

FLINT (A)

The Coming Rôle of the Medical
Profession in the Scientific
Treatment of Crime
and Criminals.

BY

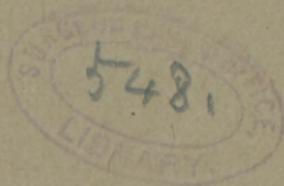
AUSTIN FLINT, M. D., LL. D.,

Professor of Physiology in the Bellevue Hospital Medical
College; Visiting Physician to Bellevue Hospital;
Visiting Physician to the Insane Pavilion,
Bellevue Hospital; Consulting Physician
to the Insane Asylums of New
York City, etc.

REPRINTED FROM THE

New York Medical Journal

for October 19, 1895.



Reprinted from the *New York Medical Journal*
for October 19, 1895.

THE COMING RÔLE OF
THE MEDICAL PROFESSION
IN THE SCIENTIFIC TREATMENT OF
CRIME AND CRIMINALS.*

BY AUSTIN FLINT, M. D., LL. D.,

PROFESSOR OF PHYSIOLOGY IN THE BELLEVUE HOSPITAL MEDICAL COLLEGE ;
VISITING PHYSICIAN TO BELLEVUE HOSPITAL ;
VISITING PHYSICIAN TO THE INSANE PAVILION, BELLEVUE HOSPITAL ;
CONSULTING PHYSICIAN TO THE INSANE ASYLUMS OF NEW YORK CITY, ETC.

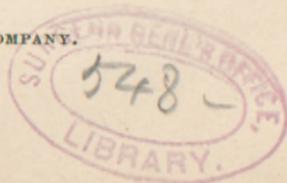
DR. CESARE LOMBROSO, in his work on *The Applications of Criminal Anthropology*, quotes Rondeau as saying, in an essay on the death penalty :

“Even assassins are patients, as well as all other criminals. They should be punished because they disturb the regular course of social life, because they are obstacles to the development of the species.

“Conceding that every crime is the natural outcome and a logical consequence of some disease, its penalty should be nothing else than a medical treatment.”

The idea which underlies the views of Rondeau is that moral liberty has no existence, and that a moral evil is the result of physical fault. “In his system of repression all prisons would be transformed into hospitals; no attempt would be made to improve the organization of convicts.

* The President's annual address before the New York State Medical Association, October 16, 1895.



The thief and the vagabond would be treated by making them taste the joys of work, and in secluding for life those inaccessible to all treatment."

Society, I venture to say, is hardly prepared to accept the logical consequences of these views; but it must be admitted that the treatment of crime and criminals, under existing laws and their methods of execution, is a failure, and a failure so serious in its results that it is difficult to imagine what will occur before a revolution takes place and scientific criminology and penology become established as part of the social fabric.

It has been stated on competent authority that crime in Great Britain is responsible for an annual public expenditure of ten millions of pounds sterling. "According to a recent report to the Ohio Board of State Charities, the citizens of the United States spend an annual sum of fifty-nine million dollars on judiciary, police, prisons and reformatories." The president of the National Prison Congress of the United States says:

"Other questions which agitate the public and divide parties are doubtless important; but the country can live and prosper under free trade and protection, under bi-metallism or monometallism, under Democracy or Republicanism, but it can not survive a demoralized people with crime in the ascendant. That crime is on the increase out of proportion to the population is indicated in many ways, but for the country as a whole the United States census is the most reliable guide. Let us look at it by decades:

	Prisoners.	Ratio to population.
1850	6,737	1 in 3,442
1860	19,086	1 in 1,647
1870	32,901	1 in 1,171
1880	58,609	1 in 855
1890	82,329	1 in 757"

In Great Britain, Germany, France, Italy and other civilized countries, the penal systems do not differ very materially from ours; and we may assume that in these countries crime is not more successfully treated. What wonder is it, then, that jurists who have studied this great question, like von Liszt, of Germany, "admit that our existing penal systems are powerless against crime"!

The chief object of a penal system is the protection of society. The facts that I have just cited show that the protection of society against crime and criminals is becoming more and more alarmingly inefficient.

The statements and statistics just given have not been exhumed from obscure sources. They are taken from Morison's introduction to *The Female Offender*, by Lombroso and Ferrero, recently republished in New York and extensively circulated. Without considering the merits of this book in the form of its mutilated and imperfect translation, in which it seems hardly worthy of the distinguished reputation of Lombroso, the statistics alone, given in the introduction, should awaken the public to the necessity of a radical reform in penal methods and the danger of delay.

Sentimentality in questions of criminology and penology should be put aside. It has no more place in criminal law and penal administration than in medicine and surgery. Crime is a disease of our social organization. It is true that it is ineradicable, but it may be restricted within much narrower limits than at present exist. Crime calls for intelligent and scientific treatment. While crime can not be abolished, all criminals are not hopelessly affected with crime. Individuals may be protected against crime as Jenner has protected individuals against small-pox. Crime may be a constitutional disease, as in the born criminal, or it may be due, in individual cases, to surroundings, teaching or example—a sort of contagion. It has been abundantly

shown that criminals may be divided into two great classes, the curable and the incurable; but the disease which we call crime has nearly as many phases and varieties as are presented by the nosological catalogue. Society needs the aid of competent men to undertake the task of separating the curable from the incurable, to restore the former to usefulness and to protect our social organization against the latter. Jurists, so-called lawgivers and those who execute the laws have failed. In my opinion, the only hope is in the medical profession. This is the explanation I have to give of bringing the subject of crime before the Association. I have lately become fully sensible of the immense extent and importance of the subject in its relations to the profession, and, more than all, of my deficiencies in study and experience in the questions involved; but no problem can come before us more worthy of thorough investigation and careful consideration. I venture to recommend and hope that in a future meeting or meetings the Association may make this matter the subject of formal discussion and attempt to devise something to meet in a measure the existing and pressing necessity for reform.

It is to be feared that the medical profession can have little direct influence in the making or repeal of laws. The past does not show any encouraging success in this direction. The protection of the community against so dangerous and evident an evil as the unrestricted sale of patent medicines of unknown composition, many containing powerful and deleterious drugs, has never been accomplished. The profession has found itself powerless against the immense pecuniary interests involved in the sale of secret remedies, and has not been able even to compel the disclosure of the composition of these preparations, so that the public might know what it is buying. How little, then, can we hope to do in the way of enacting intelligent penal laws or of re-

pealing bad laws that have been handed down from antiquity! Our chief hope at present is to induce judges, lawyers and lawmakers to study law in the light of modern scientific knowledge.

The existing system of criminal law is based upon the ancient idea of vengeance and retaliation in the form of what is known as punishment. Crimes that are not criminal and offenses that do not offend are created every year by legislative bodies, as well as laws which restrict the liberty of certain classes, giving special privileges to others. Police organizations, whose duty it is to preserve rights, order, cleanliness, health, etc., and who are "for the enforcement of the laws and the prevention of crime," often induce, by fraud and deceit, men to commit so-called crimes so that they may be punished therefor. Does not this tend to increase the number of enemies of society, who are already so numerous and threatening? Are the real offenses against the good order and happiness of the people so easily repressed that we can afford to create new and artificial crimes by statute?

In its application to the treatment of crime and criminals, the idea of the word law, in the minds of jurists and legislators, needs revision. In its strict and scientific sense, the word law means something that is laid, fixed or set. A law is something that exists, has existed from the beginning, and the mind of man can not conceive that it will ever cease to exist. Man can neither make, destroy nor modify a law any more than he can create or annihilate an atom of matter. Laws, when known, have been discovered by man, not created. The laws of gravitation, of the correlation and conservation of forces, of certain diseases, and the most terrible and inexorable of all, the law of heredity and atavism, have been discovered by illustrious searchers after truth. Man may modify the working of certain

natural laws, but the laws themselves remain fixed and immutable. The universe, animate and inanimate, including man, exists and progresses in accordance with laws, known and unknown. Man is subject to psychological as well as physical laws, and no human act is without a cause, immediate or remote. In a so-called legal sense and in its relations to social organization, law may be termed formulated equity and applied justice; but, in the words of Blackstone, "No human laws are of any validity if contrary to the law of Nature, and such of them as are valid derive all their force and all their authority, mediately or immediately, from this original."

Man is a gregarious animal. An outcome of the development of intelligence and knowledge is social organization. This is in accordance with a law of Nature, and it involves the necessity of ordinances and regulations for the protection and preservation of communities. When these ordinances and regulations are inequitable and unjust, there is immediate dissatisfaction and rebellion sooner or later. When the natural laws of what may be called man's physical organization have been violated, either in the individual or in his ancestry, the result is disease. A man may suffer for the faults of his own organism or from infection or from contagion. It is the province of the physician to endeavor to cure the disease of an individual or care for him during its progress, so that he may be restored to health, and to protect individuals and communities against infection and contagion, thus preventing disease. Physicians have learned how to cure certain diseases; by the applications of sanitary science and quarantine they protect communities against certain diseases; recent discoveries have enabled them to secure immunity from certain diseases. In the future, carrying out recent researches in psychological medicine, physicians will be largely in-

strumental in the treatment of moral disease. It is to the physician that society will look for the differential diagnosis between the curable and the incurable criminal. Scientific progress will lead us finally to abandon the ancient idea of punishment of crime, and to substitute for it, treatment and correction. The only punishments will be those necessary for the enforcement of discipline in prisons and elsewhere. The treatment of criminals will resolve itself into measures to reform the curable and to protect society against the incurable.

A necessary preliminary to the intelligent treatment of any disease is diagnosis; and this, which is one of the fundamental principles of the science of medicine, is logically applicable to moral as well as to physical or mental disease. It is universally recognized that the insane are not responsible for their acts to the extent of deserving punishment. The organization of society demands that there be protection against the harmful acts of the insane, and the dictates of humanity call for the protection of the insane against himself. It may fairly be assumed that no mental disturbance taking the form of insanity is without a physical cause, however obscure this cause may be. Is it possible that every moral delinquency has a physical cause? It is certain that nearly every confirmed and incurable criminal has a special leaning toward a certain class of crimes. Is there a physical vice or defect which leads to the commission of these crimes, when conditions are favorable to the full development of this vice and to its expression in criminal acts? These are questions that are occupying the minds of criminologists of the present day.

It is often said that the border line between insanity and crime is very narrow and indefinite. The plea of insanity, which is so often presented in extenuation of cer-

tain crimes, the irresistible impulse which some insane persons have to commit certain crimes—such as homicide, suicide, stealing, arson, etc.—would seem to show that insanity, in some of its phases, readily fades into criminality, or that criminality may be the first manifestation of insanity. Nothing illustrates this idea more strongly than the distinctions that have been drawn between criminality and so-called moral insanity.

To my mind, it should not often be difficult to distinguish between criminality and insanity, provided the data from which to draw a conclusion be full and sufficient. There are the criminal insane and the insane criminal; the one, an insane person who commits crime under an insane impulse; the other, simply a criminal who has become insane. It might be difficult to fix the responsibility of the insane criminal if it were impossible to determine the time when he became insane; but there should be little difficulty in making a diagnosis of the criminal insane. Other difficulties may also present themselves: An outburst of insanity, made evident by a palpably insane act, under the influence of what seems to be a sudden impulse or a recent delusion, has probably been preceded by a delusion or delusions carefully concealed. A criminal act, without insanity, may be discovered, the criminal having, during a long period of years, sedulously maintained the appearance of scrupulous honesty, often assuming the cloak of religion. In some cases of this kind, it has been maintained that the person is morally insane and is irresponsible. It has always been found very difficult to show that a person who commits a crime against property, with intelligent efforts at concealment, hoping and endeavoring to reap the advantages of his crime or attempting to escape its consequences by flight, is irresponsible on any theory. A kleptomaniac steals simply because there is an

impulse to steal which he can not resist. He does not profit by the crime and has no logical reason for stealing. The criminal, however, always expects and attempts to enjoy a personal advantage as the result of his crime, or he has a reason which to his criminal mind is logical. The existence of strong temptation, great need or heavy financial burdens, sudden passion which has a logical cause, revenge or hatred engendered by actual injuries or wrongs, afford satisfactory explanations of many crimes and enable us to determine the question of responsibility. I can hardly bring myself to a belief in the existence of what is called moral insanity, excepting the moral defects which are so often observed in dementia and senility, when certain passions remain and the normal power of self control is impaired.

To Garofalo is due the credit of indicating differences between the criminal and the insane, which are clearly appreciable with very few exceptions. In the insane, the accomplishment itself of the criminal act is the end and object, and is, in itself, a source of pleasure and satisfaction. In the criminal, the act is done as a means of obtaining a material advantage, and the act itself may be repugnant. It is the abnormal nature of the pleasure and the fact that no other satisfaction is sought for, which characterize the insane and distinguish him from the criminal.

The classification of criminals is not difficult. Dr. D. Hack Tuke adopts the classification of Ferri, with slight modifications:

The criminal by passion, as a rule, has no criminal characteristics. He is simply lacking in self-control and almost invariably experiences remorse. Actually, a criminal from passion is not a criminal and is not a permanent enemy of society. It is necessary, however, to our social

system that he should take the consequences of his criminal acts. He does not commit crimes against property.

The occasional criminal, or the criminal by occasion—the semi-criminal of Lombroso—may properly be regarded as belonging to the criminal class. He may or may not have an opportunity or undergo temptation to commit crime; but under temptation and with opportunity he may commit crime from mere weakness of character. Still, there is no occasional criminal who is without criminal tendencies in a greater or less degree.

Havelock Ellis's distinction between the professional criminal and the instinctive, or the born criminal of Lombroso, seems to me to be artificial. The born criminal almost always presents physical signs of degeneration, and his history often reveals heredity or atavism, his moral criminal characteristics usually being intensified by surroundings. It is thought by some alienists and criminologists that there is often little difference between the born criminal and the victim of so-called moral insanity; but it must be admitted that a born criminal is seldom regarded as insane unless he belongs to the higher classes of society.

The professional criminal may be a born criminal, with physical characteristics, or he may present no physical abnormalities. The high-class professional is always a man of considerable intellectual ability, usually free from small vices and a hard worker. It is pretty generally admitted that a professional criminal past the age of thirty can not be rescued from criminal life. The professional criminal is, of course, an habitual criminal; but other habitual criminals there are of less ability, whose methods of exercising their vocation do not entitle them to rank with professionals.

We have little or nothing to do, in a scientific way,

with the criminal by passion. Sad experience and remorse may teach him a lesson and lead him to exercise self-control. He must accept the consequences of his criminal acts; but it is our duty, especially toward the young, to provide that he be contaminated as little as possible by surroundings while under control. So it should be with those who offend simply against good order or who are guilty of what may be termed artificial crimes. It is not a crime to bake or sell bread at prohibited hours or to violate certain ordinances necessary to public decorum or cleanliness. Many men and more women can never be made to feel that it is a crime to evade duties on purchases for their own use, yet the laws in this regard must be enforced. So long as legislators continue to enact new so-called criminal laws every year, and officials are compelled to select certain of them to enforce—as it is physically impossible to enforce them all—criminal statistics will never represent the actual detected criminality. Criminality can be studied in a statistical way only from the reports of courts and prisons; and it would contribute much to the accuracy of our knowledge if we could eliminate all except offenses against natural laws and those which are essential to the integrity of our social system.

In the scientific study of crime, the physician has to do mainly with the occasional criminal, the habitual criminal, and the born criminal; and in this study, the first thing is to separate these from the offender who is not a criminal and the occasional criminal. He will be forced to rely upon the courts for facts in regard to criminal acts. Such and such persons, with such and such an official record, have committed certain offenses; and these persons, on conviction, are turned over to experts for diagnosis and treatment. The ascertainable physical and moral characteristics of the offender may not be useful in the determination of

the crime, but they may be very useful in the classification and treatment of the criminal.

The born criminal is seldom without physical evidences of what is now called degeneration. He presents certain physical abnormalities. In fact, according to the notions of Lombroso and his followers, without such abnormalities he is not a born criminal. All of the purely physical characteristics observed in the born criminal are present to some extent in the normal man. Some of those which have been described by Lombroso and others are: peculiar skull and facial conformations; left-handedness and ambidexterity; absence or exaggeration of tendon reflexes; abundant hair on the head, with scanty beard; muscular abnormalities; anæsthesia and analgesia; unusually rapid recovery from wounds, or "disvulnerability"; obtuse tactile sensibility; unusual acuteness of vision; defects in the sense of hearing, taste or smell; with many others less marked and regarded as of less importance. Take, however, individual instances in which even a considerable number of these abnormalities exist. We may have a person with a marked peculiarity in skull formation, a heavy jaw, abundant red hair, scanty beard, diminished knee-jerk, defective sense of contact, acute vision, dull hearing, taste and smell, some muscular abnormality, and yet this person may pass through life, honest and upright, showing no criminal tendency even when exposed to temptation and favored by opportunity; but it would be idle to say that, in a person who had committed a crime, physical abnormalities found to be more frequent in the criminal than in the normal man, and particularly frequent in a certain class of criminals, may not be of great value in classifying the criminal, forming an estimate of his dangerous qualities and of the probability of reformation. A person may have the so-called insane ear or strikingly abnormal palate, great

irregularities in the development of the teeth and an insane ancestry, and yet we must wait for positive evidence of insanity by word, deed, or action before he can be pronounced insane. So physical abnormalities, even with criminal ancestry, are never in themselves absolute evidence of criminality.

The weakness in the position that there are any positive physical tests for criminality is twofold. There is no fixed normal standard of comparison; and the exceptions in which physical peculiarities assumed to be characteristic of criminality exist in normal individuals are very frequent.

On the other hand, the mental and moral characteristics of criminality are fairly positive and definite. Given a number of persons who have committed actual crimes; meaning by this certain offenses against the person or against property which are violations of natural laws: These include homicides; all kinds of crime against property, with or without violence; felonious assaults; malicious injury to person or property; the aiding and abetting of crime for gain, and other forms of crime which readily suggest themselves. There may be excluded: offenses against good order or discipline, not in themselves criminal; purely social offenses; purely political offenses; honest differences from prevalent opinion on political, social or religious questions; offenses against laws which restrict the natural rights of man; offenses innocently committed through ignorance, etc. The mental and moral peculiarities or abnormalities of these individuals may well be made use of in diagnosis, classification and treatment. Taken in connection with these, the purely physical abnormalities become of great importance, as they do in the diagnosis, treatment and prognosis of insanity.

As I have already said, the criminal by passion alone is a normal man, but deficient in self-control under provoca-

tion or strong emotion. He presents no criminal history. The criminal act is followed by the deepest regret and intense remorse, usually with a desire for all possible reparation.

The criminal by occasion, or the one who commits a crime when occasion presents itself in the form of temptation and opportunity, may lack physical and moral characteristics of criminality and have no criminal heredity, being simply of a weak and pliable organization. This unfortunate should be treated most carefully, and be protected, as far as possible, from influences which may render him an habitual criminal.

The professional and the habitual criminal are the most dangerous enemies to society. Criminals belonging to this class form a criminal organization ruled by the dominating personality of those of superior intelligence. They may possess few, if any, abnormalities called degenerative; but they have no feelings of remorse, even for the gravest crimes, are social in their habits, not solitary, and use the argot, or conventional language of criminals and vagabonds, which is never employed by the criminal by passion or the criminal by occasion. The professional is usually not cowardly like the born criminal. He is temperate, prudent, without real friendships, and his sexual ties are seldom more than transient and unstable. These aristocrats of the criminal world have talents and industry which, directed in legitimate channels, would command respect. With the professional criminal, crime is profitable. Dugdale, the author of that remarkable study of crime called *The Jukes*, says: "We must dispossess ourselves of the idea that crime does not pay." Again, he says: "Those who do minor crimes commit about one hundred to one hundred and fifty offenses to *one commitment*, while those who 'go for big money' get caught once out of five times."

A great problem is to make crime unprofitable; but this appears to be excessively difficult. The idea of Garofalo is certainly in the right direction. On conviction of a crime against property, strip the criminal of everything necessary to complete restitution; or if no property can be reached, let the hard labor of the convict contribute as far as possible toward that end. As it is, the innocent sufferer finds it more to his advantage to compound a felony than to aid what is called justice; and often he is deprived of his liberty in a house of detention while the criminal is at large on bail.

It is with the born criminal that the medical profession will have most to do; and the scientific study of this abnormality can not fail to be of immense benefit to our social system. The born criminal always presents certain distinctive mental and moral abnormalities.

Grouping together the professional, the habitual and the born criminal, the same differences in intelligence and education are found as in the honest walks of life. Those who are of a low degree of intelligence are forced to limit themselves to crimes that are within the scope of their mental capacity. They replace intelligence with a low duplicity and cunning, and they often act under the direction of others. These most frequently present physical evidences of degeneration. Experience in reformatories shows that many are incapable of education or even of learning a trade which requires a moderate degree of skill. A great proportion of these are incorrigible. While all authorities agree that education in itself is no bar to criminality, it must be admitted that the discipline which is involved in education and the avenues which it opens to honest remunerative labor are favorable elements in reformation when other conditions render this possible.

The chief defect in education observed in criminals is

in the line of technical skill. According to the observations of Dugdale, 794 per cent. of the criminals examined had never learned a trade. This observation is confirmed by all students of criminology.

What Havelock Ellis calls moral insensibility is always observed in the born criminal. It is very important to distinguish this from so-called moral insanity. General moral insensibility is a want of appreciation of right and wrong from the criminal's point of view—it may be called perversity or depravity—and criminal acts are not followed by repentance or remorse. Those who are regarded as morally insane have no genuine remorse, and the argument in favor of moral insanity without responsibility is based on the notion that the moral insensibility is confined to a single class of crimes, such as forgery, breach of trust, etc. It is difficult to imagine that a person has a moral defect as regards the crime of forgery, for example, and is entirely honest in other regards. If the idea of monomania is to be discarded by alienists, the idea of moral insanity must also fall. As to the question of monomania, how is it possible that a lunatic shall have a single delusion which his intelligence is incapable of correcting, and yet this intelligence be absolutely normal in all other regards? The mental disease may manifest itself in a single delusion which can not be concealed; but none the less is it positive proof of mental disease.

The born criminal never has remorse. This is, indeed, pathognomonic of congenital criminality. Bruce Thomson studied this question in four hundred criminals convicted of premeditated homicide, only three of whom expressed remorse. If it is ascertained positively, after a sufficient period of observation and treatment, that a criminal has no real remorse or repentance, it is certain that we have to do with an incurable born criminal.

The general character and mode of life of habitual criminals are interesting and instructive. Such criminals are invariably vain, superstitious, constitutionally lazy and improvident, and are often sentimental and excitable. They are social with their own kind, prone to orgies and to association with a certain class of prostitutes who have the same kind of moral insensibility. They use among themselves the argot, or conventional criminal language, which is quite different from the ordinary vulgar slang. They are fond of tattooing. Lombroso says: "Among male criminals the practice of tattooing is so common as to become a special characteristic." The high-class professional is certainly a habitual criminal and may be a born criminal; but his habits are usually such as do not interfere with the successful exercise of his profession.

It is impossible in the space at my command to do more than refer to the great questions of atavism, heredity and environment in their relations to criminality. *The Jukes*, that remarkable study by Dugdale, gives an idea of the terrible influence of heredity. The estimates by Dugdale from the facts which he ascertained are certainly reasonable. He calculated that the descendants of one individual, making a family of twelve hundred strong, entailed upon the community during a period of seventy-five years an amount of loss and expense equal to \$1,250,000. If any relief is to be expected from the scourge of the posterity of criminals, it is certainly to the medical profession that society must look.

When the diagnosis of the criminal and his classification is not to be obtained from the criminal's own record, this can be made only in prisons and reformatories. A criminal under thirty years of age on his first conviction is certainly a most interesting subject for study. The result of such study should class him either as a criminal by pas-

sion, a criminal by occasion, a born criminal or a criminal insane. The only way to afford an opportunity for diagnosis and proper treatment is by the indeterminate sentence. The trial by judge and jury merely fixes the crime and its responsibility; it can not bring to light the true character of the criminal and indications for his intelligent treatment. Measuring the punishment to the crime is in the spirit of vengeance, which does not belong to man; it breathes no thought of reformation or of intelligent protection of society. In the words of Van Hamel: The greatest enemy to the new tendency in the treatment of criminals is the doctrine of penal satisfaction, descendant of "ancient vengeance, which has the pretension to confide to man a task which can only be reposed in the hands of God." "It is not enough," says Wines, "that criminal jurisprudence should be humane; it must also be intelligent."

The law has thrown such safeguards around the criminal that many crimes may be committed with impunity, and criminals frequently escape conviction when there is no room for doubt in regard to their guilt. There are, however, few unjust convictions. In the examination of nearly a hundred and fifty convict witnesses in the late investigation of the Elmira Reformatory, not more than one or two hesitated to admit their guilt. Dugdale says: "Of those who are essentially not criminal, who are of sound mind and body, honest and industrious and of good stock, there are among State prison convicts from one to two per cent. They are usually committed for crimes against the person." The conviction of an entirely innocent person of honest antecedents must be of extremely rare occurrence.

On conviction of a criminal he should be turned over to the State for treatment. The judge should not fix the so-called punishment. Fortunately, laws are not wanting in the State of New York to render possible this beginning

of an intelligent criminal administration. All will admit the value and saving to society of the reformation of criminals; and all criminologists, without exception, regard the indeterminate sentence as indispensable to proper reformatory measures. I copy from *The Sun* of August 14, 1895, the following, which shows that judges have the power to impose indeterminate sentences, with very slight restrictions and few exceptions:

“A fact not generally known even among the lawyers who practise in the criminal courts in this city is that the State prison law provides for indeterminate sentences such as are in operation at the Elmira Reformatory. The provision is made in section 74 of the Prison law, which is as follows:

“Whenever any male person over sixteen years of age shall be convicted of a felony which is punishable by imprisonment in a State prison for a term to be fixed within certain limits by the court pronouncing sentence, the court authorized to pronounce judgment upon such offender, instead of pronouncing upon such offender a definite sentence of imprisonment in a State prison for a fixed term, may pronounce upon such offender an indeterminate sentence of imprisonment in a State prison for a term with minimum and maximum limits only specified, without fixing a definite term of sentence within such limits named in the sentence, but the maximum limit so specified in the sentence shall not exceed the longest period for which such offender might have been sentenced, and the minimum limit in said sentence specified shall not be less than the shortest term for which such offender might have been sentenced. The maximum term specified in such indeterminate sentence shall be limited in the same manner as a definite sentence in compliance with the provisions of section 697 of the Penal Code.’

“Succeeding sections appoint the Superintendent of State Prisons, the agent and warden, the chaplain, the physician, and the principal keeper of each prison a board of commissioners of paroled prisoners for each prison. They are to

meet from time to time, and each prisoner sentenced under the law has a right to appear and apply for his share on parole or for an absolute discharge. The commission is empowered to grant an absolute discharge where it believes that the prisoner will live an honest life. When the members of the commission feel a 'reasonable probability' only, they may parole. Other sections provide for the retaking of prisoners who violate their parole at any time before the maximum term for which they might have been sentenced expires. Although the leading penologists of the world advocate the indeterminate sentence system, the judges of the courts don't seem to take to it. The law has been on the statute books since 1890 and only twenty-eight prisoners have been sentenced under it."

If our judges could be brought to carry out this law, an immense advance would at once be made in the intelligent treatment of criminals. Every prison should include a reformatory, if for nothing else, to separate those who may possibly be reformed from the incorrigible.

The born criminal, when he becomes an habitual criminal, is and always will be an enemy of society. He can not be reformed, but the safety of the community demands that he be kept under constant surveillance when not actually confined. Not only is he dangerous to society at large, but his association with the corrigible criminal is a great hindrance to the work of reformation.

The penal code provides for the treatment of the habitual criminal, who was defined by statute in 1881, although the first sentence under the code was pronounced August 29, 1895.

I am indebted to *The Sun* for the following citations :

NEW YORK STATE PENAL CODE.

690. *Habitual Criminals*.—Where a person is hereafter convicted of a felony, who has been, before that conviction, convicted in this State of any other crime, or where a person

is hereafter convicted of a misdemeanor who has been already five times convicted in this State of a misdemeanor, he may be adjudged by the court, in addition to any other punishment inflicted upon him, to be an habitual criminal.—*Code Cr. Proc.*, sec. 510. *People v. McCarthy*, 45 How., 97.

691. *Person, etc., of Habitual Criminal.*—The person of an habitual criminal shall be at all times subject to the supervision of every judicial magistrate of the county and of the supervisors and overseers of the poor of the town where the criminal may be found, to the same extent that a minor is subject to the control of his parent or guardian.—*Code Cr. Proc.*, sec. 514.

692. *Effect of Pardon.*—The governor may grant a pardon which shall relieve from judgment of habitual criminality as from any other sentence; but upon a subsequent conviction for felony of a person so pardoned, a judgment of habitual criminality may be again pronounced on account of the first conviction, notwithstanding such pardon.—*People v. Price*, 53 Hun., 188; 24 N. Y. State Rep., 936.

It is thus seen that existing laws in the State of New York provide for the classification of criminals, the reformation of the corrigible and protection against the incorrigible. All that is necessary to a practical reform, which must come in the near future, is a judiciary sufficiently enlightened to act in accordance with the provisions for indeterminate sentence and for the surveillance of the habitual criminal, and a prison organization, intelligent, earnest, and capable of carrying out reforms on scientific principles which are now fairly well established. In the work of criminal administration the physician should occupy a prominent place. In the words of Laurent: "The physician should be the friend and student of the criminal as he is of the insane; should know how to distinguish the alcoholic, epileptic, insane, the vagabond, and morally insane. The prison may remain a prison and yet be transformed through the results of criminal anthro-

pology. Prisons are inextinguishable mines for material for investigations in this science." The United States initiated practically prison reforms, beginning with the House of Refuge (afterward removed to Randall's Island) in 1825 and culminating in the Elmira Reformatory in 1876; and yet "numbers of prisons exist nowadays which fall far below the commonest requirements of a good prison system" (Griffiths).

The treatment of criminals is the great social question of the present day. There is no good reason why we should not take advantage of the studies and experience of criminologists and penologists, treating, without malice or resentment, the criminal as a patient as well as crime as a disease; and there is every reason why we should study crime in our prisons in the same spirit in which we study disease in our hospitals and insanity in our asylums. The objects to be kept in view are the cure of the curable by reformation, protection against the incurable, prevention in the way of limiting the development of criminal tendencies in the young, and deterring those in whom these tendencies have become developed. Punishment, as retribution for crime, has no place in this system. Punishment, except as it deters, is of no advantage to society. The spirit of revenge which leads an individual to kill or injure one who has wronged him has no place in the legal protection of members of our social system. What leads so many good citizens to condone crimes against property, if they can secure any degree of restitution, is the fact that it is of no advantage to the injured that the criminal be punished, to a certain extent at his expense and inconvenience. Punishment, however, is a necessary element of discipline, and nowhere is discipline more important than in reformatories and prisons.

The reformatory treatment of criminals is that which

appeals most strongly to us as members of a profession whose mission is to alleviate suffering and preserve health and life. We do not ask, Is it worth while to attempt to reform criminals? but simply, Can they be reformed? On this question I can speak with the advantage of some experience.

In 1894 I had the honor to be a member of a commission of investigation of the New York State Reformatory at Elmira. This investigation continued for about six months, and during that time I made a careful study of the methods of the institution and the results obtained. These results are most striking and encouraging to those interested in prison reform. The system—which time does not permit me to fully describe—involves discharge on parole after a certain period of treatment. It is estimated—and the estimate seems fair—that out of 3,725 paroled from 1876 to September 30, 1893, 3,051 were reformed, or 81.9 per cent. Out of 4,797 indefinites discharged, “whether by parole, expiration of maximum term, or any other way, the percentage of reformations was 63.6.” These calculations are based to some extent on estimates. In 1887 and 1888 an effort was made “to verify the estimates of probable reformation as to 1,722 prisoners who had been paroled prior to September 30, 1887.” Inquiries to prisons, relatives, employers and acquaintances of the men were made. Definite information was received as to 1,125 of those paroled. Of that number reliable information was received that 78.5 per cent. had not fallen into crime. This would give a percentage of 51.28 known to have been reformed out of a total of 1,722 paroled. After six months of satisfactory conduct on parole a prisoner receives an unconditional release.

The Elmira Reformatory receives males between the ages of sixteen and thirty, after their first conviction of a crime

punishable by confinement in a State prison. They can not be confined longer than the maximum term of imprisonment for the offense of which they have been convicted. The minimum term of confinement is not fixed. On admission a full description is taken, including mental capacity, moral qualities, education, occupation, previous surroundings, parentage, possible hereditary tendencies, etc. The inmate is put first into an intermediate or probationary grade for six months. For bad conduct he may be at any time reduced to the lowest grade. After good conduct for six consecutive months he is advanced to the highest grade. It is possible for an inmate to earn his parole in twelve months. The average time of detention of those paroled, for six years prior to September 30, 1893, was twenty-two months. The average maximum term of all indefinites received during the same period was five years and nine months.

The reformatory combines within itself a prison, a school of letters, a school of technology, a school of physical training, a series of manufacturing departments and a military organization. The trade schools embrace thirty-four different trades, and gave instruction, in 1893-'94, to about eighteen hundred inmates. Although carried on primarily for instruction and not for profit, the manufacturing departments realized \$53,458.47 profit for the year 1892-'93.

Under the Elmira system no inmate is paroled until he has a situation provided for him and enough money to his credit to support him until he receives his first month's wages. He is under surveillance for six months, and may be returned to the reformatory at any time within this six months should he violate the conditions of his parole.

The agencies which operate in bringing about these remarkable results are the following:

1. The indeterminate sentence, which gives hope of release and incites to efforts at reformation on the part of the inmate.

2. The strict and inflexible discipline, including military training. Most inmates have never been taught self-control and have never been subjected to discipline.

3. Physical training, with no opportunity for committing excesses of any kind.

4. Removal from surroundings and associations of a demoralizing character.

5. Education and technical training. Pike, the distinguished author of *History of Crime in England*, says: "There is one great preventive for crime, one great antidote to instincts inherited from the past, and that is education."

To summarize, a criminal by instinct, his criminality fostered and developed by surroundings, absolutely illiterate, without a trade or means of earning an honest living, with a feeble and vicious physique, may be discharged from the reformatory on parole, physically well and strong, with an education not beyond his station, a skilled mechanic with good employment under honest surroundings. He has six months in which to learn self reliance and is then a free man. The Elmira Reformatory well deserves its position as the model institution of its kind.

It is so rare that a criminal more than thirty years of age—except the criminal by passion and the criminal by occasion—is reformed, that such are excluded from the benefits of purely reformatory institutions. The objects in the treatment of these and of the incorrigible younger criminals are the protection of society and deterrence by example and fear of consequences of crime. Imprisonment and protracted surveillance of habitual criminals is an essential element in the protection of society against the habitual crimi-

nal; and an imprisonment which has no attractions of any kind. An imprisonment at hard labor, the prisoner supported by the barest necessities of life, with the most rigid discipline and persistent surveillance after release, is what is required, not as retribution, but for protection alone. A dangerous man, like any dangerous animal, should be prevented from doing harm. We confine a dangerous lunatic, largely for our own protection; but not under conditions intended to deter men from becoming insane or to deter other lunatics from committing violent acts, as is evident. Although an habitual criminal may be one by heredity and instinct, he is still capable of a certain self-control and can appreciate the consequences of criminal acts. When these consequences show little chance for profit and involve seclusion from society, at hard labor—which is always repugnant to the born criminal—and with no comforts or distractions, they can not fail to exert a deterrent influence; but humanity demands that criminal jurisprudence and administration should carefully separate from the class of incorrigible and habitual criminals the criminals by passion and by occasion.

The idea of restitution and reparation enters very little into the existing methods of treatment of criminals. Crime should be rendered as little profitable as is possible; and in simple justice the State should force the criminal to make restitution and reparation to the injured to the fullest possible extent. Nothing will more efficiently deter from crime than taking away or largely diminishing the profits of criminal acts. This idea of restitution and reparation pervades the Italian school of criminology and is well represented by Garofalo. Speaking of a certain class of crimes against property, Garofalo, quoted by MacDonald, says:

“For this there is nothing better than the forced payment of the fine and damage to the injured party. This

would produce other advantages to society. An unfaithful cashier or fraudulent bankrupt would know that if once discovered he could not enjoy the smallest part of the money stolen, but would have to return all, every penny, or otherwise he would have to work for an indefinite time for him whom he had robbed. This is a forcible way of causing the sudden reappearance of the sum that might be thought to be in the hands of consorts. This is much more useful than imprisonment for a fixed time, which is no profit to any one, and only adds to the damage from the crime the expense of supporting the prisoner. If the money has really been spent the offender must work without respite for the repayment of the injured party. If he will not do it voluntarily, he will be obliged to do it by working for the State, where there is no bread without labor. If, in spite of his efforts, he is unable to gain a sufficient sum, after a certain number of years, according to his age or his good will, this constraint can be fixed to ten or fifteen years; but this term should be lengthened as soon as a want of assiduity is noticed. If the delinquent fulfills all his obligations, he is to be released, and deprived only of his political rights, with interdiction of any public function, or of exercising commerce, if it is a case of a bankrupt."

It is evident that the subject I have chosen is too large to be adequately considered in a public discourse of reasonable length. The treatment of those guilty of crimes simply against the person, including homicide and murder, of sexual pervers, vagabonds, tramps, beggars, alcoholics, *et id genus omne* must be passed over. Alcoholism and prostitution exist and will exist. What shall be done with alcoholics and prostitutes, are questions of great importance and problems that the medical profession should

attempt to solve. These problems can not be considered here; but I can not refrain from a brief discussion of capital punishment.

Capital punishment eliminates the criminal and relieves society from the dangers that might come from his possible posterity. The execution of criminals is a simple and easy method of extermination. Aside from the satisfaction of the idea of retribution, the advantages to society of extermination and the supposed deterrent effect of executions commended to jurists the severe punishments which were inflicted in the last century. Blackstone, writing about the middle of the eighteenth century, says that no fewer than one hundred and sixty crimes were made punishable by death in England by acts of Parliament. The cruel and atrocious tortures and punishments in earlier times, mainly the offspring of fanaticism, may well excite our horror. The Inquisition, with nearly three hundred and fifty thousand victims between 1491 and 1808, the burning of persons accused of witchcraft at Salem in 1691 and 1692, are shocking examples of legalized cruelty. At the present day, capital punishment is practically limited to the crime of murder.

It is pretty generally conceded that a man has a moral right to take the life of another in defense of his own; but have we a moral right to take a human life, either in the exercise of retribution, to prevent subsequent harm at the hands of the criminal, or to deter, by example, others from taking life? If it is criminal for an individual to take the life of another from motives of vengeance, it is equally criminal for society to take a human life as punishment for crime. At times of great danger it may be necessary to sacrifice human life to preserve discipline; but this is a measure of self-defense. We certainly should be able to prevent a murderer from repeating his crime without com-

mitting a legalized murder. The only argument, to my mind, that remains in defense of capital punishment is that it may be deterrent.

The arguments advanced by the advocates of capital punishment are certainly very strong. Garofalo says that murders always increase in proportion as the severity of the punishment for this crime is relaxed; and he cites statistics from Belgium, Italy, Great Britain, Switzerland and France in support of the view that the effect of capital punishment is deterrent. On the other hand, there are strong arguments in support of the proposition that capital punishment is not deterrent. That public executions are demoralizing and brutal, every one will admit. The moral insensibility of murderers is well known, as well as the bravado of those who pose as heroes and the emotional displays of those who profess repentance and "change of heart." MacDonald quotes a statement that, out of a hundred and sixty-seven persons condemned to death in England, a hundred and sixty-four had been present at executions.

The argument that I shall present against capital punishment, and one that I think can not be successfully controverted, is that the taking of human life as a punishment for crime is in itself a crime, is a relic of barbarism and unworthy of our present civilization. No physician can consistently countenance the taking of human life. When we can not and will not mercifully do this to put an end to suffering in cases of incurable disease or in the case of dangerous and hopeless lunatics, much less can we approve of it as a punishment or to deter possible criminality in others. We may destroy the life of an unborn child to save the life of the mother; but then it is with extreme reluctance and repugnance for the act. Compared with acts of savage brutality, such as cannibalism, we may quote, with MacDonald, the words of Montaigne, who says, "it is more barbarous to

kill a live man than to roast and eat a dead one." We need not go very far back to find acts provided for and sanctioned by law and so-called necessity which civilization would not tolerate at the present day. Before Pinel, in 1792, with his own hands removed the chains from lunatics at the Bicêtre, the conditions of confinement of the insane were horrible beyond description. The tortures of criminals and suspects a few decades ago were worthy only of savages; and many of the executions were brutal murders. When John Howard made his inspections of penal institutions in 1773, the prisons were hells upon earth. As scientific progress has brought about the wonderful reforms in the treatment of the insane, so the same spirit should remove the last glaring relic of barbarism, capital punishment. It is an unworthy reproach to science to assert that society has but one way of deterring the greatest of all crimes, and that is by repeating the crime itself under the cover of law. Even in the punishments which are necessary to the enforcement of discipline, the "golden rule" laid down by Pike should be observed: "Let them not afford an evil example of cruelty to the spectators."

Emancipation from fanaticism and bigotry is the first necessity in the intelligent treatment of crime. Fanaticism is responsible for the early persecution of scientific discoverers, such as Galileo, the persecution of the Jews, the massacre of St. Bartholomew, and the numberless crimes committed in the name of the divine right of kings. The Puritans landed in America in 1620 to escape religious persecution and to enjoy religious liberty; and they hanged witches in 1692. No great progress can be made in the reform of criminal jurisprudence until the laws based on bigotry and intolerance of personal and religious liberty are removed from the statute books.

It is to the physician and the scientific student of

crime that we must look for real reforms. The history of criminality is full of solemn warnings of dangers incident to existing systems in the treatment of crime, and the greatest of these is heredity. The history of *The Jukes* conveys this warning in the strongest possible manner. We are justified by public opinion in protecting ourselves from the dangerous insane by perpetual confinement. The dangers we have to provide against from the habitual criminal are much greater, as he is an enemy with more or less intelligence, acting with method and in concert with others. All criminologists agree that such criminals, when irreclaimable, should be put under perpetual confinement or surveillance. Dugdale says: "In dealing with the habitual typical criminals who are contrivers of crime, criminal capitalists and panders, where we can not accomplish individual cure we must organize extinction of their race. They must sternly be cut off from perpetuating a noisome progeny either by the propagation or perversion of a coming generation. The old laws attempted this extinction by hanging; but for us it must be perpetual imprisonment, with certain mitigations to guard against barbarity. For this class, congregated imprisonment is perhaps the most suitable."

Dugdale evidently did not care to suggest a method of organizing "extinction of their race"; but one less severe than hanging readily suggests itself. It would be not difficult to devise a method of sterilization of irreclaimable born criminals which would not offend sentimental public opinion; this to be applied, not as a punishment for any particular class or classes of crime, but merely for the protection of society, and after a full scientific investigation of every case.

In concluding my very inadequate treatment of the great questions considered in this discourse, I do not make

any formulated suggestions; but it must be evident that criminology and penology should receive more attention at the hands of the medical profession. The State of New York is the birthplace of practical penal reform. Let her do her full share now in the good work! While it would be desirable to adjust our criminal laws so as to bring them into accord with the present scientific status of criminology, existing laws admit of important reforms. A scientific spirit might be infused into the prison commission if it included members of the medical profession. Physicians to prisons should study criminals according to modern methods and not simply prescribe for their bodily ailments. Much study and accumulation of material are necessary to bring criminal anthropology to a condition approaching a positive basis, and for this work criminologists look to the medical profession. As I have already said, I venture to hope that criminology and penology will not be neglected by the New York State Medical Association.

The New York Medical Journal.

A WEEKLY REVIEW OF MEDICINE.

EDITED BY

FRANK P. FOSTER, M.D.

THE PHYSICIAN who would keep abreast with the advances in medical science must read a *live* weekly medical journal, in which scientific facts are presented in a clear manner; one for which the articles are written by men of learning, and by those who are good and accurate observers; a journal that is stripped of every feature irrelevant to medical science, and gives evidence of being carefully and conscientiously edited; one that bears upon every page the stamp of desire to elevate the standard of the profession of medicine. Such a journal fulfills its mission—that of educator—to the highest degree, for not only does it inform its readers of all that is new in theory and practice, but, by means of its correct editing, instructs them in the very important yet much-neglected art of expressing their thoughts and ideas in a clear and correct manner. Too much stress can not be laid upon this feature, so utterly ignored by the “average” medical periodical.

Without making invidious comparisons, it can be truthfully stated that no medical journal in this country occupies the place, in these particulars, that is held by THE NEW YORK MEDICAL JOURNAL. No other journal is edited with the care that is bestowed on this; none contains articles of such high scientific value, coming as they do from the pens of the brightest and most learned medical men of America. A glance at the list of contributors to any volume, or an examination of any issue of the JOURNAL, will attest the truth of these statements. It is a journal for the masses of the profession, for the country as well as for the city practitioner; it covers the entire range of medicine and surgery. A very important feature of the JOURNAL is the number and character of its illustrations, which are unequalled by those of any other journal in the world. They appear in frequent issues, whenever called for by the article which they accompany, and no expense is spared to make them of superior excellence.

Subscription price, \$5.00 per annum. Volumes begin in January and July.

PUBLISHED BY

D. APPLETON & CO., 72 Fifth Avenue, New York

