

PSYCHOLOGY AND CRIME.

BY HERBERT L. STEWART, M.A. (OXON.) PH.D.

Professor of Philosophy, Dalhousie University.

In England last year the mutual recriminations between men of medicine and men of law presented an unedifying spectacle to the laity. The Ronald True case supplied indeed excellent copy for the newspapers, but its effect was not excellent in any other sense. Jokes from the Bench against Harley Street and jibes by alienists at "the mixture of ignorance and superstition in the Courts," left an uneasy feeling that the public was being fooled by one or other—and perhaps by both—of two learned professions.

Ronald True was convicted on unquestionable evidence of murder. The plea of insanity was put forward, but failed to impress the jury. On appeal the decision of the Court below was upheld, but on petition to the Home Secretary a Commission of specialists in mental disease was appointed to investigate the mental state of the condemned man. The Commissioners unanimously reported that True was beyond doubt insane, and the Home Office commuted the sentence to one of detention during the King's pleasure. There followed a tremendous racket in the press about the alleged "influences" which had secured this exceptional interference. And the situation was complicated by the fact that a pantry boy of apparently weak mind—who could pull no social wires—was, about the same time, convicted and hanged.

I do not propose to discuss the scandalous insinuations put forward with such freedom against the impartiality of the Home Office. If the impartiality of a Judge had been impugned in the same way, it is probable that the offender would have been punished for contempt. But those who are so jealous for the honour of Courts had no hesitation in suggesting to the

world that the Minister who advises the Crown on the exercise of the prerogative of mercy can be "got at" by society women and induced to divert the even course of justice! The Home Secretary when questioned in Parliament replied that he had no knowledge whatever of the ancestry of True, that he had held no communication with anyone except the learned Judge who tried the case, and that in appointing a Commission of experts he had simply used the discretion vested in him by law.

A remarkable feature in the business is that this apparently plain statement did not hush the clamour. Furious controversy continued to rage about the fitness of calling in medical experts, about the value of their advice, and about the competence of either Judge or jury to come to a conclusion on such matters by the exercise of "common sense." The authority which to one kind of critic appeared beyond reasonable question was dismissed by another kind of critic as deserving no consideration at all! It is amid such turmoil of mutually derisive authorities that action has to be taken when a human life is at stake. Clearly this state of things constitutes both an absurdity and a grievance that ought somehow to be abated.

But, before it is abated, the public must understand very much better than it understands at present what can be said—not in high temper but in reflective calmness—for the view adopted by each of the contending parties. And the two parties must really make an effort to understand each other. Medical men must not content themselves with discounting "the stubborn adherence to red tape that has always marked a lawyer." And Judges must learn that there is more in the medical case than can be summed up as "some hocus-pocus about the subliminal mind invented by a doctrinaire psychologist at Vienna." It seems to be our fate that through preliminary clouds of such competitive nonsense the light on matters of this kind has to be perseveringly sought. But where lives are at stake we

may be over-patient in waiting for the clouds to disperse of themselves. To the present writer it appears beyond all reasonable doubt that in some countries men are being put needlessly and fruitlessly to death, whilst in others they are being no less foolishly and disastrously reprieved, because the jokers and the epigrammatists are still in the ascendant.

The case for the medical profession is the easier to present. It runs as follows:—

Within recent years psychiatry has made remarkable progress. We know vastly more than we once knew about those psycho-physical conditions which make a man's action uncontrollable at his own choice. We have analysed, classified, reduced to natural law certain pathological states which may indeed be improved by appropriate treatment, but upon which the gaol as we now have it will have no beneficial effect at all. We can now point with confidence to cases previously unsuspected, in which penal measures are just so much ineffective cruelty. The old hard and fast distinction between "sane" and "insane" has been displaced in favour of a sliding scale that interposes many a degree between the two extremes. For example, in the matter of juvenile delinquency, it has been shown by the application of recently perfected "mental tests" that the juvenile offender is as a rule inferior in mental powers and development to the average of his age and class. It has been proved that the "recidivist"—or habitual criminal—is very often indeed the innocent victim of mental abnormalities for which he is no more "responsible" than for a physical defect. The Courts, which have speculated with such helpless futility about "the sort of person who is convicted a hundred and fifty times," are worrying their brains over a phenomenon that is now as clear and simple to us as a case of paralysis or a case of astigmatism. It has been made plain that besides disorders of intellect there are disorders of feeling or will, due perhaps to an alcoholic or a syphilitic or an

epileptic parentage. We have information and we have suggestions to offer to the Courts upon such criminals, whom they continue to pursue with a mechanical and aimless savagery. But we are seldom asked for advice, and when we obtrude it we are accused of meddling.

The machinery of criminal law—devised and elaborated long before these scientific advances had been made—is still at work very much as if they had never been heard of. Here and there, after much agitation, something is done to classify and to segregate differing criminals in groups. We have a First Offenders' Act; we have Borstal systems; we have Prisoners' Aid Societies. But the method is still largely haphazard. No adequate step has been taken to have all criminals examined by experts specially trained in psychological medicine. The idea of a "Court psychologist," adopted with marked success in some American States, is sneered at by English lawyers. Worst of all, perhaps, is the neglect of "making sure" in the case of persons convicted on a capital charge. Psychological investigation is made only when the plea of insanity is put forward by defending counsel, and defending counsel—let us say it with all respect—is very insufficiently apprised of the symptoms which render such a plea even plausible. Nor is the investigator chosen from the ranks of those—still quite few—who are real specialists in this medico-psychological field. Science is thus ignored through the well-known devotion to legal precedent. As of old, improvements in law will have once more to be forced by the public against the traditional resistance of lawyers.

When a school for criminal boys was carefully examined, it was found that of the two hundred boys one hundred and twenty-seven were deficient in the direction of feeble-mindedness, in the direction of hysterical emotion, or in the direction of epileptic disturbance. Even the coarse test for insanity which we now apply to cases chosen almost at random had the

effect of declaring irresponsible 143 out of 441 persons convicted of wilful murder in England over a period of ten years. What results might we expect if this sort of enquiry were conducted, not sporadically, but systematically by men with genuine psychological training and equipped with up-to-date methods? In all probability our expert commissioners would advise the reprieve of some who are now executed, and the execution of others whom a benevolent but blundering timidity now reprieves. What we ask is not a revolution in practice, for the initial steps have been taken already. We ask for the substitution of scientific method for rule of thumb.

Perhaps this sounds persuasive. But there is another side, which I shall try to state with the same candour:—

(i) The authority of the expert is enormously weakened when it is found that experts violently contradict one another. There seems to be no other field of medicine in which so little settled agreement has been reached as in the department of medical psychology, and it is most unfortunate that our variant guides should be all alike clamouring to have their advice taken on a matter that fundamentally affects the safety of us all. On questions of public health, though their suggestions are by no means unanimously presented, there has been such general support for at least some essential reforms that our legislatures have bowed to learned wisdom, and we have new kinds of indictable offence where previously not even a complaint was heard. But who will say that there is anything like this approach to agreement in the circle of psychological medicine? By some authorities that adventurous psycho-analyst, Sigmund Freud of Vienna, is acclaimed as a genius fit to rank with Copernicus or Newton; by others he is dismissed as considerably less worthy of attention than Swedenborg and perhaps as great a charlatan as Cagliostro. Who is to decide? Are we going to gamble with the public security by transform-

ing our penal procedure on the chance that the ingenious psycho-analysts are right?

(ii) Where experts thus differ, the door is easily opened to all sorts of improper influence. The motto about leaning to mercy's side, and the motto about the benefit of the doubt, are made to serve the purpose of a one-sided humanitarianism. A thin line separates sympathy for an unfortunate criminal from callousness towards the victim he has sacrificed and towards other victims he may sacrifice in future. The comfortable sense of having been personally benevolent is thus purchased at the expense of others, and—as Burke said—most men show admirable patience under the misfortunes of their friends. It is quite natural that those who disbelieve in capital punishment should be willing to sign at sight all petitions for reprieve, but it is also notorious that many other persons—believers in capital punishment “on principle”—will accept the flimsiest pretext for making an exception in a particular case. The result is something like the scandal of casuistry four hundred years ago, when the doctrine of “probabilism” justified as “probably correct” any line of conduct for which even one ecclesiastical authority could be cited in support. Amid the voices of discordant alienists, it will be strange indeed if the sanction of some one cannot be obtained for an exercise of charity that costs us nothing and fosters our self-esteem.

(iii) These general considerations are corroborated by a great mass of evidence from the practice of French and American Courts. Appeals to “the unwritten law” and “the brain-storm” have been so frequent, so baseless, and yet so effective, as to produce in England a reaction of intense disgust. If our friends across the border resent such criticism from outside, it may be sufficient to quote the opinion of the Chief Justice of the Supreme Court of the United States:—

“I grieve for my country to say that the administration of criminal law in all the States of this

Union (there may be one or two exceptions), is a disgrace to our civilisation."

It is in the United States and in France that the campaign for transforming criminal procedure "in the light of modern psychology" has been most successful, and the results are not encouraging. It is in those countries that the idea of "crime as disease, to be cured and not punished" has been exaggerated into burlesque. Amid the ceaseless arguing—much of it quite dishonest—by which lynch law is defended, we have to recognize as the single grain of truth that legal action in the southern States has been so slow, so uncertain, so affected by sentiment. We should hesitate before we follow so dangerous a pattern.

That there is much force in both these lines of argument may be admitted at once, but we are not compelled to accept either of them just as it stands. We may agree that the Courts are often wrong about the proper treatment for a feeble-minded or a deranged criminal, without inferring that all criminals should be simply passed over to the consulting-room of an alienist. We may admit that psychiatry has often been erratic, without supposing that it is of no use at all. One conclusion we cannot reasonably draw is that a science should be invoked, but that in its use we should follow no clear-cut method. Our disputants here constantly fall into that old fallacy which lurks in the dilemma, — the alternatives are not really exhaustive.

Everyone, or almost everyone, admits that a lunatic should not be hanged for a crime that was the outcome of his mental disease. I say "almost everyone," for I am not unmindful of those daring eugenists to whom such an exception would not commend itself at all. But if the rest of us agree that insanity should be a bar to execution, it seems clear that we should use the best available scientific knowledge to determine whether the accused is insane or not. If "doctors differ" about it, the inference is not that we should

guard against the mistakes of the learned by an appeal to the ignorant. Doctors unfortunately differ in many other decisions; but we must use our best judgment in selecting the "expert" we mean to follow, and must acquiesce in an occasional mistake. The sum total of errors, we believe, will thus be less than if we fall back in a reaction of resentment upon what is facetiously described as the "common sense" of the man in the street.

The real source of justifiable discontent over the Ronald True case lay not in any objection to "experts," though it expressed itself in much ill-considered abuse of that indispensable class of witnesses. It lay in the suspicion that the expert was being invoked to save Ronald True because that criminal had influential friends, while the ordinary law had its ordinary course in cases not dissimilar, which had not the good fortune to enlist the sympathy of the same people. It does not appear that the suspicion was well founded. But it is inevitable that such hints should be heard so long as there is no uniform procedure that applies automatically to all condemned persons alike. The number of such persons is by no means so great in a single year as to make it impracticable that an expert investigation should be made as a matter of course into each one of them.

Again, is the divergence of view among authorities in psychological medicine a graver obstacle to trusting a considered decision by such a board than that other divergence so often seen among occupants of the judicial bench? Are lawyers, to whom a "dissenting judgment" or several dissenting judgments in the Court of Appeal must be so familiar an experience, really entitled to conclude that since alienists are so often not unanimous it is impossible to rely upon them at all? Let us adopt any plan that commends itself to ensure the utmost attainable certainty. Let us require, for example, more than a bare majority. Such a

requirement would appear exaggerated, especially in view of our rule about "the exclusion of reasonable doubt"; for where even a majority of one among eminent authorities takes a certain view the contrary view can scarcely be called so certain that no one can reasonably dispute it. But even so strict a method as this would be at least an advance in the direction of making systematic and uniform that which is at present so fitful and so variable.

Moreover, is it not obvious that some reform of a psychological kind is called for in the case of those criminals who are convicted again and again of minor offences. The object of punishment is to reform and to deter; but unquestionably they are not being reformed and they are not being deterred. There must be some special feature in persons upon whom the normal agencies of improvement are thus exercised in vain. The German criminologist, Krohne, has drawn up an admirable form of query sheet that might be used. It would give what corresponds to the medical man's "history of the case,"—particulars of parentage, whether healthy, temperate, insane, suicidal; upbringing, whether good or bad; record of brothers and sisters; educational proficiency; evidence of feeble-mindedness. In short, it would be the sort of examination used by an alienist in a case where incipient derangement was suspected. Nine times out of ten the result might be "purely negative," but we might detect the tenth. And again the procedure should be automatic, not arbitrary.

My last suggestion is one that breaks into more debatable ground. Is it not time to re-consider our long-standing British prejudice against the "Indeterminate Sentence"? Not every case of criminality is a case of disease; but where the psycho-physical condition is pathological, is it not absurd that the duration of sentence should be fixed in advance, unmodifiable in the light of the effect that is being produced upon the particular person? It is easy to sneer at the adult

reformatories, such as Elmira in the State of New York. But, when we observe how the statistics of persons discharged from Elmira where they have been under Indeterminate Sentence compare with those of our British prisons to which so many men return so often as to be almost permanent inmates with short periods of criminal holiday abroad, do we not find there something to think about? Some years ago the British Home Secretary announced to the House of Commons that over a period of four years 4,000 convicts had been released from gaol, and that of these 3,000 had returned under long sentences. A psychological problem indeed, both in regard to the prisoners and in regard to those who insist on continuing without change the old system of "reforming and deterring" them!

The problem of adapting old practice to new knowledge is always a difficult one, calling for patience, good temper, and an open mind. It seems unfortunate that in the present case it is being met in an atmosphere of irritability, and still more unfortunate that some who should know better are attempting to be jocose. The treatment of the insane is a dark blot upon our earlier administrative records, extending back to the time when a criminal asylum was a show place for the entertainment of those who had become bored with the circus and the menagerie. Our wisdom lies in gluing down those tragic pages of history, treating them as a record of sins of ignorance, and resolving to do better. The alienists are an easy mark for scoffers; psychological medicine has indeed been a field for much groping in the dark. But an exasperated alienist of to-day can offer many a telling retort against a satiric Bench. How have their Lordships in succession defined that state which makes a man "irresponsible"? Lord Hales laid it down that the insane from a jural point of view must be "totally deprived of understanding and memory." Carry that test into the asylums, and you will pronounce ninety per cent. of the inmates competent to plead. Lord Mansfield, on the other hand,

declared that the accused must be shown to be incapable of distinguishing right and wrong *in themselves*, apart from consideration of the particular act. The present writer has taught moral philosophy for twelve years in two universities, and can testify that a lamentable proportion of his students would each year have to be judged insane if they were required to pass a test in such subtle distinguishing as that. If Lord Mansfield himself was equal to it, he should have bequeathed his secret for the behoof of many a perplexed professor. The rule now in force is that irresponsibility implies either not knowing the nature and quality of the act which was done, or not knowing it to have been wrong. What of those who know what they do, and know that it is wrong, but who suffer from abnormal deficiencies of feeling and of will? That there are such persons is as certain as that there are colour-blind folk and that there are stammerers. Does even-handed justice involve identical treatment for the deliberate scoundrel and for the neurotic, the epileptic, the apathic, the aboulie? Only a few months ago in Nova Scotia a boy shot a farmer whose sheep he had been stealing. To avoid arrest for larceny he committed a murder in broad daylight in the presence of a witness. It turned out that the boy's brother and uncle had both been hanged, and a little scrutiny revealed in detail what might have been almost guessed from the folly of his act, that his mental age was less by many years than his physical. How many such cases are there? In how many of them is it the merest accident that suggestive facts about family history are disclosed?

Much unjustifiable scorn is no doubt poured upon the ancient forms of procedure, such as that citation of "The Rule in *Macnaughton's Case*," which figures in every debate about criminal responsibility. But the appeals to precedent lend themselves to such attack. *Macnaughton's case* was tried in 1843. The physicians of that date were at least as far behind the physicians

of the present in their knowledge of insanity as in their knowledge of any other branch of developing medical science. Suppose the case were one that turned upon some point of public hygiene or of surgical treatment. What would be thought of a Court which should make use only of such "expert" opinions as were expressed by men in 1843, wholly ignorant of the germ theory of disease and the value of aseptic surgery? How should we regard the oracular deliverance, greeted by plaudits from the junior bar, that "the rule in such cases is to be made in the King's Bench, not dictated by Messrs. Pasteur and Lister"? That precedent is not slavishly followed, that an ancient "Rule" is often just a peg on which to hang a new decision, that legal "fictions" have their important place in preserving the continuity of justice,—all this may at once be granted. But when a definitely new step is required to make the action of the Courts conform to quite new scientific knowledge, it must surely be a grave embarrassment that search should always have to be made for some "fiction" that will effect a radical change while pretending that there has been no change at all. Such manœuvering—familiar enough in politics and in Modernist theology — may be useful within limits. But beyond these limits a point is reached where it becomes a scandal. Whether the scandal is to be remedied by legislation or by that elastic machinery of "Case Law" in which new rules can be disguised under the form of merely administering what is old, it is not for a mere psychologist—unlearned in the law—to say. Nor need the psychologist care how it is done, provided it is done. Some legal authority is reported to have said that "It is doubtful whether criminals or criminologists are the greater public nuisance." But history shows how it is to men who began by making themselves public nuisances that the world is indebted for some of its most important reforms.