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# CRIME AND INSANITY: A DISCUSSION OF SOME MODERN RADICAL THEORIES

JOHN F. W. MEAGHER, M. D., F. A. C. P.<sup>1</sup>

## INTRODUCTION

The physician should know that medical theories on insanity, which change from decade to decade in our gradual progress to a fuller understanding of mental disease, are still too far from perfection to allow us to ask law to change its whole procedure, where insanity is the issue—particularly in cases of crime. Yet some psychiatrists would have psychiatry supplant law even in these criminal matters. Such an attitude is viewed with suspicion by the law, Grasset says, rightfully so.

It is well in medico-legal cases to be as precise as possible, e. g., not to refer to delusional fears as though they were normal fears. Even some of our psychiatric books speak of some alienists as being too speculative and also impractical, on the question of crime and responsibility. As Professor Wigmore says, generalizations are easy to make, and often hard to prove.

In the American literature on crime and insanity there are a few prominent writers, who have expressed some radical views on this question. Some of the lesser known writers have expressed some of the same fallacies in similar language. Not all of these writers are medical men. The theories of some of the non-technical writers are sometimes rather astounding. Sympathy is to put one's self in another's place and to appreciate his feelings and position. When extreme, it prevents a proper scientific objective study of any situation. This fact is just as applicable to the claims of the victim as it is to the claims of the criminal.

## CRIME AND CRIMINALS

I doubt if anywhere else can one see so much nonsense and half-knowledge on the subject of crime as he can in the writings of Darrow, a Chicago attorney. It will not be necessary to try to refute most of his theories; they refute themselves. Just to mention a few of his ideas will be enough. Among other things, he says:

"Punishment suggests crimes. Frequent executions favor an increase of murder. Reason has little to do with the heartbeat. The finery ex-

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hibited in the stores is the cause of kleptomania (?), so the poor woman who steals something which she needs or must have, should be held as irresponsible as the real kleptomaniac. (He doesn't understand the meaning of mental conflict apparently.) Man is largely ruled by fear and hate. It is as easy to transmit (?) idleness and lax habits as it is to transmit disease. No matter what the time or age, the characteristics of man remain unchanged. (If true, how expect criminals to sublimate?) Men are not ruled by judgment, but by impulse. (How do we differ then from the lower animals? And why plead irresistible impulse for a special few, if impulse absolutely rules all of us? And why develop intelligence if we will not be guided by it?) Man is nothing but heredity and environment. Accidents are inevitable and some accidents are called crimes. In murder, whether the man plans the method or deliberates upon the act can make no difference. The prisoner should be taught that with his heredity and environment, he could have done no other way. (Law, justice, religion, etc., do not enter into this writer's anti-social theories.)"

It would be a waste of time further to discuss the above nonsense. It is mentioned just to show how radical some learned men can be.

Crime is only a part of conduct, Darrow says; and White remarks that wrong conduct is only a departure from custom. True, but what is the value of such generalizations unless it is to prepare for what immediately follows? Darrow says that all do wrong, including judges, jurors, and jailers.

A certain writer says that crimes are inevitable, for man does as he must. This same man states that a certain percentage in a thousand will commit these crimes. In saying that a prison psychosis occurs only in a personality which easily disintegrates under stress, and that this is the same type of individual who found resource to homicide necessary, another writer states something which is only half a truth. The psychosis was necessary—the murder, only expedient. The prison psychotic is more apt to be an inadequate impulsive weakling; the deliberate murderer, a hard, cold scoundrel—not at all likely to develop a prison psychosis.

The crime is the terminal stage of a series of related events; the result of historical development, says White. Well, this is true of all conduct—of every act. Nothing happens without something having happened previously. But of what value is such a remark in medico-legal work? Our conferees in the law are well acquainted with this. What law wants to know is why selfishness and brutality were given full sway, and why no inhibitory influences were brought into play by the criminal. Certainly Doctor White believes in inhibitions and that sublimations are possible even among criminals.

Osborne says that the line between the criminal and the rest of us is very arbitrary. Well, so is the line between goodness and badness,

beauty and homeliness, white and black and many other opposites. A similar idea is expressed by Münsterberg who says that there is no sharp line between normal and abnormal people. But as Grasset says, in reference to another matter, there are sick people, and there are well people—and even if the dividing line is not sharp, most individuals can readily be placed in one or the other category. Most people can tell white from black; only reformers want to call them both gray. So Münsterberg's statement that the criminal is not so different from the man outside the jail, is no more valuable than Train's remark that a murderer may be a better man than his accuser. The rule is that he is not; the exceptions we again leave to the reformers.

Osborne and Darrow evidently do not care for legislators. For Darrow says that most men have a poor opinion of legislators, and criminals may be better men than the law-makers. Osborne in his book "Society and Prisons" quotes a criminal who refers to "the kind of cattle the people elect to office." So-called reformers are very lenient when speaking of the criminal, and very broad and loose (scientifically) in regard to other people.

Many of these writers do not agree with each other. One says that all people are potential murderers, and another says that not 1/100 of 1% of people would ever commit murder. We realize that "potential" and "would" carry different meanings, but the two quoted differ greatly in other ways in their opinions of crime and criminals.

Another sample of a generalization which has but little meaning and no value medico-legally is this from White: that the distance between the man at the top and the man at the bottom must always be very great, whether it can be lessened is doubtful, whether it has been lessened is open to argument.

Train, an attorney, rightly says that in all of us lurk passions of sex and acquirement which could develop into criminal propensities. They do not so develop, however, because the inhibitions of conscience, religion and law hold them in check.

A certain radical element who blame all crime on insanity, and who infer that all people are criminals (felons?) would lead us to suspect that society is worse than it is. Others say that nearly all prisoners are defective. A remark not infrequently seen is that the rest of the population are outside of the prison walls because they haven't been caught. All such reflections only hinder law from accepting the real advances that have been made in psychology, psychiatry and sociology. For strange conclusions are more apt to repel than to attract the thinking members of the bar. In this respect, I might repeat what Mr. Henry W. Taft said in an address before the American Bar

Association in 1921: "It is impossible for the medical profession by theoretical expositions to change the judicial process of investigation. It is too firmly imbedded in our jurisprudence."

So the medical writer who refers to the terms crime, responsibility, guilt and innocence as static concepts, will not make a deep impression on his legal confrères. The recommendation that we get at the dynamic causes of crime is a good one. But the law realizes that selfishness, a desire for easy money, etc., are very evident dynamic causes. To get at the deeper roots and the thymogenic elements would be interesting medically (for penal treatment), but of no value legally. Not all of the writers I am quoting, however, are medical men; they come from many other fields—law, psychology, sociology, penology, criminology, etc.

One writer says it is easy for those outside to make reflections on those inside the jails. Well, Osborne's book shows that the prisoners return the compliment with interest. A psychologist tells us that many outside the jail are also stupid, unemotional, and egoistic. Very true, but you would not want to jail them all because of this, but rather try to interest and educate them. This same writer adds that the criminal is not so different from the man outside. If he means felons, and we exclude the felons not yet caught, we can hardly agree with him. The compliment in being described as like the thief, pickpocket, murderer, etc., would not be relished by most people—and hardly would be deserved. One wonders when one reads in Osborne's book that many are outside of jail, because they have not been caught, whether this is a wish on his part to let the convicts out, or a desire to get a good part of the rest of the public in, so as to give them an opportunity to be reformed by himself.

Though we feel at liberty to criticize some of Mr. Thomas Mott Osborne's views on crime, we must say that he has done some excellent work in penology. And his views on crime are sociologically on a higher plane than those of Darrow, who is wont to refer things back to the cave man period, the animals, etc.—and to throw reason and judgment out of the window. Osborne says that the essential trouble with the criminal is neither physical nor mental; rather he is socially "ill"—ill of selfishness and indifferent to the social rights of other men. Parmelee says that most people who commit crimes are normal or nearly so. When he says that all people commit crimes in their lives, but the majority are not caught, he ought to say whether he means minor transgressions or major crimes. By criminal in this article, we refer to those committing crimes *mala in se*, and not mere statutory offenses. If it were true that all people outside of jails were felons,

then any discussion about the percentage of convicts who were defectives (and other aberrant types) suffering from insanity, etc., would be useless; it would merely agree with the percentage in the general population. And if we put these two ideas together, and agree with Darrow's radical views, we would have a very rotten society, i. e., all convicts are defectives in some way; but the public are convicts (not caught yet)—and so defectives. What a world these reformers must picture they live in!

So here I might say that I cannot at all agree with White's remark in his book on "Criminal Responsibility," that it is as bootless to inquire into the characteristics of a criminal as of a policeman. The value of our personality studies must have deteriorated rapidly in recent years, if we accepted such a statement. It is very valuable to society to know what traits and trends were present; what inhibitions, if any, were operative; why the anti-social way of reacting was dropped, etc. The analogy is rather far-fetched.

Another strange attitude on the part of certain writers is to refer to the murderer (or criminal) as kind, a good man, a hero gone wrong, etc., and to his conduct as infantile or childlike.

Osborne tells us that the desperate criminal is often the hero gone wrong. Well, the rule is he is rarely the hero, but nearly always mean and cowardly. One cannot picture the sneak-thief, the black-jacker, the procurer, the cold, calculating murderer, etc., in the role of a hero. It is this weird, silly sentimentality that does more harm to criminology and penology than anything else that I know of.

Darrow says criminals may have such feelings as sympathy, idealism and altruism—the lack of which often keeps other men outside of jails. It is for these reasons, one supposes, that they beat and kill defenseless men and women—all the while taking precautions to protect themselves. This sort of kindness and sympathy most people would rather do without. Maybe this is where the expression "killing through kindness" came from. A prison warden writes that most murderers are not criminal by nature; that they are fit to be useful members of society. Well, if some of these wardens would only turn all their charges back into society—and the uncaught felons they speak of, too, were allowed free rein—the respectable element in the community had better sail away to the Fiji Islands. If such ever comes to pass, I personally think that the first ones to occupy the best cottages in the Fiji Islands will be the so-called reformers themselves.

Some scientific writers like to refer to the criminals' conduct as childlike or infantile. The only thing infantile about many criminal psychopaths is their excessive selfishness. In their ability to perpetrate

clever crimes, not only in deliberation, but in execution, they are extremely like fully developed adults.

White expresses himself in this respect better than Briggs. Briggs, in discussing the three murderers, Spencer, Czolgosz and Richeson, speaks of "children in the form of men." One of these murderers was a very successful college man, never regarded as insane before he killed a poor girl, pregnant by him, in order that he might marry a rich girl in his own town. Briggs said he was irresponsible (?) because of "Hysterical Insanity," but the state executed him. It was silly to refer to him as a child. To say he was the epitome of selfishness would be nearer the facts. The aim of psychiatry should be to clear, not to befog a situation. And because some criminals are child-like in their make-up is no reason for assuming this is characteristic of criminals, even though to hold the contrary view leaves one exposed to being regarded as archaic in his views.

So when we read elsewhere in White that the prisoner's conduct is infantile and anti-social, we feel that the latter designation fits well, the former one not at all—especially if the particular criminal has just killed a distinguished citizen while burglarizing his home, and then made his escape in a high-powered car. This "infant" must have been the one an after-dinner speaker referred to as having been born in Philadelphia at the age of eighteen—i. e., spent eighteen years in utero, and made his entrance into this world with a gun and a college education, which is not so bad for Philadelphia.

In searching for unconscious motives, and carrying our analysis back to the intra-uterine period, it is well to remember that the law is chiefly interested in the criminal's evil choice.

Again White tells us that the criminal in his "child-like" and "naive" way tries to succeed in society and is motivated by relatively infantile ideals (selfish?). And unfortunately the "babyish" naive bank burglars often succeed all too well. Why stop at calling the criminal's conduct "child-like" or "infantile." Why not go back to the foetal stage. In fact, we may soon hear that the fellow trying to crack a safe is merely fulfilling a birth phantasy, and trying to get back into the uterus (safe). Then if this could be proven that he was not breaking the safe for the money, it might then be a mental conflict, and he would be irresponsible.

Practically all criminals are poor, Darrow tells us. But he does not emphasize the fact that only a small part of the whole population are well-to-do; that besides the smaller number of the latter, their good traits, and higher moral and social sense and ideals are barriers against crime. In fact, Parmelee shows that economic factors are not im-

portant in crimes against the person though they are so in crimes against property.

In regard to the physical causes of crime, Healy expresses the scientific view when he says that the correction of physical defects alone rarely cures criminal tendencies. But Lawes, a prison warden, sustains the popular idea, when he says that "treatment of tissue, gland, or to relieve pressure" may work a reformation in the criminal. It "may," but the rule is, it will not. And then Darrow spoils it all by saying that the criminal, if he tells the truth, does not want to be reformed—that he cannot be reformed. This is hard on Osborne's idea that the real aim of modern penology—(denied by Healy, Conté and others)—is reformation. Most authorities still regard the protection of society and the deterrent effect as the chief aims of punishment.

#### HEREDITY AND ENVIRONMENT

Both of these factors are very important in the genesis of crime. The influence of environment is easier to study, and therapeutic recommendations based on it easier to apply. One writer tells us without meaning to be humorous, that crime can be cured by eugenics—how, he does not tell us.

Darrow makes some dogmatic and unwarranted statements about the influence of heredity on crime, and then in another place spoils it all by telling us that we know little about heredity—which is the truth. He says criminals show an imperfect heredity. When you consider that a few hundred years back, each of us had a quarter of a million ancestors, one wonders whether anybody's heredity is perfect. There is not another scientific field like this one of criminology where you find so many writers expressing such wild speculations. Darrow also says that the problem of crime is to adjust environment to heredity, which sounds well, and that is all. He hardly ever refers to the cravings, efforts, personality, etc., of the individual. According to his philosophy, man is an animal, and apparently a poor sort of one—and nothing else. Darrow's way of referring human conduct back to the lower animals must also be very irritating to Doctor White, who would analyze it in terms of higher social tendencies and relationships. White soars heavenward, and Darrow in a contrary direction. Others analyze it on a physical basis, a neurological basis (Grasset), an endocrinological one, or a mental one.

Of course, if heredity and environment were the only "causes" of crime, and the individual himself is omitted, murder, robbery, etc., would be incidents and not crimes. Then society, law, justice, etc.,



would disappear, and we would have chaos. If personal effort does not count, and the inhibitions due to conscience, religion, and law need not be used, then no one would be responsible for any sort of conduct. And the bad imagination which Healy stresses in youthful delinquency, would have to take its course. A poor sort of philosophy indeed, to blame everything on heredity and environment and leave out the individual factors. Healy distinctly says that the influence of heredity cannot be proven in delinquency, and he cautions against being too superficial in blaming crime on heredity and environment. To date, we have not been able fully to explain acquired traits and character on a hereditary basis. Temperament had better be carefully studied first along these lines. The consensus of opinion of scientific investigators is that heredity is vague in explaining most psychological phenomena.

It is in the field of environment that great good can be accomplished from a therapeutic standpoint. Even here, however, the individual's personality and tendencies must be considered. For example, in the case of the murderer, Davis, diagnosed as a paranoid individual by six men, I later heard a psychiatrist say that he might stay well if he changed his environment. His history, character, and reactions showing definite delusions, not dependent on the environment, would contradict this.

#### PARTIAL TRUTHS

Any partial theory, as Grasset says, nearly always contains a certain amount of truth. It is this very fact which permits much nonsense to be accepted by the public at large, who see the little bit of truth, but who are blind to the larger error. For on matters requiring special knowledge, common sense cannot always be invoked.

So when we are told that no one is perfect, that perfection in anatomy, physiology, and mentality does not exist, this is true. But this does not warrant the next conclusion that therefore a dangerous scoundrel is not so different from the rest of mankind. Likewise, when no one is 100% efficient, a person who has had full opportunity, is not excused for not being efficient at all.

When Train says in his very interesting book, "The Prisoner at the Bar," that the name of the crime is not an index of the man's moral character, he states only a half-truth. If his act showed moral turpitude, and was not an isolated instance in his life, it certainly is an index of his character.

Here, I might say that the severe onslaught which has been made not only on the question of free-will, but even that there is any will

at all, by those determinists known as fatalists, goes hand in hand with a frequent denial that there is any moral sense. In fact, it is rather unfashionable to refer to a moral sense. Now one speaks more of social values. Some might say this is merely a play on words. Most people feel and know what is right within before expressing themselves in speech or action.

There is no doubt but that society as at present organized is not perfect. Nor is it likely that any society will ever be perfect. But this does not give Briggs the right to say in regard to three murderers—one of these men being the man who killed President McKinley, the other two killed two women—that society gave them the opportunity to kill. Does the writer of this know what we can do with our hundreds of thousands of civil psychopaths at present in the population? They do not consult physicians and when they do, what do we do for the non-criminal psychopaths? What can we do? As a matter of fact, Briggs must know that our present hospitals do not want them. We all know this. We can see this referred to by Healy in his book, "The Individual Delinquent."

Another flirtation with everyday experience is the statement that normal people do not malingers; or as stated by another writer, the mere fact that a person malingers shows that he is a psychopath. This is the veriest contradiction of fact, as Singer and Krohn emphasize. The society woman will simulate a headache to avoid an unpleasant appointment as do other people invent various subterfuges to avoid obligations. If the preceding idea were accepted, it would be difficult to find any normal people. And what is there to prevent the criminal from malingering? That perfect simulation of genuine insanity is easy is not so. But that is another matter. Nor can I accept White's statement that he never knew a criminal to escape through feigned insanity, "except through sympathy." Using the term "except through sympathy" lessens the value of his statement, and merely shows why the jury accepted the feigned insanity. All lawyers know that sympathy may outweigh evidence with some juries. White should read the case of Olivia Stone in New York State. And showing that malingering can also be successful in the opposite direction, both Thaw and Davis were medically insane, yet through simulation (simulating sanity) were in a way able to escape the judgment of the law. I need only refer to Parmelee, a very careful criminologist, who rightly says that criminals have escaped through feigning insanity.

The present tendency is to substitute the term "mental illness" for the word insanity. The substitution, however, is not of great value in

medical jurisprudence, inasmuch as "mental illness" is too subtle a term to use in law. For if the assertions of some psychiatrists regarding what constituted mental illness were to be accepted at its face value, i. e., as being equivalent to insanity, all criminals might plead irresponsibility. Nor does it make it of any greater practical legal value to say that mental illness is a disease of man as a social animal, not necessarily a disease of the individual himself—a disease at the level of integration of the individual and society. For the anti-social conduct (which is all that the above infers) is not necessarily a disease; and, secondly, the maladaptation does concern the individual chiefly.

They tell us that law should be more scientific in treating crime—which is true. But we psychiatrists should be more practical in advising law. I have seen psychiatrists assist getting a paranoid individual out of the asylum because his "trends" had cleared up (disarmed?); yet not a word was spoken at the time of the hearing, of the man's dangerous make-up. Don't let us criticize law too severely till we ourselves are above criticism.

Some psychiatrists say insanity is purely a legal term. Considering that most mental books use the term, that one of the best modern small books on psychiatry is Hart's "Psychology of Insanity"; that manic depressive insanity is better known by most medical men than manic depressive psychosis; it is apparent that the term "insanity" means something definite to most people.

Some of the very psychiatrists who protest against the word insanity (and responsibility) as being vague, do not hesitate to use the term "psychopath" as though it were very definite. Yet read what most authorities say regarding the meaning of psychopathy. Likewise, these same psychiatrists will advance the wildest speculation as to the influence of the pineal gland—(all based on a faint X-ray shadow)—on human conduct, particularly criminal conduct. Here is where we should protest, but do not. It is in instances such as this that one feels that our criticisms of the law are only a mockery. It is a little far-fetched to say that we do not know what insanity is; also that law and medicine speak different languages. Since we in neurology and psychiatry have absorbed endocrinology, we also speak a language quite different to most other physicians, and none too well understood even by one another.

We have graduated from explaining crime by witchcraft, diabolical agents, and physical disease, to explaining by mental causes and social maladjustments. We are now studying the genesis of crime in the unconscious (affects). The role of the unconscious is interesting, not only

in regard to crime, but also in regard to testamentary capacity. The law, however, could never function if it had to wait till all of the roots for such acts had to be determined, for in many cases they would never be determined.

Some men tell us that we must interpret mental symptoms in terms of a higher level, not of a lower physiological or chemical level; that a neurosis or psychosis must be described in psycho-sociological terms. Others tell us that facts in a given level must be explained in terms of that level. But endocrinologists and some French neurologists explain conduct on a lower level (neurons, endocrines). This difference of opinion depends on whether strivings and tendencies are paramount, or origins and motivations. Neurologists and internists favor the latter; psychiatrists the former. Let me add here again that in medico-legal work, we should simplify our descriptive terms, so that we will not be ambiguous.

The medical testimony in the Loeb-Leopold murder case did little to enhance the position of expert testimony. Urstein wrote a book on these two youthful murderers. He tried to show that they were both catatonics—(apparently to him, catatonia includes hebephrenia, paranoid conditions, manic-depressive insanity, etc.). The use he made of his material was rather strained. That one youth stuck his finger in some chocolates; that one first refused to answer questions “by advice of counsel,” and then refused a drink of water “by advise of counsel,” showed a boyish prank and flippancy. But to Urstein it was a sign of insanity (perseveration?). Urstein did not agree with all the other alienists by the way, but said the two youths had dementia praecox (catatonia).

When White says that a prisoner would not want an indefinite sentence in an insane hospital, from which he might never get out he states only a half truth. It might be true of unknown criminals, but not of influential ones, who have great hopes of getting out soon by a successful habeas corpus proceeding. For example, witness the strong efforts of Thaw, Davis, Lillian Raizen, etc., to get into the insane asylum. And the first one is out of it now.

The following is another instance of how an honest investigator, by pressing his position feelingly rather than by the method of science, is apt to be careless, and so make statements which are somewhat contradictory. Lawes, warden at Sing Sing Prison, recently wrote a book, based chiefly on statistics in which he makes a plea against capital punishment. He says that in Italy where they do not have capital

punishment, the homicide rate is much lower than it is among the Italians in the United States—in 40 of which states capital punishment is in force. He then says this seems to indicate that the impulsive Italian is more deterred by life imprisonment than by the threat of death. This very distinctly contradicts a previous emphatic statement of his in the earlier part of his book, in which he says "The small number of homicides in Canada, England, and France is due to the certainty and celerity of justice, and not to the form of punishment." Why he values the form of punishment in the Italian but not in the Englishman is hard to say, except that he is anxious to prove his point. It is a good example of much of the loose writing on this whole subject of crime, where attitude often supplants science.

The negativism of Mr. Darrow leads him to take exception to the better English criminal system praised by Lawes. But most American jurists agree with Train when he says (in his "Courts and Criminals") that the English system which has gotten rid of its errors is far better than ours. There also they have more respect for law than we have, according to Train.

Why the law permits the following trick to be played, is hard to say. It is all to the advantage of the criminal. When the lawyers try to escape trial for murder on the plea of insanity, they collect a long list of people in the family who showed peculiarities, alcoholism, insanity, etc. They assemble all the oddities shown by the prisoner as a boy, and finally bring forth the evidences of the alleged insanity. The criminal, if his plea is successful, escapes prison and goes to an insane asylum. Soon he tries to get out on a writ of habeas corpus. At this time the relatives have a poorer memory for the early eccentricities. The lawyers now want the expert to delete the family and past histories, and answer only on what he found at the time of his present examination. The paranoid individual may have been well-coached. Having a good intelligence, he finds it easy to disarm. All his peculiar ideas he says have been given up. He is "cured." He goes home. Now, why the total history is allowed to be used so that he can escape prison, but only a part of his mental history is allowed to be presented when he tries to get out of the asylum is an interesting and practical question. Personally, I feel every alienist has the right to demand the full family and past history be included in the hypothetical question—and be considered with the expert's examination also.

Russell, of Bloomingdale, at the time of the Raizen hearing told me he did not care about the term "legally insane." Apparently, however, some psychiatrists use it at times. Thus Keib of Matteawan, in his 1923 report (p. 323), says of a prisoner that he was "legally re-

sponsible," and sent to prison for a long term. So, we feel here a danger, where "legally insane" may be good enough for some, but "medically insane" may be better for others. The public has come to feel that poor criminals must be legally insane, but influential ones only have to be "medically insane"; this latter is read by some to mean "mental illness"—and this is as broad as the day is long.

Another way the lawyers work it, is this. The criminal is "medically insane" (has the "blues" which may be dignified into the term hypomania—even though the individual shows little of the syntonik make-up). The law is lenient, so he goes to an asylum. A few years later a writ is obtained, and he gets out of the asylum. By this time there may be a new district attorney and his lawyers ask by what right are they detaining this poor man, who is not "legally insane"—they no longer have any interest in "medical insanity." This quibbling over terms acts as a two-edged sword, and society is usually the victim. This is one reason why law will not allow medicine full sway in these cases, and as matters stand at present, rightly so. For the ultimate issue in these cases is responsibility for crime, and not insanity. Some psychiatrists apparently regard any deviation from normal as "mental illness."

Likewise the same lawyer who would oppose the commitment of a man to an insane asylum for treatment, would in all likelihood quickly plead insanity for this same man if he committed a murder.

#### LAW

Generalizations may be true or false, or more false than true. When Osborne says our rules of evidence are ridiculous and antiquated, this is true in regard to some matters and false in regard to others. White's remark that all people have prejudices, including judges and lawyers, is more subtle than Darrow's statement, that the law has always taken its toll of victims; that judges naturally believe that the defendant is guilty; that the dice are loaded for the conviction of the accused. We can discount all of this, coming as it does from Darrow, with his negative attitude on social problems. White is certainly in error in saying that the judicial attitude is an absurdity, even though it be true that some do not possess it. Train expresses this idea much better when he says that few judges have a perfect judicial temperament. But a judge could just as well question whether every psychiatrist possessed a perfect scientific and logical attitude. Certainly the writer who says that there is no such thing as perfect justice would not infer that there is no justice at all.

Grasset does not agree with many of his fellow psychiatrists on the question of radical amendments to the law in criminal cases. He says that premature law-making in view of our present psychiatric knowledge would be foolish. Take the recent instance when a few psychiatrists called the murderers Loeb and Leopold "mentally ill." Some said that Thaw had the paranoid type of dementia praecox; others that he was sane. A psychiatrist referred to the murderer Richeson as irresponsible because of hysteria. In view of this, one can see how law must go slowly in making changes in its procedure.

Psychiatrists sometimes criticize the law in that her tests as to legal insanity are too narrow. And law criticizes some psychiatrists in making "mental illness" so broad and general as to embrace conditions which it should not, certainly in medical jurisprudence. Most of us feel that as law holds degrees of responsibility for the sane man (degrees varying in murder, etc.), she should recognize degrees for the abnormal and the insane man. The danger of such a principle would be in putting the theory into practice. However, one advantage of this idea of partial responsibility would be that dangerous criminal psychopaths "with trends" would not, as now, first escape prison and shortly afterwards escape the asylum on technicalities, but could be more rationally managed by the law. At present he has "tendencies" (trends)—and they soon disappear, and he thus escapes the law. For his real underlying character is quite ignored at the time he applies for discharge on a writ, as long as his "insanity" is "cured." Criminal psychopaths are the very ones from whom society needs protection. Tanzi was led to say that some psychiatrists are very impractical.

To anyone who has given the subject careful consideration, the fact that law recognizes different standards for insanity, dependent on whether the issue be for commitment, or the ability to make a will, or to excuse for a crime, is reasonable, logical and practical. In fact to ask that the same criteria be applied to testamentary and commitment cases as to cases of crime, would be unsound in principle. And we as psychiatrists have different standards in estimating individuals from different strata of society. Thus Urstein says the same standards of conduct which belong to the cultured must not be applied to low types. Why deny to law a process of reasoning which we follow in medicine? For a man might need commitment for a depression, yet this of itself would not show that he was unable to make a valid will. Nor should every slight mental oddity be advanced as a reason why a man might commit murder at will. Just to say that a man is "mentally ill" or "aesthetically deficient" could hardly constitute a legal excuse for

murder. We are not referring to those writers who say all prisoners are "mentally ill" and all others who are outside of prison are criminals who have not yet been caught. (If this were so then one would have to conclude that the whole population was mentally ill.)

I remember one writer who said that the affects are the same in the child, the genius, and the idiot—but that the intellect differs greatly in them all. Others say that the unconscious in all people is quite similar—that they differ in their conscious life. In spite of all this, some psychiatrists ridicule the legal idea of insanity, i. e., not having understanding. The emotions and the unconscious life are important, but in law are rather indefinite standards with which to measure responsibility. At least the intellect must count for something, if only a little.

In medicine, we have different standards to estimate psychological reactions. So why object to law's varying standards in unrelated legal questions. In the celebrated Richeson poisoning case, Briggs apparently accepts the murderer's statement that he bought the poison to kill a dog. Whereas the evidence showed that he bought it to kill Miss Linnell.

Law has not yet arrived at the point of accepting insanity as being present in its legal sense, because someone was said to be suffering from some shade of "mental illness."

#### RESPONSIBILITY

White in his book, "Criminal Responsibility," objects to the legal concept "responsibility" referring to it as nebulous, and asking "who is wise enough to talk of responsibility." Some of his colleagues ask the same question when the criminal is being discussed. Yet, strange to say, Briggs is not averse to referring to the "responsibility of society." Apparently the shoe pinches on one foot only. Society is accountable, but not the individual. One might also ask who is wise enough to call chronic delusions "trends," or to refer to delusional fears as merely fears. White wants to get beyond the legal idea of responsibility and study tendencies—what the individual was trying to bring about. The law feels that its present investigation is broad enough to know what the burglar, pickpocket, murderer, etc., was trying to bring about without going through the sometimes impossible task of getting at the unconscious roots. I think we all recognize the fact that a few bad character traits no more destroy sanity than do a few freckles destroy beauty. Nor should the psychiatrist call a psychopathic or neurotic



man or woman insane, when he or she presents no evidence of genuine insanity.

For a man with Briggs' reputation to refer (in the Richeson case) to hysterical insanity (?) as an incurable form of mental disease, chronic and progressive, and possibly ending in dementia, is strange, to say the least. This is not the conception of most psychiatrists regarding hysteria. In regard to the same case, Briggs makes also some other ambiguous remarks. He says that 10% of the insane show hysterical symptoms. (Moebius says that we all show hysteria at times.) This does not mean, however, that hysteria is insanity. He said Richeson should have been kept alive and studied; that his execution prevented "studying the abnormal man for the purpose of aborting criminal tendencies in others of his kind." What nonsense, when we have all since studied many thousands of hysterics, sexual perverts and criminals—and yet murder goes on as before. Others say that man cannot help his tendencies (?). That the study of this single psychopath would teach us what the study of thousands of others has failed to teach us, is hard to believe. Our insane hospitals do not cater to psychopaths, as a matter of fact. Briggs' recommendation is rather deceptive. It is in keeping with his remark about an alienist who was opposed to him and who changed his opinion. He said that this alienist committed a greater crime than the murderer.

The suggestion that the jury could not distinguish different grades of unsoundness of mind (partial responsibility) is hardly so. For at present the jury is called upon to decide a more subtle question—the varying shades of responsibility in sane criminals—as in bringing in a more or less qualified verdict in murder trials. To do this in these cases the jury must pass on deliberation, intent, etc.—all more difficult to decide than whether some insanity existed in the defendant or not.

If it is true that the great criterion of science is the test of utility, then some of our colleagues in psychiatry cannot lay claim to be very scientific in their medico-legal work.

#### EMOTIONS AND THE WILL

I remember many years ago how we paid attention chiefly to the intellectual faculties and not enough to the emotional state. Now it is quite fashionable to stress how little the intellect counts and to emphasize the great importance the affects play in determining conduct. We might go back further to the source of the emotions (physiology of endocrines, muscles, etc.), were we only able to do so with our present knowledge. This course (of studying origins), however, would not fit

in well with those opponents who insist on the greater importance of tendencies. The study of tendencies is of great psychiatric value—but the question of choice is of paramount medico-legal importance. Physiologists and sociologists have unfortunately not united as yet.

Apparently not all psychiatrists reject the idea of a moral state. For Urstein says that a morality which is guided only by egoistic impulses indicates moral idiocy—a rather severe name for some cases of selfishness. He also says that moral feelings may be lost before intellectual defects appear. He speaks of a weak will and a loss of ethical and moral principles as characteristic of dementia praecox. Certainly psychiatrists would not have it that we speak only of moral sentiments in discussing insanity, and regard them as taboo in discussing criminality.

Wherever the criminal advances the claim of "irresistible impulse," if accepted by the alienist, he must be able to show the morbidity of the impulse, and the reason why inhibitions were not employed to check the evil impulse.

On the question of choosing one's actions, we might refer to Darwin's remark that man's instincts urge him to primitive reactions. In regard to certain actions at some time in man's life, this could be said of all men. But what man has learned through civilization, causes him to inhibit evil actions. With criminals it is a case of refusing to inhibit selfish desires—not a case of being unable to inhibit them. Urstein says that initiative for actions results from perceptions, feelings or moods, and not from intellectual capacities. This is true, and he might even go further back and say that physical and physiological conditions of the body initiate our actions. But the statement is not true if it implies that the direction, expression, and continuance of the actions is not determined by intellectual states (which is not the same as the initiation of the actions). This depends on deliberation, reason and judgment. Reason—which he says is the totality of our intellectual performances—causes us to choose our conduct—certainly in all matters that are important and not automatic.

While it is true that all people have sinned and committed statutory offenses (*mala prohibita*) at some time in their lives, it is not true in regard to felonies. A high moral tone (conscience and religion) more than a fear of the law inhibits the commission of felonies (*mala in se*) in most people. For the others, fear of the law is necessary.

I can hardly conceive of a psychiatrist preaching an absolute determinism (fatalism) and denying choice in conduct, and yet at the same time subscribing to Bleuler's theory of ambivalence and ambivalence. The question of choice as applied to this theory is interesting

to study in our dementia praecox patients. One wonders how a fatalist explains negativism.

#### THE ALIENIST

I have discussed elsewhere the reason why alienists disagree in some criminal cases. Experts are sometimes not as consistent as they might be. Thus at a meeting of the Medical Jurisprudence Society of New York, Carlos MacDonald spoke against the habit of experts coaching lawyers. Yet he suggested points to his attorney in the latter's examination of me in the Davis murder case in Poughkeepsie. Personally, I had no objections to this, but mention it merely in its relation to the question of consistency. In this same case, Carlos MacDonald said to the court that he would guarantee no one, not even the judge. Then of what use are our personality and psychiatric studies? Decade by decade, we see changes in psychiatry. Not many years ago, MacDonald said that Czolgosz, the murderer of President McKinley, was socially ill, but not insane. Most modern writers agree that Czolgosz was insane. (Kempf, Hamilton, Briggs, etc.) And some present day writers connect social illness with insanity, while others decry the use of the word "illness" in connection with anti-social conduct.

If we were to join MacDonald's remark that he would guarantee no one (speaking of insanity), with White's statement that all people are biased, and accept them both, it would certainly lessen the value of psychiatric prognostic conclusions. Likewise, when Urstein concludes that the youth who stuck his fingers in some chocolates at a party, thus showed an evidence of insanity, and not a mere boyish prank, flippancy, or the "freshness" which is common in adolescents, he unnecessarily widens the field of insanity. It seems to be going far to prove a point. Subterfuges are not so uncommon in criminals who plead a dubious insanity to escape the judgment of the law.

If one is going to diagnose hypomania, he should show besides the syntonik make-up, the fundamental evidence of the condition. Mere restlessness, due to an all-sufficient cause, should not be dignified by such a high-sounding name, any more than should hatred in a sane man be called a "paranoid trend." This term then becomes a subterfuge to cloud the facts. To react with hatred is bad, but it is found in both the sane and the insane.

Where a criminal is seeking discharge from an insane asylum, the alienist should not be asked to dispense with or to disregard the past history. This was done in one of the recent Thaw hearings. The whole history, if available, should be used for it is of the greatest

importance in psychiatry. By dispensing with it, we omit much of the character and all of the previous reactions of the individual. Such a procedure offends science. Just why the criminal's lawyers are anxious to use his past history when he seeks to escape prison for his offense, and yet want to disregard it entirely, when he seeks freedom from the asylum, is easy to see. We do not study cases this way in our office and hospital practice. It is like asking a builder to give an opinion on the worth and safety of a building, but insisting that he disregard the materials (character) out of which the building has been made.

In the majority of cases, a man is not dangerous merely because of his insanity, but chiefly because of his bad character or personality make-up. How rarely do you hear of a murder among the 40,000 insane in the hospitals in New York State? In fact, murder is a comparatively uncommon sequela of insanity. Nor is it true that all criminals are insane. This absurd idea is not new, but was preached as long ago as 1750. And it is rather deceptive to rest with the statement that neuroses, psychoses, and criminality possess a common origin and background. Here again, not the background, but the traits and trends are the chief factors to study. As a matter of fact, not even all paranoiacs (reformers and other altruistic types) are dangerous. What makes them dangerous, is the presence of certain traits and trends, and the failure of certain inhibitions to function. Take, for example, Harry Thaw. It was his character make-up and his lack of inhibitions more than any praecox symptoms which made him a menace to the community. Alienists must remember this in appearing in habeas corpus proceedings. Some people would have it that all people are criminals (most of them remaining uncaught); others would have it all criminals are insane or defective; the corollary would be that we are all insane and criminals. For example, Darrow says by far the largest part of the population of prisons is made up of the insane, feeble-minded, defectives, or victims of disease. It seems that with this anti-social writer, everybody but the criminal is at fault.

#### DEFECTIVES

Goddard gives an excessively high percentage of prisoners as being defective, according to Parmelee. Darrow says the criminal is almost always ill, though he adds without humor, that an examination may fail to reveal the defects. Osborne, who certainly is well-disposed toward the criminal takes exception here, and says to call criminality a disease is to juggle with words; that to claim that any large proportion of convicts are mentally deficient is the sheerest nonsense. White, who

testified for Loeb and Leopold, says that 50% of prisoners are defective or psychotic. Most careful investigators would call this a marked exaggeration. White certainly does not speak for the majority when he says that psychiatrists realize that criminals for the most part are defective to a well recognizable degree—which besides is another vague generalization. To a writer who strongly objects to the term "insanity" as a vague concept, one wonders why "defective" should be so concrete. And one cannot help but ask when one speaks of defects in emotions, intellect or will, whether there are any individuals who show perfection in all spheres. Likewise when a writer says that a very large percentage of all criminals are psychotic, defective, psychopathic, or neurotic, he might also be asked if the percentage did not also describe the general population very well. Many successful business men, doctors, lawyers, engineers, etc., might be neurotic, psychotic and mentally ill, and still be responsible for their acts. Of course, White uses the term "mentally ill," which as a term applied to medico-legal work, is a term which can be contracted or expanded at will. Another psychiatrist who discussed freely the effect of the pineal gland on conduct might have some wonderful theories on this subject—but they would hardly be of any value to law or medicine in cases of murder.

Healy says that to call crime a disease (or an atavistic phenomenon) is dubious and cheap—and Healy is a very scientific writer. And Train (in his book "The Prisoner at the Bar"), says that "crime, a disease theory," has been worked entirely too hard; adding that it is far from true that a majority of the real criminals are mentally defective. If we believe this, and what another writer says—that we all commit crimes—then we must all be defectives. It is no more true that all crime is due to insanity or defectiveness than to say that all insanity is due to physical disease alone.

Blueler says that the intelligence level of the convicts agrees with the level of the community from which they came. He says that insanity is not common among convicts (who are unethical), but that a psychopathic personality, however, is common among them. And this is what we would expect to find. Squire says that the average mental age of the white men in our draft army was  $13\frac{1}{2}$  years, which he says is the average mental age of the white men in Sing Sing Prison. One extreme lay writer spoils all this by saying that the intelligent are as bad as the defective. Urstein says that grasping and understanding a thing depends not on the intelligence, but on the emotions. Why do people want to be intelligent? The child's emotions are very well developed at birth; but its intelligence at birth is almost nil. Intelligence

as a mode of thought does not appeal to some reformers. Where an adult is rated as having a 10 year mentality, this does not mean that he has the mind of a child of that age, but rather that he passed tests normal to a child of that age. Native ability might even then be normal, under such circumstances. So, when one psychiatrist spoke of a murderer having a mental age of twelve years, he must have realized that that is only a trifle below, or almost equal to the average age of the population of the community at large.

Lawes is particularly liberal in discussing the age of adult thinking. He says that 60% of the Sing Sing murderers were under 30 years of age—the age of mature thinking. Soon they will be extending the age limit to the senile period and then excuse the murderer anyway on the grounds of being a dotard.

Briggs does not object to the statement of a man whom he quotes, as saying that 99 irresponsible people are hanged for one responsible person who escapes on a plea of insanity. We all know of three murderers who escaped on a plea of insanity here in New York State (Olivia Stone being the last). If the above remark were true and not an exaggeration, then every person electrocuted in New York State since 1899 was irresponsible. It is sad that a scientific writer like Briggs would quote such nonsense. Such statements refute themselves.

Also one wonders if White meant anything in particular when he said he doubted if anyone ever goes to execution in a normal frame of mind. I am sure nobody will dispute this.

Lawes divides murderers into two groups: (1) Those who were normal except (?) for that one moment of stress. (Unfortunately another defender of the criminal spoils this by saying that they are all abnormal. Neither refers to character study at all.) (2) Abnormal types, among whom he includes those of low mental development. If in the latter term he includes immoral individuals who have little regard for the rights of others, many will agree with him. The writer who talks of "many" murderers as having the "mentality" (not mental age) of a six-year-old child, cannot substantiate such an extravagant statement by figures and names from any reputable source.

#### PSYCHOPATHS

Having discussed the psychopathic criminal as a medico-legal problem elsewhere, I will only briefly refer to him here.

Knowing that all people have some psychopathic traits, one wonders how many one must have before we refer to him as having a psychopathic inferiority or a psychopathic personality (or constitu-

tion); or whether he must also have certain "trends" or exhibit some "episodes" to be given special consideration in criminal law. White says that it is not proven that the qualification "constitutional" is applicable. Another writer refers to "social or constitutional psychopaths," who show acquired social maladjustments. If acquired, one asks why the "constitutional?" In fact, the whole subject of psychopathy is rather unclear. This is shown also in differential diagnosis, where one writer says that the psychopath does not discriminate between useful and useless things—a symptom which more properly belongs to defectives. Also Grasset says that psychopaths are especially lacking in judgment and logic; whereas Urstein says that lack of logic excludes psychopathy.

One wonders if lawyers would so often plead that their clients who had committed murder were psychopaths, if they knew that we are all agreed that psychopathy was not curable. And if the law provided that a criminal psychopathic murderer was never safe to be at large, and should be kept in a special institution for life, fewer would enter pleas of psychopathy. And such a law would be better for the genuine insane, who might then receive more consideration from the public. A new law and special institutions are needed to cover these psychopathic criminals.

#### REFORMERS

Reformers are often noted for being impractical. As Wigmore says, some people favor the impossible, forgetting the practical needs of American justice. One must distinguish the sincere idealistic reformer from the fraud who expounds his principles, no matter how foolish, merely to thrust himself into the limelight, and to take himself out of obscurity.

Mercier tells us that justice differs from benevolence in that there is no retributive element in the latter, which is based on affection, and not on equality. And as Grasset says law is the science and art of justice. It is inherent in normal civilized man to be repelled by crime. Its attraction to some reformers must be a compensatory one. Much of their sympathy might with better taste be shown to the victims. I am reminded in this respect of the friend of a judge who did not want to serve on a jury in a murder case because his convictions were opposed to capital punishment. Some time later, his house was burglarized, and he went to the judge pleading that burglary should be punished by the death penalty. Benevolence may well be shown to the impulsive weakling; but the hardened criminal should receive quick and certain justice.

If it is true that always seeing the opposite of everything is a form of negativism, some reformers are decidedly negativistic. The only one for whom some of them have a good word is the criminal. The law of reflection may sometimes apply in such cases.

Some prison wardens are apt to become very credulous when talking to their wards. For example, one came out in the press not so long ago, and told how a certain bank murderer told him before execution that he did not commit the murder. This was promptly contradicted by one of our best known Supreme Court judges, who stated that the man had confessed the crime to him. Osborne shows his sentimentality toward the criminal by speaking of a number he lived with while on a road gang (murderers, thieves, etc.), when he said that finer comrades he had not had since leaving Harvard. There is no accounting for taste.

#### MANAGEMENT OF CRIMINALS

We all must work for progress in criminology. But society must come first and the criminal second. It is for this reason that Grasset and Urstein say that both law and society cannot as yet consider only the criminal and not the crime. Morals, ethics, justice, law mean something to the bulk of the population, if not to certain metaphysical and lay writers. Society cannot be won over to sympathy for crime. But it can be shown its own errors—in order to help reduce the amount of crime. This does not mean that the individual will not be held accountable for his actions. For the criminal is punished not only for deterrent, retributive and reformatory reasons—but for the protection of society—by moving him from it. This is a most important consideration. The place to reform criminals is not in prison, but in the home, school, church and by furnishing him with a socially decent environment.

Few will accept White's statement that punishment has little effect in preventing crime. It certainly does in regard to statutory offenses (as automobile laws, etc.); so why not in real crimes—i. e., felonies. Does anyone doubt if we did away with all punishment and all police functions, that crime would not increase? That punishment will eradicate all crime is a different proposition. For we will always have crime—as all criminologists know. Most criminologists claim that there is less crime in England, because justice is swifter and surer there.

When White says that 99% of people can be influenced by good pleas he runs far beyond common experience. Nothing like that percentage of non-criminal psychopaths can be so influenced—they are not



so suggestible and are notoriously superficial in their reactions. This is doubly true of criminal psychopaths. White lays too much emphasis on the theory that the origin of punishment is vengeance. What counts is the practical application of punishment not its origin. So Grasset says society must protect itself against neurotic criminals; however, it must at the same time treat such criminals. No one has devised a means as to how we can reach psychopaths before arrest. We certainly cannot arrest and confine all psychopaths, neurotics, morons, etc. For where would we put them? And a large percentage are not criminally inclined; and so never need to be arrested. But we could stop returning so many of these criminal individuals back to society—only to be arrested shortly afterwards. Lawes' suggestion to fit the punishment to the criminal is apt. But it can never be done unless real personality studies are made of all criminals. Then decent ones could be paroled and dangerous ones kept in prison as long as they are unsafe to be at large.

We read that psychiatry teaches that the study of the criminal is more important than the study of the crime. Some people feel that this is apparently only before trial—to excuse. For when criminals try to get out on writs, we hear only of the “cured” insanity, and little or nothing of the bad character. Why not hear of it, too? Character remains the same. Or we hear the alienist say that in a new environment the murderer will stay well, when anyone knows that the environment did not cause the insanity in a paranoiac. Why should alienists omit to study character defects at the time of discharge instead of merely saying certain “trends” had disappeared or the “episode” was now over? How about the next “episode?” In passing I might ask what are we doing for the non-criminal psychopaths—to adjust them better socially?

Briggs writes that revenge will not be thwarted by fear of the law, but this is contradicted by our best students of psychology—Jastrow, Münsterberg, etc. Does Briggs think that a few kind psychiatric words will thwart revenge? Osborne writes in a similar vein, saying that history shows (?) that fear does no good. Münsterberg states the scientific view, when he says that one man may obey the law through fear, and another through moral convictions.

Here we might mention two views which are somewhat contradictory. Osborne says that for one criminal whom prison deters, a hundred commit crimes because of the brutal prison system. Now Lawes in his book speaking of paroled murderers, says that nearly all remain good after parole. One of these conclusions must be somewhat incorrect.

White says that the criminal might be better in a hospital. How can this be brought about, when at the present time they have no room nor any particular inclination to receive criminal psychopaths and keep them for any length of time? And when a psychopath does go to a hospital, how much constructive therapy can be given him? The suggestion that the murderer be kept in a state hospital, if "mentally ill," till cured is good, if it were not for the human element. Influential criminals might soon get out unless the law exercised control. The suggestion of White's is therefore of little value, as the situation exists today. Darrow asks why we should have fixed terms for criminals when we do not have them for hospital patients. For patients who are dangerous to society (contagious), there are fixed terms. And it must not be forgotten that the patient is not anti-social. If Darrow had his way, possibly we would be putting our thieves, pickpockets, etc., up at places like Briarcliffe Lodge, the Westchester Golf Club, etc. How will the rather flowery psychiatric description of crime as a "failure to adapt socially" help law in any way? What would be said of surgery if the best surgeon would tell us that a fractured skull was a failure of the bones to stay together after an insult? The law would be more interested to hear about the man's evil choice than about his complexes and other things of interest to medicine.

On the question of the discharge of the criminal insane, some years ago MacDonald investigated the Matteawan State Hospital for the Criminal Insane. He said many paranoid individuals sought to get out. But he found not one improperly detained there. Last year, I appeared for the district attorney of King's County, who opposed the discharge of one Davis, a suture manufacturer, who was sent there as a paranoid individual for having killed Sergeant Bridgetts of the New York Police. MacDonald appeared for Davis and said that he had "Delusional Insanity" (he had delusions for twelve years), "but was now cured." MacDonald admitted the official classification listed no such disease, but said he did not care for classifications. Why he should not call his condition "Chronic Delusional Insanity" is a question. (Some people use that term for paranoia.) The man in my opinion was the same man as at the time of the murder, three years ago. In this same murder case, Kieb discharged him from the hospital as cured. Davis was then tried for first degree murder and convicted of first degree manslaughter. The verdict was a wise, social one, as Davis had numerous anti-social tendencies. In the hospital he had been diagnosed as a psychopathic inferior with paranoid trends. Yet Keib said in an an-

nual report (1923, p. 311) that he would not discharge a constitutional psychopathic inferior.

#### CAPITAL PUNISHMENT

Personally, I am not disposed toward capital punishment, as at present administered. In the case of women, I am opposed to it absolutely. In the case of men, I think the rule which is found in 32 of our states is the best one. That is that a first degree murder verdict carries with it not necessarily capital punishment, but either life imprisonment or death. The choice between the alternatives is left to the discretion of the judge and jury. My reasons for not being heartily in favor of capital punishment as we have it now, are not because of any sympathy for the criminal. Better that a hundred deliberate murderers were executed than that one respectable man be killed. I object to it chiefly because it is a brutal way to treat crime, even though the murderer may deserve death. Then again, a fairly large proportion of the public are against it, and it is from them that we draw our juries. They often illogically acquit rather than vote for the infliction of the death penalty. Again the penalty is unequally applied. Though not strongly in favor of the death penalty, I cannot agree to all the reasons given by some men against its enforcement.

A southern prison warden says capital punishment does not deter. One lay writer says that it even favors the perpetration of other murders. This is nonsensical when only 1 in 85, or 1 in 146, or 1 in 200 (as in one state) ever have the death penalty inflicted on them. How can you sensibly argue one way or the other? The rule is it should deter. And it removes a dangerous man from society. It is silly to say a man will never murder again. Many of these scoundrels have committed more than one murder. But if the chances of escape are 100 or 200 to one against suffering the penalty why speak of deterrence at all, with these odds against its enforcement? The English seem to feel that it deters. And their lower homicide rate has some significance at least. If it does not deter, one notices that prisoners fight against its application very strongly.

Lawes, who recently wrote a book pleading against capital punishment, quoted only those against it, and not those in favor of it. A scientific attitude would have demanded that both sides of the question be given. For him to say that murderers do not consider capital punishment is beside the point. How can he tell that many others had not thought of murder, but desisted because they did consider the punishment. And when the chances are about 1 to 100 of suffering it, it seems of no avail to argue whether it is deterrent or not. If 75% of

murderers were executed, then one might argue the point. But not as things now stand. In fact if only one to 100 received as punishment a life sentence or only a one-year sentence, we could as logically say that these punishments would not deter. One might ask, would these men recommend giving up punishment entirely? I cannot appreciate this maudlin sympathy for criminals, which sympathy had better be shown to the victims or their families. Osborne would reform them, and Darrow tells us that they do not want to be reformed. These two friends of the criminals rarely agree. Kirchwey's remarks on the criminal are nearly as bad as Darrow's. Sir Oliver Lodge (*Contemporary Review*, 1924) comes out with one of the strangest arguments against the death penalty that I have yet seen. It is that the prisoner may continue to do harm after death, working from the other regions. He did not mean to be facetious when he wrote this.

Lawes says many criminals do not fear death. The rule is that most of them do. For considering such fear is common to most human beings, how could Lawes convince us that felons are made of sterner stuff than other men? Common experience, to say nothing of common sense, will tell you this is not so. Certainly the average recidivist's conduct shows that he is an arrant coward, not a hero, as some would have it.

Likewise, it is a little bit of sophistry for Lawes to write that history tells us that crime is not prevented because of the death penalty. Does he know of anything, other than a decent bringing up, that will absolutely prevent crime? One must not confuse prevention and deterrence. There will always be crime. But society has a right to minimize it by every means in her power. I am in favor of progressive prison management to save those convicts who can be saved. But we want facts, and I know from my own experience not only with criminals, but with the insane and with men in general, that many criminals cannot be made decent members of society. This element should be kept out of society for good if necessary. Not even kind treatment in prison will make decent men out of some criminals. Personality studies alone will help in separating the different types. Why some psychiatrists speak of types of insane people, but deny types of criminal people, is beyond me.

When Lawes says that murderers from passion give no thought to the death penalty, he possibly states a truth. Nor do they think of any other penalty. One might continue the argument and advise that the convict be promptly discharged. As a matter of fact, a murder from passion may be impulsively done, or deliberately done. If the latter, how does Lawes know that the individual never thought of the death

penalty? Hate will cause some men to murder anyway. But is there any reason why they should not be punished for this?

No, the place to treat criminals is before they reach the prison. Strike at the roots of crime: neglectful parents, irreligiousness, bad companions, selfishness, and disregard for the rights of others, indifference to all normal ideals, and no regard for social esteem, bad social conditions, etc., and you will do some good. But most scientific authorities agree that once crime has become habitual, the condition is very likely a permanent one. Prison reformers, no more than frequent short sentences, will be able to socialize such individuals. The argument that many outside of the prison are there because they have not been caught, cannot convince anyone that all people are criminals. Nor can it be used as an excuse to set free all those who have been caught.

Only last night my paperman was held up in his store by a gunman, struck on the head by the butt of a gun and severely cut. If the criminal is caught, one wonders if his lawyer might find after a mental examination, that he does not know that the Mississippi is a river, or that Pekin is the capital of China. If he could be rated as having a mental age of 11 years, this would be enough to refer to him as a moron. He goes to a school for a while, and soon gets out to black-jack some other father of a family, and so it goes. Intelligence tests used alone to the neglect of native ability, planning, etc., can make an opinion valueless. Let us help the law. But let us be logical in our recommendations.