

CRITICISMS AND DISCUSSIONS

PSYCHOLOGY AND LAW

THE late Dr. Mercier's *Crime and Criminals* (London: University of London Press), is worth the serious attention of both social psychologists and of lawyers. Indeed it is becoming more and more desirable that workers in these two fields of human endeavor should co-operate in a much needed co-ordination of the results of modern work in their two departments. This book points the way, though in the opinion of the writer of this note it does little more than call our attention to the fruitful field to which that road leads. It is written, as readers of Dr. Mercier's former works would expect, in a vigorous style, clear and unhesitating. The opening sentence of the preface strikes the keynote of the work: "With the exception of logic, there is no subject on which so much nonsense has been written as this of criminality and the criminal." It is a bold beginning, and raises hopes which are not altogether fulfilled, particularly in the earlier chapters which are somewhat patchy and disjointed.

In the chapter on the "Factors of Crime," we are told that every act is compounded of two elements, instinct and reason, and the author points out that the conduct of animals, e. g., of spiders in making webs, is not purely instinctive but is conditioned by the circumstances giving rise to the conduct; "into every instinctive act there is an intrusion of reasoned action." On these lines is developed a rather crude biological interpretation of human conduct: "in man the reasoned factor encroaches more and more in discovering means to attain his ends, but the ends, the ultimate ends, are always instinctively determined." There are two factors: the internal factor,—“the group of instincts inherent in the actor and the degree and kind of intelligence with which he is endowed”; and the external factor,—“the circumstances in which the actor is, and that act upon him and control and elicit, or modify his action.” Then

follows a discussion of the psychology of crime which gives us nothing newer than that human conduct may be ultimately traced to a small number of instinctive desires, hunger, self-preservation, and propagation of one's species; and that "the middle-aged spinster, rising at an uncomfortably early hour on a winter's morning to attend early celebration would be indignant if she were told the truth that her action is prompted by the craving for self-sacrifice which is part of the fundamental instinctive desire for motherhood." Others, beside the spinster, will no doubt be surprised and willing to join issue on this bold generalization which even if true explains nothing, or at any rate gives us no practical guide to present-day human conduct, and gives us no help in assessing the guilt of a criminal or formulating a criminal code.

In discussing the nature of crime, the author seems to miss entirely the point of view of the lawyer; such a statement as "my own definition of crime coincides in the main with that of Austin and Stephen with this difference, that I shall regard it as consisting of acts and omissions that are infractions of law, not as it is, but as I conceive it ought to be," goes a long way to justify a class which Dr. Mercier does not spare in abuse, the conscientious objector to military service; and when in a later chapter it is seriously suggested that every breach of contract should be punished as a crime, as well as any carelessness which puts temptation in the way of the potential criminal, the lawyer feels that Dr. Mercier fails to appreciate the lessons of the eighteenth century. Criminal law must be practical and its machinery practicable; it is easy enough to point out illogicalities in any system of law and more particularly in systems of criminal law. Even if it be granted that the person who unsuccessfully attempts a murder is normally as guilty as if he succeeds in killing his fellow citizen it does not follow that it is expedient to punish the attempt as severely as the completed act; to hold so means to hold further, that the mere compassing or imagining of crime, without any overt act is always necessary in treason, would justify the full punishment meted out to the crime itself. Dr. Johnson made this quite clear when he said that if Garrick felt a murderer whenever he played Richard III, he ought to be hanged every time he played the part. But in truth the infliction of a less punishment for an attempt is logical on Dr. Mercier's own criterion of criminal legislation, viz., the prevention of anti-social acts; an attempt does less harm than the completed act.

Criminal law must ever be a crude approximation to an ideal, a system consciously defective in the interests of the non-criminal class. If the net of criminal law is so tightly drawn that no anti-social act goes unpunished, as Dr. Mercier seems to desire when he would punish for high treason all who waste public money or for theft those who waste their employer's time or use their master's property for private pleasure although not impairing its value, honest men would be open to needless risks, would be restricted in their lawful occupations and ever open to blackmailing prosecutions. "The life of law is not logic but experience," and Dr. Mercier has failed to appreciate the vast amount of human and social experience which is wrapped up in our legal systems; crude appeals to animal instincts and austere applications of ethical principles do not carry us very far in criminal jurisprudence. It is regrettable that the learned author did not begin his study of crime from the point of view which he so ably and clearly sets forth in the seventh chapter of this book. In this chapter on criminals he says: "According to this doctrine of mine, all men are by nature potential criminals since all are actuated by instinctive desires that urge their possessor to seek the gratification of them, and since no man yet attained to the perfection of socialization that we witness in the social insects, in whom gratification of selfish desire harmonizes completely with the common welfare."

This is unquestionably a very valuable point of view and it is to be deeply regretted that death has deprived us of an elaboration by the author of this theory, which is sprung rather suddenly on the reader towards the end of the work and leaves the feeling that it requires closer reasoning in statement and more justification than that produced.

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