1926

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Recommended Citation

John Rathbone Oliver, Criminology and Common Sense, 16 J. Am. Inst. Crim. L. & Criminology 555 (May 1925 to February 1926)

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CRIMINOLOGY AND COMMON SENSE

JOHN RATHBONE OLIVER, M. D.*

During the past year, although there has been no sign of any reviving interest in Thomas De Quincey, there has been abundant evidence of new interest in murder. Perhaps, not in "Murder as a Fine Art." For "the arts," especially the "fine" ones, have never had much general appeal to that class of human beings, described as the "great reading public." But, in murder, as a crime, as an emotional experience; in murder as a means of providing amusement for the reader, and reasonable hope of emolument for publisher and compiler.

In my criminological collection, on the shelf devoted to "recent additions," there stands a whole array of new "murder books." "Studies in Murder,"¹ "Unsolved Murder Mysteries,"² "Murder and Its Motives,"³ to name only a few. When it comes to the murderer's conflict with the law, there are still more. "The Trial of Thomas Neill Cream,"⁴ "Famous Judges and Famous Trials,"⁵ "Dramatic Days at the Old Bailey,"⁶ "Famous Poison Trials,"⁷ For the murderer himself as a personality, as a psychological problem, there is less interest. The public appears to be more attracted to the lesser villains. To "Rogues and Scoundrels,"⁸ or to "Seven Splendid Sinners" (female).⁹ No really good book of this type has appeared since Mr. H. B. Irving's "A Book of Remarkable Criminals."¹⁰

All of these have been written, more or less, for the home consumption of the tired business man or the weary domestic woman. But there have been other books, unfortunately only too many of

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¹"Studies in Murder," by Edmund Lester Pearson, New York, Macmillan, 1924.

²"Unsolved Murder Mysteries," by Charles E. Pearce, London, Stanley Paul, 1924.

³"Murder and Its Motives," by F. Tennyson Jesse, New York, A. Knopf, 1924.

⁴"The Trial of Thomas Neill Cream," edited by W. Teignmouth Shore; London, William Hodge, 1924.

⁵"Famous Judges and Famous Trials," by Charles Kingston; London, Stanley Paul, 1924.

⁶"Dramatic Days at the Old Bailey," by the same author, 1925.

⁷"Famous Poison Trials," by Harold Eaton; London, W. Collins, 1924.

⁸"Rogues and Scoundrels," by Philip W. Sargeant, London, Hutchinson & Co., 1925.

⁹"Seven Splendid Sinners," by W. H. R. Trowbridge, New York, Brentano's, 1924.

¹⁰"A Book of Remarkable Criminals," by H. B. Irving, New York, Doran, 1918.

them, that profess to treat of what they call a science of criminology. Of these one may read—or not read—"Criminal Types,"¹¹ "Crime, Its Cause and Treatment,"¹² "The Soul of the Criminal,"¹³ "Criminology."¹⁴ This "science vainly so called," to use the words of St. Paul, usually consists of statistics giving the number of murders to each American square mile, or of tables that vividly illustrate the intimate relations between crimes in violence and the weather. According to some of these curves, nature evidently intends you to wait until August to beat up your wife.

There is, of course, no true *science* of criminology any more than there is a science of adultery, if one excepts Ovid's "Ars Amatoria," or of any of those complicated reactions between society's laws and the individual who breaks them. This does not mean that there may not be a "scientific criminology"; that is, an objective common-sense method of studying and of dealing with delinquency. I should better have said, with delinquents. Because the moment that you lose touch with the human individual and try to evolve laws and hypotheses that apply to erring humanity in general, that moment you lose touch with reality, and usually with common sense.

If we could think a little more clearly, as our European brothers have been taught to think by daily experience with the facts of the situation, we should realize that there is a definite domain in medicine, generally called "Forensic Medicine" (in German, Gerichtliche Medizin—Médecine Légale, in French), which is as distinctively scientific—I do not like the word, but I have none more descriptive—as any other branch of medicine, experimental or practical. Here, in our own country, it has seldom been carefully studied or widely understood. In Europe, however, in connection with the medical faculty of every university, you will find courses in Forensic or Legal medicine, which every medical student is compelled to attend, while attached to every central Bureau of Police you will discover, if the authorities permit you to look for it, a laboratory with all the most modern chemical and photographic apparatus—a "scientific" laboratory to which such important matters as blood-stains, foot-prints, bullet-wounds, and forgeries are constantly referred. The university courses give the theoretical teaching, that is, afterwards, practically applied in the police or court laboratories, and one or more men, trained thus in Forensic

+¹¹"Criminal Types," by V. W. Mastern, Boston, Badger, 1923.

+¹²"Crime, Its Cause and Treatment," New York, Crowell, 1924.

+¹³"The Soul of the Criminal," by John C. Goodwin, London, Hutchinson, 1924.

+¹⁴"Criminology," by Edith H. Sutherland, Ph. D., Philadelphia, Lippencott, 1924.

Medicine, are attached to each laboratory or placed at the head of each university institute.

To them are submitted all those questions in which there is any point of contact between medical science and the machinery of the law. The photographing and reconstructing of the scene of a crime, the making and recording of autopsies, the chemical analysis of the viscera of persons supposed to have been poisoned, the examination of the mental condition of psychopathic criminals—all these and a thousand other matters of vital importance belong in the province of Forensic or Legal Medicine.

But these are all questions that admit of a definite, objective, scientific treatment, that demand a clean-cut scientific answer. In them, there is no emotional element, no sentimental interest in the criminal as a personality, except in so far as his mental condition may be a factor in the case. There are no uplifters, no reformers, no social missionaries in the laboratories and the lecture rooms of the European institutes of Legal Medicine.

The most perfect example of such an institute is the "Institute de Médecine Légale," in Paris; the very modern-looking building, far down the Seine, a long way below the place where the old "morgue" used to be—the "morgue" that every American in Paris used to visit and that once gave to so many pleasantly-terrified spinsters the additional pleasure of quoting Mr. Robert Browning. This new building is "the morgue" in fact, but not in name. It contains every appliance and device known to modern scientists for the study of pathological conditions that are associated with the "La Médecine Légale." You may take a two years' course there—a stiff course it is, too—and may receive a diploma that assures you of a position as "medicin legiste" at some French court or prefecture de police.

In Europe, there is, of course, also a branch of departmental government that concerns itself with prisons and with the care of prisoners. Such boards, or "bureaux," of prison control are staffed with men of experience, who have grown old in the routine duties of prison administration. They are, for the most part, intelligent, enlightened people. And, in England, the whole prison problem has, of late years, been approached with a broad-minded wisdom that has done more to modernize English penal institutions, to make them constructively valuable for the treatment of warped anti-social personalities, than all the wailing emotionalism and all the sporadic efforts of our American methods of trying to attain the same ends. Such prison man-

agement, penology of this type, is, in a sense, scientific; at least, it has some right to call itself so.

In America we have none of these things, or only a few of them. And the few that we do have seldom function exactly. But, if we do little, we write a lot, and we talk still more. Indeed, so much has been written of late in America about "criminology"—and most of it is written so badly—that one is almost ashamed to try to write anything about the subject at all. People, I think, are getting deadly tired of hearing and reading about "delinquents," "juvenile offenders," and "mental deficients." And I do not blame them. Somehow, in their subconscious mind—such as it is—they have developed the idea that anyone calling himself or herself a "criminologist" must be some kind of an uplifter, some new brand of minor prophet, looking for a new kind of prophesying job. It is difficult, therefore, to make people—our people—consider the problems of criminology either seriously, sanely, or justly. It sometimes seems as if one could never even touch on these problems without putting one's listener or one's reader into a state of mind, utterly unlike his normal condition. For he, or she, instinctively, reacts in one of two ways. And thus far, there seems to be no middle ground of sane and objective understanding.

One type of mind, when confronted by a crime or a criminal, reacts with feelings of outrage and expressions of anger. Such a man seems to have been touched in some tender spot. He is loud in his demands for punishment, for reprisals on the evildoer. He wants all criminals shut up forever in dark dungeons, or else hanged at once. He demands a penology of retribution and revenge. This is a primitive reaction. Doubtless, prehistoric man, when his property (iron or bronze, wife or children), was taken from him by a stranger, was filled with exactly these same emotions. He wanted to get hold of the other man, make him return his loot, and then either maim or kill him in order to make himself feel happy and secure again. If he could not accomplish this alone, he would get his neighbors to help him; and, if they caught the thief, tied him and dragged him back to the cave of the outraged property owner, the latter would doubtless perform a dance of joy, feasting his mind meanwhile on the thought of what he was going to make the thief suffer. He, the outraged one, had the evildoer in his power, and he was going to make him pay—pay in torment and suffering for the discomfort that he had caused.

It is almost exactly this same emotion that stirs in the minds of some modern men and women, when they see a fellow-being walking down the street handcuffed between two policemen, or standing up in

the dock of the criminal court. They have been told that he has stolen, or raped, or murdered; and they rejoice, because "he is going to get what he deserves." At least, they fervently hope that he is. And their joy is immeasurably increased, if it happens that they themselves have suffered something at the hands of the arrested offender. There may be, doubtless there is, a long way in the processes of thought and emotion, between the mild mental elation of such a law-abiding individual and the maniacal fury of a crowd of the same individuals that breaks into a jail and carries off the criminal to riddle him with bullets or to burn him alive. But in the final analysis, it is the same mental reaction; the same instinctive mechanism. And at the basis of it, there is either fear or lust. The thief, whom they see captured or tried, might have stolen from *them*: the murderer might have attempted to take their own precious lives. And therefore, something terrible and appalling must be done to the offender, because at least one man is afraid of him, so that other potential evildoers may take warning and become afraid also—not afraid of offending the sanctity of just law, but afraid of stealing "*my* property" or of endangering "*my* life." In minds of another subdivision of the same type, the basic, unconscious motive is that delight in the suffering of others, which is so mysterious, so powerful, and usually so vile. To such minds, there is an intense fascination in the sight, or even in the thought of another's distress, torment, or pain. It rises but seldom, "*Deo gratias*," to the higher level of blood-lust. But it is there, always lurking just below the surface of many "law-abiding" minds. And to have another human being absolutely in one's power—a human being who has been declared by the law to be without rights to "liberty and the pursuit of happiness," and whose power to retaliate has been taken away—that is intoxicating.

In countries or states, in which the prisons are run on the old "eye-for-an-eye" principle and where the dominating idea seems to be an attempt to send the malefactor to hell before he can die and possibly, by some mistaken Christian arrangement, slip into heaven—a certain type of man is almost irresistibly drawn to seek the position of prison warden or prison guard. Frequently—and this is a fact too often overlooked—such men are either physically weak or else they are mental cowards, obsessed in either case by a tormenting sense of inferiority, for which they seek and find compensation in a calling that gives them almost unlimited control over the minds and bodies of their less fortunate fellows. These are the brutal, domineering prison guards, to whom physical suffering is meat and drink. They

expand, they grow fat in an atmosphere of cringing obedience. And those prisoners who cannot or who will not cringe, these they "break." The merely physical "breaking" may not be beyond repair, but some prisoners are broken mentally forever. The very tone of voice, in which such guards address the average prisoner, is an insult. An insult that the prisoner is almost powerless to resent; and if he does show resentment, he knows that he is playing directly into the hands of his tormentor. When one has heard and seen such things, as one often must hear and see them without comment or criticism, one understands why prisoners, who pass through the hands of such men, leave prison either broken and useless, or else filled with a bitterness of soul, a desperate rebellion against authority that is naturally and logically transferred to society and its laws. Such prisoners are the stuff of which revolutionists, anarchists, and bomb-throwing nihilists are made. Any man of spirit would react in the same way.

It is very hard, therefore, to talk common-sense penology or criminology to people who are dominated by half-conscious emotions of either lust or fear. They are blinded by these instinctive reactions to any clear, objective understanding of the situation.

But there is another class of minds with which it is almost equally difficult to deal. These men and women, too, are carried away by their emotions. But it is emotionalism of a very different type. These are the people, who, when they see a man handcuffed between two policemen or standing up for sentence in the criminal court, look piously up to heaven and say: "There, but for the grace of God, go I." Why they drag in "the grace of God," I have never been able to understand. What they mean to say is: "That criminal and I are very much alike." They identify themselves with the delinquent; and, inasmuch as we are, to ourselves, always the most interesting people in the world, so the delinquent, the criminal, becomes absorbingly interesting. What he did is forgotten. The murdered man, his destitute children and wretched wife, the losses in money or goods that may entail endless suffering on harmless, innocent people—all these things seem to disappear. They see only a man or a woman, who has had the courage to outrage the laws of society, and who *might*, if he had had a little more luck, have succeeded in evading the consequences. When such people discuss a crime, you will always notice that they try to minimize the harm done and seem to lay emphasis on the fact that the thief or the murderer "almost got away."

It is not so easy to analyze these reactions. Often they spread out from individuals into the community and become mass or crowd phenomena.

When one reads, for instance, the very able description of the Borden murder at Fall River in 1892, given in one of this year's books that I have already mentioned,¹⁵ one finds it hard to follow the ebb and flow of public opinion. Two harmless old people, a man of over seventy and his wife of nearly the same age, were brutally hacked to death, one August morning, in their own home, their skulls battered in with an ax and their faces so hideously disfigured that the doctor who first examined the bodies said, "Physician though I am, and accustomed to all kinds of horrible sights, it sickened me to look upon the dead man's face." (Page 23.) The daughter of the house, who alone had, it seemed, opportunity and motive to commit the crime and to whom many suspicious circumstances appeared to point, was finally arrested. But no sooner was she in jail, than a wave of emotional sympathy for her seemed to wipe out all memory of those two hacked and battered old people. The State's Attorney received thousands of indignant letters, upbraiding him for subjecting an "innocent young girl" to the indignities of a criminal trial. The ministers and the congregation of the Protestant church, to which this "innocent young girl" belonged, treated her as a martyr; and, when she was finally brought to trial, she entered the court room, "leaning on the arm of the Reverend Buck, her devoted pastor." She was acquitted.

The same thing happens today. Some hard-eyed gunman, with a criminal record as long as your arm, kills some inoffensive citizen during an organized hold-up. After the first shock of the murder has worn off, a certain class of people begin to take an intense emotional interest in a man who would not hesitate to shoot down any one of them, if he happened to stand in the gunman's way.

What is it that, in the eyes of so many men and women, seems to lend to the criminal such an absorbing interest? Partially it is, I suppose, the love of anything new: any exciting person or event. When a famous Baltimore gunman and murderer, who had escaped and been recaptured, was brought back to the Penitentiary, a far greater crowd of supposedly busy people awaited his arrival at the railroad station than would ever have assembled to catch a glimpse of the greatest scholar, or the most distinguished man of science. For scholars and scientists are many; and murdering gunmen, who escape the gallows, are, thank God, comparatively few—still. But there is more in it than this. Modern psychiatry has taught us that our so-called subconscious minds are filled with all sorts of anti-social emotions and trends, that seldom rise into consciousness, or if they do, are quickly sup-

¹⁵"Studies in Murder," by Edmund Lester Pearson, New York, Macmillan, 1924.

pressed, because we have neither the training, the surroundings, or the motives that go to the making of a distinguished criminal. We all (so Prohibition has taught us) have within us the makings of a little law-breaker. But for the major crimes, for the "big stuff," we lack that element which our Anglo-Saxon forebears expressed by the somewhat inelegant word "guts." So, in the criminal, especially in the more serious offender, and more especially still before he has been caught and convicted, we see ourselves, as our partially suppressed anti-social tendencies would have us be. We know, in our souls, that we could never really do such things ourselves. But—but—to talk with such an outlaw—to hear the story of his crime from his own lips—to watch his fight in court—a fight for his life perhaps—that stirs in some of us an emotion of intense interest, while others of a different cast of thought turn away with an expression of anger, of disgust, "Ah, to hell with the dirty crook." But *we*, in some mysterious way, are attracted. And because we cannot reasonably admit to ourselves that law-abiding, inoffensive citizens, like ourselves, are attracted to a brutal murderer or to a callous, mean-minded thief, we forget the brutality and the meanness, and are at peace with ourselves.

With men and women, who react to crime and criminals in this emotional manner, is it very hard also to talk common-sense in connection with what we call criminology.

In a class by themselves are those mental reactions connected with crimes that center around the uncontrolled sexual appetites of men and women. It is not a pleasant task to attempt to analyze the motives that will crowd a stuffy court room for long dreary hours, when some case of this kind is being tried. Even if the judge elects to hear the evidence "in camera," most of the disappointed audience will remain patiently in their seats, hoping that, either from a lawyer or a friendly bailiff, they may catch some tantalizing echo of what is going on behind closed doors. Nor is it pleasant to watch, as I have watched so often, the faces of the men and women, who, during trials of this type, sit forward on the edges of the hard benches, with itching ears and in positions of strained attention, in order to get the last word of the abashed little child, who is trying to tell her story to the judge and the jury. And the lawyer, who says to the child, "Speak a little louder, my dear, the gentlemen of the jury can't hear you," becomes suddenly intensely popular among all the back rows of court room benches. So I shall merely note the fact and its unpleasantness without attempting to explain.

However great a lover of mankind you may be, however often you may repeat to yourself the ancient dictum of Terrence, you will find it hard to maintain this uncritical attitude of mind, if you frequent the criminal court. And not because of the criminal in the dock either. It sounds so well, after listening with lecherous ears to a trial full of "sex interest," to sigh and to say: "Ah, yes, as that great Frenchman expressed it" (you've forgotten his name if you ever knew it), "Tout savoir est tout pardonner." But why take such indecent delight in the "savoir"? And why insist on the "tout"?

It is easy to retort with another outworn tag of Latinity and to say: "Tu quoque" or "De te fabula." It is true, I suppose, that every one of us, myself included, belongs, more or less, to one of the two types that I have tried to outline. Each of us has a foot—or at least a toe—in one camp or the other. But surely, there must be some common middle ground on which men and women of education and experience may meet in order to discuss these matters from the standpoint, not necessarily of scientific accuracy, but at least from that of common sense. If there be anything worthy of the much abused term "science" that is available today in dealing with criminals and with prison administration, then why not be "scientific" so far as we can and may? And it is a proposition of fundamental importance that, in scientific discussions or applications, emotionalism of any type has no place. It is as preposterous to approach the problems of criminology from an emotional standpoint or with emotional prejudices, as it would be to attempt to deal with the problems of organic chemistry, or of zoology in such a frame of mind. Emotion clouds the judgment always.

Sentimentality, the product of shallow emotion, is a cheap product, showy but not lasting. And in our modern American attitude towards crime and its results, there has been a great deal too much of it. For emotion, if allowed to run riot, always results in prejudice. And it is utterly hopeless to attempt to fight prejudice, once it has been firmly established. You will often be forced to give up those lines of investigation or achievement, along which you have been proceeding, if you find that emotional prejudice blocks your way. And you will surrender without words of protest, if you are a wise man. You must start all over again and try to reach the same goal from another direction. Moreover, emotion is a powerful reactive force. Emotions of one type call into being entities of an opposite kind. Then, both types harden into prejudices, bitter, irreconcilable; and your path is blocked. You find yourself unexpectedly in the midst of a conflict, or you come up against a blank wall; you can go no further, at least in one par-

ticular direction and along one well-marked road. Time and time again, in the domain of penological or criminological interests, I have watched this process play itself out. The result almost always is, that long years of patient work are scrapped, that apparent failure steps in, where there should have been room for nothing but assured success. And so often all this has come to pass, because the problems that should have been dealt with in an objective, unemotional manner have been judged by states of feeling rather than by orderly processes of thought—by the instinctive emotions of the moment rather than by the common sense of tested human knowledge and experience.

This is very discouraging for anyone who believes that the problems of criminology are susceptible of rational treatment. Of course, we have to deal with human lives, with personalities, and not with soulless chemical or biological reactions. There must always be room left for the interplay of mind on mind. We must keep our attention, not on the crime, but on the criminal who commits it. And this is where the difficulty arises. We have not yet learned, it seems, in criminology at least, how to deal with human personalities without letting loose human emotions and human prejudices. Perhaps we are not yet sufficiently civilized. At any rate, I cannot see why, without losing the so-often vaunted "human touch of common brotherhood," we cannot treat the law-breaking "brother" as we treat those who have made themselves seriously ill by breaking the laws of health. From such patients, we physicians take away the thing that has caused the illness, the drink or the drug, or whatever it may be; and then we bend all our energies toward the accomplishing of two things: first, we try to repair the damage done to the physical machinery of the body; and secondly, to give to our patient such a clean-cut sensation and assurance of restored health and strength that his body will no longer demand the poisonous thing that he once needed in order to maintain that assurance and procure that sensation in a dangerous way. Sometimes, we cannot give him this, or, at any rate, not absolutely; and so we have to supply him with some sort of a crutch to keep his feet from stumbling. But we don't become emotional about it all. We don't feel a mysterious sympathy with such a patient—a sympathy that clouds our judgment of his case. Nor are we deeply enraged with him for getting into such a condition, and want to punish him with confinement and physical torment because he has been such a thoughtless idiot. We do not permit the prejudices that crystallize out of emotion to hamper us in our treatment. If some colleague can offer us a type of treatment that is manifestly better than ours, we

accept it gladly; if he can suggest some new medicinal preparation, we are delighted to use it. We don't make the sick man suffer because of any personal antipathy we may feel towards alcoholics, luetics, or drug addicts. While he is under our care, we are thinking only of one thing: his welfare; and this end we hope to achieve by taking away the thing that has hurt him, by repairing the damage done, by making him well enough and strong enough to need his particular poison no longer, and to send him out into the world, able to stand on his own legs and to make his own way.

The parallel between the delinquent and the sick man has, of late years, been scandalously overworked. One is almost ashamed to use it again. But if the stress be laid on the likeness between the criminal and the man temporarily poisoned with alcohol or narcotics, the description has in it elements of truth that are permanent because they are true, and helpful because they are supported by experience.

The English criminal law and the methods of its enforcement are based on age-long experience. In this country, we have an idea that English criminal procedure is rather merciless, that evildoers, very soon after their evil deeds, are tapped on the shoulder by a "bobby," and that there follows, with inevitable precision, a long sentence to some glum, gloomy prison, where the "convicts" pick oakum (whatever that may be) or wear themselves to shadows on a treadmill. Some of us, I fear, have translated the marvellous poetry of "The Ballad of Reading Gaol" into the prose of an almost wholly imaginary prison environment.

Two summers ago, I had the great good fortune to be able to spend two weeks of my summer's holiday at New Scotland Yard and at the Central Criminal Courts in London. This was the beginning of a sort of pilgrimage of enlightenment, starting in England at New Scotland Yard, passing from there to the Prêfecture de Police in Paris, thence to the Polizei-Praesidium at Vienna, and finally back to England again for a final comparative glimpse of English methods. I had, I think, unusual opportunities, not because of any achievements of my own but because I had been fortunate in my friends. A letter from Sir Basil Thomson put me in touch with Scotland Yard; another from M. Jusserand, the French ambassador, commended me to the Paris police; and still a third from the Austrian Chargé d'Affaires in Washington, a very courteous and able young diplomat, seemed to impress the Viennese police authorities so deeply that, had I not been forced to depart, I should probably be inspecting parts of their complex organization still. I returned to America, filled with information and ex-

perience that was to me intensely interesting, but that has been, from a practical standpoint, almost, if not quite, useless. All that remains to me now of those crowded, fascinating days is an overdrawn letter of credit, and the names and addresses of several English, French, and Austrian colleagues, to whom I send greetings at Christmas time.

American conditions differ "*toto caelo*" from conditions in Europe. In our loosely organized federation of "sovereign states," each with its own criminal code, the compact organization of the European police bureaux is utterly unacceptable, and perhaps undesirable also. However, in Europe, I learned to appreciate the work of our American police. For I saw the careful method of selection, by which European police candidates are chosen; I watched the long course of training to which they are subjected, in police schools that are like small universities, with the most distinguished legal authorities and criminologists as professors; and I realized that, in spite of their careful selection and their long training, these European policemen, so far as the achievement of objective results was concerned, were not much, if at all, superior to their American colleagues. What an unrivaled detective force might be created in America, if to the natural abilities of our American character were added the careful training of European methods!

Amidst the somewhat confused memories of my European police pilgrimage, New Scotland Yard and the Central Criminal Courts of London stand out as surpassing in interest everything else that I was lucky enough to see at work, day after day. There is something so simple, so direct, and at the same time so inevitable about English ways of dealing with criminals and with crime. If the punishment imposed does not always "fit the crime," at least it follows hard and close after it. In a trial at the Criminal Courts, there is little noise, and very little discussion. Words are few; but they all mean something. During the mornings that I spent in one of these courts, I heard a juror challenged only once. And only once did I hear counsel for the defense interpose during the testimony of a witness with a quiet "My Lord, I object." Moreover, there was an almost painfully anxious effort to give the accused every possible chance to prove himself innocent. If he had a criminal record, it might not be even mentioned until he had been found guilty by the jury. Then, before sentence was passed, the record was read. Moreover, there was never any attempt on the part of the prosecuting officer to secure a conviction. The case against the accused was stated without any emotional appeal to the jury, and in the simplest terms. A distinguished barrister, who

was my guide, philosopher, and friend, during those days at the Criminal Courts, pointed out to me a paragraph in the rules, which the new Court of Criminal Appeal has laid down for the prosecuting officers of the Crown. This paragraph reads: "Counsel for the prosecution ought not to struggle for a conviction, but should regard themselves as ministers of justice, assisting in its administration, rather than advocates." In England, no virtue is attached to securing a conviction. To press for one is not merely to violate the tradition of the bar, it is also a violation of the declared principles of the Court of Criminal Appeal.

Yet for all that, the guilty seldom escape unpunished. There are few means, if any, of circumventing the law. And, if a man *or* a woman, of malice aforethought, takes the life of another, both man *and* woman are "hanged by the neck until they be dead. And may the Lord have mercy on their souls." The dreadful words of such a sentence are often heard in the courts of England; as often, or almost as often as there is murder done. During the eight years of my own service in connection with our criminal courts, I have heard these words only seven times; never spoken to a woman, and only twice to a white man. Yet, Maryland is not distinguished by any unusual backwardness of her citizens in the committing of murder.

But for an object lesson in common sense, there is nothing better than a few morning hours spent in one of the police courts of London. These Courts of Summary Jurisdiction, as they are more properly called, are very remarkable institutions. They bear only a very faint resemblance to our own police courts. Really, they are not "police" courts at all, as they have no connection with police stations, and the only policeman that one sees there is the officer who has, in each case, made the arrest. But, like our own "magistrates courts," they deal with all the petty unpleasantnesses of life, with the skeletons in family cupboards, with the unlovely side of matrimony, with the habitual or occasional alcoholic, with "street women," with all the flotsam and jetsam of human life in a large city. In another aspect, they are unlike our courts, in that their powers are very extensive. The limits of the sentences, that they may impose are very wide; they may parole, without restriction, a habitual delinquent as well as a first offender; they may commit juvenile delinquents to reform schools or to Borstal institutes; they may issue orders of separation and maintenance to disgruntled husbands or unhappy wives. Or, if the offense be serious and indictable, they may hold the accused for trial in the criminal courts. The magistrates themselves are the most interesting element

of all, for they are men of the English upper classes—public school and university men, lawyers who have had a long and varied experience at the bar and who possess an intimate, detailed knowledge about the conditions of daily life in that part of the great city over which their jurisdiction extends.

In a morning, spent at the Bow street or the Marlborough street court, one might find material for a book, for several books: I was especially fascinated by the common-sense manner in which "drunks" were disposed of. In each case, the first question asked by the magistrate was invariably, "Were you drunk?" If the reply was a shame-faced or a brazen "Yes, Your Worship," then a small fine—a few shillings—was imposed. Sometimes, the man or the woman was warned that they had been appearing in court at rather too frequent intervals, and that, next time, the sentence might be more severe. But usually, the frank admission of drunkenness settled the case. Far otherwise, however, if the accused retorted, "No, Your Worship, I was *not*." Then, and then only, the officer, who made the arrest, was called to testify, and perhaps some bystander also, who had seen the disturbance and the condition of the man who had caused it. And, if it became evident from their testimony that the man *was* drunk, Heaven help him. His fine was three times what it would otherwise have been, and there might be a punishment still more severe, for he had put the court to the trouble of proving him a liar.

The police, themselves, have another common-sense way of dealing with "street drunks." When a hopelessly intoxicated man is arrested—a man who is dead to the world and who has "passed out," he is taken to the police station and examined by the police surgeon. If he is conscious, he is propped up in front of the desk-sergeant, and here also, he is asked: "Are you drunk?" If he admits the soft impeachment, he is consigned to a fairly comfortable cell and told "to sleep it off." If he says "No," the whole method of procedure changes. The police surgeon is summoned immediately, for the London police take no chances; they will run no danger of locking up a sick man—not drunk, but stuporous—and of finding him the next morning, dead on the floor of his cell. The police surgeon, therefore, examines the protesting patient. If he is not drunk, as he says, he goes to the hospital; if he manifestly is, then, into a cell he goes. And the next day, before the magistrate, the fact is brought out that he said he was not drunk, when he was demonstrably "full to the neck," and so disturbed the slumbers of the police surgeon, called to examine him. The poetic justice of the situation lies in the fact that the surgeon is paid

so much for each case that he examines, and that one-half of his fee must, as an additional fine, come out of the pockets of the patient, if it be proven that he had been lying about his condition.

These are chance examples of the common-sense way in which the English criminal law is enforced. You will find the same common-sense in English prison administration. From the outside, it may often seem callous, over-systematized, to our emotional American prison reformers. But it is successful, or fairly so; and it runs smoothly. Moreover, its general outlines are clean-cut; they do not change every few months. You do not find one way of dealing with prisoners at Portland, and an entirely different method at Pentonville. Of course, there are various types of prisons; but there is uniformity of administration and, therefore, stability. The governor, or the warden, does not administer his prison according to his own more or less enlightened ideas about penology; he discharges the duties of his office according to the rules and regulations that are laid down for him by the Board of Control at the Home Office in London. I visited many English prisons, two years ago; I spent many interesting hours with the physician who is at the head of the prison medical service; and I found him and his colleagues, medical men and laymen alike, very humane, very kindly people—a little too hampered perhaps by precedent and regulation, but, on the whole, able, experienced, common-sense administrators of a great public trust, who felt keenly their responsibility for the welfare of the prison population under their control.

English courts and English prisons are not the merciless, cold, unsympathetic agencies that we so often imagine them to be; agencies, that think only of punishing the crime without thought or understanding for the criminal. From the lofty standpoint of our American "prison reform," we look down on them as reactionary, as falling far behind us in the humane development of criminology and penology. I can suggest no better cure for this patronizing state of mind, than the reading and the inwardly digesting of a recently published English book—a book that stands in a class by itself—"The Loom of the Law."¹⁶

Occasionally, among all the emotional and prejudiced volumes that are compiled or written about crime and criminals, a book appears that comes to me like light in a dark place, like an unexpected solu-

¹⁶"The Loom of the Law," by J. A. R. Cairns. The experiences and reflections of a Metropolitan magistrate. Third edition. London, Hutchinson & Co., 1925.

tion to many puzzling questions that I had almost despaired of ever solving at all. And here, for a change and for a wonder, is such a book. Everyone interested in criminal courts, in prisons, in habitual criminals or in occasional offenders, should read it and then, read it all over again. It is written by the magistrate of one of the Courts of Summary Jurisdiction—of a “police court”—a man who has a remarkable facility of expression and the power of writing clear, simple English; a man with traditions and standards of his own and with a very understanding heart. There is nothing emotional or sentimental about this book. Its chief characteristic is that rare virtue, which one misses nowadays in American discussions of similar subjects—the virtue of common sense. Anyone who thinks that “parole” and “probation” are newfangled contrivances that only help to produce habitual criminals, ought to read Mr. Cairns’ chapter on “The Probation Officer.” “The courts,” he says: “are not dominated by sentiment. They are dominated by sanity. Emotionalism is not mercy. Our work is social surgery. We deal with the ills of society. And the restoration” (i. e., by means of probation) “of a healthy, disciplined, orderly citizen is a greater achievement than burying him and his freedom in the fastness of Portland or Pentonville.” (Page 248.)

The book lends itself to quotation. One or two passages are too valuable to pass over:

Mr. Cairns understands the police. “I can imagine,” he says (p. 269), “no more dangerous belief than that police evidence” (i. e., in a trial) “is more credible than the evidence of a reputable citizen.”

England has no Prohibition law, but she suffers from something that is almost as annoying: from rules and regulations laid down “by departmental chiefs and underlings” (p. 279). Against these “minor tyrannies,” Mr. Cairns appeals to the power of the press. “The descriptions of crimes in the newspapers are not,” he writes, “responsible for increase in delinquency. The contrary is nearer the truth. The press acts as a warning and a deterrent and demonstrates the fact that the offender is almost always caught and punished.” (P. 271.)

Here is a passage from the chapter on “The Loom and the Lost,” that is worth thinking about:

“It is a curious anomaly that a young girl cannot contract into legitimate wedlock without permission, but she can contract into illicit wedlock and into prostitution without interference. A young girl must not debase her body and mind with dangerous drugs. Cocaine, opium, morphine and chlorodine are forbidden. The tolerated way to death is venereal disease.” (P. 148.)

And here is another, almost equally valuable:

"There is less deliberate conscious wickedness in the world than the virtuous suppose, and many reputed virtuous have been extraordinarily lucky." (P. 33.)

After all, what is a criminal?

"Criminals are like ourselves, very human. They usually like the things that we like, and sometimes we do the things that they do, but some fish get through the net. They generally do a natural thing in the wrong way or at the wrong time or place, or with the wrong people, and there they are."

But the most valuable element in the book is the writer's attitude of mind towards the true criminal—the dangerous and the brutal. It is an attitude of mind that we, in America, too often neglect; our easy-going good-heartedness makes it distasteful to us, and because we rather shrink from its ultimate conclusions, we make serious mistakes, mistakes that sometimes impair and nullify an enormous amount of good work done for other types of offenders who really deserve our interest and our help.

"The law," Mr. Cairns writes, "is neither dominated by sentiment nor restrained by fear. It can deal out justice with an unsparing and heavy hand and make the wrong-doer suffer even unto death." (P. 87.) "The more generous impulses of the law are not intended for, nor should they apply to offenses which usually involve qualities of deliberation and brutality. Such offenses are the expression of a brutal and depraved nature. . . . A section of the community are parasites. And not merely do they live on the body politic, they infect it with dirt, disease and death. They perform no social duty: they recognize no social bond; they are restrained by no code or sense of honor." (P. 88.) "By such men, mercy is misunderstood, and on such, pity is wasted." (P. 68.) "The law is remorseless on the jackals of society." (P. 99.)

It is but seldom that one finds a book like this. I scarcely think that it could have been written by an American. It faces the issues so squarely; it is so full of straightforward dealing; yet, at the same time, it is so human, and above all, so pregnant with common sense.

Surely, then, we, in America, who are faced, day after day, by the same pressing problems that are involved in our dealing with offenses and, more important still, with the offenders, surely we might save ourselves many heart-burnings, many disappointments, if we could assimilate a little more of the virtue of common sense, especially that brand of it, of which Mr. Cairns is the exponent: common

sense tempered by human interest and big-heartedness, but in the right place and at the right time. Much as America may need Institutes of Legal Medicine in connection with its courts and scientific laboratories for the study of criminological data, we could, I think, still get along fairly well without all these important aids to criminal administration, if we could only rid ourselves of our inbred emotionalism and our sentimentality in criminological and penological affairs. But we must rid ourselves also, and above all else, of the old, callous, inhuman law of retaliation and vengeance, and try to lift ourselves up, or perhaps hold ourselves down to evenly tempered reactions, to an ideal of justice that is not always striking indiscriminately to right and left with her sword, because the bandage has been removed from her eyes forever. For weak emotionalism is one extreme, and brutal lust for revenge is another. And the golden mean, that Aristotle once taught as the measure of true achievement in all things, lies surely and plainly along the high road of common sense, the only road that does not end either at a blank wall or in a gutter, but that stretches on straight ahead and gets somewhere at the last. Or, at least, it seems to get somewhere. For, like so many other things in this life, its end we do not know and cannot see. But of one thing we may rest assured: If we keep to it, we shall neither muddy our feet in the gutter, nor wander off into barren, pathless fields.