lead the child, by over-indulgence, to regard with indifference the rights and feelings of others. It may lead the parents themselves to shirk their social responsibilities in order to devote themselves more completely to the welfare of their children. The conflict between the social instinct and the racial instinct is, however, much less intense and much less frequent than the conflict between the social



instinct and the self-regarding instincts ; and though the preponderance of the racial instinct may lead to acts that are detrimental to the society, it does so comparatively seldom.

We find, therefore, that man possesses three fundamental sets of instincts, two of which, the racial and the self-regarding or self-preservative, are primordial, and are shared by him with all other animals ; and the third, the social instinct, though not primordial, is yet of great antiquity, and ranks on an equality with the others. We find, moreover, that these three sets of instincts are not always in harmony. They are all adapted to secure the same end and achieve the same purpose, the preservation and the continuation of the race of men ; but they contribute to the end in various ways, and with different degrees of directness. The racial instincts conduce directly to the continuation of the race by prompting the acts of reproduction and to the care and rearing of offspring. The self-regarding instincts conduce indirectly to the same end by safeguarding the life of the individual until the reproductive age is reached, and as long as the reproductive period lasts. The social instincts conduce to the main end doubly indirectly, by prompting to acts that conduce to the welfare and preservation of the society, as a means to the preservation of its component individuals, which is itself a means to the continuation of the race. The necessity of preserving the life of the individual complicates matters by its occasional incompatibility with the main end of life, the continuation of the race. The constitution and preservation of the society complicate matters very much more, since they are occasionally incompatible with both the other purposes, and are always to some extent and in some respects incongruous with the welfare of the



individual ; but the preservation of the society is upon balance and in the long run so immensely advantageous, that the incidental and occasional disadvantages are overridden and swamped, so that, in the interests of the race, nothing, not even the lives of its component members, can be permitted to interfere with social welfare and prosperity. Before the welfare of society every other consideration must give way, every other mode of conduct must be renounced ; and it is the unformulated perception of this necessity that prompts society to put a stop to every such mode of conduct on the part of its individual members.

Thus we arrive at long length at the true nature of crime. *Crime is conduct injurious to society*, by which must be understood the society to which the criminal belongs. More specifically, crime is the preponderance of self-regarding conduct, and occasionally of racial conduct, over social conduct ; and is possible because the instinctive desires prompting to these several modes of conduct are not in harmony. If they were completely harmonised, there would be no crime. Crime would be absent from want of motive. Such complete harmonisation exists in some societies, notably in those of the social insects. Among ants, social bees, and social wasps, there is no crime, for in no member of these societies is there any inclination to act otherwise than for the welfare of the society, or to allow the self-regarding activity to preponderate over those activities that serve the interest of the society. No social insect, as far as has been observed, ever appropriates to itself an unfair share of the common stock. No social insect so comports itself as to allow its own activity to interfere with the activity of its fellows. No social insect betrays resentment when its work is pulled to pieces by other



members of the society in order to be reconstructed in more efficient or more convenient form. No social insect hesitates for a moment to sacrifice its life for the common welfare. In these animals socialisation is complete and perfect. There is no crime because there is no inclination to crime. There is no inclination to crime because, by the operation of natural selection, which determines the survival of societies as well as the survival of individuals, those societies in whose members the social instincts were the stronger prevailed in competition over those in whose members these instincts were weaker ; until at length societies were produced in which complete preponderance of the social instincts exists.

In mankind, this preponderance is not yet attained, is not yet universal, is perhaps not yet even general. When, as continually happens, there is a conflict in the mind of any member of a human society between desire for self-regarding action and desire for social action, the latter does not always prevail. If human beings were perfectly socialised, there would be no conflict. If a stage in social evolution is reached in which, although there may be a conflict, the desire for social action is always victorious, there will be no crime ; but as long as the conflict takes place, and its issue is not a foregone conclusion in favour of social conduct, so long there will be a tendency in the mind of man to commit crime, and so long crime will occasionally be committed.

But it is vitally important for the race as well as for the society that crime should not be committed ; and therefore every human society that has preserved its existence has devised such additions and reinforcements of the social instincts as shall enable them to prevail over the self-regarding instincts, or as shall stand instead of the social instincts in subordinating those that are



self-regarding, and in suppressing and preventing conduct injurious to society. Such additions and reinforcements are of three kinds : first, custom ; second, religion ; and third, criminal law. That these are socially and biologically very closely allied is shown by their identical origin. They are three branches from one root. In primitive societies they are identical, and become distinct only with progress in civilisation or evolution, in which differentiation takes place in these institutions as in everything else. Custom, religion, and criminal law are at first identical, or, more correctly, they are different and scarcely distinguishable aspects of an institution that includes them all. To violate a custom is to incur the wrath of God as well as punishment by the civil power, or, what is then the same thing, the collective force of the society. Religious observances are enforced by the same sanction, and soon attain the status of custom, when they do not arise out of customs. Criminal law is one with both custom and religion. The judgments pronounced by the general voice, and the punishments inflicted by the collective hand of the society, are directed against violations of custom that have religious sanction, and against violations of religious observance that are customary. Capital crimes are chiefly those that incur peculiar abhorrence by their violations of custom, and peculiar danger to the whole society from the wrath of an offended God. It is clearly because they are believed to be injurious to society that they are punished. The injury or danger may be real, or imaginary and fanciful, but it is on the ground that they are injurious to society, chiefly by incurring the wrath of God, that acts are punished. It is the injury to society that constitutes crime. The history of all primitive societies corroborates these



assertions, which are well illustrated by the elaborate code of punishments enacted in the Pentateuch.

As evolution of society proceeds, custom, religion, and law gradually separate and diverge from one another, and first custom and then religion become less powerful, while law appropriates to itself the power that they lose ; but it is worth while to show here how custom and religion reinforce or supplement the social instincts in their conflict with the self-regarding instincts.

In primitive societies, customs are reinforced, when necessary, by terrible sanctions ; but these sanctions are seldom called upon. The propensity to follow custom is innate, or is acquired at a very early age, and is a cohesive social force of the highest importance. It is scarcely correct to speak of custom as reinforcing social instincts, for the innate tendency to follow custom—that is, to do what has always been done—is itself a social instinct of great potency and value. By prescribing a course to be followed in exceptional circumstances, custom economises thought ; but its chief value is in ensuring that uniformity of action that we have seen is so valuable in binding together the components of a society. If some move one way and some another, if some move fast and others slow, the flock or herd will be dispersed and will no longer remain a flock or herd ; and if some members of a human society do things in one way and some in another, if in exceptional circumstances they know not how to act and act diversely and confusedly, disintegration of society will be incipient ; and if such action is frequent and universal, the bonds of social union will be relaxed, and may be altogether destroyed. Custom ensures uniformity, and this is a social bond, whatever the nature of the custom. Many customs, such as the *couvade*, are unreasonable and



absurd ; but it is better for the society that an unreasonable and absurd custom should be followed than that no custom should be followed. Customs are seldom directly social-conservative, seldom prescribe rites that are directly necessary for the preservation of society ; but the following of a custom, whatever it may be, is always in primitive societies advantageous. Marriage customs, for instance, vary very widely in different societies, and it makes no difference to the survival of the society whether one marriage custom or another is followed ; but it is of the greatest importance that some marriage custom should be followed, and that marriage should be invested with formality and impressiveness, so that its importance, its binding character, the fact of its performance, should be impressed upon the members of the society, registered and remembered by them, and regarded by them as sacred. When custom seizes upon a mode of action that is beneficial to society, as for instance on faithfulness to the marriage vow, it becomes a valuable safeguard to society in that respect, and of itself tends to prevent the perpetration of one particular mode of injurious action ; and when the reverse mode of action becomes customary, neither law nor religion has much power to reform it. Whenever, in the conflict between social motive and self-regarding motive, custom ranges itself upon either side, the other has little prospect of prevailing.

Religion also is a most powerful social force, partly as inculcating under supernatural sanctions those social acts that are opposed by self-regarding motives, but even more by its inculcation of a general habit of suppressing self-regarding action. Religions are extremely various in the beliefs that they inculcate and the observances they demand, but they all without exception agree in demanding self-sacrifice from their votaries. The self-



sacrifice is often unreasonable, absurd, and excessive. It may lead to the waste of life in trivial and useless performance. It may lead to the impairment of health and even the sacrifice of life by excessive mortification. It may lead, and very often does lead, to much unnecessary misery, and to much neglect of duty ; but it always has this effect, that it renders the subordination and suppression of self-regarding action customary, habitual, and therefore easy. The man who runs to excess in religious observance is extremely apt to disregard the welfare of his fellows, and thus to become unsocial and even anti-social ; but he does show by his example that it is possible to suppress the self-regarding motives, to override them, and to subordinate them to other motives ; and if this can be done for one antagonistic set of motives, it can be done for another. The practice of the religious ascetic deprives the crapulent, selfish man of the excuse that the self-denial required of him for social reasons is beyond the power of human nature to exercise. The religious ascetic is a standing proof to the contrary ; and the constant inculcation of self-sacrifice of some kind and in some degree by every form of religion familiarises its votaries with the practice of self-sacrifice, breeds in them a habit, and thus renders easier the sacrifice of self-regarding action for social reasons, and the subordination of self-regarding to social motives.

It is necessary for the preservation and for the very existence of society that action injurious to society should be suppressed ; and since the social instincts are generally and in most men inferior in potency to the self-regarding instincts, and since the reinforcement that the social instincts receive from custom and from religion is not always sufficient to secure the pre-



ponderance of the social motives, society borrows for its own behoof a weapon from the armoury of the selfish motives. It supplies, by the institution of criminal law, a self-regarding motive for suppressing, or at least for forgoing, anti-social action. It impresses selfishness into the service of the society. It says to him who would better himself by injuring society, "If you do this, you shall be not better off, but worse off," and thus proposes to deprive him of his motive for anti-social action. It is clear that if this could be carried out in practice, crime would cease. If the would-be criminal could be convinced and know that he would be not better off but worse off for his criminal action, the self-regarding motive for crime would be abolished, and crime would not be committed. Why the criminal law so often fails to produce this effect will be subsequently considered. All that need be now insisted on is that this is the rational basis of the criminal law. I do not say that it was out of any such consideration as this that the criminal law took its origin. There is no doubt that it arose in a very different way, and from very different motives. I say only that this is its rational basis, and that if it is to be effectual, it should be guided by this principle. This, I think, can scarcely be gainsaid.

It will be seen that the definition here given of crime, as consisting of acts that are injurious to society, is very different from the narrow legal definition which regards it as consisting of offences triable by indictment in courts of superior jurisdiction, and from the wider legal definition which regards it as consisting of acts and omissions forbidden by law. In jurisprudence, theft is theft, whether it is so serious as to be triable at assizes or quarter sessions, or whether it is so trivial that it may be tried at a court of inferior jurisdiction; and in either



case is a crime, though not a crime of equal enormity. And it is evident that an act may be injurious to society and yet may not be forbidden by law ; and on the other hand an act that is not injurious may be forbidden ; and in fact there are extravagances of both kinds. Jurisprudence, the science of law, takes cognisance not of what the law is, but of what the law ought to be, having regard to the principles on which law is or ought to be founded ; and in the further discussion of crime, the view that I shall take is that crime consists of those acts that are injurious to society. We are at once confronted with the question, What are these acts ? and since they are manifestly of various kinds, this leads us to the problem of the classification of crimes.





## CHAPTER IV

### KINDS OF CRIME

#### PUBLIC CRIMES

WE have seen that crime consists of acts injurious to the society to which the criminal belongs, and that it is due to the dominance of non-social action over social action. We have seen also that man is actuated by three primary sets of instincts, or motives to action : the racial, the selfish, and the social. We have seen that of these the selfish and the racial are in some respects necessarily antagonistic, and the selfish and social are necessarily antagonistic. It is natural to inquire whether the racial and the social may not also be in antagonism, in which case the preponderance of the racial would lead to crime, and a primary division of crimes would come into view, according as the crime was prompted by a self-regarding or a racial motive.

It may be said at once that some acts prompted by motives of the racial class are anti-social, and therefore criminal. Murder from the motive of jealousy will immediately occur to the reader. But there is not between racial and social instincts that necessary and inevitable antagonism that exists between the self-regarding or self-preservative and the social instincts. In the normal and general course, the racial instincts are not only compatible with the social, but are harmonious



with them and mutually reinforcing, except as far as acts of the racial class tend to diminish, as they necessarily do for the time being, the life-worthiness of the lover or parent, and so to cause some slight and temporary and indirect injury to society. Hence, although a good many crimes are perpetrated from motives belonging to the racial class, and such crimes will form a separate class in their place, they do not form a primary class, of equal rank with the self-regarding ; for in most crimes committed from a racial motive the motive is perverted, and is as antagonistic to the racial principle as to the social principle. In others, the crime, though occurring in the racial department of conduct, is prompted by a purely self-regarding motive. A primary division of crimes into those that are purely self-regarding and those into which a racial purpose enters would, therefore, be unsatisfactory. It would lead to cross-classification and confusion.

Every attempt that has been made hitherto to classify crimes has ended in cross-classification and confusion, the reason being, of course, that the principles and rules of classification have been utterly disregarded, and the things to be classified have been thrown together and separated anyhow. It is not only that the characters chosen as a basis of classification have been superficial and of little importance. A classification by unimportant characters may be quite as valid and correct, as a classification, as one that is founded on the most vitally important similarities and differences. It would not be as useful, but it might be quite as scientific, in one sense of that much-abused word ; but the fault that vitiates all the classifications of crime that have been proposed hitherto, as well as all classifications of kinds of madness and very many other things, is that no single



principle is adhered to in making each division ; and a classification made in this manner must necessarily be a failure.

The official classification constructed by the Home Office, and imposed upon the police and prison officials of the realm, has all the faults that a classification can have. It divides crimes into six classes, each of which includes the most incongruous and dissimilar crimes, and contains some crimes much more closely akin to some of the crimes of other classes than to some other crimes in the same class. Moreover, it would be easy, and indeed would be logically necessary, to put the same crime in more than one class. Some crimes are omitted altogether from the classification, and others are included that ought not to be considered crimes at all. These are all the faults that a classification can have.

The primary classes of the official classification are as follows :—

- I. Offences against the person.
- II. Offences against property with violence.
- III. Offences against property without violence.
- IV. Malicious injuries to property.
- V. Forgery and offences against currency.
- VI. Other offences.

The last class alone is enough to condemn the classification, and to show that it has not been thought out and is governed by no principle ; and the most casual inspection shows that the classes are not mutually exclusive. Offences against property with violence include robbery, which surely is an offence against the person. Offences against property without violence do not include forgery, which is in most cases an offence against property without violence. Malicious injury to property is not



included in offences against property, nor are offences against the currency. If we note the practical effect of the classification, we find it much as might have been expected. Destroying railways is in one class, and endangering railway passengers is in another. Malicious wounding and murder are in one class, and malicious use of explosives in another. Destroying ships is in one class, and endangering life at sea is in another. Offences in bankruptcy are in one class, and forgery, which is often employed in offences in bankruptcy, is in another. Forgery is in one class and falsifying accounts in another ; and so on. If we look to the collocations, we find them still stranger than the separations. Murder, bigamy, and child-stealing are all in one class ; forgery and making counterfeit coin are in one class ; larceny of horses and offences in bankruptcy are in one class ; high treason, libel, perjury, poaching, piracy, and habitual drunkenness are all in the same class. Finally, certain acts that are criminal in their nature, as being injurious to society, such as filibustering, breach of contract, stealing the use of a thing, and waste of the national resources, are not included in the classification.

A very cursory examination of this official classification of crimes reveals the reasons of its failure. It violates all the principles on which a classification should be constructed. The first of these principles is the delimitation of the things that are to be included in the classification, the formulation of a definition which shall include everything that ought to be included, and shall exclude all that ought not to be included. Crime is, in the legal sense, that which is forbidden by law, and in this sense crimes are sufficiently defined to be classified ; but we are here concerned, not with law, but with jurisprudence, and in the contemplation of jurisprudence



crime is that, not which is, but which ought to be forbidden by law.

The next principle to be observed in making a classification is to settle what purpose the classification is to serve. That which is a good and valid classification for one purpose may be a bad and invalid classification for another. A classification of men according to their incomes may be a very good classification for the purpose of the Chancellor of the Exchequer and the assessor of taxes, but it is not a good classification for the anthropologist; nor is a classification of them according to the shape of their heads, good though it may be for the anthropologist, a good classification for the political economist. Every classification must be made on some principle adapted to the purpose of the classification. What, then, is the purpose for which a classification of crimes is desired? Manifestly the purposes are manifold. The police desire a classification of crimes for one purpose, the courts of law for another, and the prison officials for a third; and none of these is the same as the purpose for which the citizen, the jurist, or the legislature desires a classification. What purpose is aimed at by the official classification of crimes I do not know. It is not explained in any official publication, and is certainly not apparent on the face of the classification itself; and whatever the purpose may be, we may be quite sure that such a classification will not achieve it.

The third cardinal principle of classification is that at each step in the process the division must be made on one principle and no more. It must be made by the presence or absence of only one quality, or by the grades, degrees, or steps of the quality. This principle is repeatedly violated in the official classification.



The first class is divided from the rest by the object—the person—against which the crime is directed. The second and third classes are divided by two principles simultaneously, viz. the object—property—against which the crime is directed, and the presence or absence of an accompaniment of violence. In dividing off the fourth class a new principle is introduced, viz. the mental attitude of the criminal. The crimes of this class are divided from other crimes by the malicious intention of the perpetrator. The fifth class consists manifestly of two distinct classes which have scarcely anything in common, and the principle on which the first is divided from the rest is the means employed in committing the crimes. Lastly, the sixth class is an omnium gatherum, in the construction of which all principle is frankly abandoned. It would tax the ingenuity of the most perverse to frame a worse classification, or one as bad.

Dr Goring's classification is almost as faulty. He also divides crimes into six classes, which are not, however, the same as those of the official classification. They are as follows :—

- I. Malicious damage to property.
- II. Stealing and burglary.
- III. Sexual offences.
- IV. Violence to the person.
- V. Coining.
- VI. Forgery and fraud.

Dr Goring's delimitation of crimes is different from that of the official classification. The latter includes offences of every description ; the former includes only those that are triable in courts of superior jurisdiction. It is manifest on a moment's consideration that many



even of these have no place in Dr Goring's classification. There is no place in it for intimidation, threats, or assaults without violence ; for housebreaking or extortion ; for embezzlement, receiving stolen goods, or offences in bankruptcy ; for treason, bribery, perjury, libel, and many other offences. These omissions, however, and the many principles employed in the division, do not much vitiate the arrangement, for it is not put forward, as the official scheme is, as an exhaustive and complete classification. Dr Goring's purpose is to show that certain rules obtain with respect to certain large classes of crime ; and his scheme is rather a list of some of the largest classes than a formal classification. It has the merit that it serves his purpose.

The legal definition of a crime, or let us say, of an offence, is an act that is forbidden by law. The jurist's definition of a crime is an act that, because it is injurious to society, ought to be forbidden by law ; and it is in this sense that I shall speak of crimes, and endeavour to classify them. The purpose of a classification is, in the most general sense, to organise our knowledge, to enable us to think together of those things that are alike, to think separately of those things that are unlike, to reduce our knowledge and our process of thinking to order, so that knowledge may be at hand when we want it, and so that thinking about it may be possible, and perchance profitable. Without classification of the material of thought, of the objects of which we think, these purposes cannot be attained. In the classification of crimes, as in all classifications, we have these general purposes in view, and in classifying crimes we have certain special purposes also. It is of importance to the State, to the legislature, the police, and to the citizens



generally, to know approximately how many crimes are committed annually ; but a mere sum total of all offences lumped together is of very little value for any purpose. It gives us no indication as to whether the offences are grave, or merely nominal ; signify deep moral depravity, or mere forgetfulness, or perhaps even conscientious scruples ; mean that society is seriously assailed, or may rest in security ; are a menace to public order, to life, to property, or to some other principles that we hold dear ; are increasing or diminishing in number, and if so in what directions they are increasing or diminishing ; and so forth. The classification that will best fulfil one of these purposes is not necessarily the best to fulfil others ; and it may be that in order to serve them to the greatest advantage, different classifications would be required ; but without going so deeply as this into the matter, it is possible to formulate a single classification that will serve one or more of the purposes completely, and the others sufficiently for such a general survey as is contemplated here.

Manifestly, however, if we bear these purposes in mind, we have several different principles on which crimes may be divided, and we must decide which of these principles we must choose for our primary division. The others may, if necessary, be utilised for dividing the primary classes into classes of the second rank.

It is open to us, if we please, to classify crimes, as the official classification purports to do, according to the nature of the injury inflicted by the criminal act ; that is, according as the act is injurious to the person, or to property, or is a misappropriation of property, or is hurtful to the feelings, or is an invasion of chastity, or is a trespass upon an exclusive right, and so forth. The defects of such a principle as a primary mode of divi-



sion are manifest, and some of them have already been pointed out. A homicidal act is an offence against the person, a violation of chastity is an offence against the person, and for this reason the two are included together in the first class of the official classification ; but the differences between them are so wide and so numerous that it is felt to be anomalous to class them together. A violent assault is an offence against the person ; but robbery is a mixed offence : it is both injury to the person and misappropriation of property. The official scheme calls it an offence against property alone, but it is certainly more than this, and the victim might well consider his broken head a greater injury than the loss of his purse or his watch. Injury to property and misappropriation of property are both in some sense offences against property ; but when a burglar steals an ancient and valuable silver cup and melts it down, under which head are we to class the crime ? Or under which head are we to class the breaking off and carrying away of the pales of a fence ?

In English law there is but one crime of murder, but if we wish to get at the springs and sources of crime, to study it with a view to its prevention, or with a view to awarding to it its proper punishment, there are many kinds of murder, distinguished by the motive from which it may be committed. Murder may be committed from any one of many motives : for gain, for revenge, for lust ; to escape from an unhappy marriage ; in English law, unintentionally, or in the course of committing some other felony ; or from some other motive ; and although it may possibly be expedient for the purpose of administering justice to lump all these different crimes together and call them all murder, yet for the purpose of understanding the causes of crime such a classifica-



tion would be confusing and very inadequate. The man who would commit murder from revenge or malice might be as far from committing murder for gain as the most thoroughly moral and law-abiding citizen.

Yet if we take motive for the primary principle of division, we may fall into anomalies equally grave. We shall then divide murders into several natural groups, it is true ; but we shall bring together in the same class larceny and piracy, coining and poaching, forgery and burglary, picking pockets and offences against the Truck Acts, bribery and driving a lame horse ; for all of these are, or may be, committed for gain. Moreover, as a practical measure, this principle is subject to the very important defect that the motive of a crime is notoriously difficult to determine. Crime of the very same outward nature may be committed from half a dozen or more different motives, and we may not be able to do more than conjecture which of these motives was in fact operative. As a primary principle of division, the motive on which the crime was committed is scarcely a practicable differentia.

One of the most important aspects of crime is the degree of turpitude that it evinces. It is this that mainly determines the reprobation with which we regard the offence, and the punishment that we award to it. The turpitude of the offence is the basis of the official classification into offences triable in courts of summary jurisdiction and offences triable in the superior courts of quarter sessions and assizes. But turpitude is an unsatisfactory basis for classification, for it is a matter of degree, admitting of no sharp distinctions, difficult to assess, assessed very differently by different persons and at different times. There has recently been an attempt made to lessen the turpitude of infanticide, and to regard



it as a mere peccadillo, though it is officially classed among the greatest crimes known to the law. If we proceed on this principle, we must class together crimes as dissimilar as poaching and betting, assault and setting fire to a common, blackmail and attempting to wreck a train, bigamy and riot, and other incongruous couples. We shall separate different examples of the same offence committed from the same motive, according to the amount of temptation under which they were committed—a sound philosophical principle, no doubt, but one very difficult to apply in practice. Lastly, we must form a large and very miscellaneous class of offences that imply no moral turpitude at all, such as allowing a chimney to catch fire, or forgetting to light a lamp or to screen its light, as the case may be. Clearly, as a practical measure, classifications by degrees of turpitude will not do.

Or we might base our classification on the differences between the objects that crimes are intended to benefit. On this plan, crimes of one class are committed to benefit the criminal alone; others are intended to benefit himself and his family alone; others to benefit some other person, or class of persons, or the State at large; for offences may be committed with any of these objects. It is clear without giving instances that the application of this principle would result in agglomerations of crimes that it can scarcely be useful to think of together, and in constituting classes in which the same offence would crop up again and again in different connections.

Lastly, we may take—as the official classification purports to take—as the basis of the classification the object directly injured by the offence, and divide crimes into offences against the State as a whole, offences against individuals, offences against the institution of marriage, against chastity, against religion, and so forth.



From this examination of the various qualities that crimes present, it appears that each of them is important, and must be taken into consideration to some extent, at some stage in the classification, or the arrangement will not be wholly satisfactory. The difficulty is to decide in what order to take them ; on what principle to make the primary division, and in what order of precedence they shall be taken in constituting the subsequent minor groups.

After very careful consideration, I suggest the following classification as that which, while conforming with the recognised rules of classifying, is free from cross-classification and confusion, keeps all the classes and sub-classes distinct from one another ; and thus, being a good and valid classification, at the same time satisfactorily fulfils the purposes for which a classification is required.

Every crime is an offence against society. It is a crime because it is directly or indirectly injurious to society ; because, if it were permitted and were to become general, society would be disintegrated ; and therefore society for its own protection must prevent or punish it, so that it may not become general.

So regarded, crimes may be divided primarily into those that are aimed against the very principle of society, that tend to injure, not only this society or that, but several societies in common, and therefore which it is the common interest of all societies to suppress, and against which all or several civilised societies take common action ; and, on the other hand, into those that injure primarily but a single State, and are dealt with by the single State concerned, acting within its own jurisdiction. Thus we make the primary division of crime into international and national.



International offences are few in number. They include piracy, filibustering, which is piracy on land, or general brigandage, and the crimes of the anarchist and the nihilist, which are aimed at destroying the very fabric of society wherever it exists. To these may be added the slave trade, which is probably incompatible with society as it now exists in highly civilised communities, and which at any rate several nations are combined to put an end to. Perpetrators of these crimes are the enemies, not only of this or that individual whom they injure, not only of this or that State whose laws they transgress, but of every organised and civilised society. They are *hostes humani generis*, enemies of humanity and civilisation at large, since their crimes strike directly at the social principle on which civilisation and humanity itself are founded, and without which mankind would relapse into savagery, and probably die out altogether. As criminals of this class are the common foes of all nations, all nations are interested in exterminating them.

National crimes consist of those acts that are injurious to individual nations severally. If permitted, and if they become general, they would destroy the fabric of the society in which they are perpetrated; but their injurious effect is limited to this society, and does not extend to others, which may even be benefited by them. They are divisible into two kinds, according as they strike primarily at the State itself, whether as a whole, or through its officers, or by injuring its institutions, or by diminishing its authority and credit. Or according as they injure the society indirectly by injuring primarily one or more of its component individuals. Many crimes of the first class at the same time inflict, or are apt to inflict, injury on individual members of the



society. But it is not because of the injury they inflict upon individual persons that they are prohibited and punished ; it is because, unchecked, they would produce general, or at least widespread, injury to the fabric of the State, and therefore it is that they are prosecuted by public officials in the name of the State.

National crimes of the second class injure society, not in the gross, but in detail, by attacking its individual members, and injuring them in person, or property, or feelings. These may be called private crimes, to distinguish them from those of the previous class, which we may call public crimes. The distinction is clear. Crimes of both classes injure both the State as a whole and individual persons that are members of the State ; but public crimes injure the State directly and are punished for the direct injury that they inflict upon the State, and not for the special injury that they inflict at the same time upon this or that individual citizen ; while private crimes injure the individual citizen directly, and are punished primarily for the injury they inflict upon him, and only secondarily for the injury that they inflict through him upon the State. As the type of public crimes, we may instance assault upon the person of the Sovereign, which is punished, not for the special injury it may inflict upon him as a man, but for the direct injury to the State inflicted by imperilling the safety of the chief representative of the State, and by the contempt of his crown and his dignity. In striking at him, the criminal strikes at the State as a whole, at its fabric and constitution. If the sovereign is not safe, the State is in peril. As the type of private crimes we may take a similar assault upon a private person in his private capacity. In this case, the direct and primary injury is limited to the individual person who is assaulted, and the



law recognises this limitation by leaving to him the task of prosecuting the criminal; but the crime inflicts an indirect and secondary injury upon society as a whole. It tends to loosen the bonds of society; and if such acts were permitted to become general, society would be degraded in civilisation and would relapse into barbarism. This secondary effect is recognised by the State, which accordingly provides the machinery by which the offender may be punished, though it leaves to the injured person the task of setting the machinery in motion.

The two kinds of injury, or rather the two objects injured, are, or were, explicitly set forth in the form of the indictment. The prisoner indicted of a grave private crime, such as murder, was indicted not only for murdering his victim, but also for murdering him "against the peace of our Lord the King." The words introduce into the indictment a formal recognition of the public element in the private crime. They declare that the crime was not only a private injury to the victim, but also a public injury to the peace of the realm.

### PUBLIC CRIMES

Public crimes are, as we have seen, those acts that primarily injure the fabric of the State or of the society; and though they may do so through the injury of individual persons, the injury of the person is swamped and overwhelmed in the eye of the law by the injury done to the State itself. The personal injury is of secondary importance. Thus understood, public crimes are of two kinds, according as they injure the functions of the State, or as they injure the binding forces of society. We may call the former direct public crimes, and the latter indirect public crimes; and it will be convenient



to take the latter first, since they can be more briefly disposed of.

### INDIRECT PUBLIC CRIMES

The first condition of the social state is that the members of the society shall hold together. If they disperse, the society *ipso facto* ceases to exist. In highly organised societies, the individual members are held together by innumerable ties, no one of which may be very powerful or conspicuous, and many of them may remain unrecognised ; but the binding force of them all is like that of the threads with which the Lilliputians tied Gulliver to the ground. If they are individually intangible, they are collectively infrangible. Family life, school life, community of ideals, physical propinquity, the machinery of supply and production, common employment, the intricate complexity of social arrangements, the economic dependence of each upon each and upon all, the innumerable interests that cannot be pursued except in common, the firm organisation of national and municipal government, the innumerable voluntary associations, clubs, and societies, the all-pervading system of life assurance—each of these things and many more constitute threads and bundles of threads binding every individual member of society to the rest in inescapable and infrangible bonds, from which he cannot escape if he would, and would not escape if he could. But in a primitive society very few of these bonds exist ; and the members of a primitive society are more wayward, more self-asserting, less alive to the benefits (which indeed are much less) of social life, less swayed by social obligations, in a word, less socialised, than the members of a highly civilised nation. In the primitive society there are many fewer bonds holding the members together, and therefore what



bonds there are must be so much the stronger. In place of innumerable threads, each perhaps of but little tenacity, but in the aggregate insuperable, there are two or three strong ropes, which are apt to gall in a way that the threads do not, but which must be preserved, however galling they may be, or society will fall to pieces. These bonds are three : the power of the central authority, the power of religion, and the power of custom.

The more primitive the society, the less it is advanced in complexity of organisation, the less firmly its institutions are consolidated, the more conspicuously must the power of the ruler be displayed and kept before the notice of the ruled. Hence, in less developed societies, the government, whether of a single tyrant or of an oligarchy, is always despotic and tyrannical, and usually capricious as well as cruel. In such societies, the authority and will of the monarch is one of the three chief forces that bind the society together and constitute its otherwise vagrant members into a society. In comparison with the advantage to the society as a whole of a strong central government, the disadvantage of a cruel or capricious government is but little. Cruel, brutal, and capricious as he was, John maintained England in prosperity ; for his hand, if it was rough, was strong. But under Stephen, England came within measurable distance of ruin, and so it did under Henry III. and Henry VI. ; for in an imperfectly organised society the amiability of the monarch does not compensate for his weakness. It was under the strong hands of Alfred, of Henry I., Henry VIII., and Cromwell, that England attained her greatest prosperity.

Next to the binding force of the central authority, even if not still more important, is the binding force of custom. The power of custom is seen in the constant



determination of the English to be ruled in accordance with their ancient laws. The national sentiment was embodied in the maxim *Nolumus leges Angliæ mutari*. As long as custom prevails, all the members of the society will act in harmony with it and with each other, and society is safe from disruption from within. Explicitly and formally, internal harmony is enforced by law ; but law has its origin in custom : it is at first nothing but the formal recognition of custom ; and in its later developments law is powerless when it conflicts with custom. The monarch himself derives his power from custom, and is obeyed mainly because it is customary to obey the monarch. This is why every usurper strives to invest himself with a legal—that is, a customary—title. If he can show that he occupies his position by virtue of customary observance, that position is secure. That which is not customary is outlandish. It is foreign. It has no part in the life of the society. It is a disturbing agent, and raises against itself an instinct of opposition. This instinct is one of the deepest rooted of social instincts. It is founded on the appreciation of the binding and conservative power of custom, an appreciation none the less real that it is inarticulate and unformulated. Hence, in a primitive society, as yet but lowly organised and wanting in the fibrous bonds that so powerfully unite more organised societies, breach of custom is injurious to the society, and is therefore a crime. Even in the narrow sense of being forbidden by law it is a crime, for law is in its origin, as has been said, nothing but recognised and formulated custom. In more highly organised societies, in which abundance of what I have called the fibrous bonds of society has been established, there is the less need for the binding power of custom ; and as societies become more and more intricate and



better and better organised, custom loses its force and falls more and more into abeyance. But it is abandoned slowly and reluctantly, and in all developing societies there is a strong and often a savage conflict between those who would abandon custom and those who would maintain it. For long and long, repudiation of custom is a crime; and though it need not be so considered in highly developed societies, there is, as has been shown, excellent reason why it should be so regarded, as it always has been, in undeveloped societies. In such societies, innovation, even in trifling matters, is a crime; and many an innovator has been torn to pieces as the worst of criminals.

The third of the ropes which bind young, or at any rate immature, societies together until more subtle and more cohesive bonds are developed, is the binding force of religion. It is unnecessary to show here how religion enforces uniformity of conduct, renunciation of self-regarding conduct, and reinforces the power of the ruler as long as he reciprocates the benefit by supporting the priesthood with his authority. Most of what has been said of custom applies to religion also, which is, indeed, the great depositary and safeguard of custom, and which tends ever more and more to be identified with custom and lost in it. Uniformity of religion is, in imperfectly developed societies, perhaps the most powerful of all the cohesive forces, and therefore any attack upon the prevailing religion is deeply injurious to society, and consequently is a crime. In such societies it is always regarded as a crime, and cannot with safety to society be otherwise regarded until a late stage of social development is reached. That stage appears to have been reached now in the most highly developed societies, and in them attacks upon religion are no longer regarded as public crimes; but they may be still in certain cases



rightly regarded as private crimes, as will be shown further on.

Meanwhile, we are to notice that for practical purposes, in this and other highly organised societies at the present day, public crimes do not include attacks upon religion, but are restricted to attacks upon the functions and the officers of the State. To discover what these crimes are and to enumerate them in detail, it will be necessary to enumerate the functions of the central power in the State, which is now shifted from the monarch to the collective Government.

## DIRECT PUBLIC CRIMES

### *Treason*

The primary functions of the State are to defend itself from external foes, and to preserve its internal integrity. Unless these functions are efficiently performed, the society must perish, either by assault from without or by disintegration and dissolution from within.

For the first purpose, the State maintains its Foreign Office, its diplomatic service, its navy and army, its arsenals and cadet schools, and all the auxiliary services by whose means it conducts its relations with foreign States, and preserves itself against attack and injury from without its own borders.

The internal integrity of the State is preserved by keeping of the peace ; and for this purpose the State provides, not only officers whose duty it is to prevent and stop breaches of the peace, officers to try and officers to punish offenders, and a machinery for the prevention of crime, but also a system for administering justice between citizen and citizen, which supersedes private



conflict, and provides in its stead a peaceful method of settling disputes.

These are the primary functions of the State, and any act of any of its citizens that impairs these primary functions is *ipso facto* a crime. The two functions are not co-ordinate, nor of equal importance. The first and fundamental function of every society is to preserve its own existence, and the maintenance of internal peace, important as this is, is after all only important as a means to this further end of social preservation. The first, the fundamental, the primary function of every society is to preserve its own existence ; and as in the scheme of nature—that is, in biological truth—the individual is of no importance except as a means of carrying on the race, and must be ruthlessly sacrificed if the interests of the race demand it, so equally in the scheme of nature and in biological truth must the interests of the social whole swamp and preponderate over that of any individual member of it. Reproduction always and inevitably demands some sacrifice, usually only temporary, but always some sacrifice of the life-worthiness and welfare of the parent. Sociality always and inevitably demands some sacrifice of the self-interest and self-indulgence of each member of the social body. In time of peace, and when the safety of the nation is not menaced by external foes, this sacrifice is limited to that forbearance and restriction of activity that I have already described ; but when the society is menaced by aggression from without, the duty of its members is to defend it. As in peace the convenience of each must give way to the welfare of the whole, so in war the safety of each is forfeit to the safety of the whole. The imperative and inescapable duty of every member of a society is to defend the society to the uttermost, even to the sacrifice of his life,



when the society is in danger ; and only on this condition can a society continue to exist, only on this condition can membership of a society be claimed, only on this condition can membership of a society be honestly enjoyed. To enjoy the benefits of social life without undertaking the primary and fundamental duty of social life is the basest dishonesty, and should not be permitted. It reduces the status of humanity below that of social insects. The man who perpetrates such a crime is inferior in morality to a wasp or an ant, and should be put out of the society whose membership he has forfeited by committing the meanest and most cowardly of crimes. There is but one crime more heinous, and that is to assist actively the enemies of the State to which the criminal belongs or in which he is, or to constitute himself an enemy of the State, and himself attack it in the person of its sovereign, in that of any of the great officers of the State, or generally to attack the fabric of the State, by rebellion or otherwise. All these acts are included in the crime of high treason.

It is treason to act in such a way as to impair the defensive power of the State, either by weakening by mutiny, or by inciting to mutiny the forces of the Crown ; or by spying, or revealing any information calculated to be useful to an enemy of the State ; or by inciting others to refrain from joining the army or navy, or from doing in any other way their duty to the State.

So, too, it is treason, not technically, not in English law, but jurisprudentially it is treason to do that which is calculated to embroil the State with other States, either by writing or by assisting in any way the rebellious subjects of those States, or in any other manner.

A minor form of treason, called sedition, is to excite discontent and disaffection towards the constitution of



the State in such a way as to weaken it and impair its primary functions.

### BREACH OF THE PEACE

The second of the primary and fundamental functions of the State is to keep the peace within its own borders. It is manifest that this is a condition of the very existence of the State as a society. As has already been shown, society cannot exist except by the mutual forbearance of its members ; and if any of its members will not voluntarily exercise this forbearance towards others, he must be compelled to do so, or the society will disintegrate and dissolve. Let the process become universal, let every man's hand be turned against every other man, and social life is at an end ; man is then become a solitary animal. Hence society in its own defence and by its collective strength must put a stop to internecine strife between its members. Hence the earliest internal function of a society is to institute law, by which disputes among its members may be settled by arbitrament instead of by private war ; and the degree to which civilisation is advanced may be measured, first, by the completeness with which the legal settlement of disputes has displaced violence, and second, by the rarity of appeals to law. When private war is put down by the hand of a strong central authority, which offers litigation as an alternative, litigation is freely and frequently employed, and is only another form of private war ; and this is a manifestation of that want of mutual forbearance that shows imperfect socialization. When socialization is complete, litigation will die out as private strife and breaches of the peace have died out.



It may seem *prima facie* that if two people choose to settle their differences by fighting it out in private, so as not to cause terror or disturbance to other people, it is no concern of anyone but themselves ; but the considerations that have been advanced show that this is not so. It is not so, because, in a society, conduct must be regulated by the principle of considering what would happen if such conduct were to become general. If duelling or private violence in any form were to become general, society would dissolve ; and therefore every instance of such conduct must be prevented, or put a stop to, or punished. A breach of the peace is a crime, and so is every incitement to a breach of the peace, or any act calculated to lead to a breach of the peace.

#### SUBSIDIARY PUBLIC OFFENCES

In order that its two primary functions of defence of the realm and keeping the peace may be performed effectively, certain machinery and certain officers must be appointed by the State. For the first purpose the diplomatic service, the Foreign Office, the army and navy, arsenals, clothing factories, and so forth, must be established and maintained ; and for the second purpose the whole machinery of the police, the administration of justice, and the prison service, are established and maintained. Any interference with the efficiency of this machinery is of necessity injurious to society, and is therefore a crime ; and thus a new class of public crimes is constituted. Impairment of the efficiency of these services may arise from within them or from without. It may arise from corruption or neglect or abuse of their position on the part of the officials of the administration,



or it may arise from interference with them in the execution of their duties by other persons outside the administration; and thus we may constitute two sub-classes of these public crimes.

In order that the machinery for performing those two primary functions of the State may be provided and maintained, the State must have a revenue wherewith to pay its officers and to provide the necessary buildings and appliances, and to this revenue every citizen ought to contribute in proportion to his ability. Any act that impairs the revenue is directly injurious to society, and constitutes a grave public crime.

All acts that are injurious to the machinery by which the two primary functions of the State are carried on, whether the injury is caused directly by one of the methods enumerated above, or indirectly by impairing the revenue or producing an unjust incidence of the revenue, is a subsidiary public crime. From what has been said it will appear that these crimes may be divided into the following classes :—

I. Crimes that impair the machinery of external defence of the realm. These have already been dealt with as minor treasons.

II. Crimes that are calculated to impair the administration of justice.

III. Crimes that are calculated to impair the revenue.

In each case the crime may be committed either by an officer entrusted by the State with the working of the machinery, or by a person outside the official ranks.

### *Crimes against the Administration of Justice*

Under the administration of justice we may include, not only proceedings in courts of law, but also the



functions of the police in preventing crime, in bringing it home to its perpetrators, in arresting them and bringing them to justice ; the functions of the prison officials in punishing offenders ; and the functions of the courts in settling disputes between one citizen and another. Any interference with any of these functions, either from within the service or from without, is a crime. It is a crime even to refrain from assisting in the administration of justice when opportunity offers, or when we are called upon to do so.

Crimes of the first sub-class are committed whenever the officers engaged in the administration of justice neglect, or pervert, or abuse, or exceed, their functions. The policeman who winks at an offence, or who fails to carry out an order, or who utilises his exceptional opportunities to commit the crimes that he is engaged to prevent, or to assist the criminals that he is engaged to arrest, or who abuses his authority by tyrannising over the citizens whom he is engaged to protect, or exercises for his own advantage the powers entrusted to him, is guilty of a crime against the administration of justice. Instigation to crime by a private person is a heinous offence, but it is exceeded in turpitude when the instigation is made by an officer specially employed by the State to prevent crimes and arrest offenders. For the *agent provocateur* there is no name in the vernacular, and the absence of the name points to the rarity of the thing to which the name applies. The crime is unknown in this country, but other countries are less fortunate, and in some the crime is frequent.

Analogous offences committed by officers of the court or by prison officials are extremely rare in this country, but they are possible ; they were at one time not unknown here, as the instances of Bacon, Scroggs, and



Jeffreys prove, and they are extremely frequent in backward countries such as Turkey.

We may congratulate ourselves that in this country the administration of justice is so pure that interference with it by its own officers is in every department practically unknown.

But the administration of justice may be vitiated by unofficial persons acting upon it from without, and crimes of this sub-class are unfortunately not so rare. They are of two kinds : crimes of omission and crimes of commission.

It has been shown, and the whole treatment of the subject in this book hangs upon the demonstration, that crime is the product of two factors, the internal and the external—the mental constitution of the criminal and the strength of the temptation to which he is subjected. It follows that part of the duty of every citizen is to refrain from subjecting others to the temptation to commit crime. Active solicitation to commit crime is recognised in the jurisprudence of every country as an offence, and a very serious offence ; but there are other ways of holding out temptation to crime besides active solicitation, and these ways are not recognised and stigmatised as they should be. We constantly see accounts of crimes committed because the sight of means to do ill deeds has made ill deeds done ; of embezzlements that would never have been committed if proper supervision had been exercised, proper auditing and accounting put in force. He who is careless in leaving money about, who has no proper system of checking the transactions of his subordinates, who allows his accounts to get into confusion, who is negligent in stock-taking, who has no proper system of audit, is affording opportunity that may amount to temptation to commit



crime, and for such negligence he should be punished. He is contributing to crime, and to contribute to crime is itself an offence. The principle is already recognised in the regulations forbidding shopkeepers to expose their wares unsupervised to the ready appropriation of passers-by; but though recognised in this single instance, the principle is not applied as widely or as regularly as it should be. Magistrates frequently animadvert on the carelessness and negligence of employers who have left temptation in the way of their employees; but animadversion is not enough. In the view of a competent jurisprudence, such carelessness and negligence is an offence, and should be punishable as an offence. It is directly contributing to crime, which it is the function of the administration of justice to repress. There are other neglects and omissions that occur at later stages in the administration of justice. Every member of a social body owes it to his society to refrain from conduct that shall facilitate crime; and every citizen owes it to the State to assist in the arrest of the criminal when crime has been committed. This obligation was formally embodied in the law of hue-and-cry in the days before officers were specially appointed for the duty of arresting criminals. When a crime was committed, the onus was on the frankpledge to show that none of its members was the criminal, or to arrest and surrender him if he were a member of the frankpledge. If the criminal fled, it was the legal duty of every hundredman to raise the hue-and-cry, and to pursue him to the borders of the hundred or of the county. Now that police are constituted for the purpose of pursuing and arresting criminals, the duty of the private citizen in this regard is fallen into abeyance, but it still exists. It is latent, but it still exists; and neglect to aid



in the arrest of a criminal when called upon by competent authority to do so is still in law, as it ought to be, a punishable offence.

If it is a crime to refrain from arresting a criminal, *a fortiori* it is a crime to obstruct or hinder his arrest, and it is still more criminal to contrive or assist his rescue from custody or his escape from the officers of justice, whether before or after conviction.

Every citizen owes a duty to the State to assist, not only in the arrest of an offender, but also in his trial, whether by serving as a juror or by giving evidence as a witness. In the former capacity it is not enough to attend when summoned and to take his seat in the jury-box : he is under obligation to pay as much attention, and to exercise at least as careful a judgment, as he would do in a matter of equal importance to himself.

In his capacity as witness, his duty is to come forward and tender evidence if he can assist the ends of justice by doing so. To neglect a summons to give evidence is an offence ; and when the witness is in court he is sworn to tell the truth, the whole truth, and nothing but the truth ; and if he violates his oath, he commits a crime, and is punishable for perjury. Nor does his obligation to justice end here. He cannot evade it by refusing to answer a question. To refuse to answer a question after taking the oath to tell the whole truth is an offence, and punishable as such. To this rule there is in this country an exception, due to the extraordinary tenderness with which English law treats the criminal. A witness cannot be compelled to answer, or rather cannot be punished for refusing to answer, a question if the answer would criminate himself. The law seems to me absurd and perverse. The purpose of a criminal trial, and of the law governing criminal trials, should be to arrive at the



truth with respect to the perpetrators of the crime, to discover those who are guilty and acquit those who are not. To ask a witness point-blank, Did you commit this crime? is not in the least unfair to the witness, and may conceivably be the means of acquitting an innocent prisoner. It is not unfair, but it is injudicious, on the ground already insisted on *supra*, that it holds out a very strong temptation to a guilty witness to commit the additional crime of perjury. This should be avoided; but there is nothing unfair to the witness in the question, and there is no reason in justice why he should not be punished for refusing to answer a question solely on the ground that if he did answer it truly, the answer would incidentally incriminate him. In its anxiety to be fair to the accused person, the law is, I think, unfair to society at large which the law has been constituted to protect.

If it is an offence to give false evidence, or to refrain from giving evidence, or to destroy or falsify evidence, *a fortiori* it is an offence to attempt to induce another witness to err in either way. Hence intimidation of a witness, or bribery or subornation of him, is a grave public offence.

Manifestly, it is a still graver offence to attempt to influence, except by evidence and argument in court, the judge or a juror engaged in trying a case.

After conviction, the criminal must undergo his punishment, neither more nor less than the court awards. It is criminal, therefore, to contrive or assist his escape from custody, or to seek to mitigate his punishment by any means but those that the law prescribes, or to aggravate the punishment by any means whatever.

Included in the administration of justice are not only the discovery, arrest, trial, and punishment of offenders,



but also measures for the prevention of crime ; and any tampering with these measures is included among grave public offences. Such are violations of the Prevention of Crimes Acts, and of certain provisions of the Pawn-brokers and other Acts.

Another function included in the administration of justice is the legal settlement of disputes between private citizens ; and in this matter also it is the duty of every citizen to give what help he can, and neglect of this duty is a grave public offence. If he is summoned, either as a juror or as a witness, he is under the same obligation to attend as in a criminal case, and is equally bound to abstain from any conduct that is calculated to interfere with the cause of justice. Even if he is not summoned to attend, he must not express a premature opinion on the merits of the case, or on the claim of one or other party to succeed, since such an expression is calculated to interfere with the course of the trial and to influence the minds of the jurors apart from the evidence and arguments in court, by which alone they ought to be guided. Any such conduct constitutes a grave public offence.

Lastly, the administration of justice is interfered with from without if persons who are not authorised to do so pretend to be officers of justice and to exercise their functions. Hence it is a grave public offence for a person who is not a solicitor to pretend to be one, or for a person who is not a constable to pass himself off as one and to act in that capacity. Personation of other officers of justice is rare.

### *Crimes against the Revenue*

The next class of grave public offences, a small but important class, consists of offences against the Revenue,



and includes not only acts by which the amount of revenue collected is diminished, but also acts of squandering and wasteful expenditure of the national revenue. The law recognises as offences such acts as smuggling and evasions of excise, but it does not punish as it should do evasions of income tax, which are easy, and are no doubt prevalent ; and it does not recognise the wasteful expenditure of public money as an offence, though in any complete system of jurisprudence such conduct ought undoubtedly to be so recognised. The Departments of the Government take scrupulous and even excessive care to check the expenditure of pence, at the same time that they place no check upon the profligate waste of millions of pounds. Many years ago a witness gave evidence before a Select Committee of the House of Commons to the effect that if an official were to stand at the end of Dover pier with sacks of gold around him, and were to throw handfuls of gold into the sea from morning till night, he could not waste money as fast as it is wasted by the great spending Departments of the Government ; and it is the general testimony of business men who have examined the methods of Government Departments that if a private business were conducted by similar methods, it would very soon be brought to bankruptcy. Recent investigations into the expenditure incurred during the war have confirmed and extended these conclusions. The waste in some Departments has been profligate and outrageous ; and although it has been checked and diminished, no one has been punished for even the most flagrant extravagance. This is a serious defect in the law. The expenditure of the public revenue should be safeguarded ; and profligate extravagance should be treated as what it is, a grave public offence.



If the extravagant administration of public funds is, or should be, considered a grave public offence, *a fortiori* wilful or negligent damage to public property is an offence of the same description.

#### CRIMES AGAINST THE OFFICERS OF STATE

It is manifestly expedient that the officers of the State, many of whose duties excite resentment in those upon whom they are exercised, should be protected in the exercise of these duties ; and any assault upon an officer of State in his capacity as such is a grave public offence. Offences of this kind are of very various degrees of magnitude, the gravity varying not so much with the seriousness of the assault as with the importance of the office whose holder is assaulted. Thus, the gravest offence of the kind is the treason-felony of an assault upon the person of the Sovereign. By English law, it is high treason to slay the Lord High Chancellor, the Lord High Treasurer, the King's Justices, or any other justice being in his place and doing his office. In this matter the law is antiquated and no longer adapted to the existing state of affairs. The Treasury has long been in commission, and the office of Lord High Treasurer in abeyance. The Lord Chancellor, though he takes rank as third person in the realm, immediately after the Archbishop of Canterbury, is no longer the Chief Officer of State, that place being taken by the Prime Minister, whose office is unknown to the law, and who does not receive the protection accorded to a county Justice of the Peace sitting in petty sessions to fine hawkers for peddling without a licence. When in the last century a Prime Minister was murdered, the crime was an ordinary felony, and not even a treasonable felony, far less high treason ; and so the law stands now, though the Prime Minister, as the



working sovereign, is *de facto* the most important person in the realm.

It is only when public officers are assaulted in their official capacity—that is to say, either when engaged in their official duties or because of some act or omission in the course of their official duty—that the offence comes under the public class. When the assault arises out of a private quarrel or is for a private reason, it is a private offence, whoever may be the victim, unless he is the Sovereign, or unless, as in the case of some other officials, he can never be considered off duty. Though the seriousness of the offence varies with the importance of the official, the nature of the offence is the same whether the official is the Sovereign himself, or a police-constable, or a prison warder.

Personal violence and assault are not the only ways in which offences may be committed against officers of the State as such. Their property may be damaged in revenge for some official act or omission. The Duke of Wellington and Mr Gladstone had their windows broken on this motive, and during the suffragette outrages of a few years ago, many offences of the same character were committed against many public officers.

All such offences are attempts to influence by intimidation the manner in which public officers shall discharge their duties. There is another method by which influence may be brought to bear upon them for the same purpose, viz. bribery and corruption. This also is a public offence, and one of great gravity.

#### ABUSE OF OFFICIAL POSITION

The last of the grave public offences is abuse of his official position by an officer of the State. This is a rare offence in this country, though in some others it is



common enough. With us it is quite unknown among superior officers, and the high tradition of our public services, together with the publicity in which public duties are for the most part performed, is likely to keep us free from it. There are rumours from time to time of the harrying of outcast women by police-constables, rumours that are not substantiated; but, beyond this, no one in this country, not even a convict in prison, has reason to complain of oppression by persons in official positions.

### MINOR PUBLIC OFFENCES

All the offences hitherto discussed are acts or omissions that are calculated to impair, directly or indirectly, one of the two primary functions of the State, the defence of the realm or the keeping of the peace. These are the primary and fundamental functions of the State, which must be efficiently performed, at whatever cost to the individuals composing the State, or the State can continue to exist only by the forbearance of other States, which, in the present degree of civilisation, cannot be reckoned on with confidence; and even if foreign States forbear to attack it, yet if the peace is not kept and justice is not administered, the society will lapse into barbarism, as we see it does in places, such as many parts of the Turkish Empire.

While these are the primary functions of the State, they are not its only functions. Modern States assume various minor functions, which are not, as the primary functions are, necessary for the preservation of the State, but are desirable, either for the convenience of the citizens at large, or for the protection of its weaker members, or to minimise risks of injury, or to serve the safety of the citizens by concerted efforts to prevent



epidemic and other disease, or in other ways to serve the public welfare. The primary functions of the State are permanent and unchangeable, though the means by which they are effected are subject to constant change in the effort to render them more efficient ; but the secondary and minor functions of the State, with which we are now concerned, are subject to continual alteration, both as to the means employed and as to the nature and number of the functions themselves. In this country before the war, the tendency was for the State to assume more and more of these subsidiary functions, such as the education of the children, and care for the health of the people, that had previously been left to private enterprise ; and since the war began, very many more functions have been taken over by the State, partly as directly contributing to the prosecution of the war, partly to equalise by central authority the burdens and inconveniences imposed by the necessities of war. No doubt the assumption of many of these functions is only temporary, and will cease when the war ends ; but no doubt certain of them will remain in the hands of the State after the war is concluded.

The secondary or minor functions of the State may be divided into those that are exercised wholly by the State itself ; those that it delegates wholly to subordinate bodies, such as municipalities, with original, if limited, legislative power ; and a third intermediate class which the State exercises through the intermediation of Committees which have no legislative power, but have a discretion in the exercise of administrative powers. To the first class belong the State monopolies ; to the second belong local police regulations, and those of railway companies and dock and harbour boards, river conservancy authorities, and so forth ; and to the third the



Poor Law, much of the Lunacy Law, and the Public Health service.

Or minor public functions may be divided on a different plan, according to the purpose that they seek to attain. On this plan these functions will consist of four groups, according as their purpose is to serve the convenience of the citizens; to protect the weaker members from wrongdoing at the hands of the stronger; to minimise risks of injury and disease; or to add to the pleasures and amenities of life; and this is perhaps the more convenient though the less philosophical division.

To serve these purposes, many laws have been enacted by the legislature, and many by-laws by municipalities and other bodies, to whom legislation within restricted areas and on special subjects has been delegated. Infractions of these laws are public offences; but it is evident that they stand on a very different footing from the grave public offences that have already been considered. These latter strike at the very constitution of society, and if they are not suppressed, will in time destroy the society altogether; but minor public offences have no such effect. The State existed and flourished for ages before it exercised these functions, and if they were all swept away to-morrow, the State could get along very well without them. They are not, as the two primary functions are, vital to the existence of the State.

The only State monopolies in this country in time of peace are the minting of coin and the delivery of letters, telegrams, and telephone messages. The State has undertaken these monopolies for the public convenience, and infringement of the monopoly is a public offence, but an offence of the minor class.

The limits of the legitimate—that is to say, the beneficial—action of the State in undertaking manufacturing



and commercial transactions have been the subject of much controversy, but that it is beneficial for the State to undertake and monopolise the manufacture of coin has scarcely ever been questioned. Curiously enough, the manufacture of banknotes, which are documentary coins, does not stand upon the same footing, at least in this country. It is a monopoly, indeed, but not a State monopoly, and therefore forging of banknotes is not a public offence, as making of counterfeit coins is. The purpose of the State in undertaking the coinage is to ensure that the coinage shall be pure and shall not depart from a standard value. Hence it is an offence, not only to infringe the monopoly of coining, but also to defeat the purpose of the monopoly by diminishing the value of current coin.

Infringement of the Post Office monopoly is rare, for it offers little advantage. Stealing letters while in transit is a public offence on the same ground that defacing the coin of the realm is a public offence, viz. that it defeats the purpose of the monopoly, the swift and certain delivery of letters.

Fraud by the wrongful use of postmarks is, in a post-office official, a grave public offence, since it is an abuse of his powers as a public officer ; but the participation of a private person in the same fraud is a private offence, and offenders convicted of it are convicted of fraud, a private offence, and not of abuse of the functions of the Post Office.

The second class of minor functions of the State consists of those embodied in the various laws for the protection of the weak—of those who are by reason of weakness in body, or mind, or wealth, or position, or ability to gain employment, or age, or in any other respect, unable to protect themselves, and at the mercy of others



who may be inclined to take advantage of their weakness. The protection of such weaklings is the purpose of the Poor Law, the Lunacy Law, the Factory Law, the Truck Acts, Employment of Children Acts, to which may be added the Money-lenders Act, Gaming and Betting Acts, and many others. Infringements of these Acts constitute minor public offences.

A large class of legislation consists of those laws that provide for the prevention, or at least the minimization, of risk of injury to persons, either by one another, or in the course of their employment, or by disease, or in other ways. Since their purpose is to protect people from injury, they may be called Protective Laws. They are closely akin to those of the previous class, which may be called the Benevolent Laws, and provision for both purposes is often made in the same enactment. Legislation for the general protection of the weak is embodied in such acts as the Public Health Acts, the Vaccination Acts, the Protection of Machinery Act, Motor Vehicles Acts, besides many municipal regulations. The sentiment of tenderness towards suffering is now so developed that it extends even to the sufferings of the lower animals, and gives rise to the Cruelty to Animals Acts, Wild Birds Protection Acts, and so forth, infringement of any of which is punishable as a minor public offence.

The fourth class of minor public offences consists of interference with the purposes of those laws that aim not merely at preventing harm, but at actively benefiting the citizens of the State by adding to the advantages and amenities of their lives. Such is the object of the laws enacting compulsory education, providing for town-planning, for the regulation of the royal parks, for the preservation of ancient monuments, and so forth; and such are the municipal regulations for the provision and



upkeep of parks, recreation grounds, baths, washhouses, and other amenities of life. Amongst other paternal functions of this kind, the State takes pains to secure to such as can afford them the enjoyment of certain amusements—that is to say, the pursuit and slaughter of game; and that they may enjoy these amusements to the full and without disturbance, the State prohibits the indiscriminate slaughter of game by unauthorised persons. The Game Laws are among the oldest in the kingdom, and among the most severe. It is a little difficult to find an appropriate title for this fourth class of minor public offences, as was felt by Bentham, who has acutely pointed out the cause of the difficulty. “Necessaries,” he says, “come always before luxuries. The state of language marks the progress of ideas. Time out of mind the military department has had a name; so has that of justice; the power which occupies itself in preventing mischief, not till lately, and that but a loose one, the police; for the power which takes for its object the introduction of positive good, no peculiar name, however inadequate, seems yet to have been devised.” In another book, *Crime and Insanity*, I have called these the Salutary Laws. They would be more appropriately called Melioristic or perhaps Hedonistic Laws. Bentham calls offences of this class offences against hedonarchic trust, and all the offences that I here call minor public offences he would denominate agatho-poieutic (*agathopoieo*, to do good to anyone). His title has not been adopted, however.

### SUICIDE

This is the only place in a classification of crimes in which the act of suicide will fit; and although in English law suicide is a crime, it does not follow that there is



anything necessarily criminal in the act, and *primâ facie* it requires re-examination in this regard, since it is one of the class of offences that was originally ecclesiastical, and in the separation of ecclesiastical from civil offences was placed on the wrong side of the line. As will be recorded on a subsequent page, there was originally no distinction, at any rate no clear distinction, between civil and ecclesiastical offences. The judge and the bishop sat side by side in the same court, and together tried every offence that came before them. At length the distinction—always, no doubt, more or less dimly present to their minds—became so manifest that the courts were separated, the bishops trying ecclesiastical offences in the ecclesiastical courts, and the judges trying civil offences in the civil courts. There ensued a very natural conflict between the two courts as to their respective jurisdictions. Between the two was a large margin of uncertainty, and it frequently happened that cases were transferred from the one court to the other, and each court strove to enlarge its jurisdiction at the expense of the jurisdiction of its rival. The ecclesiastical courts sought every available pretext for exempting ecclesiastical officers, however trifling their connection with the Church, and whether they were in holy orders or not, from the jurisdiction of the King's courts. The King's courts not only strove to maintain their jurisdiction over the civil offences of ecclesiastics, but also availed themselves of every pretext to transfer disputes concerning tithes from the ecclesiastical to the civil courts. The consequence of this conflict was that, when the complete separation of the two jurisdictions was at last effected, it was effected not according to any logical principle, but very much at haphazard; and thus it resulted that adultery, a civil offence, remained on the ecclesiastical



side, and suicide, an ecclesiastical offence, is still triable in the King's courts.

Is suicide a crime? Ought it to be considered a crime? Ought attempts to commit it to rank with attempts to commit crimes? Ought he who assists or encourages or advises suicide to be punishable as an accessory to crime? These are several questions, and do not admit of a single answer; and in seeking an answer we must avoid being prejudiced by the practice of our own country. In England, suicide is felony, one of the gravest crimes known to the law. Suicide was not a crime in Roman law, nor is it a crime in those countries that derive their law from Rome. In France it is no crime, and, on the contrary, is regarded as in some circumstances an honourable and praiseworthy act, as readers of *Monte Christo* will remember. In Japan it is regarded in much the same light; and in India it was until recently looked upon as an imperative duty when it took the form of suttee. In the practice and estimation of nations, therefore, we find no such uniformity as will warrant us in deciding one way or the other. If we look to the authorities, we do not gain much better guidance. Bentham, indeed, enumerates suicide among offences against population; but as he includes in the same class celibacy and emigration, it is evident that his classification would not be accepted now. Beccaria, though he does not positively assert that suicide is no crime, yet says that it "seems not to admit of punishment, properly speaking, for it cannot be inflicted but on the innocent, or upon an insensible dead body." It is evident from his subsequent remarks that he considers it, if a crime at all, yet of less turpitude than emigration. FitzJames Stephen pronounces no positive opinion beyond this: "It would, I think, be



a pity if Parliament were to enact any measure tending to alter the feeling with which it [suicide] is and ought to be regarded"—that is, as a cowardly and disgraceful act. He gives no reason, however, for this opinion.

In origin, as I have said, suicide was not a civil but an ecclesiastical offence. The suicide was condemned by the Church for depriving himself of that life that had been bestowed upon him by his Maker to be used for the glory of his Maker. My own opinion is that, civilly, the suicide is to blame if and when by his suicide he evades obligations to the State or to individual members of the State. In such a case he does, I think, undoubtedly commit an offence, and should be held in reprobation and should suffer a punishment in proportion to the offence. There are other circumstances, also, that would make the act an offence. There have been such occurrences as epidemics of suicide. One such took place in Edinburgh in the sixteenth century, and was put a stop to by punishment. The epidemic was restricted to women, and ceased when proclamation was made that in future the bodies of suicides would be exposed naked in the market-place. It is manifestly of importance to the State that an epidemic of suicide should not occur, or, if it does, should be put a stop to; and this affords guidance as to whether suicide should be considered a crime *per se*; for, generally, that is an offence which, if it became a universal practice, would be destructive to society. It is undoubtedly a direct injury to the State that the number of its citizens should be diminished; but only if the individuals removed from it are profitable and desirable members of the society. That it is not considered a disadvantage to the State to lose its undesirable members is shown by the former system of transporting criminals to distant colonies; and that it is not con-



sidered disadvantageous to lose even worthy and competent citizens is shown by the toleration and even the encouragement that is afforded to emigration. It can scarcely be, therefore, that the ground on which suicide is regarded as an offence is that it impairs the integrity of society by the removal of a competent and desirable member ; and, undoubtedly, many persons who commit or attempt to commit suicide are neither competent nor desirable. The only ground for its retention among offences seems to be that it was originally left on the civil side when ecclesiastical offences were withdrawn from the jurisdiction of civil courts, and that the natural conservatism of the law has kept it there. That even lawyers realise that suicide is out of place as a civil offence is shown by the levity with which it is treated in courts of law. Although it is nominally a felony, attempt at suicide is not in practice treated even as a misdemeanour. The offender is almost always treated with commiseration, and the *post-mortem* punishment of the successful suicide by deprivation of religious funeral rites, by ignominious burial in a highway, and by driving a stake through the body, has been abolished by statute for nearly a century.





## CHAPTER V

### PRIVATE CRIMES

EVERY crime is an act or omission by which the criminal seeks his own gratification at the expense of some injury to the society to which he belongs. Selfishness is at the bottom of every crime. In a very small proportion of crimes it is an enlarged selfishness, which includes the family of the criminal, or the members of his trade or of his social class, or some other section of society to which he belongs or with which he identifies himself, and to whose interest, or supposed interest, he is willing to sacrifice the welfare of the whole society. We saw before the war that the members of a sex were willing to sacrifice the welfare of the whole State for the gratification ostensibly of the sex, really of a small proportion of the sex. Crimes of this reflected and larger selfishness, though not absolutely infrequent, are, relatively to the total of crimes, very few indeed ; though from time to time, as in the case of the suffragette crimes, and in that of the trades-union crimes organised by Broadhead in the last century, they attract a great deal of attention. When we speak of crime as the triumph of selfishness over sociality, we must, in order to cover every case, understand selfishness in this larger sense ; but the cases in which it is necessary thus to enlarge our concept of selfishness constitute but a minute proportion of the whole body of crime.



We have seen in a previous chapter that all motives of human conduct may be reduced ultimately to three—self-preservative, or self-advantageous, or, briefly, selfish motives; social-preservative, or social-advantageous, or, briefly, social motives; and a third group, the racial, in which family motives are included. Crime consists in the gratification of any motive of the first and last classes at the expense of the social; and thus it seems that crimes of the private class may be divided sharply into two, according as they are prompted by motives of procuring self-advantage or of satisfying the racial, which means in practice the sexual, instinct. On this plan a thoroughly scientific classification of crimes might be made; but there are a few crimes in which self-advantage is sought by utilising and pandering to sexual motives in others, and a few in which self-advantage is sought by infringing the family principle, by desertion or bigamy for instance, or by infringing the racial principle, as by abandoning or neglecting children. It would lead to considerable practical inconvenience to separate these from the racial and family offences and include them in the selfish offences, and therefore in this respect the strict scientific classification will be departed from. This being understood, private crimes, by which are understood those acts and omissions that are injurious to society as a whole, not by attacking the primary or secondary functions of the State, but by injuring its individual members, and so impairing its fabric by a process of attrition, are of two primary classes: those that seek self-gratification in the self-preservative field, and those that seek self-gratification by either indulging or infringing the racial principle.



## PRIVATE OFFENCES OF THE SELF-PRESERVATIVE CLASS

Self-preservative conduct falls naturally into two divisions—that which is concerned with securing personal safety, and that by which the livelihood is earned and the means are administered. Both departments of conduct are profoundly modified by the social state. Everyone owes a duty to himself to preserve his own life and to earn his own living, to secure for himself food, raiment, housing, and such other advantages as he can ; but everyone owes a duty to the society to which he belongs to pursue these ends with due forbearance towards his fellows, certainly not wilfully to injure them, and as far as in him lies to aid them in their own struggle to attain the same ends. We have already seen that forbearance is the root of sociality. It is the foundation upon which society rests ; and if society is to be preserved, each individual member of it must so pursue his own safety and his own wealth as not to injure his neighbour in the pursuit. Incidental and unintentional injury cannot always be avoided, but intentional and wilful injury of others for one's own benefit is always criminal.

As self-preservative conduct, so the crimes that are committed from motives of self-preservation are divisible into two corresponding classes : first, those that seek to secure personal safety by the injury of others, and second, those that seek to acquire gain by the injury of others ; or, otherwise put, crimes prompted by fear, pugnacity, and vindictiveness, and crimes prompted by greed.

*Crimes of Malice*

Under the general title of malice we may include the three motives of timidity, pugnacity, and vindictiveness, all of which concern and direct conduct in circumstances



of personal danger and insecurity, and especially conduct towards enemies.

Among the physical dangers that beset primitive man, the most constant are those that arise from the turbulence and aggression of his fellows. Primitive man lives in constant warfare, and even in relatively advanced communities and in historic times, property is held upon the good old rule, the simple plan, that they should take who have the power, and they should keep who can. In these circumstances, pugnacity and vindictiveness are valuable qualities, assisting in the survival of societies no less than of families and individuals. Timidity also, which prompts to constant watchfulness and readiness to safeguard oneself upon the least threatening of danger, is not without value. Pugnacity and vindictiveness are a protection against aggression and injury. An aggressor will think twice before incurring a retaliation that is certain, and that may overcome his attack and bring disaster upon him ; so that they become valuable qualities, and are fostered by natural selection. Valuable as they are, however, to the society, and even to the individual, as safeguards against aggression, yet, as contributing to turbulence and strife within the society, they are anti-social also, and no community can thrive unless they are kept in check and restrained within bounds. When they prompt to internecine strife within the society, they are criminal in the sense used here of being injurious to the society ; and the same applies to timidity, which often prompts to sly and deceitful injury of others.

Life is a struggle, not only between societies, but also between the several individual members of a society. As every blade of grass and every plant competes with its neighbour for light and air and food, so does every individual member of a community compete with his



neighbours for his livelihood ; and competition is of the nature of strife, and readily leads to further strife. The successful competitor at least outstrips his rivals, and is apt to leave those rivals sore and ill-disposed towards him ; and in attaining success he is apt to inflict injury upon his rivals, either negatively or positively. A successful trader benefits many : he benefits those from whom he buys, those to whom he sells, and those whom he employs ; but he can scarcely avoid injuring his rivals, not only negatively by attracting to himself custom that but for him would have gone to them, but also positively by taking their customers away from them. When we remember that competition enters into almost all modes of gaining a livelihood, we shall see that occasions of provocation must constantly arise, and we shall not be surprised if the inherent timidity, vindictiveness, or pugnacity of mankind find frequent occasions for their display.

To prevent the ill consequences that must result to a society from internecine strife among its members, every society makes two provisions. In the first place, it stigmatises such strife as a criminal offence, and provides punishment for it ; and in the second, it provides a substitute in the shape of litigation before a tribunal. If a citizen considers himself aggrieved by the conduct of another citizen, his duty is to seek redress, not by direct retaliation, but by the arbitrament of the tribunal that his society has constituted for that purpose. In many cases, however, the aggrieved party is too exasperated to wait for the slow course of the law ; in others he has no legal remedy ; and accordingly he takes the matter into his own hand and seeks to injure his enemy directly. In doing so he commits a private malicious offence.

The aim of an aggrieved person in pursuing his own



private scheme of vengeance is to injure his enemy. The respects in which he can injure his enemy are various, and thus we are able to divide malicious crimes according as they aim to injure the antagonist or victim in person, in property, in reputation, or in feelings.

Malicious personal injuries and assault become more and more rare with the increasing socialisation—that is, with the rising morality of modern advanced societies. Official statistics of crimes of violence make no reference to the motives on which such crimes are committed; but, judging from the reports of trials, it would seem that but few crimes of violence are committed on this motive. Malicious murder is extremely rare in this country, nearly all murders committed by the sane being from the motive of gain or from jealousy. Manslaughter from a malicious motive is less rare; the very provocation that elicits a fatal retaliation in hot blood is an element in reducing the homicide from murder to manslaughter. Crimes of malicious wounding are relatively more frequent, but only relatively, the total number in the year 1909–10 being only 343, as against 38 of manslaughter and 16 of murder from all motives. The large number of cases of wounding in comparison with the graver crimes indicates the mollification of vindictiveness in these latter days. If we remember the prevalence of duelling a hundred years ago, and the comparative indifference with which the taking of human life was then regarded, we cannot fail to appreciate that the taking of life from malicious motives has very greatly diminished.

Whether a malicious assault is fatal to the victim, or whether it merely wounds or injures him, or whether it only frightens him, or whether he is not even aware of it, so that it does him no harm whatever, makes very important differences in the character of the crime in law,



and very important differences in the punishment that is awarded to it. A murderous assault that is completely successful and secures the death of the victim is a capital crime, and is punished by death. An assault precisely similar in every respect, in which the same weapon was used with the same determined intention of causing the immediate death of the victim, but which failed from some accidental circumstance beyond the control of the criminal, would be only an assault, and punishable at the utmost by two years' imprisonment. If, for instance, A places a pistol, knowing it to be loaded, to the head of B, and pulls the trigger, whereby the pistol is discharged and B falls dead, A is guilty of murder ; but if in precisely the same circumstances the pistol misses fire, so that B suffers no injury, A is guilty at the utmost of an assault with intent to commit a felony. If, aimed from a distance, the pistol misses fire, or the bullet goes wide of the mark, or merely grazes the victim, or wounds him severely but not fatally, or kills him, these are in law five different offences ; and if, on the other hand, a man, in order to break into a house, puts a pistol to the lock of the door and fires it, whereby a person on the other side of the door is killed, the offence is murder, although the offender had no knowledge that anyone was within reach of the bullet, and no intention of injuring anyone ; and if a thief in trying to escape from the pursuit of a policeman, trips up the policeman, who falls on his head and is killed, the act is murder by the thief, and is punishable by death. Even if a thief throws a missile at a hen, intending to kill the hen in order that he may steal it, and the missile hits and kills, not the hen, but a man, the thief is guilty of murder.

Such discrepancies outrage one's sense of justice, and cannot be justified. The guilt lies in the intention as



soon as the intention is endorsed by the will and issues in action. An act done with intent to murder, or to commit any other crime, incurs all the turpitude of murder or of the other crime, whatever that may be, and no more ; and the punishment should be in proportion to the turpitude of the crime attempted, and should not be mitigated or aggravated because, owing to circumstances out of the control of the criminal, the effect of his act was less or more than he intended it to be. This seems to me so manifestly just that the contrary does not appear to me to be arguable. The law presumes that if A aims a gun at B, and fires it and misses, there may have been in the mind of A, at the moment he pulled the trigger, some hesitation, some relaxation of his lethal intention, some inclination to forgo his purpose, and that this hypothetical diminution of intention at the last moment so far exonerates him from his guilt as to make an indefeasible claim upon justice for a mitigation of punishment. The presumption seems to me fantastic, without a shadow of justification, and in violation of the other presumption of law that a man intends the natural consequence of his act. The natural consequence of aiming and firing a gun at a person is to kill, or at least to wound, that person ; and it is for the intention, and not for the consequence, that the actor should be punished. If it be said that we can always tell the injury that actually is produced, but can never be certain how much injury was intended, the answer is conclusive. The whole criminal law is based upon the determination of intention, and intention must be determined in every criminal trial. What I contend for is that the principle should be applied logically and with equity, and not capriciously and at haphazard, as it is applied now.



The next form of crime that is prompted by malice is injury to the property of the person against whom the malice is harboured. Malicious damage to property is not a frequent offence. Such crimes constitute only 2·7 per cent. of indictable offences, and attain in this country to an annual total of only about 240. As a rule they are stupid crimes, committed by stupid persons; a large proportion of them—a larger proportion, perhaps, than any other crime with the exception of murder—being committed by persons who are actually insane. They range from the malicious firing of haystacks, and even of houses, to the malicious breakage of crockery. In many cases of “malicious” destruction, the motive is not so much that of distressing another person by injuring his property, as blind rage, which finds an outlet in destructiveness, as when a man thrusts his fist through the window and smashes anything that is handy, whether it belongs to his antagonist, or to some third party, or even to himself.

A peculiar and detestable injury sometimes perpetrated on property is that of maiming or mutilating live stock out of malice towards the owners. The practice was a short time ago frequent in Ireland, when it took the form of cutting off the tails of cattle belonging to an unpopular owner. This dastardly crime is unknown beyond the shores of Ireland, and it is to be hoped will remain so.

Other crimes of a peculiarly heinous kind consist in the use of explosives to destroy houses and ships. It would appear that these are seldom wholly malicious crimes, though an element of malice no doubt enters into the motive for them. They are usually political, and therefore public offences, or anarchical, and then are international offences. The same means have been employed by the Germans in the present war to destroy



neutral as well as enemy civilian property. According to international as well as national law, such acts are crimes, and it is to be hoped that they will meet in due time with condign punishment.

Another detestable injury to property is that of attempting in various ways to cause the wreck of railway trains, heedless of the loss of life that may ensue. There is reason to believe that in some cases this rare crime has been committed by present or former employees of the railway company in revenge for some neglect or grievance, real or fancied. In other cases the perpetrator has remained undiscovered, and perhaps unsuspected, and the motive is difficult to conjecture. In a few cases, but not in this country, it has been committed for the purpose of stealing from the wreckage, and would then fall in another class of crimes, those committed for gain.

The third mode of malicious injury is by inflicting injury on the character and reputation of the victim. There can be no doubt that, generally, defamation of character is injurious to society. It is in breach of the forbearance that every member of a society is in duty bound to exercise towards every other ; it tends to loosen social ties, to alienate the members of the society from one another, and, if the practice were to become universal, would in time disintegrate the society altogether. At the same time, it is important that the untrustworthy should not be trusted, and that the antecedents of those with whom we have important relations should be known to us. Hence it is proper that we should be able to receive and communicate such knowledge without having the fear of criminal proceedings before our eyes. And yet again, it is but fair and right that he who has once strayed from the paths of rectitude should have opportunity of re-establishing his character without having his former



offence cast up against him. The English law of libel seems to steer satisfactorily between these difficulties, and to work out in practice fairly to all parties.

Besides by defamation of character, there are other ways in which the feelings may be outraged, and persons may be subjected, by the malice of others, to grievous pain and annoyance without the infliction of any physical injury. Such injuries to the feelings of others are clearly injurious to society, may be more injurious to the person attacked than physical violence to person or property, and ought to be regarded and punished as crimes. Such an offence is committed when a decent-minded person is assailed with language that, though not defamatory, is filthy, profane, or otherwise objectionable and painful to hear. A religious person may be more hurt by hearing blasphemous language than by a physical assault, and from such language has a right to be protected. In primitive societies, as we have seen, religion is a most powerful social bond, and to undermine religious belief or to attack religion in any way is to such societies highly injurious, and therefore a high crime. In more developed societies, such as our own, the binding force of religion is relaxed, and is no longer needed, for its place is taken by other bonds ; and as this change takes place, attacks upon religion cease to be crimes as such. But they nevertheless continue to be crimes for another reason if they are conducted intemperately, with contumely and scurrility. They are now crimes because they violate the cardinal social principle of mutual forbearance ; because they are of the nature of verbal assaults and injuries ; because they inflict pain needlessly, and without compensating advantage ; because they provoke to internecine strife within the society.



*Offences for Personal Security*

These form a small and very miscellaneous class of offences, having nothing in common but the motive on which they are committed, this motive being to ward off or counteract some kind of danger that the criminal has incurred. They range from injuring another person's cloak by putting out with it a fire that is burning one's own clothes, to murdering a hostile witness in order to suppress his evidence. Though very various, they are so infrequent that a brief notice of them will suffice.

Offences of this nature may be divided in the same way as those of the previous class, according as they are injurious to the person, the liberty, the property, or the reputation of the victim ; and it is evident that their turpitude will depend on the proportion that the gravity of the threatening danger bears to that of the injury inflicted. A is locked up in a house by B, who intends, as A knows, to murder him. In order to escape, A smashes one of B's windows, thereby damaging for his own security the property of another. Few would ascribe any turpitude to the act. B, who has committed a murder, is afraid that C, his accomplice, is about to turn King's evidence, and, to save his own skin, murders C. B's act is one of considerable turpitude. A, being afraid that he will catch cold, sets light to B's corn-stack to warm himself. Again the act is one of considerable turpitude ; and if to secure himself from the same risk he fires B's house and so causes the death of Mrs B and her children, his turpitude is raised to the maximum. If two shipwrecked men hang on to the same plank, which is capable of saving only one, what course ought either of them to take ? If he lets go, he commits suicide. If he pushes the other off, he commits murder.



If he does nothing, both perish. The case is not wholly imaginary : however, my task is not to set problems in ethics, but to determine what are and what are not crimes.

Crimes of the class now under consideration are rare, for the reason that the occasions that render them possible are not frequent. It does not often happen that a person is in such a position that he is tempted to secure his own safety by injuring another in person, property, or reputation. The occasions for the first sub-class are usually occasions of terrible and urgent danger, in which the temptation is manifest and strong ; as, for instance, in the panic of fire, shipwreck, and other common disasters, when one person seizes the opportunity of escape by sacrificing the chances of others—by trampling them down, shoving them aside, monopolising the means of escape, or otherwise sacrificing them to his own security. Whether it is a penal offence for one Alpine climber to sever the rope that binds him to his companions, so that by sacrificing their lives he may save his own, I do not know ; but in the code of ethics of Alpine climbing it is the unpardonable sin ; and, whether or not it is a crime in law, it is certainly the worst of crimes in the eyes of those who are interested in Alpine climbing.

Of all offences, whether so regarded in law or not, perhaps the worst is to act in such a way as to divert suspicion for a crime of one's own commission on to the shoulders of an innocent person, or even to allow, as Charles Peace did, innocent men to be convicted of a crime that one has oneself committed.

Safety is sometimes sought by inflicting injury, not upon the persons, but on the property of others. It is seldom an act of much turpitude, for it is seldom that



the damage inflicted is great in proportion to the benefit gained by inflicting it. He who breaks up his neighbour's fence in order, by burning it, to save himself from perishing of cold, would be convicted of stealing rather than of wilful damage, though the offence is really of the class now under consideration ; and if the need were urgent, and there were no other means of satisfying it, the crime would not be of great turpitude. So of the injuring of a valuable cloak or rug by using it to put out a fire, the bursting of a lock in order to escape from a burning house, and so forth.

Inflicting damage on another person's reputation in order to spare oneself is a rare crime, and I know of no instance except that of bringing a false accusation for this purpose—a crime that has been committed, as by Jonathan Wild, for instance, but that is certainly very rare.

### *Offences committed for Gain*

The next class of offences consists of those that are committed from the motive of gain—that is to say, it consists of acts by which the offender seeks to add to his own property by injuring others. Crimes of this class are by far the most frequent of all, and are also the most diversified. They constitute no less than 94 per cent. of the total number of crimes committed in this country, and range in elaborateness from simple highway robbery to the most ingenious and complicated systems of fraud ; in magnitude from petty larceny to the dishonest acquirement of millions ; and in turpitude from a merely nominal wrong to the blackest and most hideous breaches of trust.

That peculiar reciprocal relation of things and persons that we denominate property and ownership is very deeply rooted in human nature, and is even shared with



man by many of the lower animals. It is highly developed in the dog, which resents and actively resists any attempt of a stranger to appropriate property that the dog regards as his own, or is accustomed to associate with his master. The proverbial difficulty of taking butter out of a wolf's throat is but an exaggerated instance of the tenacity with which every raptorial animal will cling to its own prey as its own property. The resentment that social bees and wasps display at any disturbance of their nest, any intrusion into it, or any raid upon their stores, is a collateral instance of the appreciation of the same relation. It is well known that social bees will raid the hives of their neighbours, and that the raids are resented and resisted to the utmost, and even to death, and not seldom lead to the utter depopulation of the raided hive. Such incidents are, it is true, rather of the nature of public war than of private dishonesty ; but still, they illustrate the principle of ownership, though of collective ownership. The instinctive appreciation of property goes much farther than this, however ; and it is interesting, at a time when doctrinaires are teaching that private ownership of every commodity, but especially of land, is unjustifiable, to note that appropriation of territory is a very widespread instinct among the lower animals. The strict territorial limitation of every pack of the semi-wild dogs of Constantinople is well authenticated. Every dog enjoys peace within the district of its own pack, but an intruder from a neighbouring district is instantly set upon and murdered by the denizens of the invaded district. A widely different animal is the familiar robin of our own gardens, and every robin, or pair of robins, has its own peculiar territory, and attacks with fury a stranger robin that ventures to trespass therein.



Property is of three kinds, and consists of services, of things or commodities, and of the use of things. A man's labour, his skill, and his time are his property. They are his own, to dispose of as he pleases, due regard being paid to the rights of others and of the society to which he belongs. Subject to these limitations, he may dispose of them as he will, and may exchange them for whatever he may agree to take as their equivalent in value. This was not always so, and is not even now universally so. In former times, slavery existed in every society, and from some highly developed societies it has been abolished only of recent years and in the memory of many now living ; but it is now generally recognised that a man's labour, skill, and time, which together make up his services, are his own until he agrees to sell such part of them as he chooses. He cannot sell them all. He cannot sell himself into slavery ; but he can forfeit them by evil doing, and he owes them all to the State if the State has need of them to preserve its existence. The nearest approach to slavery that now exists in civilised States is service in the fighting forces.

Services are the basis of all property. The unappropriated resources of nature are free to all until they are appropriated ; and they cannot be appropriated except by the expenditure of labour, skill, and time. The expenditure of labour, skill, and time upon them converts them into property. Unexplored land is not property. It may be territory—the territory of the State that extends its jurisdiction over the land ; but it is not property until services have been expended upon it. How much service is required to convert the territory of the State into the property of individual members of the State is for the State to determine ; but there is no property until some service, if only that of delimitation,



of some minimum of cultivation, or even of exploration, has been expended upon it. A natural object, a stick or a stone, a shell or a gem, a fruit or a flint, is not property as it lies or grows, unless it has been appropriated as an appendage of the land that bears it. The unappropriated produce of unappropriated land is not property until service is expended on it. But as soon as service is expended on it, even if it be only the time and labour necessary to gather it, it becomes the property of the person who expends the service. This is primitive law, universally recognised and admitted.

The second kind of property consists, therefore, of that upon which service has been expended. It may be a portable object, or it may be a house, or land, or water, or any material thing. It need not even be material. All that is necessary is that service of some kind shall have been expended on it. It may be immaterial: it may be water power or electricity.

Little objection will be made, I think, to the constitution of the two kinds of property thus defined; but I would constitute a third kind of property, a kind that is not yet recognised, but that it is very important to recognise, since its recognition would distinguish a new class of offences from others with which it has hitherto been confused, and no little injustice is produced thereby. This kind of property consists neither in services nor in things on which service has been expended, but in the use of things. The use of things is quite explicitly recognised for some purposes as a distinct kind of property, but it is recognised for some purposes only. The use of a thing can be bought and sold, though we do not commonly speak of the transaction as buying and selling. We call it hiring or renting; but when a house, or land, or a factory is rented, or a horse, or vehicle, or



boat is hired, what actually takes place is that the use of the thing for a certain length of time is bought. This is the true nature of the transaction, but we are so much the slaves of words that when we call a thing by another name we take for granted that it has another nature. The use of a thing is as truly property as the thing itself, and this doctrine has the very important consequence, which has been entirely overlooked hitherto, that the use of a thing, no less than the thing itself, can be not only bought and sold, which everyone admits, but also can be stolen, which is a new and unfamiliar concept, and, as it is unfamiliar, will be admitted with reluctance. Its non-recognition is a serious defect in the law. I assert, and the assertion seems to me incontestable, that what can be bought and sold can be stolen.

Property may be acquired from two sources—from the unappropriated bounty of nature, or by transfer from other people. The first is the ultimate source of all property ; but in the complex and sophisticated organisation of civilised societies, but little is directly acquired in this way. In civilised countries, most things, including the hitherto undeveloped resources of the earth, are already appropriated ; and almost all the property of the second kind—property in things—is primarily acquired from other people, and passed on, after services have been expended on it and its value has thus been increased, to yet other people.

The means by which property is honestly acquired from other people are two. It may be received as a free gift, or other property may be exchanged for it. There is no other way. In every transfer of property there must be two parties ; and in every transfer that is not a free gift, each party gives something and receives something : each acts in the double capacity of trans-



feror and transferee. The two capacities or functions are very different, and the transaction has a very different aspect according as it is viewed from the one standpoint or the other.

Looking at the matter first of all from the side of the transferor, the conditions of valid transfer from him are that he who parts with his property, whether by gift, loan, sale, or exchange, must part with it knowingly, of his own free will, with his full consent, and with a clear understanding of the circumstances in which he parts with it. If any of these conditions is any way infringed, the transaction is vitiated ; and if the infringement is in the knowledge of the transferee, the transfer is dishonest, and the transferee commits an offence—not necessarily an offence against the law as it is, but certainly an offence against the law as it ought to be.

1. The person who parts with his property, or from whom the property goes, must part with it knowingly, or the transfer is vitiated, and if the transferee is aware of the want of knowledge on the part of the transferor, the transfer is dishonest, and the receiver commits an offence. In other words, to take property of any kind without the knowledge of the owner is illegal ; and if he who takes it knows that the owner is not aware of the taking, the action is dishonest, and both illegal and punishable. It is an offence.

No doubt most people would agree that the taking of property without the knowledge of the owner is dishonest, and would see no necessity for the qualification I have introduced, that the taker must know of the ignorance of the owner ; but I shall show in a moment that this qualification is necessary. In thus agreeing, however, few people would realise all that they are conceding, or that they are in fact recognising as crimes



a body of transactions that are not usually so regarded, though no doubt they ought to be.

The qualification is necessary for this reason : that it is quite possible, and is not even infrequent, for a person to take honestly the property of another person without the knowledge of the owner. I do not now refer to purchase from an agent, such as a shopman or manager, though perhaps this might with strict verbal accuracy be considered to be made without the knowledge of the owner as to the particular article purchased ; but in such a case the owner must be presumed to have a general knowledge that his agent is parting with his property for value. The cases I am referring to are those in which the owner has not even a general or constructive knowledge of the transfer of his property, as for instance when I purchase from a hirer property that he has hired, but has no title to sell, I having no suspicion that the hirer is not the owner. In such a case my purchase would be invalid, and could not be sustained in law ; but it would not be dishonest on my part, though it would be dishonest on the part of the hirer.

Leaving on one side this necessary qualification, we are now to recur to the triple definition of property. Services can scarcely be received without the knowledge of him who gives them, though no doubt they may be received without his full appreciation of their value ; but this is a different thing. Unpunctuality is dishonesty : it is stealing the time of other people. Commodities may be taken without the knowledge of the owner, and are constantly so taken by various dishonest methods. But it will be remembered that there is a third form of property, consisting of the use of commodities, and this also may be taken dishonestly without the knowledge of the owner. As I have already pointed



out, the use of a thing is a kind of property as is already recognised in familiar transactions as well as in law. When a thing is let for hire, the use of it for a time is sold. When it is lent without reward, the use for a time is given. The identity of hire with purchase is obscured by the payments made by way of hire being often periodical ; but they are not necessarily periodical. The lease of a house may be purchased for a lump sum, and then what is purchased is the use of the house. The use of a ship for a specified time is usually purchased by a single payment. Whatever can be bought and paid for, or in any way exchanged, is surely property, and in my view the use of things is undoubtedly property ; and as it can unquestionably be bought and sold and given, so without doubt it can be stolen, and in fact it frequently is stolen. Owing, however, to the non-recognition of the use of things as a form of property, stealing the use of things is not looked upon as theft ; it is not an offence in law, and no penalty attaches to it except when the thing the use of which is stolen is money. The consequences of this omission on the part of the law are grievous. They are, first, that many acts of abominable dishonesty are not offences in law, are not indictable, and are not punishable ; and second, that other acts of dishonesty of the same kind and of even less turpitude are punished with excessive severity.

If it is an offence, as everyone, and even the law, admits it is, to use another person's money without that person's knowledge, I can see no reason why it should not equally be an offence to use without his knowledge his manservant or his maidservant, his ox or his ass, or anything that is his. If a chauffeur takes his master's motor-car out for his own pleasure or business, or to



drive his own friends, without his master's knowledge, this is, in my opinion, and in my definition of property, stealing. He steals the use of his master's car. It is no argument against this view to contend that, as he returns the car, he steals nothing. It might equally be contended that the clerk who borrows his employer's money and repays it before the theft is discovered steals nothing. It is true that he has not stolen money, but he has stolen the use of money. If, however, the deficiency is discovered before he has returned the money, he can be prosecuted ; but he is prosecuted, and usually convicted, for an offence that he has never committed. He is prosecuted for stealing the money, which he did not steal and had no intention of stealing. He is not prosecuted for stealing the use of the money, which was his actual offence. It must be remembered that the chauffeur who steals the use of his master's car does not always return the car. It has happened that on his joy ride he has run the car against a lamp-post or met with some other accident far from home, and he has thereupon left the car and absconded. Wherein does he differ from the youth who has failed to return the money whose use he has borrowed and who, finding himself unable to return it, absconds ? Yet the clerk is punished with great severity : the chauffeur cannot be punished at all. He has committed no offence known to the law. A lady of fashion asked for a valuable diamond necklace to be sent to her on approval. It was so sent, and she wore it at a reception ; and on its return it was found to be powdered with *poudre-de-riz*. This lady stole the use of the necklace as truly as the chauffeur stole the use of his master's car, as the clerk stole the use of his employer's money, or as the lady's-maid stole the use of her mistress's boots and sunshade when she went out with them on



her own person ; and it is clearly unjust that one person should be punished severely for a crime while others should not be punishable at all for crimes of the same character.

When a person steals the use of a thing, he often ends by stealing the thing itself ; but this only illustrates the familiar truth that one crime leads to another—it does not suffice to identify the two crimes. Stealing the use of a thing is distinguished from stealing the thing itself, not by the fact that in the former case he returns the thing and in the latter he does not, but by the intention to return it, which is present when he steals the use and absent when he steals the thing. In either case his intention may subsequently alter ; but whatever the subsequent alteration, the nature of the crime, as with other crimes, is determined by the intention in the mind of the criminal at the time the crime was committed. If the clerk takes the money, intending at the time to return it, he steals only the use of it ; and if he subsequently returns it, he has still committed this offence. But if he finds that he cannot return it, and subsequently to the taking alters his intention and makes up his mind to convert it altogether to his own use, then from that moment he has stolen more than the use—he has stolen the money itself. If, on the other hand, he takes the money with the intention of stealing it out and out, and subsequently repents and replaces the money, he has stolen it, and during the time it was in his possession has deprived its owner of the use of it, and for this he may rightly be punished ; but he has not stolen the use of the money, for this was not his intention at the time the act was committed. And what is true of money and of the use of money is true of every other commodity and its use. Either the thing or the



use of it can be stolen, and the two offences are different ; but both of them are offences, and both should be recognised as such by the law.

No doubt it is more difficult in the case of money than in the case of other things to prove the intention, especially the less grave intention ; but there is no reason why the accused should not be allowed to plead the minor offence, and establish his plea if he can. It is often difficult to prove intention ; but in all grave crimes it must be proved. It is often difficult in the case of homicide to prove the intention was not murder ; but the prisoner is allowed to plead that it amounted only to manslaughter, and to establish the defence if he can.

As has already been said, to take a thing without the knowledge of the owner is not necessarily stealing. It is not stealing unless the taker knows that the owner is unaware of the transfer. But for this proviso, an honest mistake would be a theft. If I take from my club an umbrella resembling my own, in the mistaken belief that it is mine, I am taking another's property without his knowledge ; but as I do not know that he is ignorant, I am not stealing. In fact, I do not even myself know that I am taking his property.

In order that the transfer of property may be honest, the transferor must know of it ; but this is not enough. He must know, not only that he is parting with his property, but he must know, in the full sense of knowing, all that he is doing. A man may know that he is parting with his property and receiving property in exchange, and yet be incapacitated by obscuration of mind from fully appreciating the nature of the transaction, and from judging of its expediency as a whole. This is the case when a bargain is made with a man whose faculties are obscured by drink, or by insanity otherwise produced.



Such bargains may be annulled by a tedious and expensive legal process, but no punishment is provided for the peculiarly mean and disgraceful dishonesty of wilfully taking advantage of a drunken man or a man who is otherwise mad, by inducing him to enter into a bargain that, but for his madness, he would never have consented to. For this dishonesty the perpetrator ought to be criminally liable. I can see no material difference between him who takes advantage of the natural simplicity and ignorance of a yokel to swindle him by means of the confidence trick, or the gold-brick swindle, or the Spanish-prisoner swindle, and him who knowingly takes advantage of the drunken man or the lunatic to induce him to part with property that, if sober and sane, he would not have parted with on the same terms. If there is any difference in turpitude, that seems to me the greater which swindles the drunkard or the lunatic. Yet these transactions are not criminal in the eye of the law, and are not, in this country at least, legally punishable. This seems to me another defect in the English jurisprudence of crime. Such dishonest transactions may not be frequent, but, if I may judge by those that have come under my own observation, they are not extremely rare, and assuredly there are others of which the law does take cognisance that are rarer still.

2. In order that the transfer of property may be honest, the transferor must not only know, in the full sense of knowing, that he is transferring to another, but he must consent to the transfer. The man who is bound hand and foot by robbers may see his trunks rifled, and may have a complete knowledge of the property transferred from his possession, and of the mode and circumstances of the transfer ; but as he does not consent to the transfer, it is not legally valid ; and as the transferees know that



he does not consent, the transfer is not only invalid but dishonest. So, any transfer of property without the consent of the owner is invalid, and may be set aside ; but it is not necessarily dishonest unless the transferee knows that the owner does not consent. If he who takes the property knows that the owner does not consent to the transfer, then the transaction is dishonest ; with the proviso, however, that the honesty of the transaction is not impaired by the withdrawal of a consent once freely and formally given. The man who has once willingly signed a contract of purchase and sale cannot subsequently repudiate it. He must hold to his bargain, and deliver the goods, or pay the money, whichever he has contracted to do.

3. But knowledge and consent, even in combination, are not by themselves enough to validate a transfer or to render it honest. Though the transferor knows, in the full sense of knowing, all that he is doing and the nature of the transaction, and though he gives his full consent to it, yet the transfer may be tainted with the grossest dishonesty if it is effected without his free will. If a highway robber holds a pistol to my head and demands my purse, I may know perfectly well what I am doing when I hand it to him, and I may fully consent to his taking it ; but nevertheless the transfer is not honest. The taking of the property is dishonest, and is dishonest because, though I know of it and consent to it, I do not consent of my own free will. I am constrained ; and constraint destroys the honesty of the transaction.

Extortion by threats is an offence well known to the law, and punishable. Extortion by threats of violence becomes, with robbery itself, less and less frequent as time goes on, society becomes moralised, and order is more securely kept ; but threats of violence are not the



only threats by which property may be extorted. Black-mail, or threats to expose something discreditable that the victim may or may not have done, is one of the most hideous offences known to the law, and is far from infrequent.

Such modes of extortion practised upon persons of average strength of mind are gross and brutal ; but there are subtler modes, practised upon persons of weaker mind, more timorous, and of less than normal strength of character. These modes are in practice difficult to bring home to the perpetrator, and, when they are brought home to him, the worst that happens to him is that he is made to disgorge his plunder. He is not criminally punished, though his conduct is as dishonest and as extortionate as that of the footpad who threatens with uplifted bludgeon. The person threatened is often in weak bodily as well as mental health ; his energies and mental fortitude are impaired by exhausting illness, or by old age ; or often he has been from birth a feeble creature, weak of will and without force of character, easily dominated by a stronger character and will. Such persons are susceptible to the influence of threats much milder than those of bodily injury or discreditable exposure. It is enough to threaten them, openly or covertly, with loss of physical comfort or moral support, with desertion and loss of services, with displeasure and disapproval, to induce them to part with property, to transfer it with knowledge and consent, but not with free will.

In this case again the criminal law seems to me to shirk its proper function. If it is criminal to deprive the person of property by threats of one kind, surely it is criminal, though perhaps not equally criminal, to deprive him of his property by threats of another kind, open or



covert. No doubt it would be difficult in many cases to prove the use of threats, but so it is difficult in many cases to prove intention and other ingredients in crime. Nevertheless, they are proved, and criminals are punished for them.

The law of England, in its distinctions between acts that are criminal and acts that afford ground for civil proceedings only, is illogical and unreasonable. In its earlier stages, the law of this country was purely litigious, and is still litigious in principle and framework. Originally, even murder was regarded merely as affording ground for an action for damages, and the action was prosecuted, not by the State, but by the family of the victim, to whom was paid the pecuniary penalty or wergeld. No punishment could be inflicted upon the murderer unless he failed to pay the pecuniary compensation. Even to this day the prosecution of offenders of every grade lies primarily with the injured party, though in serious cases the Crown takes over the prosecution. Even to this day the form of all criminal proceedings is litigious, is that of an action between parties, even if one party is the Crown; and is never inquisitorial, as it is in countries that have derived their law from the Romans. Only gradually were crimes discriminated from civil wrongs, and even now the discrimination is incomplete and faulty. There still remains a number of injurious acts, discriminated on no principle from criminal offences, but not regarded in law as criminal, and with respect to which the injured party is left to his civil remedy for damages. It is curious that though the criminal law is constantly being extended, so that, every year, acts that were previously passed unnoticed by the law are rendered criminal, the extension is always to acts that had not previously any remedy in civil pro-



ceedings, never to acts for which there is such remedy. Such acts or omissions as letting a child go unvaccinated or a dog unmuzzled, as driving after dark without a light, or riding in a public vehicle while suffering from infectious disease, for which no action for damages could lie, are made penal ; but such acts as breach of contract or false imprisonment, which are criminal in their nature, since they seek selfish advantage by injuring others, are left without the stigma of criminality, to be remedied by civil actions for damages. Whether the process of criminalising wrong acts that are now remediable only by civil proceedings will ever be resumed is doubtful. English law and the English character have little leaning towards logical completeness or systematic order, but rather prefer hand-to-mouth remedies as occasion arises ; but meantime, the exclusion of false imprisonment and breach of contract from criminal offences is a blemish in English jurisprudence.

4. The last condition of the honest transfer of property is that the owner must have a clear understanding of the circumstances in which he parts with it ; and the term " circumstances " must receive a wide interpretation. He must be under no singular misapprehension—that is to say, no misapprehension unshared by the transferee—as to the nature or amount of the property he parts with, or as to the nature or amount that he receives in exchange. He must be under no singular misapprehension as to the time, place, or circumstances in which the property is transferred or as to the person or persons to whom it is transferred. In short, any concealment or deception on the part of the transferee, in respect to any circumstance material to the bargain, vitiates the transaction, and should render it not only voidable but void, and moreover should render the deceiver liable to criminal proceedings.



Concealment or deception as to the nature of the property transferred is frequent, and may be practised either by the seller or by the buyer. When practised by the seller, it constitutes the offences of substitution, adulteration, and breach of warranty. The last is not an offence in law, but of course it should be one, since it differs in no material respect from adulteration. Fraud of the same character is frequently committed in company-promoting, when the thing sold is very different from the description. Fraud of the same kind is perpetrated when a person undertakes to sell services requiring skill or knowledge that he does not possess or does not exercise, or that require care or attention that he neglects to give ; or again, when he hires a thing for one purpose and applies it to a different, perhaps criminal, purpose.

Concealment or deception with respect to the nature of the thing bought may be practised not only by the seller, but also by the buyer, though no doubt fraud of this kind on the part of the buyer is very much more rare. As the property to be transferred is usually in the possession of the vendor, he must be presumed to know more about it than the purchaser ; but he does not always know more about it. Sometimes the purchaser possesses knowledge that he sedulously conceals from the vendor. Cases have occurred in which the fact that land contained valuable minerals was known to the purchaser and concealed from the vendor, who let the land go as agricultural land. So, too, experts have bought valuable pictures at rubbish prices, concealing their value from the vendor. Such transactions are not criminal on the part of the purchaser, nor are they even voidable ; but they are tainted with dishonesty—a mitigated and attenuated dishonesty, it is true, but they are not wholly free from the taint of fraud.



Concealment or deception as to the quantity of the thing transferred is a frequent form of dishonesty, and constitutes the fraud of false weights and false measures, false statements of the amount of work done or of service rendered, and is effected by falsification of accounts in many ways.

Of the other circumstances that may be concealed, or with respect to which deception may be practised by either the vendor or the purchaser, perhaps the most important is the amount of uncertainty or risk that the *quid pro quo* will be forthcoming in full measure at the time agreed upon. Such concealment or deception manifestly vitiates the honesty of the transaction, and should be punishable. It is seldom, however, that they are so regarded in law, and it is only recently that some of the worst of them, perpetrated by the promoters of companies, have been made remediable even by civil proceedings.

Another circumstance attending the transfer of property is the personality of the transferee, and as to this the transferor is sometimes kept in the dark and deceived. The leading case is that of Jacob and Isaac, and it has been paralleled by many cases since. Arthur Orton contrived to pass himself off upon Lady Tichborne as her son, and to induce her to transfer some property to him under that belief, and for a time great estates were in jeopardy; and many other cases of imposture, some successful and other unsuccessful, have been recorded. The criminal nature of such transactions has never been in doubt.

A different form of imposture is that of the common beggar and begging-letter writer, who makes himself out to be other than he is, and bases his claims to charity on fictitious woes and misfortunes. Such conduct is



fraudulent, and the fraud consists in deception with respect to the circumstances, understanding this term in a wide sense, in which the transfer of property is proposed.

It would be out of place here to enumerate in detail all the multitudinous methods by which fraud is practised and the dishonest transfer of property effected. All of them will be found upon examination to come under one or other of the modes that have been examined above ; but the following demand further consideration.

*Murder for Gain.*—This is, of course, a crime of the class now under consideration, of offences committed for gain ; but it is peculiar, and differs from all other crimes of the class, in the extreme heinousness of the means employed. It is the taking of property against the will of the owner, and in this its dishonesty consists ; but the dishonesty of the act is so overshadowed and submerged by the lethal character of the means employed, that it is apt to be overlooked altogether. The criminal is prosecuted, not for robbery, or theft, or conversion, the end in view, but for the means employed to attain the end. In this respect prosecutions for murder do not depart from rule. In most cases of dishonest transfer of property the criminal is prosecuted, not for the dishonest transfer, but for the means he employed to bring it about ; as for instance fraud, threats, the use of false weights, adulteration, and so forth. This points, not to any error or defect in the classification of crimes here laid down for the purpose of a scientific examination of them, but to the possibility and expediency of a different classification for a different and more practical purpose.

*Breach of Contract.*—This ought undoubtedly to be a criminal offence. It satisfies every definition of crime. It is injurious to society. It is an act by which the actor



seeks to benefit himself by injuring another. It breaks the rule laid down *supra* that consent to a transfer of property once freely given must not be withdrawn—cannot honestly be withdrawn without the consent of the other party. The only reason why it is not a criminal offence in English law is that already stated: that the gradual process of distinguishing between criminal acts and civil wrongs stopped short before it was complete, and left breach of contract on the wrong side of the line.



## CHAPTER VI

### FAMILY AND RACIAL OFFENCES

It has been shown on a previous page that conduct falls naturally into three great and primary departments, and that conduct pursued for the purpose, or in obedience to the instinctive desire, of preserving the individual or of continuing the race may conflict with the interests of society, and thereby become a criminal offence. We have dealt in the last chapter with those offences that arise from the conflict between the self-preserving needs and the social needs, and we are now to describe the offences that arise in the domain of racial conduct.

All of these have the common character of selfishness. They are committed for the gratification of desires that are immediately selfish, though their ultimate origin is for the most part in desires that serve the interests, not of the individual actor, but of the race to which he belongs. A few, such as brothel-keeping and most cases of prostitution, are selfish from beginning to end, and strictly speaking belong to the previous class, since they are committed solely for gain; but as they utilise for this purpose the sexual instinct, they are more conveniently included in racial offences.

In the lifeworthiness of a society—that is to say, in those qualities that are of advantage to it and tend to secure its welfare and prevalence, and its success in competition



with other societies—the chastity of women occupies a high place. The foundation of society is the family. Every society of mankind began as a single family or as a group of families. When the young animal, as it grows up and becomes able to fight the battle of life, roams away from its parents and seeks a solitary existence, or an existence in the company only of a mate that has similarly left the family circle, social life cannot begin. It is when the young remain with their parents for life, and bring up children who cluster round the grandparents, that the foundations of society are laid ; and by a continuation of the process the family grows into the tribe, and the tribe into the nation. Ultimately, all social existence rests upon the family ; and the main factor to which the family owes its existence is the exclusive possession by one person of a person of the opposite sex. Societies cannot begin until families are formed ; families cannot begin until permanent and exclusive union of the sexes becomes the rule. It is quite true that in certain societies other practices prevail at certain stages ; but these exceptions do not really invalidate the principle, as might be easily shown. Broadly and generally, the family, and therefore the State, are founded upon the exclusive possession by individuals of each sex of individuals of the other.

Such exclusive possession rests ultimately upon instinctive sexual love, which is nothing but the desire for exclusive possession. This is safeguarded by the subsidiary instinct of jealousy, which is again a manifestation of the desire for exclusive possession, or an inevitable corollary of it, inasmuch as it ensures antagonism and resistance to any attempt at infringement. Recognising implicitly the importance of exclusive possession as a social principle, society invests it with the safeguard of



marriage, so that the institution of marriage and the instinct of jealousy work for the same end and serve the same purpose. Jealousy, however, is more extended in its range than marriage. It is not limited to safeguarding the right to exclusive possession that marriage gives. It is often exhibited before marriage, and often when marriage is not contemplated, or not possible. As soon as love selects, jealousy mounts guard to repel third parties from entering the sacred fold. In as far, therefore, as it contributes to the integrity of the family and the sanctity of the marriage tie, jealousy is a powerful auxiliary to the maintenance of society, and is an important social factor. But this advantage has countervailing disadvantages. The tendency of jealousy is to prompt to acts of aggression, and to strife within the community, and in this way is injurious to the integrity of society, which in another way it promotes. Such acts of aggression and strife, tending as they do to the disintegration of society, are offences, and as such are punishable ; hence the first class of family and racial offences is constituted by those that are due to the motive of jealousy.

Aggressions prompted by jealousy are exhibited mainly by the male sex. The male sex is by no means the exclusive possessor of the passion of jealousy, but it is chiefly in the male that this passion leads to acts of aggression ; and such acts being injurious to society and disintegrative of it, anything that tends to repress, obviate, or minimise them is beneficial, is likely to grow, to be fostered by natural selection, and to be held in high esteem. Nothing more influential in diminishing the aggressions of male jealousy could be devised than an inherent disinclination on the part of the female to allow her affection to stray from its lawful possessor. If the exclusive possession of the woman by the man can



be secured only by incessant watchfulness, varied by occasional combats, on the part of the man, it is evident that so large a part of the time, energy, and life of the man must be absorbed in this way as to impair seriously his opportunities for advancing his own interests in other ways and for serving the society. If, however, the woman is inherently indisposed to entertain the courtship of any but her lawful spouse, his hands are free for employment in advancing their common welfare and that of the society at large. Hence the sentiment of chastity in women is a most important social asset, and it is fostered and fixed by natural selection in every society that survives in the struggle for life. The second class of family and racial offences consists, therefore, of offences against chastity, and against its auxiliary and handmaid, sexual modesty.

After what has been said, there is no need to insist on the importance to the integrity of society of a strict maintenance of the marriage tie. Every infringement of its sanctity is directly injurious to society, and strikes at the very foundations on which society is built. Therefore it is an offence; and the third class of family and racial offences consists of offences against the institution of marriage.

Unless the integrity of the family is maintained, society is disintegrated. Unless the natural wastage of the society by death is made good by the production and rearing of children to take the place of the members who die, and to keep the numbers of the society replenished, the society will dwindle, and at length expire. Moreover, since society competes with society in the struggle for life, and since in this struggle it is, *cæteris paribus*, numbers that prevail, every society is directly interested in securing a copious supply of children to maintain and increase the number of its future competent members.



To secure the continual and copious renewal of the society, and reproduction and continuation of the race, to which, after all, the existence of the society is subservient, various deeply rooted instincts have developed in man; and any act that militates against these purposes is discountenanced by society, is usually deeply resented, and made a punishable offence. Hence the fourth class of family and racial offences consists of offences against the racial principle.

These are the four classes into which family and racial offences naturally fall; but it is clear that any of the offences that are committed for purely selfish motives may be committed from motives that are partly or wholly family or racial. The same crime that is committed to secure a man's personal safety may be committed to secure the safety of his wife or child; the same crime that is committed from vindictiveness at an injury or insult to oneself may be committed in retaliation for an injury to wife or child. The same misappropriation that is committed for individual personal advantage may be committed for the advantage of wife and children. Thus, any offence of the private class may become, in a certain sense, a family or racial offence—that is, in the sense that it is committed from a family or racial motive. In practice, when any such offence is shown to have been committed from a family or racial motive, its turpitude is diminished, it is regarded with indulgence and treated with leniency; so strong is the sense of the importance of conserving the family.

#### OFFENCES COMMITTED FROM JEALOUSY

The aggression that is prompted by jealousy is a very fertile source of crimes of violence; and crimes of any other description due to jealousy are very rare. Crimes



due to jealousy are, as has been shown, due to the desire for exclusive possession, and are usually committed in resentment against some infringement, actual, suspected, or threatening, of the cherished exclusiveness. They are best classified according as the aggression is directed against the rival, against the loved or possessed person, or against the jealous person himself or herself.

The aggression may be directed against the rival or interloper who seeks to disturb the exclusive possession, or is at least credited with this design. This may be regarded as the normal expression of jealousy. It is the motive of the combat of males for the possession of females that is so prevalent throughout the animal kingdom, that has prompted, and still prompts, so many duels and murders in primitive societies, and among the less cultivated and more primitive members of more developed societies. It is a remarkable fact, and one that demonstrates the improvability of human nature, and perhaps raises hopes of its ultimate perfectibility, that in the higher social strata of the more developed societies, duelling and crimes of violence from the motive of sexual jealousy have practically ceased. The further fact that such crimes are still frequently committed by those in the lower strata of the very same societies seems to show that these lower strata are inferior in morality to those above them, which is curiously inconsistent with the teaching of those fashionable writers who would have us believe that vice is unknown in the lower strata and virtue is absent in the upper. It is often urged that the rich, in as far as they are honest, are honest because, being rich, they are under no temptation to steal; and it is frequently argued that since they alone appear in the divorce court, not only is marital infidelity restricted to the well-to-do, but the whole of the upper strata of



society are a seething mass of immorality. It would indeed be easy to prove by biometrical methods, founded on the statistics of the divorce court, that marital infidelity is unknown among the artisan and labouring classes; a conclusion that throws some light on the value of the method employed with such skill by Dr Goring, since it ignores the obvious fact that the cost of divorce prohibits the poor from seeking it. In a matter in which the classes are strictly comparable, such as this of the crimes of violence due to jealousy, we find that the criminality of the poor is greater than that of the well-to-do, out of all proportion to their numbers.

Several curious and anomalous practices, which it is difficult to account for, arise out of jealousy. In the first place, though it is assumed above that jealousy is the complement of love, this is by no means universally true. That love should exist without jealousy is indeed extremely rare; though instances are met with in which a wife who is sincerely attached to her husband yet allows him freedom in amours; but the reverse state of things, in which jealousy is acute although no love is felt, is by no means infrequent. Marriage gives the right of exclusive possession, and when this right is infringed, jealousy may be evinced even though there is no love, and even though there is positive aversion between husband and wife.

Another anomalous result of jealousy is that the violence to which it prompts may be directed, not only against the rival or intruder, not only against the lover who appears to be in process of detachment, but also against the jealous party himself or herself. A distinction must be made here, however. The suicide of a girl whose lover has been enticed from her by the wiles of an intruder is not necessarily due to jealousy. It may be due to



mortification, and to that loss of the greatest interest in life which is the common motive of suicide. But there are many cases in which suicide appears to proceed from jealousy alone, though such suicides are usually preceded by an attempt against the life of one, or perhaps against the lives of both the other members of the trio.

For the violence of jealousy, though its natural direction would seem to be against the intruder into that exclusive possession which is the aim of love, is not seldom directed against the lover or the spouse, and this not only where the lover or spouse shows signs of yielding to the blandishments of the intruder.

The intrusion of a third party is not the only obstacle to exclusive possession of the loved object. There may be pecuniary difficulties ; there may be opposition on the part of parents or relatives ; there may be differences of social status ; there may be difficulties of access, from distance or other cause ; there may be indifference or even aversion on the part of the loved one ; and in such cases a motive that is scarcely distinguishable from jealousy prompts to violence against one or other, or perhaps both, of the pair. Few assizes go by without the trial of some lover who has killed his sweetheart for the avowed reason that " if he could not have her, nobody else should."

Another of the crimes due to jealousy, though it is not usually attributable to this motive, is the double suicide of a pair of lovers whose union is prevented or interfered with. Such double suicides are not usually attributed to jealousy, but, if we regard jealousy as that feeling that resents interference with exclusive possession, it should seem that they ought to be so regarded. Such suicides are always those of lovers whose union is prevented by inexorable circumstances, or whose continual enjoyment



of each other is become impossible. As has already been said, attempt at single suicide, though it remains a crime in law, is scarcely ever treated as a crime ; but attempts at double suicide are rightly placed upon a different footing. If one party alone survives the attempt, he—for the survivor is usually a man—is charged with murder ; and if both survive they may both be charged with attempted murder, and must not expect to be treated with the leniency that is accorded to the solitary attempter of suicide ; and the reason is clear. The act of suicide requires for its commission the greatest fortitude and determination, and if it is not done in a moment of frenzied impulse, it requires a very great endeavour to screw the courage up to the sticking point. Every one is open to influence and persuasion by others, and if influence and persuasion are exerted against the project of suicide, they will probably prevail unless the suicide is the outcome of madness. When, however, influence and persuasion, and especially the encouragement of example or accompaniment, are exerted in favour of the project, they may very well make just the difference between a half-formed intention and the full determination that is necessary for the execution of the act ; and thus may become a true *causa efficiens*. In such a case, the person who incites, or confirms, or strengthens, an intention to commit suicide does in fact cause the death of another person, and is rightly held guilty of murder.

When the motive of jealous violence is to secure an exclusive possession that is not yet attained, or is resentment against the impossibility of securing exclusive possession, the violence is usually directed against one or both of the pair ; but when the motive is to maintain the exclusive possession, to prevent or avenge its infringement—that is to say, after marriage,—the vengeance of the



lover is more apt to fall upon the rival ; the other member of the pair being in almost equal danger in either case. The wronged husband is much more rarely a suicide than the disappointed lover. He is more apt to take vengeance on his rival, and less apt to direct his violence against himself. On the other hand, the woman whose lover has deserted her not seldom commits or attempts suicide, and is more apt to express her despair in this way than by violence directed against either of the other parties ; but the woman whose husband has deserted her or is unfaithful to her seldom commits suicide, and if she exhibits violence at all, it is usually against her husband.

Every act of aggression by one member of a society towards another is injurious to the society, and therefore is a crime, and all the aggressions prompted by jealousy are rightly so estimated.

#### OFFENCES AGAINST CHASTITY AND MODESTY

The second class of family and racial offences consists of offences against chastity and modesty. It has already been shown that these are directly injurious to society, and therefore are rightly treated as crimes. They include rape, defilement of young girls, and indecent assault, and aids to the violation of chastity, such as procuration, brothel-keeping, and abduction. They include, moreover, incitements to unchastity, such as the production and dissemination of obscene literature and obscene pictures, obscene stage plays and other spectacles, and indecent exposure of the person.

If such acts as those just enumerated are rightly estimated to be offences, which can scarcely be doubted, it is difficult to see why prostitution and fornication also



should not be so regarded, for they are at least equally violations of chastity. There is, moreover, an additional reason why they should be included among offences, for they are distinctly inimical to the practice of marriage, being to some extent substitutes for it; and when practised by married persons, are damaging to the marriage tie. Logically it seems that they ought to be considered crimes, and in fact they have at some times and in some societies been so considered. When the Puritans attained to ascendancy in this country, these acts were made criminal, and so they were, I believe, in New England. Fornication was forbidden by the Mosaic law, and other instances might be cited. Yet neither fornication nor prostitution is now reckoned as a crime in any nation, as far as I know, and it is interesting to inquire the reasons for the omission.

In the first place, it is to be noted that such practices, although not actually criminal, are frowned upon and considered disgraceful; and this is half way towards constituting them crimes. That which is generally reprobated has only to be intensely reprobated and it will be forbidden by law, and so become a crime in the restricted sense. If these practices are not regarded as crimes, it is because, although they are very generally reprobated, they are not reprobated with sufficient intensity. But if they are injurious to the society in which they prevail, they should be intensely reprobated, as other injurious practices are, although in many cases the nature of the injury that they inflict, and even the fact that they inflict any injury at all, are very imperfectly recognised. Unnatural offences, for instance, are intensely reprobated, though few could say in what way they injure society, or even that they are injurious. The reasons, I think, are somewhat as follows:—In the first place, though



prostitution and fornication do infringe the family principle, they are not very sharply antagonistic to the constitution of the family. They neither break up families already constituted, nor do they to any very appreciable extent prevent the formation of new families. At most, they postpone or assist in postponing the formation of new families. If there were no way of gratifying the crude sexual instinct except in the legitimate way by marriage, undoubtedly marriages would be earlier and more numerous than they are ; but this would be the only effect upon marriage that the abolition of these practices would have, and the effect would not be wholly beneficial to society. It is better for the individual, and better for society also, that marriage should not take place until the man has made for himself a certain position and secured for himself a stable income. We see the consequences of too early marriages in the prolific production of children by the very poor, children brought up under the worst possible conditions, many of whom become burdens upon society, and very few indeed of whom become as useful members of society as those brought up under more favourable conditions. In this respect, therefore, the practices under consideration are not very injurious to society, and what evil they do is to some extent, at any rate, offset by a certain amount of benefit. Nor are they in practice found to be of themselves very injurious in any other respect. They are indeed highly injurious as the chief means of disseminating venereal diseases ; but this is an incidental effect, and by no means a necessary effect. It would not be difficult to prevent it, even though the practices that now spread the diseases so widely should continue undiminished.

But the chief reason that the practices are not con-



sidered crimes is probably that they are so very widespread. Men will not readily convict others of a crime of which they themselves are guilty, nor will they be eager to make criminal a practice in which they themselves have indulged, especially when there is little prospect of obtaining convictions. We have little objection to punishing other people for crimes to which we have ourselves no inclination, but we take a very different view if our legislation may bring ourselves into the dock ; and even if we are ourselves in a position to throw stones at random without danger of breaking our own windows, we must hesitate to do so if we have reason to suppose that few of our neighbours will escape a fractured pane. Unless the danger to society is serious and imminent, we shall not punish as a crime a practice that is very widespread. It is for these reasons, I think, that prostitution and fornication are not included in family and racial offences.

#### OFFENCES AGAINST MARRIAGE

Marriage gives formal and legal sanction to that exclusive mutual possession of husband and wife which is the purpose of love, and which is the foundation of the family. Anything that impairs the sanctity and binding force of marriage is *ipso facto* injurious to society, and is an offence.

Marriage gives to each of the parties to it exclusive possession of the other ; and whether this exclusive possession was originally desired by both or not, it sometimes happens that in course of time it becomes distasteful to one or both of them—sometimes, it must be admitted, with good reason. In such cases the tie may be broken, or an attempt may be made by one of the



parties to break it, either by desertion or by compassing the death of the other.

The law regards desertion by the husband very differently from desertion by the wife ; the distinction resting on the presumption that the husband is bound to maintain his wife, while the wife has no such obligation towards the husband. A husband who deserts his wife commits an offence and is punishable by law, especially if he leaves her destitute, and the law will punish him, will compel him to return to her, or at any rate to maintain her ; but the wife who deserts her husband commits no offence in English law, and the husband cannot compel her to return to him. The different treatment accorded to husband and wife is inequitable. If the husband is bound to maintain his wife, the wife has a reciprocal duty to render good offices towards her husband ; and if the one is punishable for neglect of duty, the other should be punishable for neglect of the reciprocal duty.

In a few cases the marriage tie becomes so irksome that one party seeks to end it by the murder of the other. Women rarely commit murder. Murder is not a feminine foible ; but when a woman does commit murder, the crime is almost always of the family or racial class. It is almost always within the family. It is the murder of husband or child. Murder committed by a woman for gain or for non-sexual vindictiveness is almost unknown. When, however, murder is committed to escape from a distasteful marriage, it is more often committed by the woman than by the man, and is usually committed by means of poison. Men much more often than women murder their spouses from a motive of jealousy : much less often from the motive of escaping from a distasteful marriage.



Desertion is a grave offence against the institution of marriage, but in itself it is a single offence. It breaks up the family, but it substitutes no spurious tie for that of marriage. Bigamy is a double attack upon marriage. It breaks the existing tie, and it substitutes for the valid tie one that is but a sham. Desertion wrecks one home and breaks up one family; bigamy vitiates two families and poisons two homes. But its turpitude in the eye of the law lies in its misuse of the provision of the law. The law gives its formal sanction to union with one person of the opposite sex, and to make use of the legal forms to enter into a double union is a misuse of the law which the law must put a stop to.

The usual motive for bigamy is the motive of gain. It is not usually committed either from detestation of the lawful spouse or from inclination towards the spurious one. It is usually committed as a minor motive to escape from the obligation of providing for the legitimate family, but mainly to enjoy the property of the illegitimate spouse.

The remaining offence against the marriage tie is adultery. In early times, as soon as crimes became punishable by law, and not merely by the kindred of the person wronged, crimes were both crimes and sins, and were adjudicated upon by the judge and the bishop in common. When crimes were separated from sins, the separation was not made on logical grounds, but in a rough-and-ready manner; and while the majority of family, sexual, and racial irregularities were apportioned to the Church, others remained in the sole jurisdiction of the secular courts. Unnatural offences are still triable in the King's courts, but fornication and adultery are ecclesiastical offences; yet in its tendency to loosen the bonds of family, and thus impair the fabric of society,



no offence is graver than that of adultery, at any rate in the woman. It remained for long in this country, and still is in Ireland, actionable; and the husband may sue for damages the man who has invaded his marital monopoly; so that here again we see an instance of erroneous partition of wrongs, and the relegation of what should be a penal offence to a less severe jurisdiction. In a strictly logical jurisprudence, adultery would be a criminal offence.

#### OFFENCES AGAINST THE RACIAL PRINCIPLE

The fourth and last class of family and racial offences consists of those that are injurious to society by impairing its replenishment—that is to say, by limiting the succession of new members to take the place of those who die. The continual renewal of the community is scarcely to be distinguished in its means from the reproduction and continuation of the race, which is the ultimate purpose of the life of all living things. We are here moving, therefore, among the most deeply rooted and fundamental of all instincts, and it is little wonder if we find that acts militating, even indirectly and remotely, against these instincts are fiercely resented and regarded as crimes.

Neglect of children, and *a fortiori* cruelty to children, outrage one of the deepest sentiments of our nature, which bids us cherish, nourish, foster, and preserve, first our own children, and then children as children. The very weakness and helplessness of children appeal irresistibly to every right-minded person to protect them, and he who causes them to need protection outrages a primary and fundamental instinct. It is remarkable that only of late years has cruelty to children been made a criminal offence.



The primary duty of parents is to nourish and cherish the infant through its stage of helplessness and inefficiency, and to fit it to fight its own battle of life. It has long been held that it is the duty of every citizen to increase and multiply and replenish the earth, but it is only of late years that it has been explicitly recognised that this is only half the duty of the parentage. This duty is not complete until the child has been equipped so as to sustain itself; and this equipment includes not only the supply of food necessary to bring it to a self-supporting age, but also, as is now at length perceived, the supply of a sufficient education. Thus it is made a criminal offence to neglect a child in this respect also.

### *Infanticide*

A worse crime than either neglect or cruelty to children is their actual destruction; and here a distinction is drawn between the murder of a child old enough to have a developed consciousness, and the murder of the scarcely conscious infant. The murder of children above the age of complete helplessness is grouped together with the murder of adults, but infanticide is differently regarded by opinion everywhere, and in some nations is differently regarded by the law. There have been, and yet are, societies in which the practice of infanticide is permitted by law, and regarded as a blameless and in some cases even as a praiseworthy proceeding. Even in this country at the present day there are those who openly advocate the estimation of infanticide as a venial offence, to be punished, if at all, as a peccadillo rather than as a serious crime. We need not go this length, and yet may admit that infanticide is not equal in heinousness to other cases of murder. In comparison with other cases



of murder, and indeed with other crimes of violence, it stands on a very different footing. In no other crime is less suffering inflicted. The victim's mind is not sufficiently developed to enable it to suffer from the contemplation of approaching suffering or death. It is incapable of feeling terror or fear. Its consciousness is scarcely developed enough to enable it to suffer pain. Its loss leaves no gap in any family circle, deprives no child of its breadwinner or its mother, no human being of friend, helper, or companion. The crime diffuses no sense of alarm or insecurity ; no one feels a whit less safe because it has been committed. It is purely and solely a racial crime. It injures society, not as it is, but as it will be—injures it by striking at the provision of future citizens to take the place of those who are growing old, and by whose loss in the course of nature the community must die out and disappear unless it is replenished by the birth and upbringing of children. There is therefore a good deal to be said for placing infanticide, which is almost always committed by the mother of the victim, in a class distinct from other cases of murder, and for giving formal sanction to the practice that is invariably followed, of inflicting on the criminal a mitigated punishment.

In English courts, the sentence of death is always pronounced upon mothers found guilty of infanticide but the death penalty is never inflicted ; and some judges, even in passing sentence, have assured the convict that the penalty will not be inflicted. Such a practice as the pronouncement of a sentence that there is no intention of carrying out is indefensible ; and the law should be brought into harmony with practice by constituting of infanticide a crime of less gravity than murder. This is reasonable and very desirable ; but to contend, as has



recently been contended, that infanticide should be regarded, not as a crime to be punished, but as a misfortune for which the perpetrator is to be pitied and sympathised with, seems to me not only indefensible but pernicious, a product of the sloppy sentimentality that prevailed before the war, and that during the war has intervened with pernicious effect to protect the so-called conscientious objectors from the punishment they so richly deserve. Such a mode of regarding infanticide would strike a serious blow at the social principle, and at one of the strongest safeguards of chastity. It is true that infanticide inflicts, in comparison with other murders, a minimum of harm on existing society, but it is a serious injury to the principle of the replenishment of society ; and, moreover, if infanticide were not punishable, one of the strongest deterrents to unchastity in those in whom the instinct of chastity is insufficient would be removed, and the bonds of sexual morality would be seriously relaxed. The punishment for infanticide should not, therefore, be whittled down to a merely nominal penalty. It is a serious crime, and should be so regarded and so punished.

As with other murders, and in about the same proportion of cases, infanticide is often the outcome of madness. The time of childbirth is one of the occasions in which insanity occurs in women, and of all the features of the insanity of childbirth none is more conspicuous, none is more constantly present, none is more difficult to account for, than a fury of destructiveness directed against the helpless infant. It is a commonplace of the treatment of such cases that the first thing to do is to take the child away from its mother lest its life should be sacrificed. The vagaries of madness are at best very difficult to account for, and this one is notably inexplicable. The



fact that mankind shares it with many of the lower animals does not help much to elucidate it, but it is a fact, of which we shall some day see the significance, that dogs, rabbits, pigs, and other animals are frequently guilty of the slaughter of their new-born young.

### *Procuring Abortion*

The reasons that have been adduced above for estimating the crime of infanticide as of less gravity than the homicide of a fully conscious being apply with additional force to the procuring of abortion, a practice that ranks as a crime of great gravity, and is severely punished. Yet the procuring of abortion with the consent of the woman wrongs no one. It prevents the fœtus from attaining complete development, but the life of the fœtus is scarcely begun, and it is yet far from being conscious, and has not even an independent existence. It would strain the meaning of words intolerably to look upon the action as wrong done to the fœtus, nor can it be considered a wrong to the mother, who freely and eagerly consents to it. It does, indeed, endanger the life of the mother, but I know of no instance in which an act, otherwise innocent, is regarded as a crime because it endangers the life of the actor, or in which an operation, freely consented to by the subject for the benefit to be obtained by it, is considered on the same ground a crime. No. The only ground upon which the procuring of abortion can be held to be a crime is that it infringes the racial principle. It deprives the community of a potential citizen. It is a crime of the same kind as infanticide, and is held to be a crime for the same reason. As the potential citizen is farther from the stage of actuality than the infant, it should seem that the crime is of less



gravity than that of infanticide ; but it is in fact reprobated more severely and punished with greater severity, and the reasons seem to be two : first, it attracts to itself none of the sympathy that is felt for the mother who kills her illegitimate child, and who is usually assumed to be an innocent, confiding creature who has been led away by the arts of the seducer ; and second, that around the practice of abortion clings some of the odium that attaches to the arts of the pandar. Both reasons seem destitute of foundation. The mother of an illegitimate child is as often as not the seducer rather than the seduced, and the women who apply to have abortion procured are in many cases married and chaste. I can discover no sound reason in ethics for the great severity with which the procuring of abortion is punished by law.

### *Preventing Conception*

Infanticide, procuring abortion, and preventing conception are manifestly three degrees of the same crime, and I think manifestly diminish in turpitude from the first-mentioned to the last. If we continue the series, it is manifest that the next step is marital continence, the next is celibacy, and the last exaggeration in the same direction would be self-mutilation. None of the last four steps in this series has ever been considered a crime in any system of jurisprudence known to me ; and the Church, with curious inconsistency, while it looks upon the prevention of conception as a sin, encourages marital continence, and looks upon celibacy as one of the first of virtues. Yet all these are grades of the same offence, if offence it be. The effect of them all upon society is alike. They all tend to check the replenishment of society with young and fresh individuals to take the place of



the old and worn-out, and are thus in some degree injurious to society, and therefore partake of the nature of crime. But it is to be remembered that they are not wholly or necessarily injurious. The restriction of conception would, of course, if pushed to the limit, result in the arrest of the renewal of the population and the destruction of the society ; but, on the other hand, the removal of all prudential check upon the population would result in such enormous and rapid increase as would outrun the means of subsistence and become a danger to the State. The social organism, like the individual organism, may grow too fast for its strength, and may become disorganised by its own too rapid increase of bulk. As a physiological fact, there is no reason, other than the prudential check, why every healthy woman who marries at twenty should not have twenty or more children ; and as an historical fact, there has never been any nation, people, or language, however little removed from barbarism, or even from savagery, in which the practice of infanticide, of abortion, or of preventing conception has not prevailed extensively. The three practices, together with the prevalence of infant mortality, are complementary ; and where any one of the four is effectually prevented, one or other of the remaining three will become efficient and restrain the too rapid increase of population. Of all the modes that have been enumerated, the prevention of conception is the most innocuous ; and it is chimerical to suppose that it will ever be abolished, nor is it desirable that it should be.

### *Unnatural Offences*

The injury done to society by the remaining crimes of the racial class—that is to say, by unnatural offences,



usually so called, and other unnatural ways of gratifying crude sexual desire—is very remote. It is manifest that if they were to become universal, society would die out ; and if they were to become general, its existence would be imperilled ; and it is probable that it is to some deep, underlying appreciation of their injurious consequences, if pushed to an extreme, that the reprobation and abhorrence with which they are regarded is partly due. But it is more because of the degradation of human nature, and because of the violation of the racial principle that they involve.

Originally subject to ecclesiastical jurisdiction and triable in the ecclesiastical courts, they are now secular crimes, and as such are punished as a rule with extreme severity. It is noteworthy that the severe sentences passed upon these crimes do not appear to be inflicted for their deterrent effect, for the trials are for the most part, and very properly, hushed up as much as is compatible with their being technically public ; nor are they passed with any view to the reform of the criminal. The reason of their severity is the deep-seated revolt in the mind of the judge, and of the public he represents, at the nature of the crime.



## CHAPTER VII

### CRIMINALS

IT is manifest that if one person commits a crime and another does not, there must be some difference, either in the nature or the experience of the two persons, to account for the difference in conduct. This, I say, is manifest. It needs no argument to establish it. In certain Eastern countries it is not unknown for a refined, wealthy, prosperous man of business, even for a powerful Minister of State, on arriving at a certain age or period of his career, to strip himself of his possessions and his power, and to lead the life of a wandering mendicant, clothed in a rag or two, and entirely dependent for food and lodging upon the occasional charity of those he meets. This he does, urged by the desire of securing a better position for himself in the life hereafter, or it may be merely as a matter of duty. It is clear that a man of such a cast of mind would never pick a pocket, or forge a will in order to acquire a fortune. The nature of the man would render such crimes impossible to him. He would be destitute of that desire for gain which is a necessary antecedent to the commission of such crimes. They would be impossible to him owing to his nature. Yet there are persons who do pick pockets, others who forge wills, and others again who try by various dishonest means to acquire unlawful gain. It is clear that the reason crimes of dishonesty are possible to the one man



and impossible to the other is the difference in their natures. The one has desires, longings, cravings, of which the other is destitute. The difference is a difference of internal disposition. Similarly, a kindhearted, motherly woman, overflowing with the milk of human kindness, of the loving and protecting nature that so many women are, could never commit a cold-blooded murder, especially the murder of a child. Such an act would be so repulsive to her that not only would she not undertake it voluntarily, but no coercion would compel her to do it. She would suffer death first. The crime would be impossible to her because of her nature. Yet there are persons who do commit cold-blooded murder, and such persons must, it is manifest, be different in nature from such women as I have sketched. It is the difference in native disposition that renders crime, at any rate crime of a certain kind, possible for one person, impossible for another.

But, given two people of the same innate disposition, with equal proclivities to crime, and to a particular kind of crime, then whether either or both of them will commit crime must depend on circumstances. Take the man who in London or at race-meetings picks pockets, and place him in Equatorial Africa or Brazil, where he will meet with none but naked savages, and it is manifest that he cannot pick pockets for want of pockets to pick. "How oft the sight of means to do ill deeds makes ill deeds done!" Everyone who reads or hears this maxim subscribes to its truth, but I cannot find in all the voluminous literature of criminology any reference whatever to it. As far as I know, it has never been taken into consideration by any writer on the subject. Yet it is well enough known to the police, and is even taken into account in police regulations. There are



places where shopkeepers are forbidden to display their wares openly and unprotected on the pavement in front of their shops, since it is found in practice that goods so exposed form an irresistible, or at any rate an unresisted, temptation to passers-by of low morality. One man passing along a street where goods are exposed in this manner will steal. Another, of more upright and honest nature, will pass the goods without stealing, and without being tempted by the display to steal. But even the first man, if he goes home by another street where there is no such temptation, will reach home crimeless. Manifestly, whether he commits a crime or whether he does not will depend, in this case, not on the nature of the man, but on the circumstances he encounters.

All this is so clear, so manifest, so obvious, that it renders the more extraordinary the fantastic suppositions, conjectures, and surmises that have been propounded as cast-iron facts with respect to the kind of persons who commit crime, and the respective parts played in its inception by the nature of the criminal and the circumstances that environ him. We may distinguish no fewer than seven of these doctrines, each of which has for a time prevailed and held the field of general opinion. In my opinion, all of them, including the last, most ably enunciated and advocated by Dr Goring of the English Prison Service, are erroneous, and this I shall try to demonstrate ; and I shall add an eighth that will perhaps be demolished by some succeeding writer, and superseded by one more closely in accordance with the facts. There is nothing to regret or be ashamed of if this should happen. A perfectly true doctrine, fitting accurately all the facts, is seldom achieved at a bound, is seldom born, like Minerva, adult and complete at all points. The history of science is a history of gradual



and successive approximations. Early doctrines, held by primitive men, are so crude, so wanting in support from reason, so incompatible with plain and clamorous fact, that we wonder that they should ever have been entertained. Their immediate successors are but little less absurd and unreasonable ; and age after age more accurate knowledge is achieved by successive approximations. Every doctrine should be held only provisionally, until a better one is devised. The successive doctrines that have been held with respect to the persons who commit crimes are roughly as follows :—

1. Among primitive people, such as the Hebrews of the Psalms, mankind are sharply divided into the good and the bad, the righteous and the unrighteous, the sheep and the goats. In this estimation the unrighteous, or, as we now call them, the criminals, are those whose acts and omissions are such as to incur the wrath and vengeance of the tribal god—a wrath and vengeance that are utterly indiscriminating, and fall alike upon the just and upon the unjust, upon the righteous and the unrighteous, the tribe being regarded by its deity as a whole, just as the family is regarded by the rest of the tribe as a whole. For any transgression by one member of the tribe the whole tribe is punished by its god, and for any transgression by one member of a family the whole family is punished by the tribe. Many instances of both occur in the early history of the Hebrews, and the responsibility of the whole family and the whole tribe for the acts and omissions of any one of its members is the familiar theme of the students of the early laws of the Irish as well as of the Saxon and other tribes. In a more advanced stage of opinion, the vengeance of the deity was less blind and indiscriminating, and was directed against the sinner alone, who was punished by



worldly misfortune for his transgression. Conversely, if a man was persecuted by misfortune after misfortune, it was an infallible proof that he had incurred the wrath of the deity by his crimes. This was the doctrine assumed as obviously true by those who are ironically called the comforters of Job, and the doctrine was for ever demolished by that superb masterpiece of literature, the Book of Job.

The opinion of mankind is not much influenced by reasoning, however, and perhaps even less by allegory ; and in spite of the teaching of the Book of Job, the doctrine, or at any rate the practice founded on the doctrine, of the indiscriminating vengeance of God survived until very modern times. If tribal and national misfortune and disaster are incurred by the sins of the individuals belonging to the tribe or nation, then the manifest interest of the tribe or nation is to get rid as speedily and as effectually as possible of the offending individual. Viewed as an offence against the tribe or the family of the injured person, a crime could be expiated by a money payment to the family of the injured person, and elaborate codes of compensation were in force in early times in this and other countries. But viewed as an offence against God, no such compounding of crime was possible. The Jonah must be got rid of by the most speedy and effectual means—that is to say, by slaying him out of hand ; and this was the punishment awarded to those offences that were considered offences against God rather than against man. But there was no very sharp discrimination between the two. Accurate delimitation is unknown in the earlier stages of evolution ; and practices are pursued, not because they are logical, nor even because they are successful, but because they are customary and in accordance with



tradition. Thus it was that until very modern times criminals of all kinds were regarded as unpardonable, and were put to death without mercy and without delay. Such crimes as blasphemy, witchcraft, and unbelief were manifestly and directly sins against God, and were punished with death because of the horror they inspired ; the underlying motive being, no doubt, the traditional belief that they would bring down the vengeance of God upon the whole community. Crimes that are primarily and directly crimes against men, such as homicide and stealing, were nevertheless secondarily crimes against God, since they violated the Divine commands of the Decalogue ; and therefore it was expedient that the perpetrators of these crimes also should be hurried out of the world, lest the wrath of God should be incurred by the society that tolerated the criminal. It is not contended that such reasoning was articulately formulated in the minds of the judges and the public ; but there is little doubt that, if they had been questioned, some such reason as this would have been adduced in favour of the practice. The real reason was, no doubt, that the practice was customary and traditional, and in the minds of most people until a very late stage of evolution it is impious to depart from customary and traditional practice. Such departure it does not occur to them to make.

This primitive view of the criminal, as not only a criminal but also a sinner, and more a sinner than a criminal, prevailed in this country to the end of the first quarter of the nineteenth century, and even later it was still reflected in the terms of the indictment, which charged the prisoner with " being prompted and instigated by the devil, and not having the fear of God before his eyes."

2. This view of the criminal as a member of one of the



two classes, the sheep and the goats, the righteous and the unrighteous, into which mankind were sharply divided, was gradually superseded by a doctrine which regarded him as one of the generality of an undivided mankind, but one who had succumbed under stress of temptation, and was no otherwise distinguished. This way of regarding the criminal was strongly supported by Beccaria and Bentham, who made it the basis of their schemes of treating criminals. They contended that, since criminals are normal persons resembling the rest of the human race in all material respects, they are swayed by the same motives ; but since the motives that restrain other people from committing crime are not in criminals strong enough to restrain them from committing crime, an additional motive, in the shape of fear of punishment, should be provided to reinforce the insufficient motives and render them effectual. Punishment of the criminal is no longer to be vindictive, nor is it to be propitiatory of the anger of God, as primitive punishments are, for the criminal is to be regarded, for the purpose of human justice, no longer as a sinner against God, but solely as an offender against the laws of society. The function of punishment is solely deterrent. Its only purpose is to deter a would-be criminal from committing crime, and this it can do only if the criminal is an ordinary normal person, swayed, like the rest of mankind, by fear of punishment among other motives.

3. A subsequent school looked more closely into the matter, and, while not departing in principle from the doctrine that criminals are normal persons who have yielded to temptation, yet observed that there were differences among criminals, and that to treat them alike and in the mass must necessarily perpetrate injustice, which it was one purpose of Beccaria's and Bentham's



systems to avoid. The doctrine that all criminals are normal persons swayed by the same motives as the rest of mankind is clearly untrue, so these reformers discerned, of those criminals who are lunatics also, and for criminal lunatics justice demands special treatment. Young persons also are on a footing different from adults, and for them also different treatment is required. Another profound difference between the newer and the older schools was that, while the latter punished only to deter, the former placed reform also as one of the purposes of punishment. Both alike, however, postulated that the sane adult criminal is a normal, ordinary person who has yielded to a temptation that the non-criminal has not succumbed to, either because he was better founded in morality, or perchance because the temptation never came his way

4. The fourth mode of regarding the criminal was that identified with the name of Cesare Lombroso, and called sometimes the anthropological, sometimes the positive doctrine. This differed from the view of Beccaria and his successors, and reverted to the original doctrine that the criminal is specifically distinct from the person who does not commit crime. The old view was, as we have seen, that the criminal or sinner was distinct from the righteous man, and separated from him by an impassable gulf. This was Lombroso's doctrine also ; but whereas the primitive doctrine discerned no difference between criminal and non-criminal except that the one was wicked and the other good, Lombroso professed to discern between them innumerable differences of physique, of mind, and of habits, which marked criminals off as a separate race, as distinct from the rest of the community as, for instance, the Semitic Jews are distinct from Aryan Christians among whom they live,



and, like the Jews, easily distinguished by the discerning eye of the anthropological positivist. Some of the criminologists, as for the first time they dubbed themselves, declared that the criminals were a distinct race of men, breeding true to type as the Jews do, and arising in no other way than by heredity and descent. Others regarded criminals much as albinos are regarded : that is to say, as sports or comprehensive variations from the normal stock, but still constitutionally different from that stock. When I say that some criminologists took the one view and others the other, I am crediting them with more clear-headedness and consistency than they actually possessed. I do not know that either view was explicitly and in plain terms formulated by any criminologist, and, though both views may be discerned implicit in their teaching, it cannot be said that any criminologists adhered consistently to either view. The one or the other was more or less clearly assumed for the purpose of the moment, and either was substituted for the other when convenience required ; but I know of no clear and definite pronouncement of either.

The method of the anthropological criminologist is, or was, to examine each criminal with respect to his physical and mental qualities, his habits, conduct, and so forth ; and whatever quality the criminologist found that departed from an imaginary standard that he fixed in his mind as the normal, he put down as a " stigma " of criminality, marking the criminal off as belonging to the criminal race or pathological variety of human kind, and distinguishing him from non-criminal man. As the standard of average or normal man assumed by the criminologist was never defined by him, and as he could vary it as he pleased, and as, moreover, he never measured or defined the degree of departure from this exten-



sible and contractile standard that is to characterise the criminal, it is manifest that no human being was safe from having criminal "stigmata" attributed to him. As no two human beings are precisely alike, as everyone departs in some respect from the average, and as no fixed average was ever ascertained by the criminologist, it was easy to pick out in every criminal some character or other that appeared exaggerated or defective to a prejudiced eye, and to declare that this character is a "stigma" of criminality. In short, the criminologist addressed the criminal much in the following strain:—

"You are not as other men are. You belong to a separate class of human beings. You are marked off from the rest of your race from your birth, and are devoted and predestined to a life of crime. You are incapable of regulating your life according to the canons of rectitude: they do not apply to you. Your skull is oxycephalic; it is unsymmetrical; its frontal curve is less, and its parietal curve is greater, than those of other men. Your forehead recedes; or, worse, it projects. Your chin projects; or, worse, it recedes. You have no wisdom teeth. Your ears are too large; they are too small; they are misshapen. Your hair is thick; your beard is thin. You are dark in complexion. You are unusually fair. You have a fixed look in your eye; you have a glassy stare; you look like a bird of prey; you have a singular air of bonhomie; you have an angel face; you have the appearance of a wild beast, and the glance of a tiger; you have a peculiarly benevolent aspect. In addition to these stigmata, which characterize you as a born criminal, you are shorter than the average; you are taller than most men. Moreover, you have tattoo marks on your arms, and perhaps on your body also.



“ This being so, we regard you as irresponsible. You are a criminal, it is true, but the fault is not yours. It is not in the habit you have formed of yielding to your passions. It is not in your self-indulgence ; your laziness ; your slavery to impulse ; your selfishness ; your cultivated lack of self-control. No ! It is impressed upon you by your inheritance. You, poor fellow, are visited with the sins of your father and grandfather. You are a thief, a murderer, a violator, it is true, but this is not your fault. You are a criminal, as Falstaff was a coward, by instinct.

“ In one word, you are degenerate ; and, since your crimes are no fault of yours, you shall not be punished for them. On the contrary, you shall be entertained, amused, instructed. You shall be treated with Turkish baths and massage, until your criminality departs from you. You shall exercise in a gymnasium to the strains of a band of music, played by your fellow-criminals. You are of a weak mind ; and therefore you shall be æsthetically cultured by a course of lectures on Chaucer, and Shakespeare, and Emerson, and Browning. You are a semi-imbecile ; and therefore you shall be put through a course of Jowett’s *Plato*. As a means of elevating your character, you shall be taught journalism ; and be provided with a newspaper to edit, whose contributors and readers shall be your fellow-prisoners.”

It is a wonder that, in an age in which scientific methods were extending rapidly into ever new fields of research and endeavour, such stuff as this should ever have been accepted, and should have attained the extraordinary vogue that it did. Lombroso founded a very large school, especially in Italy and France, of writers whose works are characterised by all, and if possible more than all, the unwarrantable assumptions, the looseness and



inaccuracy of thought, the vagueness of description, the superficiality of observation, and the dogmatic assertion of absurdities as incontestable truths, that characterise the writings of the Master. The cult never spread much in other European countries, and in this country Mr Havelock Ellis is, as far as I know, its only devoted upholder ; but it has attained a very wide vogue in the United States of America, and has become in some States the foundation for some very grotesque legislation and procedure.

5. Some of those who appreciated the absurdity of this doctrine were so repelled by it as to be driven into an equal absurdity of an opposite kind. Spencer taught that all peculiarities, and indeed all properties and qualities, whether peculiar or not, of living things, must have one of two origins. They must be derived either by heredity from parents and ancestry, or be impressed by the weight of the circumstances in which the life is passed. The school of Lombroso taught that criminality is derived from heredity alone ; and the doctrine led to such patent absurdities that its opponents flew to the opposite extreme, and asserted that criminality is the product of environment alone ; and they asserted, with the same dogmatic assurance as their opponents, and with the same airy disregard of evidence, what these circumstances are. Criminals, according to this school, are not born criminals, but made criminals ; and their criminality is due to poverty, to their being brought up in bad homes by drunken and criminal parents, to lack of education, to drunkenness, either of their parents or of themselves, and so forth. It did not appear to these doctrinaires, any more than to their opponents, that either proof or evidence of their assertions was needed. It seemed to them likely, *a priori*, that such circum-



stances would tend to criminality in those subjected to them, and the doctrinaires, adopting *holus bolus* the method of their adversaries, jumped to the conclusion that the circumstances do produce criminality, and, more than this, that they are the only source, the only possible source, of criminality. The conclusion is quite as irrational as the conclusion of the opposing school, and if accepted would lead to results as disastrous. The implication of both doctrines is that the criminal is wholly irresponsible for his criminal acts, and that punishment of the criminal is unjust, uncalled for, and futile. The doctrine of the anthropological school made the criminal irresponsible because he is born to be a criminal, and cannot help his birth or alter his innate proclivities. The doctrine of the environmental school is that the blame of criminality rests not upon the criminal, but upon "society," which gave him a criminal father and a drunken mother, permitted him to be reared in an insanitary home, failed to educate him, and made him a drunkard. These are not the very words of the doctrine, it is true. Doctrinaires of this character do not clothe their doctrines in plain terms. They prefer vague and complacent generalities. They say "society and not the criminal is responsible." But when we track the doctrine to its lair, and compel it to reveal itself in its naked simplicity, this is what it means; and the criminal himself is not slow to adopt it. It is comforting to him, and, pushed to its logical conclusion, it would leave him free to give full rein to his criminal propensities, and relieve him from any punitive consequences of doing so. The criminal may be, as Dr Goring says he is, deficient in intelligence, but he has enough sense to seize with avidity upon the doctrine that "society is responsible," and to throw it in the teeth of those agents of society who are



entrusted with his trial and his custody. "Society" he says "is responsible for my crime ; it is society and not I who ought to be punished for it."

As I have said, the doctrine is a mere speculation. It is a surmise, founded solely upon an apparent *a priori* possibility, and has not a shred of proof nor even a vestige of evidence to support it. Dr Goring has examined it by the statistical method, and has shown that in the light of that method it is quite untenable ; but no demonstration of its falsity is needed. Until some evidence in its favour is brought forward, it is not worth examination, much less acceptance ; nevertheless, so low is the general standard of intelligence, that it has in fact been very widely accepted.

6. A passing notice must be paid to a school that has never had much influence or many followers, which regards the criminal as the product of disease—of a disease allied to, if not identical with, madness. In the opinion of coroners' juries, almost every suicide was *ipso facto* mad when he committed the crime of suicide. In the opinion of at least one of the school we are now treating of, every murderer is *ipso facto* mad at the time the murder is committed. For the coroners' jurors there is some excuse. They wish to save the feelings and minimise the distress of the relatives of the dead. They are strongly influenced by custom, from which unintelligent natures are loth to depart ; and the custom originated in good sound reasons, which have now, however, in great measure ceased to operate. A coroner's verdict of *felo de se* carried with it terrible consequences. The felon of himself was (and still is) denied Christian burial, a deprivation that caused in former times much more distress than it does now to the surviving relatives. He was buried at midnight, at the junction of two roads—



at the four cross roads—and a stake was driven through his body to indicate to wayfarers what lay beneath their feet. Besides this, his lands and goods were forfeited; and it was to prevent this as well as the other consequences of a verdict of *felo de se* that coroners' juries took to violating their oaths, and finding, in the teeth of the evidence, that the suicide was mad when he took his life. They did not think he was mad. In very many cases they knew he was not; but they brought him in "temporarily insane" without a vestige of evidence, and out of merciful consideration for the feelings and the pockets of the survivors, with whom they deeply, and usually justly, sympathised.

The verdicts of coroners' juries that suicides are temporarily insane are not entitled to consideration, and receive none. They carry no weight, because everyone knows very well that the jurors, in giving such verdicts, do not care a brass farthing for the evidence, and care a great deal for the feelings of the survivors. The opinion of those who pretend that criminality is a form of madness, or a manifestation of madness, or is in some way allied to madness and partakes of the nature of madness, are entitled to no more weight than the verdicts of coroners' juries, but for different reasons. The reasons are many. In the first place, the doctrine rests on the mere *ipse dixit* of him who states it. No proof is offered. No evidence, even, is offered. The doctrine rests solely upon authority; and now we have left the day of Aquinas behind us, no doctrine can be admitted or can carry any weight at all in science unless that doctrine rests upon something more substantial than authority. In the second place, the authority is not unimpeachable. In the third place, when it is said that criminality is a kind of madness, or is allied to madness, or is a disease, no definition is given either of criminality, or of madness, or



of disease ; and therefore the truth or falsity of the doctrine cannot be examined satisfactorily. Until these wants are supplied, until some definition is given of the terms employed, until some evidence is offered in support of the doctrine, until appeal is made to something more substantial than the *ipse dixit* of amateurs, it would be waste of time to bestow serious attention on the doctrine that the criminal is a kind of madman, or suffers from a disease allied to madness.

7. We are now to examine a doctrine of the nature of the criminal that rests upon very different ground, and demands most careful examination, since it is advanced with great ability, with great moderation of statement, and rests upon an immense mass of evidence compiled by many hands with industry extending over years, evidence that has been digested and arranged with conspicuous ability by the untiring labour of Dr Goring.

The conclusion arrived at by Dr Goring from his most painstaking and laborious survey of data furnished by several thousand inmates of English convict prisons is discrepant from all those that have been described, and is this : the criminal men—by which he means men who have been convicted of crime sufficiently serious to be tried in a superior court, that is to say, at assizes or quarter sessions—do differ appreciably, and even conspicuously, from the mean of Englishmen at large. The difference is not the difference between disease and health ; still less is it a difference that can be termed in biological language a “ sport,” such as albinism or the possession of a sixth finger or toe on one extremity ; still less is it a racial peculiarity inherent in a criminal stock and descending by inheritance, as the Jewish or Japanese. According to Dr Goring, criminals, in the restricted sense in which he uses the word, do as a class



differ in both physical and mental characters from the rest of the population ; but they differ, not specifically, but selectively. They differ in possessing, in a rather higher degree than the average or the mean, certain qualities that all men possess in some degree. They differ, not as smutty or rusty wheat plants differ from the healthy wheat plants in the same field, still less as the poppies or the charlock differ from the wheat, but as a collection of the plants with the shortest straw and the least fertile ears would differ from the rest of the wheat plants in the field. They are a separate class, but a selected class, and are different solely because they are selected.

It will be seen that this is a new view, and a very important view, and one that, if it is correct, should modify our estimation and treatment of criminals in very important ways. It behoves us therefore to examine it with the greatest care.

I may say at once that the doctrine seems to me defective in some very important respects ; but before I proceed to examine it and to point out what these defects are, I desire to bear testimony to the immense industry, labour, and care that Dr Goring has devoted to his task, to the openness of mind with which he seems to have approached it, to the fairness with which he has conducted it, and to the restraint and moderation that he displays almost throughout. His book, *The English Convict*, is in its manner of treating the subject a model of the statistical method applied to certain data ; but Dr Goring, carried away by enthusiasm for the method that he handles with such skill and dexterity, claims for it more than its due. It is true that he admits that " in some orders of observation there is no need for a calculating mechanism to trace and prove the existence of



association," but he goes on to say that "the precision and validity of so-called clinical experience depends upon the aptitude for memorising the frequency of past relations, and for correctly estimating by a mental statistical process the probabilities of their recurrence." As true for comparatively rare occasions this may pass, but as a universal assertion, as Dr Goring states it, it is certainly erroneous. He does, indeed, draw the distinction between estimates of quality and estimates of degree, and admits verbally that in the former "the disturbing effects of chance associations can be allowed for mentally, and without aid from the elaborate meticulousness of statistical processes"; but the admission is of a face-saving character, and does not materially influence his faith that motley is the only wear, biometrics the only method of obtaining trustworthy results in social, biological, and medical science. "Criminological study," he says, "whatever branch of it is being pursued, and by whatever method it may ultimately proceed, should be *based upon*, and originally consist in, the statistical treatment of facts which, in their crude form as revealed to direct observation, are valueless for reconstruction." Again, in the concluding paragraph of his book he says: "to obtain the truth, our appeal must be made, not to the opinions of descriptive psychologists, sociologists, and criminologists, but to the facts and calculus of the statistician. For the virtue of statistical inquiry is just this: that its conclusions, whatever they may be, have mathematical accuracy, and the same degree of reliability as the conclusions of an exact science."

All this is stated far too absolutely. Statistical inquiries and calculations such as those laboriously made by Dr Goring have their value, and in certain cases and for certain purposes their value is considerable; but the



statistical method is far from being the only method by which trustworthy results may be obtained ; and the statistical method is itself liable to fallacies that may seriously vitiate its results, and may even deprive them entirely of value—fallacies that its advocates and practitioners do not appear to be aware of, for they never, as far as I know, take them into account.

It should be unnecessary to insist that the statistical method is not the only method that yields results of scientific value, even when the factors estimated are quantitative ; and even Dr Goring does not claim that it is the only method of obtaining valuable results from quantitative factors. If I go into my garden one autumn morning and find that the thermometer registers two degrees of frost as having occurred in the night, and if I find that all my unprotected heliotropes are blackened and dead, I can infer at once, without any statistical computation, that a frost of two degrees of severity is fatal to heliotropes. The conclusion is incontestable and inescapable. It is derived from a single observation or from a very few observations, and it not only needs no statistics to verify it, but it is insusceptible of verification by statistics ; and it is a strictly quantitative observation. The result manifestly depends, not on the fact of frost having occurred, but on the degree of frost that is registered. On the same morning I find my dahlias but slightly or not at all affected, and I infer that two degrees of frost are not fatal to dahlias. But next morning my dahlias are all blackened and collapsed, and now I find that the thermometer registers five degrees of frost. I infer, and the inference is valid, and so far scientific, that though dahlias will endure two degrees of frost without fatal damage, they are killed by five degrees, and this again is an affair of degree and of



quantity and intensity. Yet it needs no statistical basis, no calculation of means or probable errors for its establishment. It is valid on the face of it.

The importance of Darwin's observations on the *Variation of Animals and Plants under Domestication* can scarcely be exaggerated. They have modified for all time our estimates of organic phenomena, and indirectly of social phenomena also ; and they were almost wholly quantitative estimates. Many of them were based upon measurement ; all, or nearly all, were estimates of more or of less in length, or breadth, or thickness, or weight, or some other quantity ; and Darwin did not employ the statistical method. Yet his observations have never been impugned ; and though attempts have been made to belittle their value, the attempts have failed. He revolutionised our mode of regarding organic phenomena, and this he did without employing the statistical method. The only observations in which Darwin employed the statistical method were those upon earth-worms, and in this he employed the method only in a crude and elementary form ; and however interesting and valuable these observations may be, they do not compare in either respect with those on which he based his doctrines of natural selection, of the origin of species, and of the descent of man. Clearly, therefore, to assert that to obtain the truth, even in quantitative investigations, an appeal must be made to the facts and calculus of the statistician is a very great exaggeration.

Dr Goring's second assertion, that the conclusions of statistical inquiry have mathematical accuracy, and the same degree of reliability as the conclusion of an exact science, is true in a sense, but it may be extremely and fatally misleading. It is true in the sense that if the calculations are correctly performed, the conclusions will



be mathematically accurate deductions from the data ; but no amount of accuracy in the calculations or in the statement of conclusions will secure that the data have been faithfully observed, or, if they have been faithfully observed, that they can be relied upon. It is certainly untrue that the conclusions of statistical inquiry have the same degree of reliability as the conclusion of an exact science. They may be misleading ; they may be utterly false and worthless.

Dr Goring is careful to warn us that his favourite method can give us only relative and never absolute results. The whole virtue of statistics, he says, lies in comparison. If this is so, then it is of the first necessity that the data should be comparable ; but in statistical inquiry, and in the compilation of elaborate statistics, the data are not always comparable. Take, for instance, statistics of drunkenness, as displayed in the comparison of the prevalence of drunkenness in one district with its prevalence in another. Such a comparison may be made by comparing the number of convictions for drunkenness in the one town or country or district with the number of convictions in the other. The method would seem at first sight eminently fair and just, and calculated to yield conclusions " of the same degree of reliability as the conclusions of an exact science " ; but is it really so ? Let us consider. Suppose that in the one district the Chief Constable is a fanatical teetotaler, or the majority of the Watch Committee are of this way of thinking. Suppose the magistrates also are tarred with the same brush. The results will be that the police will be stimulated to arrest or summon every man and woman who can plausibly be considered a little the worse for drink, and that every such man and woman will appear on the police sheet as a case of drunkenness,



and will be so recorded in the register of police-court convictions. In the other district, the Watch Committee may have no bias in favour of teetotalism; the Chief Constable may be a large-minded man of the world; the magistrates also may be reluctant to record convictions for trivial offences, and prone to discharge with a caution and a little fatherly advice those who have been "market merry," or have been celebrating a wedding or a christening too hilariously. In such a district the police will know that they will obtain no credit for excess of zeal in arresting or summoning people who are half seas over. They will be inclined, if a man has had a little too much, but is doing no harm and not making himself too much of a nuisance, to place him in the care of his friends, or even to see him home and leave him to the punishment he will receive from his wife's tongue. It is manifest enough that to compare the number of convictions for drunkenness in this district with the number in the other would give no just idea of the comparative prevalence of drunkenness in the two districts. The statistics, so far from having the same reliability as the conclusions of an exact science, would be utterly unreliable and misleading.

Dr Goring's statistics are apt to mislead, and almost necessarily must mislead, in another respect, although, to do him justice, he does something to guard us against being misled by them. They refer, as he points out repeatedly, only to persons who have been convicted of serious crime; yet he constantly speaks of them as applying to criminals as a whole. In short, his investigations do not concern criminals as a class at all. They concern only convicts. Yet throughout his treatise he speaks not of convicts, but of criminals. The result of this may, for aught we know, be extremely misleading.



It is almost certainly misleading to some extent, and it may be extremely misleading. One of the most salient results of Dr Goring's statistics is to show beyond doubt that criminals who are convicted of serious crimes are upon the whole inferior in intelligence to the general population; but is it not manifest that of the whole body of criminals those who are defective in intelligence will be specially liable to conviction, while those of average and superior intelligence will be relatively immune from conviction—will escape conviction more often and more completely? Dr Goring shows that criminals convicted of serious crime are selected by their inferior intelligence from the whole body of the population; but is it not extremely likely that they are selected by the same character from the whole body of criminals? In every year, if we may take the year 1911 as fairly representative, more than 97,000 indictable offences are reported to the police, and few more than 13,000 are convicted at Quarter Sessions or Assizes of the commission of such offences. In fewer than one-seventh of these offences, therefore, is the perpetrator convicted; and although it is of course possible that in some cases he may be convicted of some other offence committed in the same year, yet there must remain a large but very uncertain number of offenders who are not convicted, and not being convicted do not appear in Dr Goring's statistical tables. As guides to the physique, mental peculiarities, heredity, education, and so forth of the entire body of criminals, these tables are therefore utterly untrustworthy. They are statistics relating not to the whole body of criminals, but to fewer than 15 per cent. of all criminals, or at least to fewer than 15 per cent. of the crimes perpetrated; and the strong presumption is that they refer to a selected class



of criminals, and not to a fair average sample. The very fact that they have all been convicted selects and differentiates them from the total of criminals, presumably selects them by inferiority of intelligence, and perhaps, for all we know, selects them by inferiority of physique. If all the 85 per cent. of perpetrators of indictable crimes who escape conviction for those crimes escape conviction altogether, the statistics of the whole class of criminals are hopelessly vitiated, and command no confidence at all. As we do not know what proportion of this 85 per cent. ultimately become convicts, we cannot make the necessary allowance, and must remain in complete uncertainty. Dr Goring's statistics of criminals are not statistics of criminals. They are statistics of convicted criminals, a very different class, and a selected class; and though it may be interesting and important to have these statistics of convicts, and though the conclusions that Dr Goring draws may be incontestable—I do not contest them—in their application to convicts, yet if they are applied to criminals in their totality, unconvicted as well as convicted, they require very serious modification. Of the 85 per cent. of perpetrators of indictable offences we know nothing at all, and the only conjecture we are justified in making with respect to them is that they are probably more intelligent than those from whom Dr Goring's data are drawn. Their superior intelligence may go far to balance the inferior intelligence of those to whom his statistics refer, and so, for aught we know, may their stature go far to raise the mean stature of his convicts towards the normal. However accurate his conclusions may be with respect to convicts, it is clear that they do not apply to the immensely larger number of criminals who commit minor offences, and are tried and convicted



in courts of summary jurisdiction. They apply only to a selected class of a severely selected class of all offenders, and this class within a class is but a very small fraction of offenders as a whole.

8. The notion of criminality and of the nature of the criminal that I shall myself put forward for consideration differs from all the foregoing, from Dr Goring's scarcely less than from Lombroso's. It seems to me that all these doctrines, whatever modicum of truth they may contain, fail to take into account an element of vital importance, which has a very strong influence upon every offender in the commission of every offence. According to this doctrine, the commission of every offence is a function of two variables. It resembles every other form and phase of conduct in being the product of two factors, which enter into it in the most various proportions. In some offences the gravamen lies almost wholly upon one of these factors ; in others it lies almost wholly upon the other. In every offence, the more of the one factor that is present, the less of the other is needed to bring about the result, the commission of the offence. When both are absent, or present in but trifling degree, no offence will be committed. When one is present without the other, no offence will be committed. When one is present in high degree, it will need but a minimum of the other to ensure the commission of the offence ; and when one is deficient, more of the other will be needed to bring about the result ; but each factor is present in the commission of every offence, and in the total absence of either no offence will be committed. In this respect, and in this respect only, crime resembles insanity, for insanity also requires two factors and only two for its production, and in insanity also the proportion of each that is necessary to produce the result is fixed



by the foregoing rules ; but in crime and insanity the factors are different, though they may be called by the same names. They may be called by the same names because, though they are different, they are closely analogous. My doctrine of the causation of insanity is that it is due in varying proportions to the two factors of heredity and stress—to the stress of circumstances acting upon an innate constitution ; to varying proportions of heredity and environment. My doctrine of crime is so similar that it may be formulated in the same words, though the words will not have the same significant contents. Crime—and in crime I now include offences of all kinds—is due to temptation or opportunity, the environmental factor or stress, acting upon the predisposition of the offender, the inherent or constitutional factor. The more potent the one factor, the less of the other will be needed to bring about the result. A very powerful and alluring temptation will break down the virtue of even a very moral person, who would not succumb to any ordinary temptation. A thoroughly immoral person, inured to crime, will require scarcely any temptation—no more, in fact, than amounts to opportunity—to induce him to commit crime ; but without some remnant, some vestige, of criminal proclivity the first would not succumb to the temptation, however powerful it might be ; and without opportunity the second would remain crimeless, however strong his proclivity to crime. For crime, as for madness, every man has his breaking strain, and will give way under stress if the stress is sufficiently powerful and of the right kind. St Anthony was either of a cold, misogynous disposition, constitutionally indifferent to sensual passion, as some men and many women are, or the devil was maladroit, and did not appear in sufficiently



alluring guise, or did not continue his allurements long enough. Some thieves that I have known have had so strong a constitutional proclivity to theft that they would steal even under the very eyes of their guardians, and although they knew that instant punishment and restitution must follow ; but still, they could not have stolen if there had been nothing portable to steal ; they would not have stolen unless tempted by the accessibility of certain portable objects peculiarly attractive to their cupidity. So that in all crimes, as aforesaid, temptation acting on proclivity, proclivity subject to temptation or that milder form of circumstance that we call opportunity, are to be recognised as the necessary condition and the necessary cause respectively.

It is a curious illustration of the blindness of doctrinaires to the obvious that they should have roamed so far afield as to invoke, as causes of crime, such extremely improbable factors as bad sanitation in the house of the criminal, and lack of acquaintance with the Latin grammar (which is what is commonly meant by want of education), when such a factor as temptation must have been familiar in the experience of them all, and they must have known that it is a frequent factor in the experience of every human being ; but such is the nature of doctrinaires. In medicine—especially in that branch of medicine that deals with madness, with which I am most familiar,—in philosophy, in logic, in education, and in other matters into which doctrinaires have obtruded themselves, it is always the obvious that is overlooked and ignored. Even Dr Goring, able and open-minded as he shows himself to be, never once mentions temptation in the whole of his large book upon criminals and the causation of crime.

Such alleged factors in crime as bad homes, defective



sanitation, want of education, receding foreheads, long or short or medium noses, an angel face, and the look of a bird of prey, all require proof before they can be accepted as actual factors ; but the two factors that I allege need no proof. They commend themselves at once to every reasonable mind as manifestly and necessarily valid. Their proof is in the daily experience of every human being. Crime in the technical sense—that is to say, indictable crime—is but one species of the class of delinquencies, or offences against the law. Offence against the law is, again, but one species of the larger class of wrong or immoral or dishonourable acts, which range in turpitude from the merest childish peccadilloes to the gravest crimes known to the law, crimes that nothing short of the death of the offender will expiate. However they may differ in gravity, they are alike in being infractions of the conscience of the offender. He who does a wrong act, not knowing that it is wrong, does no wrong. It was the underlying appreciation of the truth of this unformulated maxim that led the judges in 1843 to declare that even a madman who does wrong, knowing that it is wrong, is responsible—that is to say, punishable—for his act. What constitutes the *animus nocendi* is the consciousness that the act is wrong, and this consciousness is independent of the gravity of the offence. We of the Church of England confess daily or weekly in the order for Morning and Evening Prayer that we have done those things that we ought not to have done, and that we have left undone those things that we ought to have done, and for most of us there is truth in the daily, or at any rate in the weekly, confession. The offence committed may be, and in very many persons is, but the merest peccadillo, the merest infringement of a needless scrupulosity of honour ; but the point is that,



however trifling or however grave the offence, its turpitude consists in yielding to temptation. If there were no temptation, there would be no offence. That is the universal experience of mankind, and it needs no proof, no insistence, no evidence beyond universal individual experience, to establish that that which is true of the less grave offences, which make even the saint in some degree a sinner, is true of the graver offences that bring the offender by way of the assize court into the convict prison or to the gallows. It is yielding to temptation that constitutes criminality.

Nor does it need any proof to show that whether a person will or will not yield to a given temptation depends upon his mental constitution and proclivities. It depends in the first place upon the intensity of the desire to which the particular temptation appeals; and different desires have very different force in different people. The covetous man, the self-indulgent and lazy man, will yield more readily to the temptation to unlawful gain. The passionate man, the vindictive man, will yield more readily to the temptation to inflict injury upon his enemy. The lecherous man will be more prone to commit sexual offences; and all men will be more prone to commit offences in proportion as they have accustomed themselves to disregard the restraints of conscience and satisfy their desires without regard to the welfare of other people. All this needs no proof. It is part of the common knowledge of human nature that we all acquire by our own experience of our own minds and conduct, and by common observation and interpretation of the conduct of others. It is as nearly axiomatic as an assertion with respect to human mind and conduct can be. It is self-evident, and neither needs proof nor is susceptible of formal proof.



Like other general and abstract doctrines, this is of the greatest importance in its practical application. The ancient doctrine of original sin, and of the danger of Divine vengeance that the sinner brought not only upon himself but upon all who were connected with him, led directly to the savage and inhuman punishments that were inflicted upon evil-doers as long as this doctrine prevailed. The doctrine of Beccaria and Bentham, that the true purpose of punishment is to provide a motive counterbalancing the motives to crime, and that certainty and promptitude of punishment are more effectual in this respect than severity, led directly to a mitigation of the ancient savage penal code. The speculative folly of Lombroso led directly to the practical folly of some American penitentiaries ; and logically, the anthropometric deductions of Dr Goring should lead to a policy of permanent segregation of the 20 per cent. of convicts who are weak-minded, and gives, as far as I can discern, no indication towards what is to be done with the remaining 80 per cent. My doctrine, if accepted and acted upon, should modify practice in many directions, but specially in the direction of inculcating and fostering the obligation of duty, and in efforts to raise the ethical standard of the community. These precepts savour, it is true, of the platitudinous, and in their bald and general statement they may be so ; but they are susceptible of practical application in various ways, as I shall endeavour to show.

According to this doctrine of mine, all men are by nature potential criminals, since all are actuated by instinctive desires that urge their possessor to seek the gratification of them, and since no man has as yet attained to the perfection of socialization that we witness in the social insects, in whom the gratification of selfish desire har-



monises completely with the common welfare—in whom if we may judge by their conduct, selfish desire, the gratification of which is incompatible with the common welfare, does not exist. In them, as far as we can judge, the gratification of individual desires never conflicts with the common welfare, and pleasurable action becomes merged into duty and identified with it. In the human race, pleasure and duty are in frequent conflict, and criminality consists in giving the rein to pleasure when pleasure conflicts with duty. When I say that every man is a potential criminal, I mean that every man experiences this conflict from time to time. To every man the choice is occasionally presented of gratifying his own desire and thereby obtaining pleasure at the cost of others' welfare, or of subordinating his own pleasure to the common good. He may be of so saintly or so public-spirited a disposition that in fact he never transgresses ; but this shows only that the peculiar temptation to which he is most liable has not assailed him with sufficient intensity. The mere fact that the struggle takes place, the mere fact that he must exercise a choice to do good rather than evil, constitutes him a criminal *in posse* though he may never be a criminal *in esse* ; for manifestly, as long as there is room for choice, the choice may fall on either course. If there were no room for choice, if he were perfectly socialized, if his desire for self-gratification always harmonised with the common welfare, if his only pleasure were in duty, then there would be no possibility of his doing wrong—and no merit in his doing right. Then, and then only, would he cease to be a potential wrong-doer ; and as no man has yet attained to this perfection of socialization, no man is free from the potentiality of doing wrong, and so becoming an offender against the law.



Thus the doctrine leads by another route, the *a priori* route, to the same conclusion as Dr Goring's statistics. It teaches that the convict, and not only the convict but the criminal, and not only the technical criminal but the offender of every degree, is but a normal man, whose criminality or delinquency consists, not in any qualitative difference, either mental or physical, between himself and the virtuous generality of mankind, but solely in quantitative difference if there is any difference at all. In the delinquent, certain desires are stronger and certain others are weaker than in the virtuous man. In the one the control of the will over the gratification of selfish desires at others' expense is weaker than in the other, either by native constitution, or by difference of training, or by difference of practice and experience. In most cases of serious delinquency, such constitutional differences, either innate or the result of habit, etc., do, no doubt, exist ; but in some cases of serious criminality, and in very many cases of minor delinquency, the delinquent is not in any of these respects below the mean of virtuous mankind, and may even be above it ; but he has been subjected to temptation beyond what his fellows have had to bear, and he has succumbed to it as they would have had to succumb to it, and, it may be, later and more reluctantly than those of mean standard would have succumbed. So that in all things, as aforesaid, the criminal and the minor offender are normal human beings ; normal, but differing in some respect, as all men differ in some respect, from the mean standard or average of mankind. The delinquent may differ in constitution. He may have some desires or passions stronger and some weaker than average man. He may be less intelligent, or may have less power of self-control. He may have been worse brought up, or never trained



in self-control or had his sense of duty developed, and in any of these and other ways may differ from average man in constitution ; or he may have been subject to overpowering temptation, and thus differ in experience from average man ; but whatever his differences, they are differences only of degree. He differs from average man or from the mean of mankind in precisely the same ways as all other men differ from the average or from the mean—in the same ways, and to extents that differ with each criminal as they differ with every non-criminal. The difference between the criminal and the non-criminal is, in short, first in the combination in various degrees of qualities that both and all possess in common, and second that the criminal is subjected to temptation that, relatively to his combination of qualities, is excessive. It may be a temptation that would be no temptation to the average man. It may be a temptation that would be no temptation to a differently constituted criminal ; but relatively to the particular person to whom the temptation is presented, it is excessive. It reaches his breaking strain, and he gives way. The breaking strain differs in different people, and in the same person is different for different temptations ; but everyone has his breaking strain in some direction or other, and if in this direction he is tempted beyond his strength, he will fall. What else is the sense, what else is the meaning, of Baxter's celebrated saying : " There, but for the grace of God, goes Richard Baxter " ? Baxter knew the human heart. He was a man of irreproachable life, a saint ; but he knew he had his breaking point, and he thanked God that no temptation had ever reached it. Such is in my view the constitution of the criminal, and such the occasion of his lapse into crime. In the habitual criminal the breaking point is low, and is fre-



quently reached ; in the saint it is high, and is in a very different region of his mental constitution ; but in both a breaking point there is, and whether he breaks down or not depends on the strength of the temptation to which he is subjected, on the strength of the desire to which the temptation appeals, and on the strength of his fortitude to withstand the temptation. But for the absence of sufficient temptation of the right kind, every man is a criminal.





## CHAPTER VIII

### KINDS OF CRIMINALS

FROM what has been said in the last chapter it follows that criminals may be graded into classes according as the breaking point is low or high, and may be grouped into a different set of classes according to the part of the mental or constitutional make-up in which the breaking point that is reached is situated. In other words, we may divide criminals according to the ease with which they succumb to temptation, or according to the kind of temptation to which they succumb ; and both classifications are important.

He whose breaking point is low, and who easily succumbs to temptation, will frequently succumb to temptation and become an habitual criminal. He whose breaking point is relatively high, or whose low breaking point is in a region not much exposed to temptation, will seldom succumb, and, if he becomes a criminal at all, will be only an occasional criminal. Hence by this mode of classification we form two primary classes of criminals, the habitual criminal and the occasional criminal.

Habitual criminals are of two main classes, each of which is again divisible into two by the application of the same differentia. The first division is made according to whether the criminal has an active criminal propensity which impels him, usually from the earliest age, to the commission of crime, and which no circumstances can



mitigate ; or whether he drifts into crime quasi-passively, as the course of least resistance and the easiest way of making his living, and may be reformed by appropriate measures if he is taken in hand early enough.

Criminals of the first of these classes are true "instinctive" criminals. Their criminality appears to be innate ; at any rate, it shows itself at a very early age. They are born with desires and aversions, with a peculiar mental constitution, with a way of regarding themselves and others, that of itself tends very strongly to plunge them into crime, and that no training, no education, no care in upbringing, no system of rewards and punishments, has any appreciable effect in modifying. Such persons appear sporadically in normal families of good social position, of law-abiding disposition, whose other members—fathers, mothers, brothers, sisters, and more remote relatives—are upright, moral, and socially normal members of society. In the language of breeders, criminals of this class are "sports." They are aberrant specimens of the race, as are albinos, or persons born with hare-lip or cleft palate or without arms or legs. As in these, the development is deficient. It falls conspicuously short of the normal in one particular respect. It is a defect, not of pigment, or of structure, but of a mental faculty, of what is called "the moral sense"—that is to say, of the social instinct. Certain fundamental instincts are born in all normal persons. The instincts to suck, to grasp, to convey to the mouth what is grasped, to cry, all show themselves in infancy, and show themselves in all normal children, irrespective of education and training. In later life, new instincts, which also we may regard as innate, come into play. We may regard them as innate because they arise spontaneously in every one as soon as a certain age is attained. I use the term



innate in this sense, and not as implying any hypothesis as to their origin. In this way at adolescence the instincts of courtship and the other instincts of sex come into being. From a very early age the female displays the instinct of motherhood. In both sexes arise the instinct of acquisition and accumulation ; and among other later appearing instincts are the social. The most elementary of these is the primitive desire for companionship and fellowship, and involved and implied in this is, as has already been shown, the instinct of forbearance, of consideration for one's fellows—in other words, of duty towards them. This instinct is undoubtedly innate in the sense already defined of arising spontaneously when a certain stage of development is reached ; though, like the instinctive actions of standing and walking, it needs a certain amount of training and education—more than these do—for its full development. It is this instinct of forbearance and duty towards other members of the society that is deficient in the instinctive criminal. In him it is altogether or almost altogether wanting in his mental make-up, just as in other persons the arms or the legs are wanting in the physical make-up. From the earliest age he is wholly or almost wholly wanting in consideration and forbearance towards other people ; and as he has not the rudiments of these qualities, they cannot be cultivated in him. He is wholly selfish, and without scruple or hesitation will take all and give nothing in return. He is a truly instinctive criminal in that his criminality is due to the absence or imperfect development of an instinct that other people possess. I have called them moral imbeciles because of their analogy to intellectual imbeciles, who also are born deficient in a mental quality that normal persons possess, or with an incapacity to develop, in one particular respect, up



to the normal standard of the race to which they belong ; and I prefer the title of moral imbecile because that of instinctive criminal has already been appropriated by Lombroso and his school, and applied to criminals of a very different kind—virtually to all criminals.

Moral imbeciles are rare, but they unquestionably exist, and are of two kinds : the general and the particular, or those who are generally criminal or immoral in most of their relations with their fellows, and those whose criminal or immoral acts are of a very restricted and peculiar kind.

The general moral imbecile is a curse to the family—usually a very respectable family, and it may be a family of high social position—in which he is born. He begins to steal almost as soon as he can walk, evinces in early childhood the dishonesty, the callousness, the utter indifference to the welfare and feelings of those around him, that characterise him throughout his life. He regards as his lawful property everything that he takes a fancy to and on which he can lay his hands ; and he resents with indignation, and apparently with a sense of outraged innocence, any effort of the lawful possessor to recover it, still more any punishment he may incur by his appropriation. In childhood, his amusements consist in torturing the cat or the dog, or perhaps his brothers or sisters, whose permanent injury or death may result from his deliberate cruelty ; and as he grows up, his least offensive amusements take the form of objectionable practical jokes, injurious or humiliating to their victims. Punishment arouses in him only a sense of injustice, of injured innocence, and of rankling vindictiveness. He can never be made to understand that retaliation upon himself is justifiable in any circumstances for whatever fault he may commit, though he is ready



to retaliate upon the instant on any injury inflicted on himself. In short, he is selfishness incarnate. He is a solitary beast of prey, destitute of social instincts; and in a society he is a hyæna in a pack of hounds, a wasp in a beehive. He acknowledges no obligations towards those around him, and looks upon them only as victims upon whom he may prey.

As a rule, there is a certain intellectual defect also along with the moral defect. The general moral imbecile is often, perhaps usually, clever. If he can get through his school and college career without expulsion, an achievement of which few are capable, he may occupy a creditable position in his classes, and take a creditable degree; but though he may be clever, cleverness is, as I have explained in my *Text-book of Insanity*, not the highest intellectual faculty. It occupies only the second level, and is quite compatible with serious defect on the higher level, which I have entitled wisdom, and which enables a man to regulate the more important modes of conduct in the more important affairs of life so as to achieve success in his career. The general moral criminal evinces his lack of the highest intellectual quality by his uniform failure in life. He always falls in the social scale. He always lives from hand to mouth. He always dies poor; and he not infrequently commits suicide. His depredations may be planned with great ingenuity, but they always contain some crass defect, they are always vitiated by some manifest stupidity, which either brings them to naught or entails upon their perpetrator speedy discovery and punishment. He may be clever, but he is always conspicuously lacking in wisdom and discretion. His callous indifference to the welfare of others shows itself chiefly in acts of dishonesty, but in other ways also. He is cruel, treacherous, and false



in every way. One such man became engaged to a girl, and on the day appointed for the wedding he absconded, without explanation, warning, or notice, leaving the girl to wait in the church until she discovered from his non-arrival that he was not coming.

Moral imbeciles of the second sub-class have not the general selfishness, callousness, and indifference to the welfare of their fellows that characterises the general moral imbecile, neither have they his conspicuous defect of wisdom.

They are persons who, in addition to a very ordinary make-up, not departing widely from the mean or the average of normal man, possess a craving of great intensity, but of very restricted scope, for one very limited class of objects ; a craving so intense and overmastering that it impels them to acts for its satisfaction in defiance of that general moral restraint which is sufficient to keep them in the path of rectitude in respect to other things. Such cases are not very frequently met with, but they are not extremely rare. They are cases of persons who are habitual criminals in the sense that they habitually commit crimes, but whose crimes are all of precisely the same character, *and serve no further end beyond affording the gratification of committing them.* This is the mark, this is the distinguishing character, of crimes of this kind. As we shall see, all criminals restrict their crimes within the limits of one larger or smaller class, for the perpetration of which they have a special taste and special aptitudes ; and in this respect the criminals we are now considering share the common lot. Their distinctive peculiarities are, first, the minute class to which their crimes are restricted, and second, that the crime appears to be the satisfaction of a peculiar and special appetite, so that when the crime is committed



and the appetite for it appeased, there is an end, as far as the criminal's desires are concerned. He does not put his crime or the proceeds of his crime to any further use. The following cases are illustrative :—

A woman of good position and ample means used to steal fans. She never stole anything but a fan, but the sight of a fan aroused in her an irresistible cupidity. She never bought a fan, but never missed an opportunity of stealing one. When she had stolen it, she took it home, locked it up in a drawer, and, as far as is known, never looked at it again. She certainly never used it. When the discovery was at length made, she had a considerable collection of fans belonging to other people—fans that she had stolen at theatres, concerts, dinner-parties, and so forth, from both friends and strangers.

Mr Justice Walton used to relate the case of a woman who was tried repeatedly before him for stealing. The peculiarity of her case was that she never stole anything but bacon. Again and again she was convicted of stealing a small piece of bacon, but she was never charged with stealing anything else, and as far as was known to the police, she never did steal anything else.

A man of great wealth and high position used to steal spoons. Whenever he went out to dinner he would pocket a spoon or two from the table. His valet would find the spoon in the pocket of his master's dress clothes, and duly return it to the house at which his master had been dining. The master never inquired what had become of the spoons, never made any effort to keep them or to put them to any use. The sight of the spoon attracted him to steal it, and when he had gratified his desire, the spoon had no further interest for him. He made no attempt to conceal it, nor did he ever ask what had become of it.



At the Rutland assizes a few years ago a young man was tried for stealing fowls. He went a considerable distance out of his way to steal them ; he had nowhere to keep them ; he did not attempt to dispose of them. Having got them, he did not know what to do with them. The defence was that he had an irresistible propensity to steal fowls. He had stolen fowls before, and he had never stolen anything else. In other respects his conduct was irreproachable. The evidence to this effect was so cogent that the jury accepted it, and he was acquitted.

These are true kleptomaniacs, and it is to such people that the term ought to be restricted ; but it is often very incorrectly applied to the well-to-do shoplifter. The proclivity of such instinctive criminals is not always to stealing. It may be to arson, and is then called pyromania ; and there is at least one case on record in which it was to murder—motiveless, unprofitable, unvindictive, unmalicious murder.

Many other cases could be cited, but the foregoing are enough to illustrate the kind of criminals enumerated here as composing the second sub-class of the first class of habitual criminals.

The second class of habitual criminal is composed of those who commit crime after crime, not, as with those already considered, because they have a strong, active impulsion to crime, but because their social instincts, weak though not absent to begin with, have never been cultivated or intensified by a course of judicious training, such as operates on all children who are wholesomely brought up. These unfortunates have had either no homes or bad homes. They have struggled up from the gutter. They are perhaps the children of criminals or of drunkards, and have been neglected in the care



both of their bodies and their morals. They are children of the slums, brought up in an atmosphere of immorality and crime, and naturally follow, as children are prone to do, the examples most commonly and prominently set before them. Or they are by nature idle and self-indulgent, strongly averse to steady and continuous employment, though capable of occasional bursts of great energy. Self-indulgent, they are incapable of work in the proper sense of work—that is to say, of continuing at a relatively distasteful employment in spite of the allurements of one more attractive, or of idleness. They are impatient, and want quick results. The slow gains of steady labour are too slow for them. They aspire to make in a short time by strenuous exertion as much as will sustain them in idleness for a much longer time; and the readiest way to rapid gain is the way of crime. Their constitutional idleness and aversion to steady labour prevent them from gaining a high degree of skill in any honest occupation, and therefore, once embarked upon a career of crime, they continue in it; and another reason for the continuance is that they can give no references, and have no character. Hence they soon become excluded from the ranks of honest labour, and find honest means of gaining a livelihood closed to them. For them, crime is the path of least resistance, and they follow it, at first from indolence and self-indulgence, and at length from necessity.

It will be seen from what has been said that many criminals of this class are reformable if only they can be caught early enough, before their habits are fixed and their characters destroyed. Those who owe their criminality in great part to evil surroundings, evil example, and want of knowledge and opportunity for better things in early life, may, if they are rescued in early life from



their circumstances and properly trained and influenced, be reformed and made useful and upright members of society ; but when once the habit of criminality is become confirmed, there is little hope of reformation.

Of habitual criminals of this class there are two sub-classes parallel with the sub-classes of the class already considered. They may be divided into the general practitioners of crime and the specialists ; and the number of the latter preponderates vastly over that of the former.

General practitioners in crime are but few, and are for the most part limited to the young, who have not yet found their appropriate and congenial specialty. They are persons who are ready to commit any kind of crime, from petty larceny to murder, that promises them gain. They are so few that we need not consider them at length.

The great majority of habitual criminals are specialists. Each of them takes to only that kind of crime for which his tastes, his aptitudes, his abilities, and his habits render him most adapted ; and having once adopted a special kind of crime, he adheres to it for life.

Different kinds of crime are perpetrated by different kinds of criminals, always premising that by a different kind of criminal is meant, not a natural kind, such as the older logicians postulated, separated on all sides by an impassable gulf from other natural kinds, nor a different species or variety of the human race, but merely that the criminals addicted to any particular kind of crime will resemble one another and differ from criminals addicted to other kinds of crime, in having a certain mental make-up, or combination of mental qualities. We should expect *a priori* that criminals who commit crimes of violence would resemble one another and differ from other criminals in possessing a hasty and ungoverned temper, a vindictive spirit, a tendency to impulsive



action, and probably a powerful physique. We should expect the criminal who commits the more elaborate and, as we may call them, the more intellectual kinds of crime, such as forgery and ingenious modes of swindling, to be more intelligent than criminals who commit what we may term crude kinds of crime, such as crimes of violence and of damage to property, and so forth. And we should expect that criminals who commit very crude and stupid kinds of crime, such as damage to property usually is, to be more stupid than the rest of criminals. In all these respects our *a priori* anticipations are found by Dr Goring's researches to be, in the case of convicts, fulfilled.

These general correspondences between the mental and to some extent the physical make-up or constitution of the criminal and the kind of crime he commits are such as we should almost necessarily anticipate, and such as, from the very nature of things, we should be justified in predicting; but experience of criminals and their crimes brings to light other correspondences that we should hardly have anticipated—correspondences not merely between minor classes of criminals and more restricted kinds of crime, but even individual correspondences by which an individual criminal will perpetrate repeatedly the same restricted kind of crime in the same peculiar way.

Dr Goring divides crime into six primary classes, and criminals into six corresponding classes. His classes are as follows :—

- Malicious damage to property.
- Stealing and burglary.
- Sexual offences.
- Violence to the person.
- Coining.
- Forgery and fraud.



He finds that each class of crimes has a corresponding class of convicts, who differ from the convicts that have committed crimes of other classes. My classification is much more detailed, but it is still true of my classification that the criminals who commit crimes of one class restrict themselves to crimes of that class. They are specialists and are not what might be termed general practitioners of crime. Dr Goring's second class, for instance, includes stealing and burglary; but scarcely any thief is a burglar, and scarcely any burglar is a thief. The two classes are distinct, and unquestionably are made and kept distinct by the possession of certain mental and bodily aptitudes, proclivities, and other physical and mental peculiarities. The burglar needs courage and enterprise that are not required by the pickpocket. The pickpocket requires manual dexterity of a kind that would be of little use to the burglar; and hence we find that the burglar is never a pickpocket, the pickpocket never a burglar. The two classes of criminals are quite distinct, and are distinguished as much by personal differences as by the different callings which result from these personal differences.

Not only do burglars differ from thieves, but also within the class of burglars are minor classes, and within the class of thieves minor classes; and burglars of each class restrict themselves to their particular kind of burglary. There are burglars who always work in gangs, burglars who always work in pairs, and burglars who, like Charles Peace, always work in solitude. There are burglars who fly at high game, who restrict their operations to jewel and other safes, and who would scorn to steal spoons; and others who would never think of attacking a safe, but enter a house to pick up what they can find. There are burglars who break into houses



only at dinner-time, and when the inmates are assembled on the ground floor ; and burglars who operate only at dead of night, and so on. There are burglars who are specialists in sacrilege, confine their operations to the collecting boxes of churches and the church plate, and never break into a private house. Every thief also belongs to his own special class of thieves, and confines himself to one kind of theft. The area sneak who filches the milk-cans from the doors of late risers has not dexterity enough to pick a pocket, even if he had the inclination to do so ; and the pickpocket would scorn to stoop to the method of the area sneak. Shoplifters form a class by themselves. They are always of the female sex, and usually well-to-do. Another class of female thieves is composed of bogus cooks, who call upon ladies who have advertised for a servant, are taken faint during the interview, and, while the mistress is gone for a glass of water, lay their hands upon any valuable they see and make off with it. These women are never shoplifters, nor is the shoplifter ever a bogus cook. Bicycle thieves steal as many bicycles as they can lay their hands on, but as a rule they steal nothing else. They form a separate class of thieves, as distinct as possible from the class of thieves who waylay seafaring men, ply them with drink, and empty their pockets when they are drunk.

Each of Dr Goring's six main classes of criminals is susceptible of division into sub-classes in the same way. The long-firm swindler is quite distinct from the welsher, and may be strictly honourable in his dealings on the racecourse. The man who would forge a will would never forge a banknote. The thimble-rigger and professor of the three-card trick may be quite above bilking a landlady or a cabman. Ringing the changes is an art



by itself, requiring a peculiar effrontery and dexterity, and is restricted to a special class of operators. The bogus advertisers, who advertise goods for sale, take the money, and do not send the goods, form another sub-class whose members do not practise any other mode of swindling. The tradesman who adulterates his goods would not falsify a balance-sheet, nor would the falsifier of a balance-sheet set fire to his house to claim the insurance money. Criminals of each sub-class, no less than criminals of each principal class, restrict their operations to a particular kind of crime, and do so because their mental and physical constitution adapts them to crime of that sub-class and not to any other.

When we examine each of the main classes of crime, committed by its own class of criminals, and divided into its several sub-classes, each committed by its corresponding sub-class of criminals, and the sub-classes into sub-sub-classes, as it is manifest to those who are acquainted with crime and criminals that we could do, the process of division would still be incomplete. It would be incomplete until we had pushed it to the uttermost and discovered whether there is not an individuality in crime as there unquestionably is in criminals ; whether each criminal, in committing the crime to which he is addicted, does not pursue it by his own peculiar methods which stamp his individuality upon the crime. *A priori* considerations would lead us to suppose that this should be so, for in every form and mode of human endeavour we find that no two human beings do what we call the same thing in precisely the same way. As every man has a certain individual physique, facial features, and fingermarks, that distinguish him clearly and infallibly from the rest of the human race, so every man has certain characteristic individual ways of doing things that all



men do, so that by the way he does these things we may recognise the individual handiwork and identify the doer. An instance familiar to everyone is handwriting. A man's handwriting is as individually characteristic as the features of his face or the ridges on the palm of his thumb. It possesses so much in common with the handwriting of other people that we know it at once for handwriting ; and, unless it is executed by a public-school-and-university man, we can even read it. The letters and words are formed approximately after the same fashion. They are formed, at any rate, in imitation of a common standard, and they have a general conformity to this standard, and therefore a general similarity to the writing of other people ; but within this general similarity there is infinite diversity. Just as, of all the millions of men, and even of Englishmen or Frenchmen, each is so characteristically different from the rest in facial features that he can easily be distinguished from all of them and identified, so it is with their handwritings. Even when they write the same words in the same sequence, even when they copy the same document, each copy can be allotted without the least difficulty, by anyone familiar with the respective handwritings, to the person who wrote it. If a class of fifty pupils be set to copy the same drawing, all will produce drawings that closely resemble the copy, but in each drawing the handling will be so characteristic of the copier, that the master who is familiar with them all can pick out each and assign it to its executant. The same principle is true of all handicrafts, and it is by virtue of this principle that experts are able to identify the painters, who have died generations ago, of pictures that still survive them. Of twenty different portraits of the same person, each will be identifiable as a portrait of that person and no other, but



each will be identifiable also as the handiwork of the particular artist who painted it.

Nor is the principle true of handicrafts alone. It is true of mental products also. It is true, for instance, of literary style. No one could mistake the literary style of Pepys for that of Sir Thomas Browne, or of either for that of Evelyn. Even though they wrote on the same subject, no one could mistake the style of Swift for that of Pope, or either for that of Addison. No one could mistake the style of Burke for that of Johnson, or either for that of Goldsmith ; or the style of Tennyson for that of Browning, or either for that of Swinburne ; or the style of Macaulay for that of Cardinal Newman, or either for that of Walter Bagehot ; or, it may be added, the style of Shakespeare for that of Bacon, or either for that of Spenser. And if the style of each of these writers is unmistakably different from the style of all his contemporaries, it is still more different from the styles of his predecessors and successors. Sir Thomas Browne is widely different from Pepys, but is nearer to Pepys than to Chaucer or to Macaulay. Dryden is widely different from Pope, but not as different from Pope as he is from Donne on the one hand or Tennyson on the other. Scott is widely different from Austen, but not as different as from Fielding on the one hand or Mr Anthony Hope on the other. What concerns us here is not only that the style of each writer differs from that of every other, but also that the literary style, like the handwriting, of any one person is self-consistent. As every letter and every page of his handwriting is unmistakably identifiable as the work of a single penman, so is every letter and every page of print stamped with his individuality, and expressed in a way different from that in which anyone else would express the same thought.



The principle of individuality dominates the activities of every human being, and determines what he shall do and how he shall do it. This is only another way of saying that every man is constituted to some extent differently in every respect from every other man. It is an instance of the principle of variation. As men vary in stature, and in head-length and head-breadth, and in the other characters—most of them, it must be said, irrelevant to criminality—measured with such care and manipulated statistically with such dexterity by Dr Goring, so they differ in those fine nervous arrangements that determine their handwriting, so they differ in those still finer nervous arrangements that underlie their literary style, so they differ in every faculty and aptitude both bodily and mental, and so they differ in the strength, both relative and absolute, of their several desires, of their wills, their intellects, their emotions, and their memories. The constitutional make-up or temperament, which consists of the sum-total of all a man's characters, abilities, aptitudes, and disabilities, determines, both in its broadest features and in its minutest details, how he shall act in the presence of any group of circumstances. It determines what calling in life he shall follow, how he shall follow it, and his modes of action down to the most trivial action.

The second primary class of criminals consists of occasional criminals. These are persons who, unlike habitual criminals, especially those of the first class, whom we may call constitutional criminals, differ but little in mental constitution from the mean of the society to which they belong. Their criminality depends mainly, not, as that of the habitual criminal does, upon the internal factor, but upon the external factor. They are not constitutionally predisposed to crime as the instinctive



criminal is, nor do they drift into a life of crime, as criminals of the second class do, by reason of constitutional indolence, self-indulgence, and cupidity, which have never been counteracted by wholesome environmental influences. Criminals of the class now under consideration are ordinary citizens of ordinary upbringing and rectitude, who are allured into some crime by temptation of exceptional severity, or allow themselves to slip into a minor offence for the same reason. Even the most upright and severely moral person may slip into the minor offence of riding in the dark without a light on his bicycle or his motor car, if it has gone out within half a mile of his destination and he is in a hurry ; and similarly, if he is in desperate pecuniary straits, which he is convinced are purely temporary, and will certainly be relieved very soon, the same man may permit himself to borrow from a trust fund money that he may subsequently find himself unable to repay. The triviality or gravity of the offence makes no real difference in the machinery by which it is brought about. In both cases it is due to the exceptional power of the lure, and not to any criminal disposition of the perpetrator. Let him that is without sin cast the first stone. I do not say that no defaulting trustee incurs grave guilt ; I say that some defaulting trustees, like some bicyclers who fail to light their lamps, do what nineteen persons out of twenty would do in the same circumstances.

It does not at all follow that he who commits but one crime is an occasional criminal. The habitual or occasional nature of the criminality does not depend upon the number of crimes the criminal commits. It depends, as has been shown, upon whether the criminal is or is not constitutionally predisposed to crime ; upon whether his



crime is committed in circumstances that would hold out no temptation to a person of ordinary rectitude, or whether it is committed by a person of ordinary rectitude under the stress of an overwhelming temptation. Many murderers are caught, convicted, and hanged after their first murder, and therefore have no chance of becoming habitual murderers ; and many murderers commit murder after murder before they are discovered, or even suspected ; but it by no means follows that the latter alone are habitual murderers. Some who are caught after what is, so far as is known, their first murder, are found to possess a mental constitution so peculiar, so selfish, so brutal, so callous, so utterly wanting in sympathy and morality, so willing to inflict upon others any injury that may conduce to their own comfort, that it is clearly only the quasi-accident of their being caught and hanged after their first murder that prevents them from repeating the crime whenever they should find it profitable to do so, and thus becoming habitual murderers *in esse*, as they already are *in posse*. Such a murderer was Crippen, and such are all poisoners. It is, in fact, rare for a poisoner to be convicted, or even suspected, of his first murder. It is a mode of crime so abhorrent that few are bad enough to commit it, and that few are apt to suspect, unless it is perpetrated in a very clumsy manner ; and hence the poisoner's first crime often goes unsuspected ; and it is very usual, when a poisoner is convicted, for those acquainted with him—or her—to remember that several unexpected deaths have occurred by which the poisoner has benefited, and among persons to whom he—or she—has had access.

Be this as it may, the occasional criminal is not necessarily the person who commits but one crime. He is the person in the origin of whose crime the external factor,



the temptation, preponderates greatly over the internal factor, the mental constitution that predisposes to crime. The distinction is manifestly not an absolute distinction, for in every crime both the internal factor and the external factor participate in the causation ; but though not an absolute distinction, it is a distinction of great practical importance. Any attempt to reform the instinctive criminal is a hopeless task, foredoomed to failure. It is an attempt to wash the Ethiopian white, or to make the leopard change his spots. It is an attempt to convert the wolf into a lap-dog. On the other hand, any attempt to reform an occasional criminal is superfluous. He is in no need of reform. His crime is due to stress of circumstances, and if the circumstances are never likely to be repeated, the crime is never likely to be repeated. If it should happen that the circumstances are repeated, no reforming influence other than the ordinary punishment inflicted for crime of that character will prevent the repetition of the crime. No one would think of attempting to reform by religious or moral training the bicyclist who had neglected to relight his lamp. A fine that leaves him uncomfortable will be enough ; and, similarly, it is fruitless to attempt to reform the defaulting trustee. He is never likely to have another trust to administer ; and if he were to be so trusted, the punishment incurred by his first offence would be sufficient, if he is but an occasional criminal, to deter him from a second. Properly understood, reform means alteration of the mental constitution in such a way as to abolish, or at least to diminish, the exceptional proclivity to crime. But the occasional criminal has no exceptional proclivity to crime, and therefore stands in no need of reform. The only criminals for whom reform is needed and in whom reform is practicable are the habitual criminals of the second



class, who are criminals not by intensity of the internal factor nor by intensity of the external factor, neither because they are born with a powerful and unconquerable proclivity that needs no temptation, nor because, being men of ordinary rectitude, they are subjected to overwhelming and irresistible temptation, but who drift into criminal ways by reason of favouring circumstances acting on a favourable nature—who are naturally self-indulgent, cupidinous, averse to steady employment, and have never been subjected to such training and discipline as is calculated to combat and counteract these criminalizing qualities. These, if caught young, before their habits of criminality are confirmed, may be reformed. The reformation of other kinds of criminals is either hopeless or unnecessary.



## CHAPTER IX

### THE PREVENTION, DETECTION, AND PUNISHMENT OF CRIME

#### I. PREVENTION

THE prevention of crime, like the prevention of anything else, can be effected only by attacking its causes ; and hence the discussion in a previous chapter on the causes of crime has an immediate practical bearing. If criminals are a separate race of men, as Japanese or Jews are, then the only way to prevent crime is to exterminate the criminal race. If they are not born criminals, but are made criminals by unsanitary surroundings, then we can prevent crime by pulling down slums and establishing an effectual system of drainage. If crime is due to defective education, then let us reform our schools. Whatever the cause, crime can only be prevented by attacking the cause.

My opinion, as I have stated in a previous chapter, is that crime is a function of two variables, viz. a certain temptable disposition on the part of the person who commits crime, and the temptation to which he is subjected ; and that the more of one of these factors that is present, the less of the other is needed to bring about the result. In short, crime is due to temptation offered to temperament. This being so, crime is to be diminished, if at all, by diminishing temptation, including oppor-



tunity, and by modifying temperament. If my doctrine of the causation of crime is correct, there is no other way. Legislation can do little to diminish temptation to crime, but it can do much to diminish opportunity. Something can be done even to diminish temptation. Those who carelessly leave temptation in the way of others—as, for instance, shopmen who leave their wares unwatched, and householders who leave valuables lying about in their houses, or at hotels, or in cabs—might be punished for doing so. They become, in fact, accessories to crime; and the least that should be done is to deprive them of part of the value of their property if the property is recovered. If shopkeepers were more vigilant, shoplifting could be sensibly diminished. “How oft the sight of means to do ill deeds makes ill deeds done!” Provision for more frequent auditing and stocktaking and supervision over employees generally would do something to diminish temptation and opportunity. Much is already done by harrying and prosecuting receivers, for it is an old saying that if there were no receivers there would be no thieves. The provisions of the Pawnbrokers Acts serve the same purpose, and serve it very efficiently. Much more could be done than is done by the police in warning inexperienced and unsuspecting persons of notorious and common swindles that are repeated again and again, and have been repeated from time immemorial, such as the confidence trick, thimble-rigging, the three-card trick, the Spanish-prisoner swindle, the gold-brick swindle, and many another. Steamboat companies very properly place notices in their boats warning passengers against pickpockets, and the police might well keep standing advertisements in the newspapers and at railway termini, warning the unsuspecting against common swindles, and altering the warnings from time to time



as the fashion in swindling changes. Many swindles are effected through advertisements in the newspapers, and some newspapers, to their great credit, exercise a rigorous censorship over their advertisements. The *Times*, for instance, sets a most honourable example by refusing to insert the advertisements of money-lenders; but many newspapers derive a large part of their incomes from advertisements that are upon the face of them dishonest. When it is proved that a swindle has been effected by means of an advertisement of this kind, the proprietor of the newspaper is *particeps criminis*, and should be punished as an accessory.

When we speak of the prevention of crime, we do not mean the prevention of crime in general; we mean the prevention of crimes committed for the motive of gain. It is manifest that it would be unprofitable to provide machinery for the prevention of vindictive crimes or of crimes due to jealousy, even if any such machinery were devisable; for such crimes form but a very small proportion of all the crimes that are committed. When we speak of the prevention of crime, we mean the prevention of crimes of dishonesty, which form, as has been said, some 94 or 95 per cent. of all crimes in this country.

A very efficacious mode of preventing crime would be to render it unprofitable. The immensely largest proportion of crimes are committed for gain, for the profit they bring in; and if they brought in no profit, it would not be worth while to commit them. If a thief knew that as soon as he had committed a theft the stolen property would be taken out of his hand and restored to the owner, it would be unnecessary to punish theft, for theft would not be committed. It would be unprofitable. The motive would be abolished. Although this ideal can never be reached, it is approached the more nearly



the more certain detection becomes. Hence the great importance of detecting crime, by which is meant bringing crime home to the perpetrator. The more certainly and the more promptly this is done, the more unprofitable crime will be made, the less will be the temptation to commit crime, and the fewer crimes will be committed.

Again, if there were no criminals there would be no crimes. It is true that everyone is a potential criminal, but it is true also that everyone is not an actual criminal ; and a very large proportion of crimes are committed by men whose profession and business it is to commit crime, and who have no other way of making a living. If these men were put out of society, either by putting them to death, or by banishing them, or by keeping them permanently in prison, the number of crimes committed would be very sensibly diminished. This has been recognised and provided for by the Act for the Preventive Detention of Habitual Criminals, an Act that would be very valuable if it were more regularly enforced.

Crime is due to temptation acting upon temperament. Temptation can be diminished in the various ways described above, but it can never be entirely abolished. That which is no temptation to one holds out a powerful allurement to another, and the circumstances of each man's life will always provide temptation of some kind that is attractive to him. Whether he shall fall, and commit the crime to which he is tempted, will depend upon his mental constitution, his make-up, the absolute and relative strength of his different desires and of his will, on the mental discipline in which he has been schooled—in short, upon his temperament. Now, the temperament can be modified. It is in large part inherited, it is in large part innate, the product of ancestral inheritance ; but



in large part it is the product of upbringing and training, and can be modified and moulded by upbringing and training.

Crime is due to the preponderance of selfish action over social action. It is due to the indulgence of selfishness at the cost of others, and thereby to the injury of society at large. It is often asserted that character may be modified by education, and the assertion is true ; but when we inquire what is meant by education, we find that it means chiefly the learning of Latin. Now, learning the Latin grammar is not likely of itself to subordinate selfish to social desires, or to bring them under the control of the will. Still, it is true that this can be done by education if education is understood aright—if it is understood to be, not the cramming of the mind with knowledge, for the most part useless, but the training and direction and development in due proportion of all the faculties of the mind. Among the most important functions of education is the cultivation and strengthening of the spirit of sociality, the inculcation of the habit of acting for the welfare of society rather than from selfish motives. When expressed in these words, the project seems chimerical ; but it is not chimerical. It is constantly attempted, and is constantly successful. The mind of the child and of the schoolboy is quite incapable, it is true, of grasping the notion of society at large, and it is hopeless to attempt to teach him to subordinate his own wishes to the welfare of the nation ; but he is quite capable of grasping, and constantly does grasp, the notion of the little society, the schoolhouse and the school, to which he belongs, and of subordinating his own wishes to the welfare of the school. *The first lesson in morality is the cultivation of esprit de corps.* It is because *esprit de corps* is so thoroughly inculcated and cultivated



in our public schools that the education they afford, contemptible as it is from the intellectual point of view, is so invaluable as a moral training. That strong sense of the duty of acting, not for the satisfaction of selfish interests, nor for the good of other individuals, but for the welfare of the whole society, is the foundation of morality. History, experience, show that action for the welfare of other individuals may be just as immoral, just as criminal, as purely selfish action. The ostensible motive of the Inquisition was to save the souls of its victims. But action for the benefit of the whole society to which we belong, however limited may be our concept of the society, is always moral, and is indeed the foundation of morality.

Hence the importance of training and education in the large sense in the prevention of crime. In order that it may be effectual, it must be practised upon the young. The green shoot may be bent and trained into this shape or that, but it is useless to try to bend the grown tree. Catch your potential criminal young, and subject him to proper training, and he will not grow up into a criminal ; but it is hopeless to attempt the reformation of the confirmed habitual criminal, and all experience demonstrates that it is hopeless. As for the occasional criminal, he needs no reformation. He is no more a criminal in spirit than the ordinary law-abiding citizen. He has been subjected to exceptional temptation, and to this temptation he has succumbed, as anyone else would have done if subjected to sufficient temptation of the right kind. As for the instinctive criminal, on the other hand, he can never be reformed. A germ of sociality may be cultivated, fostered, and reared into a strong and healthy growth ; but if no germ is there, no plant can be produced. You are trying to germinate a stone.



## II. DETECTION

The term "detection of crime," frequently as it is employed, is a misnomer. What we mean when we use it is the detection, not of crime, but of the criminal who has committed the crime. As a rule, crime needs no detection. It is gross as a mountain, open, palpable. Detection begins when the crime is known and it is desired to detect who did it. In the popular mind, fed upon fanciful detective stories, the detection of criminals consists in picking up and tracing of "clues," and is an art requiring superhuman acuteness and subtlety that are never to be found in the regular police, but exist only in a few men of rare genius, whose chief occupation in life is to put to shame the dolts of the regular police force.

This is a fancy picture that does not truly represent the facts. Amateur detectives are as a rule childish creatures, whose acumen may be equal to suspecting, when a man is found with his head battered in, that "there has been foul play," but who rarely progress beyond this stage, and, if they do, emulate their fictional prototypes only in thwarting the plans of the police and obstructing the regular operations.

There is nothing very romantic about the detection of criminals. As already stated, more than 90 per cent. of crimes are crimes of dishonesty, and of these by far the larger proportion are committed by habitual thieves, each in his own habitual way. The sensational murders that catch the attention of the public, and stand with the public as the type of all crimes, are extremely exceptional, and do not amount to one per ten thousand of all the offences that come under the cognisance of the police. Criminals are detected, not by the piercing insight of genius, but by systematic investigation upon



an orderly plan, and by the efforts of many men combined into a regular system according to the able design of General Atcherley, chief constable of the West Riding police. Some such plan had been in General Atcherley's mind for a long time, but he was unable to work it out to a practical scheme for want of a scientific classification of crimes. It was not until he became acquainted with the classification set forth in my book on *Crime and Insanity*, which is on the same plan as that contained in this book, although worked out with much greater detail, that he was able to formulate a thoroughly practicable scheme. This scheme he put at once into force in his own district ; it was rapidly taken up by the chief constables of neighbouring districts, and immediately before the war broke out, a plan was on foot for applying it to the whole country.

The systematic detection of criminals is founded entirely on the fact, to which attention has been drawn in a previous chapter, that every criminal, in common with every non-criminal, has his own individuality, his own idiosyncrasy, which stamps itself upon everything he does. No two people have exactly the same facial features. No two people have exactly the same characters, either bodily or mental. Every man has his own original aptitudes and capabilities, and in every man these aptitudes and capabilities have been developed in certain ways and to certain extents peculiar to him, by his training and education, by the experiences of his life, and by the habits he has formed. In every office, however numerous the clerks, the manager can identify every clerk by his handwriting. In every company, however many the men, the non-commissioned officers can identify every man by his voice. In every workshop, however many the workers, the foreman can



identify the work of every individual worker. Painters, sculptors, architects, musicians, composers, all are known by their style, and the product of each one can be assigned to him by its resemblance to his other products and its difference from the products of other artists. And so it is with criminals. Crimes committed by occasional criminals give the police but little trouble on the whole ; in the first place because such crimes are few, and in the second because the circumstances usually point at once to the criminal. If a trust fund has disappeared, there can be no difficulty in identifying the defaulting trustee. If an infant is murdered, there is not usually much difficulty in detecting the mother as the criminal. Apart from sensational murders, which are altogether exceptional, and form but an infinitesimal proportion of the total number of crimes committed, the detection of criminals practically means the detection of habitual thieves, and habitual thieves are detected by the character of their handiwork.

That different criminals choose different modes of criminality needs no demonstration. The tramp who steals linen from the hedges, or the area sneak who filches the milk-cans, could not be a fraudulent trustee or a company promoter ; nor would the fraudulent trustee or company promoter pick a pocket or steal linen from a hedge. The truth is manifest in the case of crimes as different as these, but it is still true of crimes much more closely alike. The mumping sailor with his false tale of shipwreck could not change parts with the begging-letter writer, nor the begging-letter writer with the bogus parson or doctor who tells a doleful story of a lost purse. The welsher and the racecourse thief both carry on their operations on the turf, but they never exchange parts. The man who passes base coin does not pass flash bank-



notes ; the railway thief is not an hotel thief ; and *vice versa*.

Every crime of a certain class is committed by a criminal of a corresponding class : burglary by burglars, cardsharpping by cardsharppers, pocket-picking by pick-pockets, bilking by bilkers, and so forth ; and each criminal keeps to his own speciality, for which he is fitted by natural aptitude, by custom and habit. These will not allow him to depart widely from the mode of crime that he has made his own, even if he wished to leave it and adopt some other ; and experience shows, not only that he does not depart widely, but that practically he does not depart at all. He works in a very narrow groove, repeating the same crime in the same way day after day, month after month, and year after year. Even if he is caught and punished for a crime or for a series of crimes, each time he comes out of prison he returns to his old ways—because he knows no other. If a saddler is taken ill, he does not upon recovery turn blacksmith or baker : he goes back to saddle-making ; and so it is with the pickpocket or the coiner. He goes back to his trade from custom and habit, and because he knows no other. The consequence is that parallel with the classification of crimes is a classification of criminals ; and that if our classification of crimes is made upon scientific principles and is pursued into sufficient detail, we shall at length arrive at characteristic crimes that are committed by characteristically small groups of criminals, and finally at crimes that have but a single living perpetrator, who is either already known to the police or may speedily become so. Hence the practical value of a scientific classification, as already stated. It was the want of such a classification that prevented General Atcherley from completing his system of thief-



taking : it was the supply of such a classification that enabled him to complete it. Even in such a purely practical matter as thief-taking, the value of the systematisation of knowledge makes itself felt.

If we turn now from the crime to the criminal, we may take it as an axiom that the criminal is seldom convicted for his first offence, but that sooner or later he is caught and convicted ; and from that moment he is a marked man. He is " known to the police," and is connected in the police records with a particular, specialised kind of crime. Whenever that particular crime is committed in the police district in which he is known, he is inevitably suspected, and there is usually little difficulty in bringing the crime home to him. But police districts are many : in England and Wales alone there are 190 ; and his natural course, the course that he always takes, is to move from a district in which he is known to one in which he is not. He is now an habitual criminal. He has now joined the great army of " travelling thieves " who make up the bulk of the criminal population. In a new district in which he is unknown, he enjoys for a time immunity from capture, and perhaps even from suspicion ; but his ultimate capture is inevitable unless he speedily moves on, for his immunity comes to an end as soon as he and his methods and the connection between them are known. Here is the value of General Atcherley's system. By this system a scheme of identifying marks is drawn up, and by these identifying marks, which a criminal can no more change than he can change his facial features or his finger-marks, his crime is described. They are ten in number, and it will not give criminals, nor perhaps the general non-criminal reader, any clear indication of their nature if I enumerate them as Class-word, Entry, Means, Object, Time, Style, Tale,



Pal, Transport, and Trade-mark. It may be anticipated from what has been said, and it is found in experience, that for the same criminal these are always alike in every one of his crimes, and that they are never all alike in two crimes by different criminals.

When a crime is committed, a report of the identifying marks is immediately transmitted to a central office, at which it is compared with other records; and by this means the progress of a criminal can be traced from town to town, the course that he is likely to take can be predicted, his description and even his photograph can be forwarded, not only to the district in which his last crime was committed, but also to the two or three districts in one of which his next crime will be committed. In this way his speedy apprehension will be rendered certain. This, and not the piercing insight of an amateur genius, is the means by which criminals are detected and connected with their crimes.

### III. PUNISHMENT

The meaning and purpose of punishment are fully discussed in my book on *Criminal Responsibility*, and since that book was written, fourteen years ago, I have seen no reason to change the view therein expressed. It is unnecessary, therefore, to argue the matter here, and I will merely repeat that in my view the purposes for which punishment is inflicted upon criminals are retaliation, deterrence, and reform. That is to say, we punish the offender, first and most, in order that he may suffer pain in return for the pain that he has inflicted; second, as a subsidiary but still important purpose, to deter him from repeating his offence, and to deter others from emulating it; and third, as a minor and much less im-



portant purpose, an afterthought, to reform him—that is, to alter his mental constitution or temperament so that he may no longer wish to commit crime. We are to inquire by what means these ends can be best attained.

I. RETALIATION.—The primary purpose of punishment is to inflict pain upon the offender in retaliation for the pain that he has inflicted. When we ourselves suffer injury at the hands of another person, we have an ingrained and deep-seated desire, the biological importance of which is manifest on the face of it, to inflict injury in return ; only so can we live in security. When we witness the infliction of injury upon other members of the society to which we belong, or upon the society itself, we feel a similar craving to inflict injury upon the offender, and again the biological significance of the desire is manifest. It is a safeguard to the society. If such injuries are permitted, if they may be inflicted with impunity, society will sooner or later be destroyed. Retaliation and deterrence have the same root, and it may be that deterrence is the more primitive, or at least of equally primitive origin ; but in actual practice it takes second rank, as the means so often succeeds in ousting and superseding the end for which it was originally employed.

There is more in retaliation, however, than the mere infliction of injury upon the offender in return for the injury that he has done. The same craving that impels us to give him pain impels us to preserve a certain proportion between the injury that he has inflicted and the injury that he shall suffer, or rather between the turpitude of his offence and the severity of the punishment. No one would be content to inflict a reprimand upon a very atrocious murderer : everyone would feel the injustice of visiting upon a trifling theft, or upon neglect



to light a tail lamp, the penalty of death. There must be a certain proportion between the severity of the punishment and the turpitude of the offence for which it is inflicted ; and this leads us to inquire in what the turpitude of an offence consists.

It is stated here, and it is generally admitted, that crime is action injurious to society ; and if this is so, then it should seem that the turpitude of the crime is proportional to the amount of injury that it inflicts upon society. The greater the injury inflicted on society, the greater the turpitude of the crime, and *vice versâ*, and no other factor should be regarded. This is explicitly laid down by Bentham, and it seems to be implicitly held by Beccaria, and I do not say that it is incorrect ; but the injury inflicted upon society is certainly not the only consideration in the mind of the judge when he is fixing the punishment to be awarded to the convict before him. Homicide is homicide, and the death of two persons of equal usefulness and importance to society inflicts equal injuries on society. Yet the one may be a brutal and deliberate murder from a sordid motive, and may be therefore of the utmost turpitude and rightly incur the extreme penalty ; while the other may have been committed on the spur of the moment and under extreme provocation, may therefore be of little turpitude, and may rightly be visited with a trifling punishment or with none at all. Again, the theft of an old pair of boots is but a trifling injury to society, and, if committed by a lad whose first crime it is, may rightly be regarded as of little turpitude, and allowed to go without punishment ; but the same theft committed by a hardened habitual offender who has spent his life in committing crime is rightly punished with great severity. These discordant views and practices may be



completely reconciled if we bear in mind the clear difference there is between the turpitude of the crime and the turpitude of the criminal. As far as I know, the distinction, though clear enough, and always taken into account in awarding punishment, has never been explicitly recognised. But it is manifest that in awarding punishment we do not punish the crime : we punish the criminal ; and we award our punishment according to the turpitude, not of the crime, but of the criminal. The turpitude of the crime is certainly an element in that of the criminal, but it is far from being the only element, as the following analysis will show ; and even in estimating the turpitude of the crime, much more is taken into consideration than the amount of injury done to society. The factors that determine the turpitude of the criminal, either directly or by modifying the turpitude of the crime, are as follows :—

(a) *The Motive*.—The more purely selfish the motive, the greater the turpitude of the criminal ; the more a desire for the welfare of others enters into the motive, the more excusable the crime appears. This is well seen in crimes committed for the benefit of the offender's family. The burglar who sits down to a good meal in the house in which his depredations are committed finds no one to palliate his offence ; but if, instead of himself consuming the victuals, he took them home and distributed them to his children without sharing them himself, we should look with a more lenient eye upon his depredations. We should consider that he is not such a very bad fellow after all, that there is something to be said for him ; and we should be inclined to mitigate his punishment accordingly. Political offences stand in a class by themselves, and, other things equal, are visited with a mitigated punishment. They are not subject



to extradition. Bitter complaint is made if a political offender is treated as a common criminal. It is taken for granted that he is entitled to greater leniency ; and for this feeling there is no foundation except in the fact that his motive is unselfish, or relatively unselfish. His crime has been committed not solely for his own benefit, perhaps not at all for his own benefit, but for what he believes to be the benefit of others ; and the unselfishness of the crime diminishes its turpitude.

Sir FitzJames Stephen insists strongly upon the impropriety of taking into consideration the motive of an act in determining its guilt or innocence, and no doubt in this he is right ; but it by no means follows that motive should not be considered in determining the degree of its turpitude when once the act is found to be an offence ; and though this very learned judge would never have allowed a jury to take the motive of an act into consideration, nor would he have mentioned it in his summing up except to warn the jury to disregard it, yet undoubtedly he himself took it into consideration in passing sentence.

(b) *The Intention*.—It is curious that, although in English law the intention is one of the most important factors in determining whether the offender is guilty or not, and of what crime he is guilty, yet with these exceptions it is not taken into account at all in determining the degree of his guilt. I have already discussed this in a previous chapter, and have shown, as it seems to me conclusively, that the turpitude of the criminal is determined, other things equal, by his intention. If he does a criminal act with a certain intent, then he is rightly punishable, not for what he succeeds in doing, but for what he intends to do. If he puts his hand into another man's pocket, intending to steal what is in it, and the



pocket happens to be empty, he cannot, even though he is caught in the act, be punished for picking the pocket ; but it is as clear as day that his guilt is the same whether the pocket is full or empty. The intention not only makes the act a crime, but also determines the degree of criminality. There is no question here of his heart failing or his intention wavering at the moment of committing the deed. What he does he does with a certain fixed and unwavering intention, and for that intention he should be punished, however unsuccessful his act may be.

It may be, on the other hand, that the consequences of his act are much more serious than his intention. The classical case is that of the man who shot at the hen, unintentionally killed a man, and found himself indicted for murder and convicted. Such a conviction is ridiculous, and subversive of all respect for the law. It is indefensible and intolerable ; but it cannot be avoided except by allowing the intention to determine, other things being equal, the turpitude of the crime. The principle is already admitted, and is already thoroughly recognised in law, and enters into the formal indictment in many crimes ; but with that illogicality that the English pride themselves upon in all their proceedings, it is not carried to its logical conclusion, and the result is that the criminal law of this country is full of absurdities and is in many respects revolting to common sense.

(c) *The Temptation*.—The turpitude of a crime is universally estimated as in inverse proportion to the temptation under which it is committed, other things, of course, being equal. A petty theft by a rich man is inexcusable and unpardonable. There is a meanness in it that is peculiarly repulsive ; and if we inquire in what this repulsiveness consists, we must reply that it is in the



absence of temptation. On the other hand, if a cabman in putting up his cab for the night finds loose money on the seat, the temptation is very strong to appropriate it and say nothing about it. The act is wrong, no doubt, but its turpitude is attenuated and minimised by the strength of the temptation. The chauffeur who steals the use of his master's car in order to give a joy-ride to his friends acts under no great temptation, and is the more inexcusable; but if his child is taken ill, and in order to summon the doctor he borrows his neighbour's bicycle without that neighbour's leave, the act is excusable, and is so partly on the ground of the urgency of the temptation, though no doubt the motive also may be pleaded in extenuation. If he borrows it without leave in order to send a telegram that will secure him a much more advantageous post than that which he holds, the motive is purely selfish; but still, the urgency of the temptation may be pleaded in mitigation of the offence, supposing the act were an offence, as it ought to be.

(d) *The Magnitude of the Injury*.—The third element in the turpitude of an act is the magnitude of the injury it inflicts, an element that needs little insistence. Everyone will acknowledge that murder is a more heinous crime than highway robbery, and highway robbery than picking a pocket; that it is more wicked to swindle a man out of his whole fortune than to steal his purse, and so forth; but the next element in the turpitude of an offence is less obvious, and I do not know that it has been pointed out by anyone but myself. It consists in

(e) *The Proportion of the Injury Inflicted to the Benefit Sought*.—All crime is at bottom selfishness, and the greater the selfishness the greater the crime. "It is the nature of extreme self-lovers," says Bacon, "as they will set a house on fire an it were but to roast their eggs"



—an act of great turpitude on account of the magnitude of the injury inflicted in comparison with the trifling character of the benefit gained. To destroy a costly fur cloak in sheer wantonness, to destroy it out of revenge for some deadly injury inflicted by its owner, and to destroy it by wrapping it round oneself to extinguish one's burning garments, illustrate three degrees of turpitude. The amount of injury inflicted is the same in all three ; but the degrees of turpitude in the same act are very different, and the difference consists in the different proportions that the injury inflicted bears to the benefit to the actor that is sought by the act. It may of course be said that the difference is in the motive, and this would of course be true ; but the difference is not in the selfishness of the motive. In each case the act is self-regarding, and is done for the benefit of the actor. The real difference is in the proportion that the injury inflicted bears to the benefit sought.

(f) *The Deliberation*.—An impulsive act committed on the spur of the moment is always and rightly deemed of less turpitude than an act committed with forethought and deliberation ; weighed, considered, and decided upon at leisure, and carried out in conformity with a pre-determined intention ; and, other things equal, the turpitude of the act is greater the longer the act has been contemplated, and the more elaborate the arrangements made to carry it out. To snatch in passing an article exposed on an open stall is an act of less turpitude than to leave home and visit the stall for the purpose of stealing an article from off it ; and this again is of less turpitude than to survey the premises beforehand, to plan how they can be entered, to provide oneself with the necessary tools, and to break and enter the house to steal the same article. There is no need to labour the



point or to illustrate it further, for it is universally admitted, and is embodied in the law of every nation.

(g) *The Alarm*.—Some writers, especially Bentham, attach great importance to the amount of alarm produced by a crime, and reckon the degree of alarm it produces and the wideness with which the alarm is diffused as factors in the turpitude of the offence. I am not sure that this can properly be so considered, but in practice it certainly does add to the severity of the punishment allotted to the offence, as those who remember the garrotting in the late 'sixties of last century can testify. It may therefore properly be mentioned here.

(h) *The Danger*.—Another factor that contributes to the turpitude of the criminal is the danger incurred by society or any part of it by reason of his crime. The danger incurred is of course quite apart, on the one hand from the alarm caused, and on the other from the harm inflicted. It may easily happen that the former factor is present when both the latter are wanting. He who leaves explosives lying about, or takes matches into a powder factory, or lights his pipe under the lee of a corn-rick, may not cause any actual harm, and, if his action is unknown, produces no alarm among his neighbours; but nevertheless the action is highly criminal, and is so because of the danger that is incurred among them by reason of it.

(i) *The Record of the Criminal*.—The universal practice of the courts, no less in other countries than in our own, is to take into consideration, in awarding punishment, the record of the criminal, and to treat him with leniency if the crime under consideration is his first offence, but to increase the severity of the punishment with the number of crimes that he is known to have committed, for some or all of which he have may been already punished.



The only justification, indeed the only explanation, of this practice is that each additional crime adds to the turpitude, not of the last crime, but of the criminal who has committed it. We sometimes see an offender sentenced to a very heavy punishment for some very trifling offence, such as stealing a pair of boots, for which another offender would get off scot-free after conviction. The explanation is in the respective records of the two offenders. The first is an old offender, whose depredations, each of them it may be but trifling, have continued for the greater part of a lifetime ; while the crime of the second is the first offence.

(k) *The Frequency of the Crime*.—Lastly, without contributing to the turpitude either of the crime or of the criminal, the frequency of the crime weighs with the judge in apportioning the severity of the punishment. A crime that is frequently committed—and there are fashions in crimes as in every other mode of human conduct—is punished more severely, other things being equal, than a crime of equal turpitude that is rarely committed. Especially when the crime is increasing in frequency it is held to warrant a severer punishment. We have recently seen a considerable increase of the crime of bigamy, a crime that is usually regarded with some leniency, and that was at first treated with leniency when committed by soldiers who had fought in this war. Partly in consequence, no doubt, of this leniency, the crime became frequent, and as it became frequent it was treated with greater severity. Fifty years ago, the crime of garrotting originated and became frequent ; and as it became more frequent, it was punished with greater severity. Judges and magistrates are accustomed to adduce the frequency of a crime as a reason for punishing it severely.



All these ten factors should influence the judge, and no doubt do influence him, consciously or unconsciously, in awarding punishment to a criminal for a crime. According as the judge estimates the degree or the nature of these factors, he will increase or diminish the severity of the punishment that he would otherwise have awarded, and there will be little doubt in his mind as to the direction, whether towards increase or diminution of the punishment, in which he should be moved by a consideration of each factor. The more unselfish the motive, the lighter will be the punishment; the more deliberate the action, the heavier will be the punishment; and so on. But there is one factor as to which there may be a doubt whether it ought to incline him to severity or to mildness. This is the amount of temptation. Ought a crime that is committed under stress of great temptation to be punished more severely or less severely on that account? Bentham has no hesitation in deciding that it should be punished more severely. The greater the temptation to commit a crime, the more severely the criminal who succumbs to the temptation should be punished, or, as he puts it, "the quantum of the punishment must rise with the profit of the offence; *cæteris paribus*, it must therefore rise with the strength of the temptation. This there is no disputing." And again, he speaks of "the maxim that the punishment must rise with the strength of the temptation; a maxim, the contrary of which, as we shall see, would be as cruel to the offenders themselves, as it would be subversive of the purposes of punishment."

In spite of the confidence of Bentham's assertion, his maxim has never been followed in practice. The quantum of punishment does not in fact rise with the strength of the temptation. On the contrary, it falls.



The more severe the temptation under which an offence has been committed, the lighter, other things being equal, is the punishment inflicted ; and the practice is in accordance with the general sentiment of the public, and has never been called in question except by Bentham. And Bentham never gave his opinion lightly or without adducing very cogent reasons. In this matter his reasons are unanswerable if we allow his major premiss, which is indicated in the concluding words of the first quotation I have given. Not to make the quantum of punishment rise with the strength of the temptation " would be subversive of the purposes of punishment." But according to Bentham, the purposes of punishment are purely utilitarian. They are solely to restrain the offender from repeating his offence, and to warn others against committing it. In other words, the purpose of punishment is purely and solely to deter ; and if deterrence is the only purpose of punishment, Bentham's reasoning cannot be impugned, nor can his conclusion be questioned. But in fact his maxim has never been accepted and never been followed. He says the contrary of it would be cruelty ; but it is the cruelty of acting on the maxim itself that has prevented it from ever being acted upon. There could be no clearer proof of the error of his maxim. There could be no clearer proof that it is false to suppose that the sole purpose, or even the main purpose, of punishment is deterrence. It is not, and the weight that is allowed to temptation in mitigating punishment proves that it is not. Punishment is primarily imposed in retaliation, and as in retaliation, therefore in proportion to the turpitude of the criminal, and not in proportion to its effect in deterring him and others from committing future crimes. I do not say that deterrence is no part of the purpose of punishment ; but I say that the mitigating



weight allowed to temptation proves indisputably that deterrence is not the sole purpose of punishment. I do not say that severity of punishment is without effect in deterring would-be criminals from committing crime ; but I assert with the utmost confidence that it has little effect in comparison with other ingredients in punishment. These ingredients are now to be discussed.

2. DETERRENCE.—How, then, are would-be criminals to be deterred from committing the crimes to which they are inclined ? Certainly not solely by severity of punishment : probably very little indeed by severity of punishment. Severity has been tried for many, many generations, and by itself has utterly failed. The horrible punishments awarded in this and other countries to high treason never prevented high treason, and, as it appears from history, had very little effect in deterring people from committing high treason. The partial hangings, followed by mutilation and disembowelling of the still living culprit, the quarterings, the breaking on the wheel, the dungeon, the rack, the boot, the burning alive, and a score of other ingenious and diabolical tortures, were never effectual in deterring would-be traitors from committing high treason. The hangings, the transportations, the imprisonment in foul and noisome prisons, the floggings, the pillories, the brandings and mutilations, never sufficed to deter people from committing crimes. On the contrary, in the days of these savage punishments crimes were far more frequent and far more brutal than they are now. Severity of punishment has had its trial, and it has utterly failed. What, then, is the alternative ?

The root of crime is selfishness. With but very few exceptions crime is committed in order to secure for the



criminal some profit, some satisfaction, the gratification of some desire or of some aversion. Now, if the criminal is assured beforehand that his purpose will be achieved, but that it may entail upon him unpleasant consequences, he will not, as human nature is constituted, be much deterred from the action he contemplates. He will take the risk. When the risk of suffering unpleasant consequences is not great, he will certainly take the risk. When the risk is considerable, he will still be inclined to take it, for the gratification that he gains by the crime is certain, and the punishment he may suffer is uncertain. At the present time in England his chances of impunity are on the average about six in seven, for in 1911 97,171 indictable crimes were reported to the police, and only 13,165 convictions were obtained. The habitual criminal has little foresight. The habitual criminal in the higher ranks of crime, the forger, the coiner, the breaker of jewellers' safes, the accomplished swindler, in short the professional criminal as we may call him, is by nature a gambler. It is his delight to run risks and to gamble on chances. The frequenter of the tables at Homburg or Monte Carlo knows quite well that the chances are against him, and that it is a mathematical certainty that if he goes on long enough he must lose ; but the fascination of the chance is too great. He thinks that in his own case the laws of mathematics will be suspended ; and so he gambles—and loses. And so it is with the criminal. He gambles, and in the long run he usually loses ; but he does not always lose. Some of his ventures, perhaps many of his ventures, are successful. Enough may be successful to compensate him for his failures ; and if they are not yet so, he always hopes that they will be. At any rate, he almost always has a run for his money. Justice is never sure, and, even if it were sure, it comes with a



leaden foot. The criminal is not a thrifty calculator, but even if he were, he might decide that a certain and speedy enjoyment is worth the risk of a punishment that will certainly be delayed, and may never reach him at all.

The inference is obvious. If punishment is to deter from crime, it need not be severe, but it must be enough to render the crime unprofitable. It need be no more than this, but it must be certain, and it must be speedy. Severity of punishment does not deter. That has been proved by universal experience. But if the thief knows for certain that, the moment he has stolen, the property will be taken from his hand and restored to its owner, he will not steal. It will not be worth while. No punishment at all will be needed. The unprofitable expenditure of time, trouble, and ingenuity will be its own punishment. In other words, all that is necessary to deter the criminal from committing crime is to deprive him promptly of the fruits of his crime. If this is not done, punishment will be inefficacious. If it is done, punishment will be unnecessary. These, then, are the objects to be striven for.

In the first and most elementary of these conditions the law is lamentably deficient. It makes very inadequate provisions for depriving the criminal of the fruits of his crime, and in many cases it makes no provision at all. Of course, there are many cases in which no such provision can be made. The satisfaction gained by the vindictive or malicious injury to person or property cannot, in many cases, be taken away; and punishment must be substituted for the deprivation. Stolen property is often dissipated irrecoverably before the thief is caught; but if he were caught promptly, this would less often happen; and even if the property has been dissipated, yet in many



cases reparation could be made. It is in this that the English criminal law is so deplorably defective. It makes no provision for reparation. It permits the thief to accumulate stolen property, to retain it even while he is imprisoned for stealing, and to enjoy it upon his release. Nay, in some cases the thief has entrusted to the police officials his property, undoubtedly ill-gotten, to be preserved for him during his imprisonment, and to be restored to him on his discharge from prison. This of course does not include the proceeds of the crime for which he is actually convicted ; but even these proceeds he is not compelled to restore or make reparation for if they cannot be identified. This is wholly and manifestly wrong. In all cases of stealing, at least a certain amount of reparation should be a necessary preliminary to release from prison. If the criminal has no effects, let him work under supervision and control, and the proceeds of his work, less the minimum necessary to keep him in health and strength, be paid over to the person he has wronged. This is elementary justice, and it is surprising that it is not recognised and enforced. No doubt there are practical difficulties, but what does man come into this world for but to overcome difficulties ? Even if it actually cost the State more than the labour of the prisoner is worth, it would be worth doing for its effect in deterring from crime.

Very insufficient attention is given by English law to making the punishment fit the crime, not only in quantity but also in quality or nature. The French are more ingenious, and their punishments in consequence more efficacious. When a tradesman has been convicted in France of adulterating his goods or of using false weights or measures, a copy of his conviction is suspended in his shop, for all his customers to see. A more effectual



deterrent for others it would be difficult to devise. The purveyor of adulterated goods should be compelled to supply gratis to his injured customer an equal quantity of unadulterated goods. When a man has wronged another, we are content to make the wrongdoer make pecuniary compensation to his victim ; but why should he not also make public apology, and publish the apology at his own expense in the newspapers and elsewhere ? A little thought, a little ingenuity, might make punishments far more efficacious by adapting them more suitably to the character of the crime. On this principle, it is right to punish crimes of brutal violence by flogging, a punishment much decried by sentimental humanitarians, but undoubtedly efficient, and one to which the objections are entirely sentimental, and not founded on either reason or the results of experience. I say this after having perused an immense deal of literature—I should say of writing—against the practice of flogging. All that I have read bears the stamp of faddism, and is wholly unconvincing. It is on a par with the writings of the anti-vivisectionists, the spiritualists, and the adherents of other fads.

3. REFORM.—This has been dealt with incidentally in other chapters. It is enough to say here that the occasional criminal does not need reformation. He is an ordinary person who has yielded under stress of temptation, as his gaoler or his judge might yield if tempted with enough severity ; and it is absurd to speak of reforming him. The habitual criminal is beyond the reach of reform. He cannot be reformed either by the ancient method of brutal severity or by the modern method of providing him with beer and skittles, with newspapers to edit and lectures on Sophocles to listen to. The only criminal who can be reformed is the young



criminal whose criminality is not as yet confirmed ; and the only means by which he can be reformed is to teach him the delight of congenial labour, and the sweetness of obtaining the reward of labour in the respect of his fellows, and in increased opportunities of enjoying his life by enlarging and deepening and multiplying his interests in things around him.





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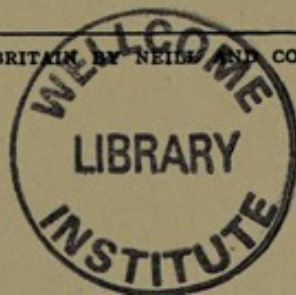
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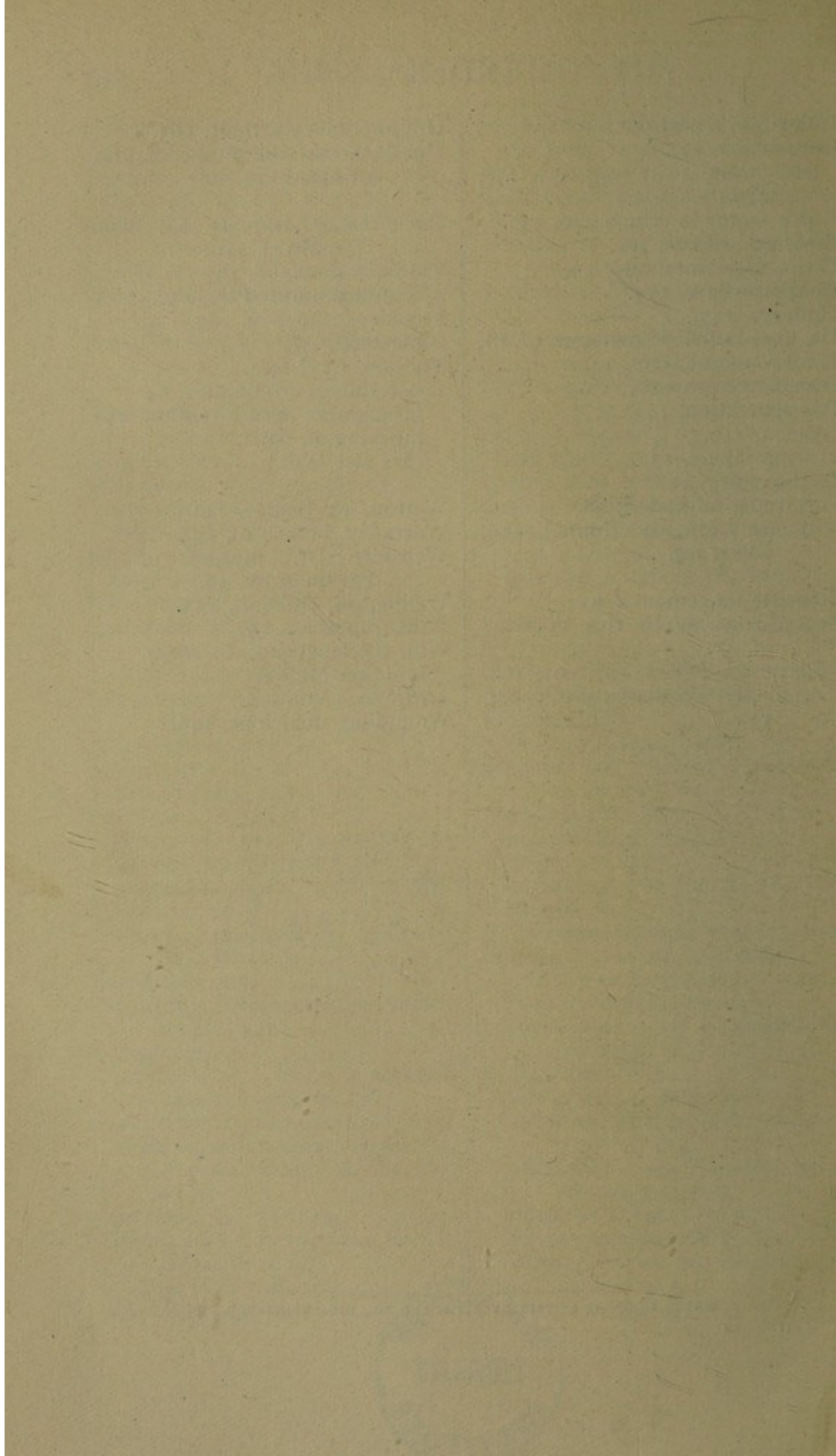
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