

ORIGIN OF CRIME IN SOCIETY.¹

II.

FAILURE OF THE PUNITIVE SYSTEM.

NOTHING better illustrates the power of heredity, when fortified by widely prevalent custom, than the tenacity with which civilized races still cling to arbitrary punishment for the repression of crime. It is assumed without question that three things are essential to public security: the government must have power to compel the obedience of the subject; punishment by statute furnishes adequate deterrence to law-breakers; the withdrawal of criminals by death, imprisonment, or reformation diminishes the ratio of criminals at large. These assumptions are jealously maintained, and on analysis they possibly reveal that the fear of criminals is greater than confidence in human nature, that faith in statutes is stronger than faith in social laws, and that reliance upon brute force is more esteemed than a proper understanding of the remorseless compulsions of national metamorphoses. In matters of crime, the public mind largely ignores the part which civilization plays as a perpetual persuasion, in slowly moulding the most diverse and obdurate elements of self-interest into still more diverse and recondite forms, which pass under a thousand altruistic names.

It is proposed to examine into the authority for maintaining arbitrary punishment. The first point to be taken up is the assumption that punishment tends to reduce the number of criminals at large. This falsehood will be best exposed by considering the relation of human nature to risks. From the time that the Montgolfiers made an aerial ascent, in 1683, to the year 1838, every forty-seventh adventurer was killed, and, on

¹ See *Atlantic Monthly* for October, 1881.

an average, seventy-five ascensions have terminated in a fatal catastrophe. Nevertheless, aeronauts continued to tempt fate. In July, 1873, M. Durnof and his wife were prevented by the municipal authorities from making an ascension at Calais, because the wind was blowing toward the North Sea. The spectators hissing him for supposed cowardice, he obtained his car from the authorities by a subterfuge, entered it with his wife, and, cutting the ropes, they were driven seaward five hundred miles by the gale. They descended in the Skager Rack, their car tossing in the waves, themselves clinging to the rigging, and would have been lost had not Captain Oxley and James Buscome, of the smack *Grand Charge*, put out with a boat, and rescued them from their perilous drifting. On reaching England, they were warmly welcomed by Mr. Coxwell, the aeronaut, who tendered them the use of his balloon; with which, notwithstanding their recent escape, they ascended from the Crystal Palace, in view of twelve thousand spectators. So far, all ventures at navigating the air have failed, and every attempt at reaching the North Pole has hitherto come short of success; yet Professor Mitchell to-day proposes not only to navigate the air, but to steer to the North Pole. It would seem as if he wished to prove true the paradox of M. Zola, "Only the impossible occurs." Blondin crossed Niagara on a rope to make a fortune, and several men were found ready, for the sake of notoriety, to sit in his wheelbarrow and be trundled over this treacherous bridge. Merchants risk their capital in ships on the capricious waves; farmers sow the last bushel of their seed, although they know that there must be a blight every seven years. The mind of man is constituted

to run risks, and his entire conduct is based on the more or less accurate calculation of probabilities.

The criminal follows this universal law of human conduct. He voluntarily faces the risks which beset the career that he prefers, and these are not greater than are incurred by many belonging to the industrial class. The knife-grinders of Birmingham have an average life of only forty years, while the expectation should be sixty. The compensation is furnished in proportionately higher wages, and it is related that they have struck against a protector that would shield the lungs from steel-dust and prolong their lives, because its introduction would reduce their wages. How does the career of lawlessness of habitual criminals compare with the every-day life of laborers? The average duration of the crime career of convicts in Sing Sing prison was found to be 11.35 years, of which 7.84 were spent in criminal liberty, and 3.71 in prison. Here the measure of crime risks is far below the hazards of the miner, who holds himself ready to spend three hundred days a year, or eighty-two per cent. of his life, in an occupation much more self-denying than imprisonment is, for a remuneration yielding only the bare necessities of life; while the criminal sacrifices only thirty-four per cent. of his life to secure sixty-six per cent. of license and self-indulgence.¹ It is related that during the late war a detail of three hundred volunteers was needed as a forlorn hope to carry a redoubt. The call was made with the statement that only three could ever hope to return; in ten minutes the volunteers were mustered. The word was given to march at double quick, and the redoubt was won, but only five men came back as living heroes of the hour. This is in the chronicle as one of the heroic deeds of the war, and it will go into the hands of our children's chil-

¹ The Jukes, page 101.

dren as a sacrifice of patriotism worthy of emulation. The incident is so thrilling, and our admiration of the act is so sincere, that few have stopped to ask whether every man in that volunteer company was not the man who expected to return covered with glory. What death before the foe is to the patriot, punishment is to the criminal. Human instinct in each case leads one to expect to draw the prize in the lottery of immunity which will make him scathless. It is not the fear of consequences, but the certainty of escape, that predominates. Legal punishment is a device for artificially raising the risks which the criminal assumes. The efficacy of this punishment is secured by bringing the reflective faculties to bear upon those probabilities which involve painful consequences; but it demands of the criminal the exercise of faculties which our experience shows to be the least developed among this class, and their exercise at a time when temptation is at its maximum.

It is worth while to trace the nature and the degree of success which the deterrent method has obtained. Pure deterrence originates with savages. Its form is retaliation on offending comrades and reprisal on alien aggressors. It suits only that form of society where violence and plunder are resorted to as a proper means of procuring wives or of prolonging life in the struggle for existence under famine or attack. Savage impulse visits on the clan the blow aimed at the individual. Blood feud, which existed before primitive law exercised authority over private wrongs, required the next of kin to avenge the murder or injury of his relative on the offender or his family, and raised deterrence to its highest power. It incited the prosecutor to a private feud, while the collective responsibility of the offender's brotherhood converted them into a police to restrain the lawless members of their clan. Blood feud led to such destruction of

life and social order that the measures adopted to limit its excesses prepared the way for criminal law. Gradually it became the custom of the family to compound the offenses of its members by the payment of a sum of money to the person injured, and the law enacted a tariff for every recognized offense, giving the injured party the alternative right to choose revenge or compensation. If he accepted compensation he must give up revenge, but the law did not at first compel him to accept the fine. The government sought only to check feuds, not to punish offenders; but by degrees it converted the practice of collective liability of the tribe into the legal forms of vicarious obligation. In the process of breaking down the custom of blood feud, sanctuaries and cities of refuge were established where the persecuted could flee for safety. Within these inclosures inquests could be held to determine the guilt of the fugitive, and if this could be established he was given over to the vengeance of his pursuer. When government became more centralized, and the personal vindicator was superseded by the impersonal executioner, vicarious obligation was gradually supplanted by individual responsibility for individual crimes. But the establishment of cities of refuge and sanctuaries where the vilest criminal was safe from molestation, and the introduction of compensation in money, even for murder, which were among the most important of the earlier interventions of the government between the offender and his victim, tended to mitigate the severity of punishment by protecting the life of the malefactor, and, according to the theory of deterrence, to lessen his fear of consequences. Nevertheless, this important step was taken, the state assuming the authority of executing the death penalty. Thus deterrence in its barbaric form was transferred to the government, and the savage element of vindictiveness took the form of exemplary punishments,

which have survived down to the middle of the nineteenth century.

It remains to see if the heritage was a profitable one. Savage law visited larceny with death, and when George III. added one hundred and fifty-six crimes to the sixty-seven which three dynasties of kings had already made punishable by death, he only extended old law to new variations of crime made possible by advancing civilization, and put the surviving but crippled conception of deterrence fully upon its last legs. Executions were made public in order to inspire the wicked with terror, but the effect produced upon the king's loyal subjects by the "many cartloads of our fellow creatures carried once in every six weeks to slaughter"¹ was that they flocked to the "holiday at Tyburn" to see the unfortunate "die game." Did exemplary punishment deter? During the interval from 1806 to 1819 the sanguinary code remained nearly unchanged, and the hangings nearly doubled in the four years ending 1819 as compared with the four years ending 1809, while the number of indictable offenses committed increased one hundred and seventy per cent., or nearly triple. In the year 1820 there was a decrease of six per cent. over 1819, and of seven per cent. over 1817. Had punishment become more rigorous? No; for the executions were decreased by one hundred to one hundred and fifty, but 1820 was a year of unparalleled harvest as to quality and quantity, the yield of grain being one third greater than the average. The ratio of crime continued to decrease until 1824, when it was again augmented by a bad harvest. If we take the period from 1858 to 1875, when the criminal law remained almost stationary, when capital punishment, except for murder and treason, had ceased, when the hulks had been abolished, when transportation was so nearly given up that England was ab-

¹ Fielding's Increase of Robbers.

sorbing her indigenous criminals, when the most cruel punishments were disused, a decrease of thirty-three per cent. will be observed in indictable offenses, and of seven per cent. in the aggregate of all offenses. The list includes indictable crimes, summary convictions for larcenies, malicious mischief and assaults, and offenses against the game laws. Here we may note a second period, during which the government itself discards the methods of the savage, which it had adopted from the established customs of an earlier stage of national organization; and coincident with their abolition will be noticed a decrease in the severity and extent of crime. The further details are examined the more conspicuous is the failure of the sanguinary code. Of one hundred and sixty-seven persons under sentence of death attended by the Rev. W. Roberts, chaplain of the Bristol jail, one hundred and sixty-four had attended hangings.¹ Another witness² reported that out of forty persons whom he had seen executed, all but two had witnessed hangings. On the evening of the day when one Miller was hanged for murder, one Jessmer, while stabbing a comrade, declared he "would be hung like Miller." Husbands have kicked their wives to death, saying they were ready to swing for it. And it is related that in 1786 a man was executed for house-breaking, who was cut down and resuscitated, and in a few days sent home; but on his way he stole a saddle and bridle, for which he was this time hanged in earnest.

Neither brutality nor fear answered, even when death was proclaimed to the thief. The appeal to reason through fear broke down, because the legislator ignored the nature of the criminal. "In proportion as punishments become more cruel," wrote Beccaria, one hundred and twenty years ago, "the minds of men, as a fluid rises to the same height with

that which surrounds it, grow hardened and insensible; and, the force of the passions still continuing, in the space of a hundred years the *wheel* terrifies no more than the prison." The unvarying habit of the human mind to estimate the probabilities of immunity limits the deterrent effect of any given punishment to a fixed quantity, which will be overcome when a temptation above the average disturbs the balance. If deterrence enters as an element into the calculations of habitual criminals, it acts chiefly as a stimulant for contriving new methods by which the penalty may be evaded. Upon habitual criminals, therefore, the effect of punishment acts constantly in a diminishing degree. The theory of intimidation presupposes that offenders calculate the cost of crime, and restrain themselves accordingly; the fact being that they are chiefly occupied with the expectation of success in their operations. The successful criminals are not affected by the terrors of laws which they know how to evade, while the unsuccessful or foolhardy notoriously lack foresight; they seldom plan crimes, much less modes of escaping punishment. The shame and disgust and apprehension of the halter or prison have no place in the moments of excitement or temptation which precede the felonious act.

Then, if the penalty comes, how much does it punish? At least sixty out of every hundred felon convicts have been in prison before. Has their experience of punishment compelled them to respect the laws? The fact is that, while the first chastisement hurts, its repetition blunts the feelings, nature adapting itself so readily to unfavorable conditions that there is no permanent conscious memory of pain. This is the emotional condition of what we call the "hardened criminal." The law has no terrors for him, and the difficulty with the punitive system is that it does not rightly appreciate and fails to apply the method of reward, which stimulates to

¹ Charles Phillips.

² The Rev. H. G. Lyford.

correct conduct because it awakens pleasures which are always sweet and therefore live in the memory. Here is the quandary, then, when it is urged that you must increase the penalty. Larceny shall no longer be punished with the county jail; whipping shall be added, and the timid transgressors shall be frightened from the ranks of the offenders. They tried this policy with the Huguenots in France. Heresy was a crime to be stamped out with torture and death. What was the result? Half a million of timid Huguenots swarmed into Switzerland and the Carolinas. The government did not suppress heresy, but it forced emigration; and the more courageous and crafty Huguenots, who stayed in France, replied to the *peine forte et dure* with a guerrilla warfare of twenty years in the fastnesses of the Cévennes, and participated in the uprising of the Revolution. So, when whipping begins, you do not suppress larceny, but force emigration. The timid thief in New York seeks a less rigorous market for his calling in New Jersey, while the more hardy and callous Jersey rogue crosses the state line to farm his chances in the fields of temptation in New York. We are not rid of the thieves by increasing the deterrence, but invite to ourselves a more desperate lot, and favor Jersey with our cravens. They understood things better than this in England two hundred years ago. Previous to 1688 it was customary to brand on the hand such thieves as were entitled to the benefit of clergy, the usual penalty for theft being death. In 1688, it was enacted that such persons should be branded on the cheek; but after an experience of eight years this act was repealed, because it had "not had its desired effect by the deterring offenders from the further committing of crimes and offenses, but, on the contrary, such offenders, being rendered thereby unfit to be intrusted in any service or employment to get their livelihood in any

honest and lawful way, become the more desperate."¹

One would have supposed that the perception of this truth would lead to its application to the general question of punishment, and modify the sanguinary code; but governments are not consistent, as individuals are. The few are convinced before the many, and there is no such logic even in men as there is in books; for men follow their feelings by preference, while books follow their argument. So, nearly two hundred years have elapsed since this astute preamble was engrossed in the statutes of England, and yet, amazing to relate, the authorities in most of our States still hold that striped clothing is a proper degradation of the guilty; that the lock-step, which habituates a man to tread automatically with his left foot foremost, so that his step ever after brands him as a felon, is an essential aid to prison discipline; and that the forfeiture of citizenship must be added to the infliction of the arbitrary punitive sentence. Has all this artificial effort reduced the number of criminals at large? Not at all. It is the effective temptation that regulates the ratio. The punishment does not in the least affect the degree of temptation, or essentially touch the rate of risk. The rise in risk has been canceled by a rise in the venturesomeness of the offender.

But if legal punishment does not decrease the crime ratio, at least the death, sequestration, or reform of the criminal must tend to lessen the number of criminals at large. "Don't you see?" says the defender of the old system; "here are ten thousand active thieves; catch two thousand, and that leaves only eight thousand, — twenty per cent. decrease." Nothing is more simple in arithmetic, nothing more illusive in social science. How accurately Archbishop Whately described transportation as "a system

¹ 5 and 6 Anne c. 6; also, Statutes of the Realm, 6 Anne, c. 9.

begun in defiance of all reason, and persevered in in defiance of all experience," can be gathered from facts which have transpired since he wrote these words to Earl Gray. From 1828 to 1838 the average convict population of Great Britain was fifty thousand, while from four to five thousand were transported every year to her penal settlements, of whom at least two thirds stayed in the colonies or died there; and yet the crime ratio was increasing, though to be sure in a decreasing degree. But from the day transportation was checked in 1853, and finally abolished in 1867, the crime ratio in England has gradually been reduced to nearly one half. There are now but ten thousand convict prisoners and some two thousand ticket-of-leave men, and the crime ratio is steadily on the decrease.

We are here met by the seeming anomaly that the fewer men there are in prison the fewer criminals there are at large. The fact is that something has been overlooked. The transportation of the malefactor has only affected the number of adults without decreasing the capital stock of criminals, for the progeny is left to follow in the footsteps of the father. Nor is this all. The withdrawal of a portion of the thieves, while the degree of effective temptation remains the same, simply eases up the competition among the thieves who are at large, and enables a new set to take the place of those withdrawn. Instead of the father you have the son; instead of the native you have the foreigner; instead of the professional you have the neophyte, who, being more easily caught, swells the census of the penal colony. What is true of transportation is also true of imprisonment. Its inevitable tendency is to make criminals at the expense of the State. Indeed, it is supposable that, if all the criminals of the State of New York were to be incarcerated within twenty-four hours, the foreign thieves, hearing of a virgin market

for their operations, would flock in as they did to the scene of plunder during the celebrated draft riots of 1863. By successively arresting and imprisoning the new-comers, not only would the New York prisons be full, but the necessity for an indefinite number of penitentiaries would arise, till it had constituted itself the penal colony of the entire commercial world of English-speaking people. Fortunately for the State of New York, such an experiment is impossible. It would entail a taxation equivalent to devastation long before the international exchange of convicts was completed. In other words, the withdrawal of criminals from a country while the degree of effective temptation remains the same does not permanently reduce the crime ratio. It only redistributes the criminals who are at large. The true policy seems to be gradually to dispense with the expedient of imprisonment. Let the criminals be returned upon the community under certain conditions of probation. If they disregard these conditions, they will at once compete with those at large, and before long will drive out those unfit for the criminal calling, to monopolize it themselves. The prisons will then be empty; the active criminals will decrease in number; the taxes will be lessened; and the loss by theft will not be materially augmented. Were the law governing the number of criminals other than one which is self-regulative, there would be no basis for civilization, and no hope for the amelioration of the race. This proposition may startle many, as if it were the entering upon anarchy; but let it be remembered that before prisons existed the forces of civilization were slowly but persistently marching on, and that they will not halt because this innovation has been dared. It is, indeed, less an innovation than it seems. From the history of the changes in prison management itself, a gradual decline can be traced in the coercive system,

and a constant confession of its failure. Hanging and torture have never put a stop to crime. Transportation effected nothing in this direction. While it was in full activity, offenses in England rose from 1821 to 1848; while from 1858 to 1865, during which years it gradually ceased, until in 1867 it was entirely given up, crime fell in a marked degree. The history of transportation contributes to demonstrate the fallacy of deterrence, because it led to experiments in the colonies which in the mother country would have been impossible during the present century on account of public bigotry and fear to make the trial. In Australia the policy of cruelty within the prison was pushed to such extremes that it utterly broke down. Convicts were outraged on method: they had to salute empty sentry-boxes as a mark of self-abasement; they were "lashed" for insolent looks, and for offenses they did not commit, on the ground that they deserved punishment for undetected breaches of discipline. The convicts sent out to make roads and construct public works were packed for safe keeping, from sunset to sunrise and during all the Sunday, into movable vans or boxes, "which held from twenty to twenty-eight men, but in which the whole number could neither stand upright nor sit down at the same time, except with their legs at right angles to their bodies."¹ In 1834, twenty-nine ringleaders in an unsuccessful attempt at mutiny were tried for murder. When passing the sentence of death the eyes of the judge filled with tears, and when one of the accused was asked why judgment should not be pronounced, the remark of the criminal that "a man's heart is taken from him, and there is given to him the heart of a beast," caused the Chief-Justice to burst into tears. Sixteen of these men were reprieved, and the Vicar-General of Australia, Dr. Ullathorne, volunteered to take the news

to the pardoned, and to console the condemned. His astonishment on announcing the tidings is best told in his own words: "As I mentioned the names of those who were to die, they one after another, as their names were pronounced, dropped down on their knees and thanked God that they were to be delivered from that horrible place, whilst the others remained standing mute. It was the most horrible scene I ever witnessed." Is it wonderful that it was found necessary, as one of the rules of discipline, to deny the convicts the use of knives and forks, so that they had to tear their food like wild beasts, because convicts and guards had been "cut up like meat" by prisoners in the barracks for the bare chance of escaping into the wilderness on the journey to the nearest court and to certain conviction; and that the Chief-Justice of Australia should depose before the Parliamentary Committee on Transportation that the cruelties were "such as to render death desirable, and to induce many prisoners to seek it under its most appalling aspects"?²

These are the acts of a highly civilized people, and some of them were perpetrated less than fifty years ago. They were intended as "aids to discipline," but may be more rightly called incentives to revolt. They show that within the prison was the essential environment of savage life, and that the submission of the undisciplined malefactors to its influences produced all the features of savage retaliation. It is only another illustration of the statement already made, that men care less for life than for the things for which they live. It was just after a revolt in one of the English penal settlements, when the government and the convict stood at bay, that Captain Maconochie confronted the question "of dragging up two thousand of my fellow-men, al-

¹ Bishop Ullathorne's pamphlet *On the Management of Criminals*.

² Parliamentary Report.

most by the hair of the head, from perdition." Only one hundred and sixty soldiers and five superintendents were allowed him on Norfolk Island to govern this mass of desperadoes, many of whom were the reconvicted felons of New South Wales and Tasmania, "the dregs of the dregs of criminality," whom deterrence had failed to tame! How did he conquer these savages within a year? Well, he discarded that "miserable instrument of government,"¹ fear, and substituted "laws that will execute themselves," because they accord with the spirit and possibilities of human nature. He proposed to rely on increasing rewards to stimulate, instead of continuous punishment to deter. Henceforth the term of imprisonment was to be divided into three stages: the first, hard, repulsive, solitary; the second, in associated gangs of six, each convict choosing his mates; and the third, under conditional liberation. The arbitrary "time sentence" of the law was set aside, and the convict could literally *purchase* his freedom with wages earned under a "labor sentence," which required that a definite amount of work should be done by him before he could be discharged. The convict was *paid* in "marks," an expedient for money, which he had to earn like an ordinary laborer, in proportion to the amount of work he performed. With these marks he bought his medical attendance, his food and clothing, even his education if he desired one, which items might cost him from three to five marks a day; and whatever he could save above this expenditure he could apply to the ransom by which he regained his liberty. Ten marks saved counted for one day of commutation, and it was possible to save ten a day by over work and frugality. In the second stage Captain Maconochie, to insure good discipline, revived the institution of "peace pledge," which best suits the uncivilized and was the first

¹ Adam Smith.

form of police organization in ancient Britain. Six convicts were associated together, and the marks they saved were pooled in a common fund. If any man misbehaved, a fine proportionate to the offense was levied on this fund, so that each one was not only bail for his own conduct, but for his companions'. Thus, arbitrary coercion was superseded by the loss of an advantage already earned, and "the simple non-collection of reward performed the office of punishment." In the third stage the convict was allowed to live in a separate cabin, to work part of the time for himself, and to enjoy a degree of liberty, the privilege of which depended on the condition of good conduct. The analysis of Captain Maconochie's plan shows how closely it conformed to the development of society. Its basis was useful labor; its law was the exchange of service to the state for service from the state; its lesson was abstinence from present gratification for future advantage; and its objective aim was social responsibility under liberty. Captain Maconochie was never allowed to reap the fruit of his policy. The government, through the mingled jealousy and contempt of the officials who ranked him, prevented him from carrying out his promises of commutation of sentence for good conduct; and, after two years of trial, the disappointed convicts became mutinous, and the opportunity was improved to remove Captain Maconochie and bring the important experiment to a close.

Nevertheless, in subsequent years, a modified copy of the Australian success was introduced into England and Ireland under the names of the "Crofton" and the "Mark" systems; adopting the three stages and the ticket-of-leave, but rejecting the labor sentence and the "peace pledge" with associated labor, which are the distinctive features of Captain Maconochie's plan. The labor sentence was rejected chiefly because

the law provided only for a time sentence, with which it was incompatible. The associated labor in gangs, with mutual bail for good behavior, was rejected chiefly because it is claimed that the contamination resulting from the congregation of many rogues multiplies the number of criminals and makes them desperate, an assumption which requires analysis. From the days of Howard the one constant and seemingly unanswerable cry has been that the jail is the school where the neophyte graduates into the hardened villain; and so completely has the statement become identified in the popular mind with the crime question that a description of the jail and its influence which should omit this philanthropic fiction would be considered lacking in point and argument. A little reflection, in the light of the law which regulates the crime ratio, would greatly modify the view. It is quite true that many boys sent to the reformatory for a petty offense learn pocket-picking and "stalling to steal"¹ from accomplished though youthful offenders; but one does not necessarily become an habitual criminal because he has consorted with thieves in a prison. Before he can range in the category of the habituals two things must have come to pass: he must have the disposition to prefer this mode of gaining a livelihood, and he must be able to make his living by this means. If his aptitude for crime falls below the average required, he becomes a bankrupt in the business, no matter how keen his disposition may be to pursue it. The prison or the jail is merely the official accident which determines the meeting of the true teacher and the true scholar, the agent for selecting the recruits, not the creator of the criminals. The prison is the market established by law, the deliberate act of society in creating a criminal exchange: it simply collects the pupils of crime,

¹ Distracting the attention of a store-keeper while a confederate steals.

and puts them beside the most competent teachers. But this does not increase the crime ratio. If the county jail were made what it should be, a place where the accused are held for trial and are separated from all communication with one another, then the apt scholar and the able teacher would be found to "hang out" at "The Burnt Rag," or "sport" at "The Buckingham," or at gambling hells where gay young blades wind up their careers with embezzlement. Nor is the dangerousness of the criminal necessarily determined by his consorting with other jail-birds. It is the effective opposition of the community in guarding its property which raises the standard of criminal ability and daring. No criminal gives himself more effort than is necessary to secure the "swag" he "goes for," any more than the farmer yokes a pair of oxen to hoe a row of onions. When Silas Herring invents a burglar-proof safe, he challenges the capacity of "Johnny Hope;" when the United States treasurer employs the Continental Bank-Note Company to engrave the greenbacks, he sharpens the skill of Ulrich; and when Miss Flora promenades Central Park with her diamond ear-rings, she heightens the daring of "Young" Soper. It is idle to urge that the meeting of Hope, Ulrich, and Soper in the Tombs would produce burglary, counterfeiting, or snatch-thieving. The mere chance meeting of these worthies and their mutual consultation would be barren of results unless they were confronted with obstacles in the way of a coveted opportunity for the "cracking" of the Manhattan Bank, the counterfeiting of a treasury note, or the snatching of a lady's diamonds. It is the difficulty of accomplishing the job, not the bragging around the corner, that determines who shall be the successful competitor in "raiding" the public. Words are no more potent in teaching thieves how to steal than they are in the university for

teaching how to win success in life. If, however, the contamination of the prison is an undoubted fact, and actually increases the crime ratio, it only adds another reason for discontinuing imprisonment as a mode of "repressing crime;" and even as matters stand to-day the present generation is to be congratulated on the gradual abolition of many of the old features of prison practice.

This brings us back to the consideration of the gradual decay of the so-called punitive theory. When the English government adopted the Mark and the Crofton systems, the ticket-of-leave, given from one to five years before the expiration of the sentence, enabling the convict to live at large on condition of reporting to the authorities at stated times and avoiding the company of thieves, was a virtual abandonment of the time sentence, and the abatement of imprisonment to that extent. This step, however, was anticipated by the change in juvenile imprisonment, when children of fourteen years and under were withdrawn from the jails and hulks and placed in reformatories, which took more the character of training schools than of prisons. The establishment of industrial schools, designed to educate children whose parents were criminals, paupers, or habitual drunkards, followed the reformatories. The reformatories themselves underwent changes in construction and management, and gradually all the features of a prison were withdrawn, and a similitude of home life, under the name of the "family system," substituted in its place. The reform has not stopped here. In Massachusetts they concluded that even the reformatory was hurtful to many children, the "institutionalizing" which it produces having the bad effect of preventing the formation of habits of self-reliance. A new office was accordingly created in 1867, to be held by a visiting agent, whose duty was to attend the trials of children, and in cases where

the child seemed worthy or promising to place him in the care of some private family. The point was to avoid even a committal to the reformatory. It was then seen that, if imprisonment or even a reform school was injurious to a child, it might deteriorate an adult; if apprenticing the juvenile offender in good families was most propitious for forming the character and obtaining the training suitable to the prospective station in life which these children might be placed in, many adults sentenced for the lighter offenses might best be dealt with in a similar manner. Thus, in 1872, the practice of conditional liberation, first devised in Australia and adopted in England as a mitigation of imprisonment, was carried a step further in Massachusetts. First, offenders upwards of twenty-five years of age, who appeared to be deserving, were placed on probation after sentence had been suspended, and imprisonment was avoided altogether. They were required to report to an officer appointed for the purpose; and thus partial supervision, so that the conduct and companions were noted, was exercised over the "probationists," but otherwise they were unrestricted. It is understood that so far the plan has given satisfaction.

What is the lesson of all this? The prison as a remedy for crime is a failure. After ages of trial it is falling to pieces of its own accord; and were not the fear of criminals greater than our confidence in human nature (an unfounded fear, which was entertained when conditional liberation was first tried in England), the prison as a mode of repressing crimes against property would soon cease to be an institution of civilized life. Its methods are essentially incongruous with the causes of crime. Civilization has changed alike our prisons and our criminals. If the prison does not keep down the crime ratio by sequestration or reform; if it fails as an agent in increasing the moral compulsions of society; if

if does not deter the criminal; if it accustoms a certain portion of the habituals to cell life, so that they become indifferent to imprisonment; if it pauperizes (and all these propositions are true), is there any useful function which it can serve? We think there is. The prison will continue to be necessary for the life confinement of murderers and of criminals addicted to offenses of great violence against persons, — a class requiring absolute restraint. But it will be a long time before the public will consent to have its criminals remain at large, under conditions the details of which there is no space to set forth in this paper. During this interval the prison can be usefully employed as a field for experiment. We know so little concerning the offending class, as its members ramify through the complex web of society, that new and long-continued observations need to be made, extending to their ancestry, to the surroundings of their childhood and manhood, to their social, mental, moral, physical, and industrial disabilities, before a clear conception can be obtained of the multiform agencies by which a criminal can be lifted into a useful and honorable career. By means of the adult reformatory the question of success in individual cases of discipline can be treated, although this will not affect the ratio of criminals at large. It will have the advantage of showing that hereditary instinct can be overcome by adequate educational influences; it will render possible a registration of the specific process of instruction which has been applied to a given case; and it will impart to a number of persons a knowledge and practice of adult education which must in the end enormously increase the effectiveness of the educators as an expert class dealing with the psychological, as distinguished from the scholastic, aspect of the educational problem. There is now, and for years to come there will continue to be, a necessity for institutions with the aims

of the State Reformatory at Elmira, New York, but it cannot be admitted that there is either need or justification for such "state-prisons" as New York and other States are responsible for. Built in violation of hygienic requirements, intended only to punish, with a barren discipline and a bad system of labor, officered by political time-servers, and turning out their convicts without instruction in trade, in manners, or in books, it is difficult to characterize them without offense to their managers. Nothing thorough has ever been done until a visible necessity arose for vigorous action. It was not until capital punishment for minor offenses was abolished in England that the police was rendered efficient. It was not until the hulks were broken up that the educational and industrial training of youthful offenders was carried forward with zeal. It was not until transportation was discontinued that conditional liberation was adopted. It will not be until prisons are virtually abolished and the last remnants of the punitive system finally set aside that the question of hereditary crime will be thought of enough importance to justify an exhaustive inquiry into the physical and social conditions which keep up the entailable attributes of the malefactor. Gradually puerilities are passing, and the arbitrary imprisonment of criminals must go with the rest of them.

It would seem that the whole attitude of society toward the criminal must shortly change. The Massachusetts experiment of probation indicates the approach of the time when all good citizens will be courageous enough to apply conditional liberation under suspense of sentence to those who are under condemnation with greater frequency; it is possible that a revival of the peace pledge may take place in some form fitted to the complexity of modern life; for an extension of the practice of giving sureties for good conduct might be made to play an important part in a wiser criminal

jurisprudence. If these changes shall be reached in the next quarter of a century, we shall have history again repeating itself. In the beginning of man's experience personal deterrence, in the form of feuds, was broken down because it threatened to extinguish the social

order; to-day corporate deterrence, after centuries of trial, succumbs to industry, emulation, and training under liberty. The way to civilization is not by the discarded expedients of savage life, but through the agencies of civilization itself.

Richard L. Dugdale.

SHAKESPEARE AND BERLIOZ.

OF Hector Berlioz as a musician, others have spoken with an authority to which I cannot pretend. His glory is now complete; even the Parisians, after having treated him as a madman, overwhelmed him with silly calumny, and finally killed him with indifference and ingratitude, now bow very low before his tomb, and proclaim him the glory of the modern school of French music. In the following essay an attempt will be made to study Berlioz from a particular point of view, to trace the influence of Shakespeare upon his life and upon his genius.

Up to the very day of his death, Hector Berlioz was an ardent Shakespearean. The epigraph of his remarkable *Mémoires* is a translation of some lines from *Macbeth*, and the last words of the volumes are the same lines in the original English:—

"Life's but a walking shadow; a poor player,
That struts and frets his hour upon the stage,
And then is heard no more; it is a tale
Told by an idiot, full of sound and fury,
Signifying nothing."

Indeed, Shakespeare was the cause of Berlioz's happiness and of his misfortunes, the inspirer of his musical efforts, and in a certain way the origin of his moral disasters and of what he calls the greatest drama of his life.

This drama comprised a sad and romantic story. In the year 1827 a company of English actors, amongst whom were Charles Kemble, Abbot, Liston,

Chippendale, and Henrietta Smithson, came to Paris, and gave a series of performances at the Odéon Theatre. Berlioz, a young man of twenty-four years of age, was then struggling against all kinds of privations. His parents were opposed to his studying music, while he himself had the conviction that music was his true vocation. In order to procure his daily bread, Berlioz entered the Théâtre des Nouveautés as a simple chorus-singer, at a salary of fifty francs a month; and as his modest garret was not an inviting place to dine in, he used in summer time to buy some bread and some dried fruit, raisins, dates, or prunes, and eat them seated at the foot of the statue of Henri IV., on the Pont Neuf. There, without thinking of the capon which that good monarch desired each of his subjects to have in the pot at least on Sundays, he ate his frugal meal as he watched the sun go down behind Mont Valérien; "following," as he writes, "with charmed eyes, the radiant reflections of the rippling Seine that flowed murmuringly before me, and with my mind ravished by the splendid imagery of the poems of Thomas Moore, a French translation of which I was reading lovingly for the first time." Berlioz was then simply a young man of talent and enthusiasm, seeking his path, and finding himself, like all the fiery Romanticists of his time, out of harmony with the old order of things, and