

HYPNOTISM AND ITS LEGAL IMPORT.*

PART II.

I think that we have now reached a point where we are sufficiently equipped to discuss the forensic aspects of hypnotism, and first of all we must mention the interesting fact that the disposition of certain persons, of allowing themselves to be very easily and one might say instinctively and unconsciously influenced by others without recourse to hypnotic procedure, is based on suggestion. This disposition is very highly developed in certain persons; they simply cannot resist suggestion, the influence of those who take an interest in them, and in consequence they become the playthings of other people, and are mostly misused. On the other hand, we meet with people who know how to subject others irresistibly to their influence. These are great natural hypnotists and they often abuse their gift if they are unscrupulous. An historical example of this is met with in the person of Napoleon I. These facts are absolutely identical with suggestion in the waking condition, and the relationship of this phenomenon to hypnotism will be well to bear in mind.²⁰

Let us first discuss crimes committed on hypnotized persons. I believe that a good many crimes may be committed on a hypnotized person, provided that a higher degree of hypnosis is attained, although I do not go all the way with Forel when he says that every conceivable crime may be committed under these circumstances.

A very important protection against this is found in the hypnotized himself. However tempting and easy a crime of this nature might be, the results of this for the hypnotist are very dangerous, for the whole structure on which he would build his security is a fragile one, which can be easily blown over. The hypnotized person sometimes awakens at a time when one least expects it. At times one thinks the subject is amnesic, and yet the recollection of it all suddenly returns to him by means of some autosuggestion or other. The subject can mostly be hypnotized by another person, despite contrary suggestions, and a complete detailed remembrance of what has happened may be restored in a later hypnotic sleep. I believe that the instinctive feeling of these facts on the part of the hypnotist is to a great extent responsible for the fact that so few crimes have hitherto been committed on hypnotized persons. Of course all those crimes that can be committed on a person in the waking state, are

* Continued from p. 22 *ante*.

²⁰ Forel, p. 278.

equally perpetrable on the hypnotic; with this qualification, that sleep may be induced in hypnosis, and we need hardly attempt to prove that a sleeping person may be more easily robbed, violated, or slain, than a person in the waking state.

The most common crime is that of a sexual nature, and these are the ones that have been mainly dealt with in literature. The case of the beggar Castellan in 1865, was very famous in France. Although physically a cripple and revolting to the girl Josephine H, she followed him for days, much against her will, and he outraged her on several occasions, also much against her will, although she didn't seem to be able to help herself. Castellan was condemned to 12 years' penal servitude. Moll seemed to give the right interpretation when he said that it was a case of rape committed on a hypnotic subject (p. 403); although I think that the girl was suffering from a sexual repression, and under the hypnotic influence to which Castellan subjected her, a transference of her sexual emotions to Castellan took place. The result of this was that her conscious will was unavailing to prevent her following the beggar. It doesn't matter whether we give a psychoanalytic interpretation of the facts; the truth was that with the aid of hypnotic influence on a very suggestible person, a sexual crime was repeatedly perpetrated on Josephine, in spite of what she herself, her friends, or her family could do.

We now come to a very important case of its kind, which occurred a few months ago in Ecuador. The victim was Angelita Blacio Flor, a beautiful sixteen year old society girl who relates how she was seized by a number of men and carried off to a hotel where a giant negro hypnotized her. Investigation revealed that the perpetrators of the crime carried her to a hotel of questionable repute, where they subjected her to violent sexual abuse, and then left her unconscious and in a serious condition in the street. The facts have not as yet been proved nor has the attitude of the court been shown. In any event we can place a certain reliance on the statements of the girl, and then we would have an example of a sexual crime perpetrated upon a subject in the hypnotic state. There is a great possibility that the offence was committed with the assistance of hypnotism; on the other hand, if the negro is not guilty of having used hypnotism it will be because the facts will be found to differ from those reported by the girl, and in which case nothing for or against the problem will have been proved. In any event it is true that rape has often been committed without the aid of hypnotism; its use would merely be an aid in the commission of the crime—as possibly in the above case to suggest amnesia of the perpetrators

of the crime (which is quite likely to have successful results) or, and this is less likely to be lasting, to suggest amnesia as to the incident. For our present discussion we are not so much concerned with the possibility of hypnotism being used to obtain consent from an otherwise unwilling person, as there was no suggestion of that in the report of Senorita Flor.

There are moreover, cases where, as a result of autosuggestion, a woman, believing the accusation to be true, accuses a person falsely of having committed a sexual offence on her (e.g., the recent case of Sylvia Boyd in Oakville). Then there are cases where nothing of this kind happens. The woman invents the hypnosis, or at least the rape, simply to hide a *faux-pas*, or for some other reason. Certainly we must exercise a great deal of care before assuming that there is conscious lying on the part of the accuser in such cases. The confused notions of hypnosis and suggestion that are still so prevalent make it quite possible for a woman to mistake intense sexual excitement for hypnosis, and this appears all the more likely when we come to consider that sexual excitement, when artificially aroused, renders a girl quite as incapable of offering resistance as hypnosis.²¹ Of course, from the human point of view, we may be charitably inclined in these cases, but as experts we must really distinguish between them and hypnosis. Czynski's case tried at Munich in 1894 belongs here.²² He was charged with seducing Baroness X by means of post hypnotic suggestion, and also with taking part in a sham marriage ceremony. He was convicted on the latter but discharged on the former count. The opinions expressed by the experts were at great variance. Moll thought that hypnotism had little to do with the Baroness' love, while Schrenck-Notzing expressed himself thus:—"The jury acquitted the accused in respect to the charge of the offence against morality, possibly on account of the interpretation of the act, and possibly because the Baroness later yielded herself voluntarily to her seducer. But in spite of his, there can be no doubt about the crime of the accused, and therefore about the criminal use which he made of the hypnotic condition by means of intensive suggestions. In this instructive case, therefore, the decision of the hypnotic specialist will differ from that of the lawyer."²³

In a New York seduction case, evidence that the girl claimed to have been hypnotized by the defendant and not to have remem-

²¹ For the erotic root of hypnosis see Schilder, p. 34.

²² 14 Medico Legal Journal, 150; note in 40 L.R.A. 271.

²³ Forel, 297.

bered anything of the seduction until subsequent hypnotic examination, was held insufficient to get a verdict.²⁴

In *State v. Donovan*,²⁵ it was held that evidence of a seduction accomplished either by hypnotism or love-making, or both, was held sufficient to warrant a conviction.

Hollander and Kantor, writing in recent years, practically deny the moral dangers of hypnosis. Huffner believes that the subject carries out the suggestions only as far as he wants to. According to Vorkastner, there are only twenty cases of moral wrong done in hypnosis. On the other hand, Schrenck-Notzing (1920) thinks hypnotism can be used for criminal purposes; and although Friedlander (1922) considers it unfitted for most criminal purposes, he asserts that it can be used for sex offences. Schilder seems to agree with this when he says, "In general, we may go so far as to say that a subject may be more readily induced to perform sexual acts than other crimes."²⁶

It has also been asked whether suicide might not be committed as a result of hypnotism; on theoretical grounds, I agree with Professor Krafft-Ebing, of Vienna, that it would be possible, provided the suggestion were adroitly made. However, I think that it is a problem of the whole personality of the person and his conflicts at the time. There have been cases of double suicide, where a person would only commit suicide when bolstered up by the knowledge that another person was doing the same thing at the same time. It would seem to follow that if such a person had been hypnotized, it could have been effectively suggested to him that he commit suicide. It seems to me to be a relative problem. One person would commit suicide of his own accord; another would do so if it were consciously suggested to him, either by the moving pictures, the newspapers, or some other person; a third would do so only if a friend were to do so at the same time; but somewhere there would be a fourth, who could be brought to commit the act if it were suggested to him while he was in the hypnotic state. This is all the more understandable if at the same time it were suggested to him that he was acting of his own free will, and with certain definite motives. (Being amnesic of the suggestion given in hypnosis, his case would seem to be no different than if he were our first person, who thought there was good and sufficient reason to end his life.)

²⁴ *Austin v. Barker*, 1906, 110 App. Div. 510; 96 N.Y. Supp. 814.

²⁵ 1905, 128 Iowa 44.

²⁶ Schilder, 54.

There are important differences of opinion about the offences which hypnotic subjects may be made to commit. Liégeois and Liébault thought this danger very great, while Benedict and Ballet deny it altogether; others, Forel, Eulenberg, and Dalley, take an intermediate position. Liégeois conducted some experiments in this connection to see whether a crime could be successfully suggested, and he made a very suggestible girl fire a revolver, which she thought was loaded, at her mother; and another put arsenic in the drink of a relation. There have been many of these staged crimes, and they are usually criticised on the ground that the subject is aware of the general situation, and that he is conscious that an experiment is being made on him. It would seem, however, that only those acts are done which are in accord with a previous inclination of the subject.

Even so there appear to be two dangers. It is possible that suggestions be put so as to conceal the fact that they are of a criminal nature, and then there would be no reason to expect the moral feeling to revolt. A false premise could easily pervert the whole outlook and it might even appear to the subject that he was doing a meritorious act. Prof. Munsterberg allows that a man may swear falsely, though believing that he swears the truth, because someone has fabricated an artificial delusion in him.

The second danger arises from the fact that there are many acts which a person might be induced to do which are in no way criminal, as far as he is concerned, and yet which might have disastrous results. Thus Moll mentions cases of persons being induced hypnotically and post-hypnotically to sign promissory notes, deeds of gift, give large donations to charity, and to sign testamentary dispositions. Indirect extortion of money might be effected in this way, and a person might be cheated by being induced to pay the price of real pearls for sham articles, or he might be seriously crippled by buying, at a high price, a house which was useless to him. All that seems necessary is that the proper suggestion be offered so as to make the subject think that he is doing the act of his own accord at the time, and because there is sufficient justification.

There have been one or two cases where there has been a discussion of the question of a hypnotized person committing a murder. However, of all the crimes, murder is the least likely to be done in this way. One would really have to be a murderer to plan such a crime beforehand, and a suggestion such as this would be

rejected in advance.²⁷ Theft, however, has been successfully suggested, and in one case with far-reaching results. Liébault made a post-hypnotic suggestion of a theft to a young man, and as a result the man stole two statuettes. Two months later he was arrested for a number of petty thefts he had committed and which were recorded in his notebook. Liébault was inclined to think that these thefts were the result of his first criminal suggestion, but it was soon shown that his colleague had hypnotized the person and suggested all these thefts to him.²⁸

Even if suggesting that the general importance of suggestion in criminal cases does not appear very great, we must carefully distinguish between its general practical importance and its significance in any given case. For many reasons its general importance in this special connection seems slight; but it is quite another question whether hypnotic suggestion must not be taken into serious consideration in a concrete case in which, for instance, the accused person has not only been constantly hypnotized, but the hypnotizer is also known to derive considerable advantages from the crime.

Although the general importance may be slight, the difficulty arises from the light thrown upon the intricacies of human nature by psychoanalysis, which, as we have already seen, allows us to say that the tendency to criminal activity is latent in all of us. More than this, psychoanalysis showed us that it is particularly in unconscious processes, such as dreams, that we give vent to these criminal instincts. It follows, therefore, that since hypnotism allows sway to the unconscious processes, we would be more liable to give vent to these same criminal instincts when in the hypnotic state. As I have already pointed out, it would be then quite easy to realise how a well-formed suggestion could hit one of our repressions to the effective point where we would follow that suggestion, even though it might be a crime of a lesser sort—and even though it might seem to be contrary to our personality as a whole. At this point I might be met by the argument that if a person committed a crime while under hypnotic influence, it would merely prove that that person was a criminal anyway. I think this argument falls to the ground when we realise just how complex the psychic make-up that controls our personality is, and also when we realise how easy it might be for a person to be “unconsciously” out of accord with moral and legal principles at any one small point, and yet still be a model citizen.

²⁷ But see Marjoribanks “For the Defense,” containing Marshall Hall’s Interpretation of *The George Joseph Smith* murder case as resulting from hypnotism.

²⁸ Dercum—Rest, Mental Therapeutics and Suggestion.

Next we must speak of hypnotism as a defence, and the responsibility of the hypnotic criminal. Wagner-Jauregg, among others, mentions the possibility of a criminal causing himself to be hypnotized when already imbued with the intention of committing a crime, having the double purpose of overcoming his own inhibitions, as well as evading completely or in part, punishment in case he should be detected. Lilienthal thinks that in this case the hypnotic should be punished, and there is no doubt about this, because the well-settled principle of law that a person cannot take advantage of his own conduct would govern. At all events, however, strict enquiry should be made as to why the man consented to be hypnotized, unless this was done suddenly or by force or guile; for even if he was not aware of the experimenter's purpose, he incurs some liability for having voluntarily alienated his free will, so much more so if he knew for what criminal purpose it was proposed to employ him. Desjardins in France expressed the opinion that any person who commits a crime under the influence of criminal suggestion is punishable, because he might have foreseen the possibility of such a suggestion. Lilienthal, however, thinks it strange justice which would punish a crime committed in unconsciousness and without intention. It certainly would be contrary to the whole spirit of criminal law to punish a person for an act done while he was not in a state of responsibility and without intention.

Section 19 of the Canadian Criminal Code reads as follows:—"No person shall be convicted of an offence by reason of an act done or omitted by him when labouring under natural imbecility, or disease of the mind, to such an extent as to render him incapable of appreciating the nature and quality of the act or omission, and of knowing that such an act or omission was wrong." In all ordinary crimes the psychological element which is indispensable may be fairly accurately summed up as consisting simply in intending to do what you know to be criminal—but a person who committed a crime under hypnotic influence could possibly be protected if the depth of the hypnosis and the suggestibility of the subject satisfied the relative conditions of this section, which demand the exclusion of free volition or a morbid disturbance of the mental activity. Kenny says that generally a crime must be an act of a man's will, and will is not a mere wish but an emotion of the mind always succeeded by motion. It is the power of volition. (*i.e.*, the offender must be able to help doing what he does. Where it is absent, an immunity from criminal punishment will conse-

quently arise.²⁹) Dr. Mercier says:—"To incur responsibility by a harmful act, the actor must will the act, intend the harm done, and desire primarily his own gratification. Furthermore, the act must be unprovoked, and the actor must know and appreciate the circumstances in which it was done."³⁰ Applying this test to a hypnotic subject, if it were shown that the person was hypnotized; that he did not enter this state for the purpose of receiving a criminal suggestion; that the depth of the hypnosis was somnambulism; and that the suggestion was one that he could not under the circumstances resist, it would appear that the subject would not be guilty of a crime. As far as hypnotic influence is concerned, *Corpus Juris* states that:—"proof that the accused committed the offence charged when under the influence of hypnotism, so that he did not know what he was doing, or was compelled to commit the offence would no doubt be a defence."³¹

Another question to be considered concerns the responsibility of the person making the suggestion. By section 69 of the Canadian Criminal Code—"everyone is a party to and guilty of an offence who does or omits an act for the purpose of aiding any person to commit the offence, or counsels or procures any person to commit the offence." However before the Law was changed by this section, the problem would arise as to the responsibility of the hypnotized criminal, because if a hypnotized subject committed a crime and were not responsible, the operator would be liable as the agent; but if the subject were responsible for the crime, the operator would only be liable as instigator of the crime—in which case his punishment would be considerably mitigated. Under our present law, any person who orders a hypnotic who is still in a condition of responsibility to take anything away from a third party would, if the theft were carried out, be punishable as a party to the crime. Undoubtedly he would be such if the subject were declared not to be in a condition of responsibility.

In this connection of responsibility of hypnotist and subject let us look at the Sauter case. The prisoner was accused in Munich of having attempted to kill her husband by strewing gentian roots into his socks. This was, in her opinion, a means of killing; it had been advised to her by a fortune teller. (German law punishes attempts to commit crimes, although undertaken with inefficacious means). Being extremely superstitious, Frau Sauter had come to consult the fortune teller on every important occasion, and it was

²⁹ Outlines of Criminal Law, p. 40.

³⁰ Criminal Responsibility, p. 153.

³¹ 16 Cor. Jur. 111.

the latter who suggested the whole crime to Frau Sauter, although entirely unintentionally. The report which Forel gave led to the proof that the accused, fascinated by the fortune teller, had carried out the ideas of the latter while in a condition of suggestive dependence, and Frau Sauter was acquitted. This case represents the first acquittal of an accused person who committed a breach of the law under the suggestive influence of another person and is therefore of principal and lasting importance for the doctrine of the relationship of suggestion to Criminal Law.

The judging of the condition *in foro* becomes difficult if, as in the Sauter case, the intellectual originator, (the fortune teller) has absolutely no conception of the lawlessness of her actions, and of having committed a crime. We are therefore dealing with unintentional, unnoticed influencing. The court of Justice in this case was not in a position, under these circumstances, to punish either the originator or the person who has carried out the deed, since it is impossible to prove a criminal intention.³²

There is another direction in which hypnosis might be of importance in law—it can be used to falsify testimony. By means of retroactive hallucinations subjects can be made to believe, even after they awake, that they have witnessed certain scenes or perhaps even crimes. At any rate there is no theoretical bar to hypnosis being used for the purpose of obtaining false evidence.

However, it is difficult to conceive of a case where a deeply hypnotized person would prove a very valuable witness for the hypnotizer post-hypnotically in a court of law. And here also we must bear particularly in mind that some small detail might be easily omitted when the witness in receiving his instructions during hypnosis; and then the whole fabric would fall to pieces during the hearing in court. This would be all the more likely when we remember that cross-examination always confuses a hypnotic subject. But even if the direct importance of hypnotism in influencing testimony is not very great, hypnotism has acquired the very greatest significance as an indirect agent from this point of view. The retroactive hallucinations induced by hypnosis certainly led to the investigation of the question whether it is not possible to bring about falsification of memory without hypnosis, and Bernheim, who was first in the field, proved how easy it is to do so. In this way people may be made to believe that they have witnessed certain episodes and thefts, for example, which only existed in their imagination as a result of suggestion to them.

³² Forel, 300.

This brings us to the case of Johann Berchthold. Since the mysterious uncertainty which attached to the murder was not cleared up immediately, a portion of the press of Munich began a kind of preliminary investigation. After several persons had brought forward matters relating to the occurrence, one journal declared, before the magistrates had completed their preliminary investigation, "that there was practically no doubt that Berchthold was the murderer." The result of this was that numerous persons offered themselves as witnesses, and gave evidence on oath, making statements which represented the most obvious contradictions: Whether one believes him guilty or innocent, the trial indisputably showed up the fact that part of the evidence was inspired by the newspapers. As a matter of fact, among two hundred and ten witnesses called there were eighteen whose evidence could be referred directly to the influence of the newspaper notices. One witness for instance swore that he saw the prisoner at a time when it was proved that he (the witness) was in court. Another witness swore he saw the prisoner wearing clothes that actually only existed in the imagination of the artist who drew a picture of the prisoner, and which was published in a newspaper, and so on.

In short, the result of this proceeding which is so very interesting for the doctrine of suggestion, teaches us that the authorities still lack a proper appreciation of the suggestive factor in law cases—that the number of persons who give evidence on oath in good faith untruthfully and inexactly is much greater than one generally supposes. Above all, it has brought new proof of the suggestive power of the press.

Bernheim pointed out long ago what precautions should be taken to prevent a Judge accepting evidence procured by suggestion. He proposed that witnesses should be tested as to their suggestibility, and that, too, by attempting—of course without hypnosis—to suggest an answer the inaccuracy of which could be easily demonstrated. If it should appear that a witness was readily susceptible to such suggestions, then the Judge should be very cautious in accepting his testimony. Similarly Professor Munsterberg³³ advises that not only should witnesses be examined as to their suggestibility with a view to ascertaining the influence of suggestion on their report of the facts, but also jurymen; as it is farce if not the evidence but insignificant and accidental circumstances determine the attitude of the suggestible Juror.

Just as one can wring a confession out of a child, a woman, or

³³ "On the Witness Stand," p. 198.

a weak man, of a suspicious deed, so one can suddenly produce the suggestion in an innocent person that he is guilty. When this takes place, not only a complete confession to the crime, which he has not committed is made, but all sorts of details of the most concrete kind are hallucinated retroactively. In 1906 an English governess Miss Lake was murdered at Essen, and a man named Land confessed to the murder; in spite of the clear account he gave of the circumstances in which the crime was committed, he was acquitted by independent testimony. It was reported in the *Standard* of Dec. 18th, 1911, that it is now believed that Miss Lake was killed by a man living at Essen, who has since disappeared. This man made a special study of hypnotism and knew Land to be a good subject. It is thought that he suggested to Land the idea of passing himself off as the murderer.³⁴

Not only false confessions, but also false witnesses may be prepared in this manner. In the terrifying procedures which witnesses are frequently subjected to and in the manner in which they are turned and twisted by the barristers, they will certainly often be induced to make statements which depend on suggestion. The contradictions which one accuses them of are not always conscious lies and they are not seldom the results of suggestion.

The question whether hypnotism may be used to obtain from witnesses testimony which they decline to give in the waking state must be answered in the negative. It is only under certain conditions that people can be hypnotized against their will, and it is not probable that such favourable conditions would be present in the case of a witness who refused to give testimony. But apart from this, it is a mistake to suppose that a hypnotic subject straightway lets out his secrets; the hypnotized subject keeps his individuality and is silent on matters he does not choose to discuss.

I have no doubt that in some cases it would not only be justifiable but necessary to hypnotize a person in order to obtain his or her statement. It would be so for the purpose of saving an innocent person wrongly accused, and it would be necessary in order to revive the recollection in a case in which it was suspected that a person had been made a victim or instrument of a crime while in the trance state. As the law at present stands, there would be some legal difficulties in the way, although there is no specific law prohibiting it. Any confession or evidence given by a person in a hypnotic state would probably not be allowed in a court in Canada or the U.S.A. However such evidence would always be of use as an in-

³⁴ Arnold—*Psychology applied to Legal Evidence*, 463.

dication to the right conclusion so that the proof could be adduced from different sources.^{34a}

In the case of the *People v. Worthington*,³⁵ evidence showing that the defendant was told by her husband to kill the deceased and that she did so did not tend to prove that the defendant was hypnotized, and render admissible evidence of the effects of hypnotism on people subject to its influence. In a murder case, *The People v. Ebanks*,³⁶ testimony of an alleged hypnotist that the defendant while hypnotized denied his guilt was properly excluded. Searls said:—"The law of the United States does not recognise hypnotism. It would be an illegal offence. I cannot admit it." McFarland however said "what is said by Searls on the subject of hypnotism must be taken as applicable to the testimony offered on that subject in this case, which was clearly inadmissible and not as covering the whole subject. It will not be necessary to determine whether or not testimony tending to show that a defendant committed the act while in a hypnotic condition is admissible until a case involving that precise question shall be presented." However in *State v. Exum*,³⁷ the fact that the defendant had hypnotized his wife on at least three occasions was admissible as affecting her credibility. This tended to show that he had an influence over her to a greater extent than usually arises from the relationship between them. The Canadian case of *Rex v. Booher*,³⁸ was very interesting. In 1928 Booher was suspected of a murder, but the gun could not be found with which the crime had been committed. The crown then employed Dr. Langsner who claimed to be able to obtain information by means not used by the ordinary individual. The day following his first visit in the cell of the prisoner, Dr. Langsner went to the scene of the murder and after a few minutes search located the missing rifle. Dr. Langsner made subsequent visits to the defendant, but claimed he did not speak to him. On the last occasion of such a visit, he came out and

^{34a} There is now before the New York Courts the interesting case of the *People v. Elsie Smith*. The accused was indicted by a grand jury on the charge of murder of her eight month old son. At the preliminary hearing she testified that she had no recollection of the baby from November 7, 1933, when he was reported missing, until the baby was found in a swamp on November 26. The defence was insanity, and after a lunacy commission had disagreed as to her condition, Dr. Nathaniel Selby of the New York Neurological Institute was retained on February 1, 1934, to clarify the situation if possible, by hypnosis. The amnesia of Mrs. Smith was in part broken down by Dr. Selby's hypnotic experiment. She recalled certain incidents which she had not remembered previously. As a result, Mrs. Smith was found legally insane by the lunacy commission.

³⁵ (1894), 38 P.A.C. 689.

³⁶ (1897), 49 P.A.C. 1049.

³⁷ (1905), 50 S.E. 283.

³⁸ (1928), 50 C.C.C. 271.

told the detectives that they might expect a confession at any time. Within a few minutes Booher had confessed to the murder. In the opinion of the Judge who tried the case, the crown failed to discharge the onus he placed on it of establishing that the defendant was not under the influence of mental suggestion exercised by Langsner and therefore he did not allow the confession.

I am inclined to think that hypnotism of a kind, or some psychic power such as mental telepathy, was employed by Langsner, more particularly in learning the whereabouts of the gun. It is particularly here that hypnotism can be of service—not so much in obtaining the final confession, as in getting the proper clues that will eventually lead to a conviction through legally admissible means.³⁹

This completes our consideration of the bearing of hypnotism on jurisprudence. Cursorily we have seen the direct practical importance of hypnotism to jurisprudence, and also that it must not be exaggerated. It is not the fact that a hypnotic can be made the victim or the instrument of a crime; it is not the fact that we can induce retroactive suggestions hypnotically, and thereby falsify testimony, that is all important in this respect. But rather it is the number of instructive lessons in jurisprudence that hypnotism has directly supplied us with. By teaching us the importance of suggestion, it has opened up many a fresh field of view to the Science of Law. In the instigation of crime, factors that are very similar to those employed in hypnotic suggestions often play a part; indeed, it may be that suggestions in the waking state, as well as other mental influences are used.

All these are questions for the jurist to consider. He must be able to think psychologically and know how far an accused person's culpability may be lessened, if not nullified, by this suggestibility, and more especially by the ease with which he can be influenced. On the other hand, he must know how to weigh the value of evidence. Unfortunately our professional jurists are not sufficiently schooled in the psychological way of thinking. In future more will be demanded in this respect, since incapacity to think psychologically is calculated to make the jurist the agent of injustice, not of justice.

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³⁹ Compare the use of lie detectors which can furnish us leads, but not conclusive proof. See *Frye v. U.S.* 1923, 54 App. Cas. D.C. 46. See also (1893), L.T. at 500. DeJong was hypnotized in Holland for purpose of obtaining clues as to whereabouts of missing girl whom he was alleged to have murdered.