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## Responsibility and Crime

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## RESPONSIBILITY AND CRIME.<sup>1</sup>

A STUDY AND INTERPRETATION OF THE LATER WORKS OF ALFRED BINET.

ELIZABETH S. KITE.<sup>2</sup>

The humanitarian spirit that is abroad in the world today nowhere manifests itself more clearly than in the desire to understand and to deal justly with that large refractory class of humanity known as criminals and delinquents. The sentiment of modern society towards its offending members has been summarized in the following terms:

*Punishment Should be Beneficial but Contained in Such Measure that it Be Not Unjust.*

To be beneficial the criminal must have sufficient intellect to relate the punishment to his act; to be just it must take into consideration his state of mind at the time it was committed.

Public sentiment recognizes different degrees of responsibility in relation to given acts. Even our newspapers bear testimony to the fact that of the many thousand crimes which every year are brought before the public, a very different sentiment prevails in regard to the culpability of the offender. Certain atrocities, such as the murder of an entire family by a parent, are at once recognized to be the deed of a maniac, upon whom it would be absurd to inflict the death penalty. In the case of an imbecile setting fire to a building, thereby jeopardizing or destroying human lives, public sentiment demands that so dangerous an individual be taken into custody, but revolts from inflicting upon the culprit the legal penalty for his deed; and this because it would be neither beneficial nor just, for since the imbecile is lacking in the power to relate ideas, he cannot be taught that fire is dangerous, therefore the punishment could have no educative value; it would not be just, because this inability to realize what he has done, makes him irresponsible for his deed.

On the other hand, there are crimes continually coming before the public which are so cleverly planned, especially co-operative crimes, such as burglary, systematic fraud, the commerce of prostitution, in regard to which public sentiment requires speedy and full application of the penal laws; in the first place, because the persons concerned have shown evidence of intelligence, of the power to make means at their dis-

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<sup>1</sup>Read before the American Prison Association Congress at Indianapolis, October 15, 1913.

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posal serve a definite end, and are thus judged to be responsible; in the second place, because having the power to relate ideas, there is a possibility that the punishment inflicted may teach them to abstain in future from similar acts, even if it does not effect a change of heart or character.

*Responsibility Absolutely Denied to Man by a Certain School of Modern Scientists.*

In striking contrast to this world-old view of humanity in regard to responsibility, are the avowed opinions of a certain school of modern scientists.

The theory first voiced more than half a century ago by Herbert Spencer in his "Data of Ethics," amplified by later European scientists, has found perhaps its most advanced expression in an article by Dr. C. B. Davenport in the July, 1913, number of the Popular Science Monthly, entitled "Heredity, Culpability, Praiseworthiness, Punishment and Reward," in which he denies human responsibility *in toto*.

To the thoughtful reader the clear and concise statements of Dr. Davenport are productive of a decided shock, for they reduce man to the level of the brute, make him a merely biological product, the result of hereditary laws, and take conduct and destiny wholly out of his hands. He becomes a creature neither praiseworthy nor blamable in any of his acts, devoid of personality, will, and the power of choice. Romantic, heroic, or cowardly actions become alike impossible to him, for he acts as he does simply because he must. Distressing as are such ideas to contemplate, yet when men like Dr. Davenport in America, and Dr. Ballet in Europe take this stand, they cannot be ignored, but one must dig deep in order to find wherein lies our antagonism to their theories. The lucid exposition of this extreme materialistic view as given by Dr. Davenport makes this possible. Nothing could be clearer or more concise than his statements, and when taken one by one it is surprising, considering the unfavorable impression made by the whole, to find how true most of them are.

This it would seem is because Dr. Davenport, being a scientist, asserts real facts, but not being a philosopher, has interpreted all human conduct by attributing it wholly to inherent traits plus such culture as they may have received. The inhibitory mechanism which he calls a device for controlling conduct, results, he says, from hereditary determiners and has nothing whatever to do with will. His studies, excellent as they are, and original, having been confined to heredity in animals and to the inheritance of traits in man, have led him, it would

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seem, to ignore a vast field of human evidence and positively to deny a spiritual nature in man. To his mind all punishment is unjust, and no action either good or bad is worthy of praise or blame.

### *Philosophy or the Science of Sciences Necessary for a Correct Interpretation of Phenomena.*

It is exactly in this connection that one of the soundest thinkers of modern times has said: "All the sciences have their own departments, and in going out of them they attempt to do what they really cannot do; and that the more mischievously, because they do teach what in its place is true, though when out of its place, perverted or carried to excess, is not true. And as every man has not the capacity for separating truth from falsehood, they persuade the world of what is false by urging upon it what is true." "Man," he further says, "whose life lies in the cultivation of one science to the exclusion of any philosophical view of the whole, has all the obstinacy of the bigot whom he scorns, for each exalts his one science into a key, if not of all knowledge, at least of many things more than belong to it." The philosophic habit of mind prevents mistakes of this character and enables the specialist to guard the limits within which his science must be kept—for his partial truth is true only when taken in relation to other partial truths, all of which must be considered in giving a just estimate of the whole.

### *Responsibility from the Psychological Standpoint.*

It is generally admitted, as has been shown, that children, the mentally defective and the insane, are less responsible for their dangerous acts than normal adults; that very young children are less responsible than older ones, an imbecile than a moron, a lunatic than one slightly deranged. Here it is a question of more or less; but to admit more or less is always to admit the fact, for if some human beings have less responsibility than others, then there is a form of responsibility. The question then becomes: how shall we find this norm and by whom shall it be fixed?

The lamented French psychologist, Alfred Binet, a philosopher as well as a scientist, whose untimely death two years ago cut short his work barely begun upon criminal psychology, has expressed more clearly perhaps than any one else so far has done, the scientific basis of the general belief before alluded to, in human responsibility. But it must not be thought that his views can be found put forth in any such concise form as are those of Dr. Davenport, for Binet was too compre-

hensive a thinker to permit of his believing that the complex phenomena of human action could find summation in a few terse formulas. Of such formulas Binet has said: "C'est de la littérature, ce n'est pas de la science."

By a careful study of his later works, however, we may arrive at a comprehensive idea of his view of human responsibility, and consequently of what he considered beneficial and just in punishment.

In his study upon "The Aptitude of Imbeciles" he brings forth conclusive proof that the essential characteristic of normal man is the possession of higher processes of *direction*, of *choice*, of *criticism* and of *will* by means of which it is possible for him to *pose* an end to be attained, having chosen it as desirable, and finally to make the circumstances of his life bend themselves to its attainment. To grant to man this power of choice is to admit his responsibility.

"Life," he says, "results from a continual work of adaptation of the intelligence of the person to his surroundings," but even here "there exists a hierarchy between possible acts of adaptation; there are acts which are insignificant and others which are important; there are those which have small and immediate advantages, and those whose advantages are in the distance, but immense. To know how to choose is to put in its place our lower nature, to dominate the instincts, to elevate life. The mentality of a child, of an imbecile, and unfortunately also of very many adults, and who for this reason can never rise, consists in preferring the immediate pleasure of the moment to the durable pleasure of the morrow, and who consequently develop an activity which does not calculate, does not reflect, and above all does not economize and therefore can collect no capital."

The "inhibitory mechanism" which Dr. Davenport makes a purely biological function, the result of physical determiners, is raised by Binet, to its place in the moral realm; the vital energy there stored, man is left free to conserve by means of his intelligence or to squander through uncontrolled impulse. To complete the image, let us add that moral energy, like the miser's fortune, when once spent, leaves the spender in a state of penury, with nothing for himself and nothing to pass on to his offspring. If he wish to energize his life again by storing up capital, it can only be done in one way and that is through *self-conquest*.

#### *Responsibility and Legislation.*

Let us now come to the practical problem of crime. The French nation is in advance of us in giving legal recognition to attenuated responsibility, for though we do in practice recognize it as a fact, as

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proven by the notorious Thaw case and others, yet our criminal code has nothing analogous to Article 64 of the Penal Code of France, which is expressed in the following terms: "There is neither crime nor delinquency when the accused was in a state of dementia at the moment of the action; or when he was compelled by a force to which he was unable to offer resistance."

In practice the medical expert whose intervention this article compels, is empowered by the following formula: "Investigate whether the accused was the victim of a malady whose nature impaired his responsibility and to what degree."

Dr. Ballet and others have recently objected to furnish replies using the term responsibility, because they felt that this would imply a belief in the philosophical doctrine of free will. Their attitude in this has been productive of considerable embarrassment to the courts. Binet insists that the objection is out of place, and says: "Every sensible man who admits that one is only responsible for those acts that are freely willed and freely executed, gives to the word liberty a totally different sense than its metaphysical sense; he calls 'free' an act of will which expresses our personality, and which is not under the influence of a force foreign to our person. The expert is called only to determine the responsibility of the accused by taking as term of comparison the responsibility of a normal person; is his responsibility equal to his, or less; here is the whole question. It is very precise, and there is no metaphysical argument that can prevent its being posed or being answered." Binet thus maintains the position that normal human beings are responsible for their acts, and crimes can with justice be imputed to them. The question of irresponsibility can only arise when the subject is not normal, either through lack of development, as is the case with children and mental defectives, or through disease which throws into disorder or weakens the mental faculties.

### *Morosity and Imbecility in Relation to Crime.*

Stated in its simplest form imbecility and morosity correspond to different stages of childhood, from five to eleven years. With them, as Binet says, "there is such an arrest, an insufficiency in the stages of their development, affecting alike their intelligence and their moral sense, that with double right they are placed within the ranks of the irresponsible."

Civilized nations are ceasing to consider the delinquencies of childhood as crimes, and when it is once fully grasped that human behavior depends upon mental and moral, more than upon physical development,

it will be the mind of the culprit that will first claim the attention of judge and juries. By the aid of that simple instrument, the Binet-Simon Measuring Scale of Intelligence, which at least to the tenth year is as perfect as a human instrument can be expected to be, it is always possible to decide accurately the mental age of the subject if he be in reality a child. Around the border line the difficulty of accurately deciding will forever remain, but for those whose mentality does not develop beyond that of a child of eight or nine, or ten years, regardless of the length of time they have lived, there can be no doubt of their irresponsibility. For self-protection as well as for humanitarian reasons, persons of this class must be cared for by society at large. With intelligent direction supplied from without, they can, in nearly all cases, be made not only harmless but distinctly helpful elements in the state.

*Distinction Between the Insane (aliené) and the Criminal.*

"The gravity of this distinction," Binet says, "can escape no one; in so far as it is just, conformable to Article 64 of the Penal Code, not to treat as criminals the insane, who are not responsible for their dangerous acts, in so far as it is equally urgent not to let repression be softened by declaring criminals irresponsible, who with too much complacency have sometimes been assimilated with lunatics. Society has the duty to defend herself energetically against those who are detrimental to her; and it would be disastrous if through confusion of certain medical and philosophical ideas, under pretext, for instance, that free will is a chimera or that every criminal has a diseased mind that the magistrates, the juries and the medical experts came to declare averred criminals as irresponsible." "The capacity for imputability," Kraepelin says, "depends upon two elements: First, a faculty of intelligence; the general faculty of judging what is permitted or forbidden, what is useful or harmful, and the special faculty of comprehending the importance and the consequences of the act which one commits. Second, the faculty of volition; that is, the faculty of choosing between several possible acts, and deciding after reflection and conformable to the tendencies of one's own personality. To put it briefly, imputability depends upon a certain amount of intelligence and will." All this is very clear; evidently the two great masters of alienation, one French, the other German, Binet and Kraepelin, are in accord in recognizing that normal man has the power of choosing between several possible acts and that he is therefore responsible.

The criminal, then, is a person whose intelligence is sound. On the other hand, the intellect of the dement is more or less disordered.

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The criminal knows what he is doing, he is able to realize the bearing of his acts; the dement does not know what he is doing, and is not able to realize the bearing of his acts; the criminal is responsible, the dement is irresponsible. Lack of balance is what is essentially characteristic of dementia. "This lack of balance," as Binet says, "is composed of two elements; there is an exaggerated production of certain manifestations; for instance, an idea becomes an obsession; a false reasoning becomes a cause of continual reflection and passes to a state of delirious conception; a slight depression becomes despair, etc. This is the active element, the impulse; and its counterpart is a slackening, a weakening of the higher processes of *direction, choice, criticism, will*, by means of which a normal person effectively controls the production of his active functions."

"Certain crimes," Binet says, "are in themselves almost exclusive of the idea of alienation. For example: the fabrication of false money; fraud in the world of business, etc. These crimes require on the one hand a great liberty of intelligence; on the other hand they have essentially pecuniary, that is to say, normal motives. It is in fact, absolutely exceptional that a lunatic commits a crime by a desire for lucre. Still another indication: the association of evil-doers has rarely a pathological character because the lunatic has this peculiar trait that he isolates himself from his kind, he lives alone, he acts alone. "Criminal acts are sometimes committed," Binet notes, "by those suffering from a form of lunacy where, strictly speaking, the intelligence is intact, but vitiated by delirium or other morbid symptoms rendering the doer irresponsible. Thus a murder may be committed through hallucination or through a paroxysm of unjustifiable jealousy. There also appear from time to time criminals who simulate insanity, hoping thereby to deceive the experts and escape merited punishment. These, as Binet makes clear in his definition of alienation, are seldom difficult to discover, for as a rule, "they fall into an excess of absurdity and incoherence. Alienation has its laws which cannot be invented if they are not known."

### *The Criminal.*

How shall we then characterize the criminal?

"We may safely establish this rule," Binet says, "that the criminal is a person whose mental faculties are in a sound condition; he knows what he does, he realizes the bearing of his acts, therefore he is responsible for them."

It may seem a contradiction in terms to speak of the criminal as

normal, but this simply means that his anti-social acts do not spring from a disordered intellect, but rather from a disordered moral nature, which condition may in a certain sense be considered normal, since its possibility belongs in its very essence to that power of choice, which as we have seen, is the distinctive attribute of normal man. The choosing of a base or evil end, does not in itself weaken the intellect; on the contrary, the intellect may develop tremendously under such conditions like the power of an athlete, trained to the utmost, that he may win in a given contest. What *does* weaken the intellect is choosing no end at all—but allowing “any old thing,” according to that most pernicious Americanism, to have sway. To this state of mind Binet has given the very technical term *n’importequism*, which is the sure forerunner of degeneracy, a totally different problem from crime.

Again we are right to call a criminal normal, because any man might under given conditions commit a criminal act if he allowed himself to do so, and having committed one such act, find it easier to commit another and so on and so on, until finally he became an avowed criminal; also such a man has in himself the power to say, “Fool that I am! My criminal acts bring me only misery and disgrace. I will rouse myself, control the brute within me, and take my place among men.” So he comes out *reformed*, his moral nature again in order, that is to say reason and will no longer slaves of passion, but passion chained and under the control of reason and will.

Not every criminal reforms, however; for there are those who deliberately prefer crime. Perhaps one of the strongest criminal characters in literature is the celebrated Tromp-le-mort, a creation of Balsac’s. Through him is caught a glimpse of a subterranean world, a world of co-operative crime, with its aristocracies and its menial class, its code of honor, its laws, its fixed ideals. At every point it is antagonistic to the social order, but it is held together by a keen and ever watchful intelligence, an esprit de corps that makes it the power it is. No medical expert needs to be called when Tromp-le-mort falls into the hands of the police. There is no one who questions his responsibility. He has deliberately chosen crime because he loves hazardous adventure, because he loves power and cares to play with wealth. Comfort, ease, tranquility mean nothing to him, he despises them all.

Although in real life there are not many Tromp-le-morts, yet there are lesser men who are also criminals, regarding whom neither judge nor jury think of raising the question of their responsibility. But unfortunately there are others who commit crimes; as we have seen, there are imbeciles and morons, there are maniacs, the obsessed, the born

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criminals; there are also a host of degenerates, as the perverts, the morally insane, etc., about whose crimes, when the occasion arises, there comes in a very grave doubt as to their responsibility.

### *Degeneracy and Crime.*

Of degeneracy, especially moral degeneracy, very little is definitely known; until more is known, Binet insists that we cease to repeat "that vague word which explains nothing." And yet the accepted meaning of the word passing from a good state to a bad, from a bad to one that is worse, when applied to humanity expresses a very real and often observed fact.

A degenerate is a being who has lost or is losing his power of choice and of will, whose personality is diseased or disintegrating, and who in very truth is often urged on to hideous deeds by a force over which he has no control. He is obsessed or possessed as if by a demonic spirit.

Like the insane, degenerate criminals act alone and by stealth. Incendiarism, petty thieving for morbid or useless ends. Sodomy—these are some of the crimes which they commit. Mostly the mentality of this class is of a low order, but Binet himself notes that certain degenerates, sexual inverts for instance, often are possessed by an unusually brilliant intellect. It is precisely in dealing with this group that the gravest difficulties arise in deciding the degree of responsibility which such subjects retain. As has been shown, the extreme cases present but slight difficulties; it is the question of attenuated responsibility, where the accused is near the border line of normality, that the great difficulty of decision lies.

The study of criminology during the past century by Lombroso and others, "far from establishing a clear distinction between the two categories has," as Binet says, "rather resulted in confusing them. It has been proven, for instance, that the criminal presents many of the physical characteristics of the insane. Numerous studies, rather hasty it is true, and suggestive statistics, although lacking in critical sense, have shown that the criminal has a peculiar heredity; it is a criminal heredity, or insane or alcoholic, and from this it has been concluded that there is here an excuse for their anti-social acts. More than this the distinction between *crime* and *insanity* has ceased clearly to appear, and this is *much more serious*."

"To our minds, neither the accumulation of physical stigmata nor the most charged heredity is sufficient to stamp a man who commits a crime as irresponsible. We know, however, that we have here an ex-

tremely delicate question; one will always have trouble in distinguishing criminals from moral maniacs; but we must not permit our theories upon the subject to make a sort of breach through which nearly all the criminal world can introduce itself into the realm of the insane there to find impunity."

*The Practical Problem. What Then Is to Be Done?*

First it is necessary, Binet says, that a dividing line be established, even if arbitrary, between responsibility and irresponsibility, that the matter must not be left to the subjective valuation of the alienist. There are, he admits, between the two states, all the degrees of transition, as between day and night. In the latter case the law has fixed the hour when it is called day, so that, the hour having struck, a magistrate has the right to enter a private house to execute an arrest; although the fixing of this be arbitrary it works out in practice better than to allow each officer to decide for himself when the day has arrived.

More than this, even when the dividing line has been set up the question remains, what shall we do with those judged irresponsible? Shall we turn them unpunished back into the community to repeat their noxious crimes? Evidently not. For the mentally defective and for lunatic, sequestration or colonization is not only advisable but possible. With that vast borderline group, however, which offers by far the most difficult social problem with which our age has to deal, no such easy solution offers itself. Binet says: "The moment that it is proven that the accused has an attenuated responsibility the judges are indulgent and inflict penalties less severe than those designated by law; he is then enabled to repeat the act more easily. Good sense and the defense of society require, on the contrary, that he be incapacitated to do harm, since he is more dangerous than a normal person. But this is not an objection against the principle of attenuated responsibility; it is rather a criticism against our system of penalty."

The time is at hand when this most important social problem must be grappled with in earnest. Attenuated responsibility means moral disease, and moral disease is more insidious in its attacks than smallpox or tuberculosis. Modern science is finding a way to protect man from those diseases which attack only the physical body; shall we not turn our attention to that which blasts the entire being of man?

But in doing this we must not forget that while it is necessary to recognize our ills in order to rise above them, no real reform can be effected except in holding before our minds an exalted ideal that will

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lead us ever up and out of our ills. The deep lesson of the Bible story must not be forgotten; how the Israelites when bitten by serpents in the desert, were bidden not to look at their wounds if they would be healed, but at the golden serpent that was set up; so we must keep before us the perfect model lifted up that all men might be saved.

Let us then close with the words of the great Paul to the refined Phillipians: "For the rest, my brethren, whatsoever things are true, whatsoever pure, whatsoever just, whatsoever holy, whatsoever lovely, whatsoever of good report, if there be any praise, if there be any virtue, think on these things."