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## A COURT OF CRIMINAL EQUITY

A. E. POPPLE<sup>1</sup>

The term "criminal equity" is not one which is often met with in common speech even amongst the legal profession let alone amongst those who do not frequent the halls of justice, yet it means a great deal to the average individual. In its modern form it appears in the guise of "natural justice," present in the mind of every judge but not administered in any *particular* court, nor based upon any particular principle.

Criminal equity originated, so the law writers inform us, in that extraordinary criminal jurisdiction of the King-in-Council, sitting in the Star Chamber, a jurisdiction analogous to the equitable jurisdiction of the chancellor in civil matters.<sup>2</sup> The so-called Court of Star Chamber was abolished, with the result that criminal equity never developed in the way that equitable principles developed in civil matters. The right to exercise it remained with the King-in-Council, as it does even at the present day.

Parliament has, however, widened the powers of the ordinary courts, giving them, in effect, some of the jurisdiction in criminal equity which belongs to the King-in-Council. The Courts of Criminal Appeal in England, and lately in Canada, are examples of this. It must be apparent to everybody that such a court can be a potent factor for good, and if crime is ever to be abolished or even reduced below its present limits there must be some central agency in every country, where criminal matters can be considered in the light of natural justice.

There is every evidence that the fundamental legal principles underlying criminal equity are going to be used more and more as social conditions change, and the attitude of merely endeavoring to make the punishment fit the crime is giving place to a scientific study

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<sup>2</sup>"The Expansion of the Common Law," p. 82, by Sir Frederick Pollock, Bart.

of crime with a view to laying a foundation for the abolition of crime—not merely its repression. This is apparent outside of the courts more than within them, but even in the courts there are evidences of a change. Several factors are retarding the adoption of these principles within the courts, not the least of these being the spirit of lawlessness and total disregard for constituted authority which is abroad in the land. The amelioration of the law cannot come while the law itself is held in disrepute, nor while lawlessness prevails, nor while any part of society arms itself against the other.

Another factor which is retarding the growth of criminal equity today is the indifference of the executive agencies to the position of the criminal and lack of policy underlying their actions. There is apparently no definite object in view, no goal to which they aim, and no appreciation of the endeavors made by social and philanthropic institutions to salve the human wreckage which drifts across the continent. The fundamental reasons underlying crime, the means available for its abolition, the study of environment and conditions of labor are ignored by executive bodies and are left to outside agencies, which are compelled from financial reasons to face them. Even the evolution of the prison system is being watched by certain branches of the executive bodies with anxious eyes.

There is little wonder, therefore, that the growth of criminal equity is slow in the face of such an attitude. Ultimately a full growth will prevail, and as society progresses in its ideas of the treatment of the criminal, so will the growth of criminal equity become more vigorous in the courts. It has ever been so with the equitable jurisdiction in civil matters and it will be the same in criminal matters. All that is necessary is to awaken the consciousness of the people, and this in turn will reflect upon our laws, for the law is merely the reflex of the spirit of the times in which we live.

The enormous cost of crime and its devitalizing effect on the nation both call loudly for investigation along scientific lines. The courts have always been a central agency for molding the life of the nation, and the time is coming when separate courts dealing exclusively with criminal equity will be established in every land, and there will be a broader outlook and a better administration of justice. A court dealing exclusively with criminal equity, deciding its cases upon equi-

table principles, would prevent the harsh inequalities of the law, and would obviate those grave miscarriages of justice which are becoming all too familiar. Before the law all men are *presumed* to be equal. In a court of criminal equity they *would be* equal.