CENTURY

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Crime and Punishment

The Responsibility of Criminals and the Purpose of "Punishment"

BY HORACE J. BRIDGES AND CLARENCE DARROW

MR. BRIDGES STATES THE CASE

It is little wonder that the mind of the American public should be so absorbed and so alarmed as it is by the problem of the increase of crimes affecting human life. Burglary and robbery are bad enough, and the estimates of the financial loss they annually entail involve figures that stagger imagination. But these things, disgraceful as they are, do not cause the heart-searchings prompted by the decline in the sense of the sanctity of human life, the appalling frequency with which life is taken on the flimsiest of pretexts, and the seeming utter paralysis of the human machinery responsible for the prevention, detection, and punishment of homicides. When a city of fewer than three million inhabitants has a record of considerably over two hundred homicides in eight months; when fewer than half of these result in trials; and when, of those tried, only a small proportion are punished and a wholly insignificant fraction executed; when, moreover, there is clear evidence that the number of homicides has fluctuated from year to year in strict correspondence with the greater or less efforts made to enforce justice; it is evident that we stand at a crisis, and are threatened with something approaching a collapse of civilization in this matter.

The attention of the apathetic and jaded public has latterly been forced upon the problem by one singularly heinous and abominable murder, with which the newspapers of the entire country were sensationally occupied for months on end; but even in this case the interest and alarm were really due to an awakened consciousness of the terrific general increase in the evil.

What can the readers of a periodical like THE CENTURY MAGAZINE profitably do in such a matter? We are not specialists; we cannot usurp the province of the criminologist, the anthropologist, the psychologist, the psychiatrist, the neurologist, the alienist, or the gland-rigging miracle-worker. To all these we are prepared to listen humbly and hopefully, awaiting the day when the discordant babble of contradictory counsels they now offer shall be succeeded by some approach to concurrence. For until the present conflict of testimony, even on individual cases, to say nothing of the multitude of general recommendations, ceases, we shall be constrained to feel that these gentlemen, however scientific the method pursued by each may be, have no achieved sciences to draw upon, but are only engaged in the elaboration of what may some day become sciences. This is admitted freely enough by some of the best psychologists. They tell us that they have only the hope of a science, not the achieved reality. And that the specialists in the kindred lines are at the same stage is proved by their discordance. In particular, we need to remind ourselves that all the current talk about glands and their influence on personality is the merest hypothesis. That glandular secretions, like all other bodily processes, do affect psychic life, mental health, and even moral ideas and conduct need not be doubted; but that anybody is yet in a position to tell us just how and to what extent, or to decide by investigation of glandular conditions whether a given criminal was or was not responsible—all this is mere assertion, devoid of scientific warrant, and can do nothing but mislead.

The non-expert public, however, is ultimately responsible for whatever action may be taken to deal with the menace. And readers of this magazine may be taken to have a special interest in the ethical side of things; that is, in such questions as the reality of the spiritual nature of man, the understanding of right and wrong, and the practice of right. A little clear thinking here, therefore, may contribute something to the formation of a sound public opinion.

Now, the public has been giving great attention of late to Mr. Clarence Darrow. For many days together, millions of people followed with close attention his pleadings in the Leopold-Loeb trial, and noted the curious philosophy on which his arguments were based. Large numbers have also read his recent volume entitled, "Crime: Its Cause and Treatment." Nobody who knows Mr. Darrow personally can fail to like and respect him. His skill in persuading juries and influencing the minds of judges has made him one of the most famous criminal lawyers now living. His deep sympathy with a certain class of unfortunates has led him never to act as a prosecutor, but always for the defense. He is honorably distinguished by the fact that his professional activities are never influenced by financial considerations. He often acts not only without payment, but at personal expense. His great gift of persuasive public utterance is accompanied by a skill and lucidity of written expression that makes his books instantly intelligible to all sorts of readers. It is overwhelmingly probable that large numbers of persons who have read him on the subject of crime have read nothing else on it, for the literature of criminology is not among the best-sellers. It is highly necessary, therefore, that the views of a man so popular, and in his profession so powerful, should be attentively scrutinized.

I purpose, accordingly, to define roughly what may be called the ethical conception of the nature of man, as against that preached by Mr. Darrow; and, in the light of the contrast, to compare notes on the special problem of the criminal.

Those, then, who believe in moral personality begin by attributing to man as such—that is, irrespective of race, sex, color, stage of civilization, or personal endowment—a nature which is spiritual, unique in each person, and of unconditional worth. We cannot prove this, as we cannot prove any first principle whatever. All argument begins with assumptions; men can only define their differences when they stand together on the ground of matters concerning which they do not differ. The spiritual nature of man, then, we hold by because we find ourselves inevitably driven to assume it. And we are encouraged by finding that it is also inevitably assumed by men who, like Mr. Darrow, explicitly deny it. One test of the validity of a principle is that we find it regulating the arguments and the valuations of those who expressly repudiate it.

The compulsoriness of the assumption becomes apparent when we find, as we do, that the violation of another personality—the treatment of human beings as it would be right to treat them if they did not possess inherent and unconditional worth—is self-violation. It recoils unbearably upon the violator. Many a *Bill Sikes* has realized the lurking divinity in man or woman only through the horror of remorse, a thing entirely distinct from the dread of punishment which ensues upon the commission of murder.

We may remark, too, that the reality of man's spiritual or moral personality is guaranteed to us by the only powers which yield us the assurance of any reality whatsoever. It is possible to doubt the existence of anything but one's own mind. One may persuade oneself that life is a dream, and that this panorama of sea and land, of forest and city, sun and stars and human faces, "all the quire of heaven and furniture of the earth," are but the self-evoked phantasmagoria of one's dream. But in the act of doing so, one necessarily affirms the reality of one's mental nature and the validity of its deliverances. Now, the moral nature is the same sort of ultimate fact as the rational nature. That some things are good and some bad; that of two or more impulsions simultaneously soliciting the will, one is better or higher and the other worse or lower: this is as much a matter of universal human experience and testimony as is the existence of a world external to the individual body. To deny the validity of the consciousness which yields this testimony is to deny also its validity in affirming the existence of other men or of the outer world.

Men often feel where they cannot see or prove. Nobody can know the genesis of the spiritual nature, and the attempt to account for it has led to imaginings often wild enough. All the myths of all the religions about the special creation of men by gods, however worthless from the scientific, historic, or philosophical point of view, are yet testimonies to the felt reality of the spiritual nature. You may dismiss with a smile or a sigh the fairy-tale about this or that god forming man out of the dust of the ground and then breathing into his nostrils the breath of life; about this or that god saying, "Let us make man in our image, after our likeness." But you have still to answer the question, Why should such myths have been framed and gained credence? What set men upon inventing them? And the answer must be that it was the irrepressible feeling, the inexpugnable certitude, that there *is* in the nature of man a unique element; something not to be accounted for by the same acts of the gods or processes of nature as suffice to account for—that is, to satisfy man's curiosity about—other forms of life and the non-living world; something, as Sir Thomas

Browne said, "that was before the elements, and owes no homage to the sun."

The modern fatalist, however, will be moved to contempt by an appeal to the old myths. "If *this* is all you can offer for the existence of your 'spiritual nature,'" he will say, "you are surrendering your case. There are scores of ways of accounting for the psychological condition of savages and primitive men besides assuming that there was an objective reality for which, by means of their myths, they sought to account. They believed in ghosts, in spirits of the corn, the trees, and the sea. Are we to suppose they were right as to all these, and only wrong in the accounts they gave of the spirits or their ways of propitiating them?"

The answer is cogent, and might suffice if we had nothing else but such an hypothesis to adduce. But the truth is, that what primitive men felt about man has been felt also by every civilized people. And there is a fact about the modern scientific fatalist himself which offers interesting implications when we stop to consider it. That fact is his pessimism. Why should the attainment of what they think the truth about man and the universe drive so many of them to something akin to despair? Consider the final attitude of Henry Adams, of Mark Twain, and of my friend Mr. Darrow. They all tell us, in different words, that the world is a mere blind machine; that consciousness is its illusory by-product; that the freedom of man is a dream; that man is just an animal among animals, the true definition of an animal being that he is a sensory automaton, acting only in response to outside stimulation. Very well, assume it so; whence, then, the despair of the theorist, his discontent with the inevitable and unchangeable order that has produced him? Supposing he can work the miracle of conjuring reason out of the non-rational, and consciousness of the world as a process of change out of the change of which it is the consciousness; still, how can even *he* extract from the blind physical mechanism of the universe that scale of values, that conception of what the world ought to be, which alone can account for his dissatisfaction with what he thinks it is? How could a non-rational and non-sentient world beget its own condemnation? How could it create the ideal standard by tacit reference to which it is condemned? Is the pessimist's despair at the world, his sense that non-existence is better than existence, his acute consciousness of evil, rationally explicable as anything but the irrepressible protest of that part of his nature the reality of which his theory has compelled him to deny?

Note, further, that without the ascription to man of unconditional spiritual worth, all talk about the "rights" of man, about democracy or republicanism or representative government, becomes, as Nietzsche clearly saw and courageously asserted, a mere beating of the air. On the mechano-fatalist hypothesis, according to which nothing is but what must be, and man is an automaton, the only political or social arrangement rationally justifiable is the enslavement of the weak by the strong and the simple by the cunning. We may safely venture to challenge any thinker who holds that man is nothing but an animal to give us one single valid or compulsive reason for treating man any differently from any other animal.

For in his world there is room only for facts; there is no room for an "ought." That word he deprives of all meaning.

We assume, then, that all men, including those called criminals, are beings possessing intrinsic and unconditional worth, and, as such, *potentially free agents*. Note the qualifying adverb.

§ 2

What, then, is Mr. Darrow's view? Fortunately, there is no uncertainty about this, and no difficulty in ascertaining it and stating it in his own words. He holds, first, that "the laws that control human behavior are as fixed and certain as those that control the physical world." Therefore, of course, nobody is responsible for anything. This conviction Mr. Darrow often expresses in so many words, and it underlies all his pleadings for his criminal clients. The word "crime," he assures us, ought never to be used at all. If it is used as a convenient counter to denote an act forbidden by the law, no kind of censure, moral or other, ought to be understood or intended by it.

Every act of every man is as inevitable as the falling of rain. Praise and blame, therefore, are meaningless and hopelessly silly. Mr. Darrow has spent much time in talking with the inmates of jails. As a result of this experience, he assures us that "Every man of intelligence can trace the various steps that led him to the prison door, and he can feel, if he does not understand, how inevitable each step was."

Mr. Darrow speaks always of man as "the human *machine*," and means by this not that man possesses or controls, but that man *is*, a machine. *As such*, he of course can act only "in response to outside stimulation." It is a little curious, perhaps, that a thinker who strenuously denies any purpose in nature should feel constrained to define its enigmatical product, man, by a term which is shot more full of purpose and design than any other word in human language. Men may do many things by accident or without purpose, but assuredly no man ever invented or constructed a *machine* without exemplifying purpose in its most complex form. There must be a clear conception of the end to be attained, the function to be performed, and a rigorous examination, selection and rejection among the possible means to the end, before there can be a machine. Thus to call an animal organism a "machine" is implicitly to read teleology into nature; yet nobody is so forward to do it as those who ridicule the idea of there being any designing consciousness behind or among the phenomena of the world. Even so non-theological and non-religious a thinker as Samuel Butler might make them aware of the irrationality of this.

But let us get on with our exposition of Mr. Darrow. Man is a machine. There is no distinction in Mr. Darrow's thought—because he finds no difference in fact—between mechanism and organism or between vital energy and mechanical force. Man, consequently, is the puppet of two utterly uncontrollable fates. Their names are Heredity and Environment. They cannot be said precisely to take the place of the old-fashioned Ormuzd and Ahriman or Yahweh and Satan, because of these pairs one was, at least intermittently, benevolent, the other malevolent; whereas, both of Mr. Darrow's twin daimons, although devoid of any intention whatsoever, are predominantly maleficent. If their product, man, does things that we approve, it is merely by a lucky accident, for which neither they nor he deserve any credit. But generally he only manages to add to the sum of pain and misery in the world. Well, he can't help it, because they caused it; and they can't help it either, because they have n't even that illusory semblance of intelligence and choice which deceives man about himself.

Accordingly, it is really absurd to speak of mind and character. You might as well speak of the mind of a crystal or the character of an ocean current. You may talk of the *characters* of a man, as the botanist classifies those of a plant, or the entomologist of an insect; but if you mean anything more or different in the one case than in the others, you are talking deceptive and disastrous nonsense. Where everything is inevitable, freedom and responsibility are of course mere dreams. "The body is the mind," says Mr. Darrow; and inasmuch as nobody can deny that the body is produced by, expressive of, and inextricably intertangled with the determinism of nature, so must the mind be, *if* it is identical with the body. Don't blame the assassin, then, for his deed; strictly speaking, it was n't a deed, for there is no such thing; it was a meaningless accident, occurring in a world that has no meaning. Blame, if you will, the stimulus, the sight of means to do the ill deed which made the ill deed done; or, rather, be properly scientific and philosophical, and don't blame anything; remember that the stimulus was as blind and irresponsible as the man.

Mr. Darrow always uses the words "reason" and "motive" as synonymous with the word "cause." From his point of view, this is entirely logical. We may point out that no external stimulus ever becomes a motive *until the man has done something to it;* that of the countless stimuli that are perpetually soliciting us, the overwhelming majority are passed by; that not until attention has been concentrated on a given stimulus, and it is lifted out of the flux, taken inward, and adopted by the man into his selfhood, does it become a motive. Thus, for us, there is a clear difference in meaning between a motive, which is one special kind of cause, and other causes which are not motives. For Mr. Darrow there cannot be. We regard man as the singer of his song; Mr. Darrow regards him only as the gramophone record. He holds, accordingly, that moral valuation, praise or blame, of human conduct is as meaningless as praise or blame to a house for burning or not burning when inflammables are applied to it. You may be glad that your house does n't catch fire when Tommy drops the lamp; but you don't praise the house, as though you thought it could have caught fire if it liked, but chose not to.

§ 3

What, then, is Mr. Darrow's practical conclusion as regards the criminal? It is this: "All indignities should be taken away from prison life. Instead the prisoner should be taught that his act was the necessary result of cause and effect, and that, given his heredity and environment, *he could have done no other way*." That is how we are to encourage and strengthen him to do better for the future.

Most of us, probably, will feel that

this is scarcely an encouraging view of man's nature and its possibilities. But the question, of course, is not whether it is encouraging, but whether it is true. "Things are what they are, and their consequences will be what they will be; why then should we wish to be deceived?" We don't, of course; so we apply ourselves to the question of the truth of Mr. Darrow's doctrine.

Now, one test of the truth of a theory is to see whether it can be consistently applied by its advocates. If we find that even those who are most anxious to convince us of its truth cannot take a single step in argument without contradicting it, there will be a reasonable presumption that the theory is false, in the sense that at least it is n't the whole truth and does n't fully cover the facts. There is no use in telling us that a pair of trousers two feet long will cover a man's legs if, when he wears them, we can see an ankle and a foot of shin below them. The trousers will cover a part of the facts, but not the whole of them; and in this respect Mr. Darrow's theory is like unto them.

For, obviously, if any one man is the impotent thing Mr. Darrow describes, any number of men must be equally helpless. You cannot make a rope out of grains of sand by multiplication of their number. It is nonsense, we are told, to say that the individual *ought* to do any differently than he does; very well, then, it is equally nonsense to say that the collection of individuals called society or the state ought to do what in fact it does n't do. Yet Mr. Darrow's whole book is a sermon as to what men collectively *ought* to do. Men are determined by their environment; therefore they must change the environment that determines them. They cannot choose but act in accord with the most enticing stimulus; they must therefore be careful to select the stimuli to which they expose themselves and others. The criminal could n't help feeling as he felt or doing as he did; therefore, other men, equally unable to control their feelings or acts, are required to change their feelings and their acts toward him. The whole book is built on this paralogism.

§ 4

"If there were any justice in human judgment and civilization, then each human being would be judged according to his make-up, his tendencies, his inclinations, his capacities, and no two would be judged alike." Justice? My dear Darrow, what on earth are you talking about? Have n't you been insisting right along that every feeling, thought, word, and deed is the meaningless result of mechanical forces? Define justice, and the conditions of its possibility, in accordance with that saying if you can. I defy you to do it. Justice is, first, the ideal projection in thought of something that ought to be, but is not, and thereafter the changing of the outward facts to conform to the ideal; whereas you have eloquently demonstrated that nothing can be that is not. Justice can arise only when men are able to *refrain* from acting in response to outward stimulation; for the injustice they do is no other than the result of their so acting. But you have told us that they can't act otherwise. You have been insisting that the word "crime" is meaningless, because it imputes moral responsibility to a mere machine. So be it; but then the words "justice," "kindness," and "humanity" are equally meaningless. Having told us that to impute responsibility to the criminal is silly, why do you now impute responsibility to the rest of us? Why talk about justice when the stimuli and your familiar daimons Heredity and Environment won't let us be just? We plead on our own behalf the excuses you have so generously offered for the criminal, reminding you of your oft repeated assertion that he is exactly like all other men.

Surely the logic of mechano-fatalism at this pivotal point is a bit groggy! The entire argument, from beginning to end, as to how we shall regard the criminal, *presupposes the freedom it denies and attributes the responsibility it declares impossible.* Reduced to logical form, Mr. Darrow's book amounts to this: "The criminal is a machine. He is as irresponsible, as helpless, as incapable of initiative and self-determination as a motor-car or a type-writer. Therefore it is silly and cruel to say that he ought to have done differently. The word 'ought' has no meaning. *Therefore, you ought to change your attitude towards him.* You are responsible for doing the thing which I have just succinctly shown that you cannot do." Mr. Darrow reminds one of the words of *Stephano* in "The Tempest," when he hears the two voices coming from the two ends of what he takes to be a single "monster": "His forward voice now is to speak well of his friend; his backward voice is to utter foul speeches and to detract." The whole argument is constructed for the sake of the criminal, but its benefits are ruthlessly denied to all other men. Since Mr. Darrow believes in his own view of man, why does he write a book the lessons of which cannot possibly be applied if man is what he takes him to be?

With which of his two voices does Mr. Darrow speak the truth? Choose between them we must. For if what he says in behalf of the criminal is true, his appeal to the rest of us is clearly nonsense. But if he is right in blaming society as he does, then his defense of the criminal breaks down.

I think we must choose the latter alternative. We must agree with Mr. Darrow that we ought to change our treatment of the criminal. But if we ought, it is because we can; and if we can, then, by the same token, the criminal also possesses responsibility. He too is capable, within limits, of self-transformation. Within limits; and the question is, What are the limits? The difficulty is that they are not the same for any two human beings; that is why Mr. Darrow is so emphatically right in saying that no two persons should be judged alike, even though they have done the same wrong act.

The misunderstandings that arise between fatalistic thinkers and the rest of us are due, I think, largely to the fact that believers in human freedom are supposed to attribute to man complete or absolute freedom. This, it cannot be said too plainly, no man possesses; probably no man ever will enjoy it. Indeed, it is almost a self-contradiction to suppose any being subject to the limitations of mortality possessing complete freedom. That is the ideal attribute of a perfect being in a perfect society. Yet there is a vast difference between possessing absolute freedom and having no measure of freedom at all. If we had perfect vision, I suppose we should not need telescopes and microscopes; but although, as *Mr. Weller* said, our "wision 's limited," that is not quite the same as being blind. And the fact of experience is that all men possess some measure of freedom. Dr. Johnson said of "free will" that "all argument is against it, and all experience for it." We cannot accept that oracle, even from Dr. Johnson; how can *all* argument be against a fact or reality certified by universal experience? The responsibility of life is the responsibility for enlarging and extending our freedom. What the law calls crime (when the law is talking sense, as does sometimes happen), and what the moralist calls sin, may be defined as self-enslavement, or the enslavement of others, to the thraldom of the sub-rational and sub-moral nature with which our distinctively human attributes are tangled up. Therein consists its wrongness.

§ 5

In dealing, then, with the criminal, or for that matter with anybody who needs education, we have to take the attained measure of freedom as our starting-point; for all education, intellectual or moral, has for its object the extension of that. (Freedom may be defined with sufficient accuracy as self-determination, or the power of deciding which stimuli shall become motives.) Instead, therefore, of teaching the criminal that "he could have done no other way," a wise reformer would teach him the exact contrary. In the very fact that he could have done otherwise lies the tragedy of his lapse; but in that fact also lies the indefeasible hope of his amendment. Only, in teaching him this, we must in each case make full allowance for the special hindrances, the temptations, the internal and external factors which limited his responsibility by limiting his power, and so made it hard for him to go right.

In this part of his argument Mr. Darrow has behind him all the teachings of contemporary science. This is where the criminologist comes in, bringing with him his allies, the psychologist, neurologist, psychiatrist, and kindred specialists. All that they can adduce goes to reinforce the conclusion of common sense, which is that the attitude of the law towards the criminal has hitherto been quite wrong, because it has assumed that every man possesses as a fact absolute freedom of will. What we really possess is only the much obstructed rudiment and potentiality of freedom.

Even the reform movement for the bettering of prison life has thus far been largely futile, because it has been prompted by a sentimental pity for the criminal instead of a scientific study and understanding of him. Much has been done that was indeed necessary. Prisons have been made more healthful, more comfortable, and less humiliating. But what is needed is a radical change in the conception of the *purpose* of prisons, and consequently in the functions and equipment of those in charge of them. This is the department in which we inexpert members of the public need to go to school to the great criminologists and psychologists; to listen to Quirós and Garofalo, to our own William Healy and Herman Adler and the rest. The prison should be a moral and psychological hospital and re-education center. Where, apart from such admirable individual experiments as those of Mr. Osborne, is it so conceived to-day?

The last jail or two that I have been in illustrated the effects of the crude reform conceptions that have so far prevailed. One in particular I recall that stood on a height overlooking a wide stretch of water. The location was admirable; from that point of view, the inmates were to be envied. And in the newer part of the structure the cell accommodation was extremely satisfactory. I have more than once paid what seemed to me high prices for steamer cabins that offered less in the way of amenities. Many of the inmates must be vastly more comfortable, and in far more favorable hygienic conditions, here than outside; I do not doubt that many of them are much happier. But what of the officials? Were they physicians of the soul? Were they experts in psychology and neurology, in the re-education of perverted wills and twisted minds?

Far from it. (I am speaking of the ordinary attendants, not of the men at the top, about whom I could learn nothing.) Those with whom I talked seemed to me to have the mentality of cattle-drivers, and very much of their attitude. Their bearing toward their charges was such as inevitably to increase the anti-social bias, the grudge, of the criminal. This is what is wrong. We shall not put it right by substituting for such men either sentimentalists inspired by uninformed pity, or fatalists of Mr. Darrow's school, who will tell criminals that they could not have done other than they did.

Why can we not follow in this matter the analogy of the hospital and the lunatic asylum? The problem is certainly not larger, though it is doubtless more difficult, for the simple reason that the criminal is not a lunatic, and can be called an invalid only by a figure of speech that is largely misleading. Still, as there is a hospital for every sickness, with a staff of physicians and nurses expert in the cure of bodily ailments, so should every prison be a hospital—more properly, perhaps, a sanatorium and school—for perversions and abnormalities of mind and will. But the main task of these experts would certainly be to determine the measure of responsibility of which each inmate is capable, and to discover the best means for overcoming the physical hindrances to its exercise (where these exist and are curable) or the hostility to society which evil experiences and circumstances have engendered.

Baron Garofalo, the famous Italian jurisconsult, who agrees with this conception of the purpose of prisons, draws the logical conclusion that we should take from the judge the utterly impossible responsibility, now imposed on him, of determining the exact kind and duration of punishment for each offender. Let it suffice for the judge to determine the facts in the particular case, and to elicit such information as is available regarding the previous circumstances and conduct of the criminal. The latter must be handed over for expert study and treatment to the specialists. These must decide,—for they alone can,—both the nature of the treatment required and its duration. At present the indeterminate sentence is the exception; when penology is rationalized, it will be the rule. The test of the competence of the experts will be the amount of recidivism; when they have really mastered their business, there will be none at all.

But the central problem, as we have said, for these experts will be to ascertain the man's or woman's possibilities of moral responsibility. An offender who is found to be altogether irresponsible must be permanently detained. He must be kept at such work as will be healthful for him and will help to reimburse society for his maintenance. But when, and in so far as, he is found to be capable of responsibility, the objectives of the treatment should be reparation for his offence, if it is one involving property, and his re-education and readaptation to social life, by changing his mode of reacting to social stimuli.

In other words, there should certainly be no sentimentalizing over the criminal: no more than there is, on the part of physicians and surgeons, over the hospital patient. They tell us that crime is a disease; as an analogy we accept the statement. Now, when a disease is incurable, as, for example, leprosy has hitherto been, the patient is never let out to spread his contagion through society. So must it be with the criminal. It is altogether probable that there would be many cases of life detention under a thoroughly scientific and humane system of social protection.

For we must remember that the re-education of the criminal is only one of the two purposes of what is miscalled "punishment." The other is the defense of society. And, even on the most strictly utilitarian basis, the latter is more important than the former, because it involves the life and well-being of a far larger number of persons. Every crime directly injures many people and indirectly injures the whole community. True, none of us has any right to put on moral airs toward the criminal. There is probably none of us who has not experienced the impulsions that led him to his fall. The wrong he has done, we might have done if our outward life history had been the same as his. In so far as avoidable temptations—that is, temptations that the action of society could have removed—have thronged about him, and opportunities for the development of the better elements of his nature have been lacking, we all share in some measure what we call his guilt. Remember the old story of the good man who, when he saw a criminal going to execution, said, "There, but for the grace of God, go I." It is a confession we must all make, whatever we may take the expression "grace of God" to mean. And it is always competent for the criminal in reply to point to the good man, to the very best of men, and say, "There, but for the powers of evil, which largely were created or unnecessarily tolerated by society, go I."

§ 6

At the same time, we should think as much of each one of the victims of crime as of the criminal, and regard it as the disgrace, rather than the misfortune, of society that crime is suffered to continue on its present outrageous scale. Precisely because men are morally responsible and can modify their environment, crime can be extirpated. And so we say that the defense of society is the second legitimate purpose of what is called punishment.

On the question of capital punishment I have space only for a word. Mr. Darrow is utterly opposed to it in all cases. He thinks life is worthless, yet that it should never be taken; that man is not intrinsically different from or of more worth than a sheep, yet that somehow the criminal's life is sacred while the sheep's is not. Many fine thinkers, however, among them Professor Felix Adler, hold that capital punishment is inadmissible because it is an intolerable violation of the spiritual nature of the criminal. With great respect and diffidence, I venture to dissent from this view.

Since Dr. Adler holds, and I with him, that the spiritual nature is not identical with the empirical self, or the body, I fail to understand why the extreme penalty may not be inflicted, since nothing done to the body can touch the essential or spiritual self. For me, therefore, the only question is whether the defense of society really does require the execution of irreformable offenders. And at present, conditions being what they are, one must conclude that it does. But I can readily believe that if we had such a fundamental change in the conception of crime, and consequently such a thoroughgoing alteration of the whole penal system, as modern criminology would prescribe, together with such efficiency of police that not one criminal in a hundred could escape arrest or conviction, it would then be both possible and desirable to abolish capital punishment. For undoubtedly it is the certainty of punishment, rather than its nature, which supplies whatever deterrent influence it has. The criminal is usually a gambler. He will take long odds, but he will not wager against a certainty.

In any case, however, we cannot dispense with the conception of moral responsibility. Not merely is it an inevitable presupposition, as I have tried to show—a presupposition unconsciously shared by those who in theory deny it, but it is also the only hope of human progress.

MR. DARROW REPLIES

MR. BRIDGES'S chief criticism seems to be of my conception of man as a machine which acts and reacts according to its structure as it is moved by certain stimuli. I have treated man as a part of the whole organic universe, and therefore held that his conduct is controlled by law. My thesis was that the supposed free will with which metaphysicians and theologians have endowed man is a myth and that the problem of crime is not one of punishment, but of education and environment as these can be applied to his structure. In short, I have meant to place the conduct of man on the same scientific basis upon which one approaches the rest of the universe.

It matters not what one's view of life and conduct may be, it is difficult to write or speak without using ordinary terminology, and this does not always definitely and technically express the full meaning. For this reason every contribution must be viewed more or less as a whole, and I am quite satisfied that my position is always reasonably clear.

The mechanistic theory of life cannot be proved as one would demonstrate a proposition in geometry. But enough evidence has been gathered to allow us to proceed upon this hypothesis; the mechanistic view of life is so fully supported by facts that it seems to be the only rational starting-point for the discussion of man. So far as we know, and can find out, he functions as a mechanism. Every physician treats him in this way. The source of every abnormality or maladjustment is sought in the human machine, and all treatment is applied to the physical organism. Science has described the origin and development of the man as well as his decay and dissolution, and in both instances the process must be stated in terms of the growth and destruction of a mechanism. We can trace no other element in any stage in the development or decay of men. If any solution is to be discovered for the behavior of human beings, it must be found in the character of his structure and the effect of the environment on the specific machine.

It is quite impossible to fathom Mr. Bridges's view of man. He is too much of a scientist not to recognize the human mechanism and the effect of the stimulus that is applied to the structure, and still he is not content to view man in this light alone.

Mr. Bridges says that those who believe in moral personality attribute to man as such—irrespective of race, sex, color, age or civilization or personal endowment—a nature which is spiritual, unique in each person, and of unconditional worth. The statement must mean that every human being, irrespective of the conditions and circumstances named, has a spiritual nature, unique and of worth, which is unconditioned by anything but himself.

It is hard to conceive how a scientist could make such a statement. Do all people, regardless of circumstances, have the same nature or the same ideas of right and wrong? The child is born with no conception of right and wrong and no conception of "spiritual worth." Every idea of right and wrong that it may later hold is taken from the environment in such manner as his particular structure may assimilate it. No two human beings ever have the same attitudes or feelings. Their whole conception of moral values may differ from each other in the widest degree.

At the starting-point of such a discussion, it is better to speak plainly on vital questions. Why does Mr. Bridges use the word "spiritual" in connection with the structure of man? What does he mean by the word? Were he speaking in the religious sense, the origin of the word at least could be easily traced; but Mr. Bridges would not use religious terminology. If man, beginning as a single fertilized cell, becomes something more than a structure, it is important in discussing his conduct. The Standard Dictionary defines spirit as follows:

"The principle of life and vital energy, especially when regarded as separable from the material organism, mysterious in nature, and ascribable to a divine origin. In the most ancient way of thinking, spirit, like soul, was regarded as composed of some especially refined kind of substance, such as breath or warm air."

Can science make anything out of this word? Mr. Bridges at once goes on to say that he cannot prove his statement, in fact, that there is no proof that it is true; but that it is admissible on assumption. If so, the whole question may as well be assumed, and at once foreclose all argument.

Man is influenced by heat and cold, by food and shelter, by storm and sunshine, by the action of every organ of his body and every part of his structure. He is clearly influenced by everything that touches him, by every emotion that affects

his being, and every custom and habit that grows into his life.

Man's kinship to other forms of animal life has been so clearly proved that it is accepted by all scientists. Does Mr. Bridges think that all animals have an idea of spiritual worth "which is unconditioned by anything around them?" The reaction of all other animals is not unlike the reaction of the human structure to the stimulus applied to the machine. No one would doubt the so-called lower orders of animals are not only influenced, but controlled in their conduct, by every stimulus that touches them. No scientist to-day sees any difference between man and other organisms excepting one of the degree of complexity of their organization. Mr. Bridges admits that the attempt to account for the spiritual nature of man has led to the wildest imaginings, and that these attempts are worthless from scientific, historical, or philosophical points of view; and yet, in the face of this admission, he contends that the very fact of the existence of these attempts to explain the spiritual nature of man shows that the idea of spirit is based on truth. Mr. Bridges's chief evidence of the existence of spirit is shown by man's *feelings*. Surely, Mr. Bridges cannot mean this. It requires but little insight or historical knowledge to establish the fact that most of the crude and foolish ideas of man's existence and future happiness and misery have been stoutly affirmed on the theory that the individual *feels* that they are true and that the feeling indisputably proves the fact. As a rule, those who have thought the least about these mysteries, if such they be, have always felt the strongest, and this feeling was never in any way influenced by the strictest proof of facts.

§ 2

It would be just possible to believe in a grain of truth in Mr. Bridges's contention if the origin of the idea of spirit could not be readily traced. This belief belongs to the childhood of the race. The primitive man knew life, but had no conception of death. When the chief or his neighbor could no longer move and act, it was supposed that his spirit had left his body. The idea of non-existence was inconceivable, and the members of the tribe placed meat and drink in his tent for his use on his journey to the happy hunting-ground. Often the dead revisited the living in dreams, which was proof much more positive of the spirit of man than the "feeling" that Mr. Bridges urges in lieu of the facts. That the old belief of the past has persisted with some men to the present time only shows the strength and vitality of a religious idea when one wishes to believe that it is true.

No doubt the belief that man is mortal, that the various delusions as to his importance and persistence are not true, tends to take much of the glamour and illusion from life. The world has long indulged in these dreams and delusions and has added a certain hope to life on account of their acceptance. If giving them up destroys some of the egotism of man for himself and his race, what of it? One cannot believe simply because one would like to believe.

It is true that the mechanist does not talk about the rights of man. He knows no such word as "rights" except those that can be maintained. However, man has a certain structure, and this is largely influenced and controlled by his nervous system. He has imagination, and this makes him feel for the weak and the suffering. His imagination is the origin of sympathy, for it makes him put himself in the place of another. In order to relieve his own suffering, he must seek to relieve his fellow-man. As a rule, the "lower" animals do not come so near to him, and he does not feel their sufferings so keenly.

It is hardly worth while to discuss the question of whether the word "crime" should be used. Those who believe in "free will," "spirits," and "moral purpose" seem to delight in the use of the word "crime," and probably should be left to enjoy it. It seems somehow to fit in with free will and moral and immoral conduct. That in its larger aspects crime is simply one manifestation of human behavior cannot be doubted. Neither can it be doubted that if it were possible to pick out the worst man and the best man in the world, there would be a wide gradation between them, and no one could be found who would be entirely devoid of either good or evil. Good and evil, like justice, are relative words, human conceptions. These conceptions, however, of good and evil can probably be best translated into terms of pain and pleasure, the pleasure being good and the pain evil. All organisms reach out for pleasure and seek to avoid pain. It is possible to conceive of justice as that type of conduct which, on the whole, is the fairest to the individual involved; but this surely cannot be arrived at without appraising the individual human structure and taking account of the vast number of stimuli that move it. And if this is true, no two human beings can be judged alike, if judged at all.

What has been called crime has been one of the most serious problems of the ages. Despite all punishment, there is not the slightest evidence of its abatement, much less of its cure. So far the world has thought of nothing except to punish the criminal for the act. It seems never to have occurred to the great mass of people that every act is preceded by a cause or causes sufficiently important to be followed by the act. Sickness and insanity were once treated as crime is treated now. The world has slowly come to the conclusion that for all maladjustments, causes should be found and removed where possible.

Whether there is anything "spiritual" in man really does not seriously bear upon the question of the treatment of crime, for every one of intelligence knows that man is closely bound up by his heredity and environment and that free will, as once believed in, is not only foolish, but cruel. More and more man has been revealed as a part of nature bound by strong ties to the rest of nature and controlled in his every act by immutable law. More and more he is studied as a mechanism, and all that is learned about him is learned from this point of view. It almost surely follows that because he is a mechanism or a machine he cannot act from free will. It follows that he has no origin other than that which is common to all other matter and no destiny different from that of any other organism.

Mechanism, it is true, may carry with it the feeling of design, because we are used to studying certain machines which we know have been made by man; but the mechanism of an automobile is no more wonderful than the mechanism of a crystal or a constellation, and man has no means of finding either origin or purpose in either one. When he asks "Why?" he can get no answer. And if he should assume that there must be a cause, he must then ask "Whence came the cause?"

There are some things that we know about criminals that seem inevitably to point to the fact that their conduct is due to inevitable laws. For instance, we know that virtually all of them are poor, and we have a right to believe that there is a close relationship between poverty and crime. We know that generally they are subnormal, and therefore there must be a relationship between native intelligence, or the lack of it, and crime. We know that the great majority are ignorant, and therefore this must bear some relation to crime. True, there are a few exceptions to every rule, but these exceptions can be easily accounted for if the facts are known. Together with all the rest, the condition of the individual is largely due to what, for lack of accurate knowledge and from the point of view of the individual, we must call luck. Some seem born to good luck and some to ill. It is perfectly admissible to say that the individual has no choice, but, still, if society were differently organized, the individual might have had a better chance, and been saved from disaster. True, society cannot be blamed any more than the individual, but every one who speaks or writes or thinks or acts, does it with the conscious thought that he may influence both society and the individuals, and to some extent he may and does. If one believes in free will, he could scarcely hope to influence the individual by what he says or does. Education would be of no avail; its only purpose is to build up inhibitions, and convey knowledge that will aid in living.

It will not do to underestimate heredity and environment. There is nothing else to man. No one any longer doubts the controlling power of heredity in the animal world or the effect of environment after the heredity is fixed. No one can doubt them with man any more than with horses or cattle, and yet the world has been so long obsessed by the importance of punishment and vengeance that it calmly closes its eyes and refuses to see.

Heredity and environment are neither malevolent nor benevolent. They are simply there and are all powerful; and so long as man cannot control heredity and may influence environment, added wisdom with greater imagination may sometime show him how to improve environment so that the unfortunate and the weak may "get by."

Would Mr. Bridges deny that so far as the man himself is concerned his heredity is simply an accident, and that he deserves neither credit nor blame for either one? Neither is there any question about the good or ill luck of his early environment, and, to the believer in the powers of law and the inevitability of cause and effect, the individual has no more choice in late environment than in early. Does this fact make it absurd to speak of mind? Mr. Bridges seems to take issue with the statement that the mind is the body, but he carefully refrains from telling us what mind is. The word "mind" is used to designate consciousness and the source of the reasoning faculties of man. No one knows exactly what it is, but the latest investigation seems to point to the mind as being a by-product or result of the activity of the whole body, functioning, perhaps, more directly through the nervous system and the brain. It is true that the mechanistic theory of life will prevent one from placing blame upon the criminal, but it will not prevent one from making him understand his deed and trying to put him into more harmonious relations with life or to keep him safe from society so long as he is a menace.

I presume that Mr. Bridges would not deny the effect of stimuli on the human structure, although he seems to doubt it. It would be more scientific to say that "stimuli do not affect man until the stimuli have done something to the man" rather than to say with Mr. Bridges "until the man has done something to the stimuli." Of course every stimulus may not affect man, and he is not moved to action except by those that do affect him. In the light of science, it is not admissible to praise or blame, but even without this lamp of knowledge to light the way, every imaginative man feels almost instinctively that it is not for him to blame another for his acts.

§ 3

Few men of insight and the sympathy that grows from it are satisfied with prisons. If our jails are the best that we can hope for from civilization, then we have wrought in vain. Despite my friend Mr. Bridges, I still believe that prison surroundings should be human and that the inmate should be given all the instruction and help possible, so that he may at some time adjust himself to life. He should be shown that, due to his special structure and environment, he could have done nothing else except commit the act which placed him in jail; but that instruction, education, and training go into environment, and even though his heredity cannot be changed, with new ideals of life he may still learn to live in better harmony with those about him. If he cannot be so taught and adjusted, of course the protection of society should demand his retention in prison under the most favorable conditions possible, if need be, for life.

I am at a loss to see how the mechanistic theory of life affects the question of kindness and humanity and even of justice, and why it makes these words meaningless. Surely kindness and humanity do not depend upon the intangible, uncertain, unthinkable, word "spirit." The word "justice," of course, is a human conception; it has a certain meaning necessarily indefinite, but as applied to the individual it carries with it the idea of giving fair play. This involves a great deal, and must necessarily lead to charity on account of man's lack of insight and knowledge. Kindness and humanity indicate only the reaction of the human structure toward some other structure. They do not require the conjuring up of "spirits," but only a knowledge of the physical make-up of man. Neither does one need to judge society more than he judges the individual. The monkeys of Central Africa have a sort of society and an organization automatic or other. It is probably more complex and better than the organization of the wolves on the plains, but neither organization can be blamed for not being equal to the societies of men. Human communities are capable of no more than they perform. They can doubtless be influenced and modified by various stimuli and they doubtless are. Man is susceptible to a somewhat higher organization, but not to a perfect one. It is the best that he can do, although, perhaps, not so high as the angels or what Mr. Bridges would call the "spirits."

In the end, Mr. Bridges sees the practical situation about as I see it. He says that prisons should be changed. With this I fully agree. Neither do I say that it is impossible to do either one or both. If enough people have the emotion to do it, they will undoubtedly change both prisons and criminals. This is in nowise inconsistent with the mechanistic theory or with the statement that, in view of their history, neither criminals nor prisons could be any different from what they are. Both have changed in the past. Both will change in the future. We can only hope that the change will be in the line of decreasing the pain units and increasing the pleasure units of the human machine.

Mr. Bridges falls into the common error of extravagant statement in reference to the prevalence of crime. Deplorable as are these abnormal acts of man, they still are comparatively insignificant in life. The amount of property lost through burglary and robbery is not "astounding." It is negligible. It is probably less in America in a year than the losses of one week on the stock exchange when an active falling market is manipulated by shrewd men who are not criminals, but who are vigorous prosecutors of crime. Statistics are carelessly made, poorly digested, and often dishonestly compiled; on the whole, they are virtually worthless. During the eight months' time during which Mr. Bridges says that over two hundred homicides occurred in a city of over three million inhabitants, which means Chicago, there were twice as many killed by automobiles as through homicides.

The number of homicides is not carefully investigated, but included therein are many accidental killings and a large number of others where no prosecution should follow and no conviction could or should be had. These figures Mr. Bridges takes from the newspapers without the slightest investigation. In the large majority of the cases probably no sane man would be in favor of a death-penalty, even though he was obsessed of the benefits of capital punishment. The circumstances of most of the individual cases would be enough to prevent most convictions and almost all executions. The astounding statement that follows, that there is a direct proportion of crimes in relation to the way law is enforced, is without the slightest evidence anywhere in the world or at any period of time.

Where does Mr. Bridges get the information which he uses as a statement of fact: "There is clear evidence that the number of homicides has fluctuated from year to year in strict correspondence with the greater or less effort made to enforce justice." This statement is exceeded in grotesqueness only by the next one: "It is evident that we stand at a crisis, and are threatened with something approaching a collapse of civilization in this matter." And yet, assuming the number of real homicides in a year as three hundred, which is far beyond the real number, this would mean one one hundredth of one per cent. of the total population of Chicago are victims of homicide. If this percentage threatens a collapse of civilization, then civilization must be shaky indeed.

§ 4

One does not even need to be a mechanist to be astounded that a highly intelligent man like Mr. Bridges could say that the American public should be shocked and alarmed by the great increase of crimes respecting human life and the deplorable decline of the sense of the sanctity of human life.

Assuming that homicides in America have increased in the last few years, does Mr. Bridges imagine that it is without cause? Has the human heart grown colder and harder all because of an act of free will on the part of the criminal? Only a slight study of the subject of crime will furnish a full explanation. No doubt the idea of the sanctity of human life has measurably decreased in the last few years. There is likewise very little doubt that this lessened regard for human life is due to the Great War. For four years the whole world taught killing. Men were so glutted with killing that unless the number ran into tens of thousands every day it failed to produce any impression on the public mind. Every one was trained to kill. Even the babes just out of the cradle were regaled with stories of hatred and killing. In the number who have been tried and punished for murder are a surprisingly large number of of the veterans of the European war. Does Mr. Bridges imagine that all this could bear no fruit? The same conditions can be shown after every great war. It will doubtless be many years before the effect of the state's disregard of life will fade from the minds of men. For the state to kill more men on account of it will simply add fuel to the flame.

The effect of punishment in stopping crime always has been and always will be a doubtful question. It seems certain, however, that this effect has been grossly exaggerated. Most crimes are either committed by people who act regardless of the danger of punishment or who believe that they can plan to escape the penalty. Those who have been the best students of crime and punishment have placed the least reliance on punishment as a deterrent to crime. It has been only about a hundred years since Great Britain punished with death nearly two hundred offenses, including poaching and picking pockets. The victims were executed upon a hill in the presence of the multitude that all might be awed by seeing the wages of sin, and yet more pockets were picked going to and from the execution than on any other occasion. The general opinion has been usually accepted that as the harsher punishments were relaxed, crime decreased. Most, if not all, the States in the Union forbid showing scenes of executions on movie screens. The reason urged is that it suggests crime and leads to its commission. Still, the newspapers publish all the details, sending these suggestions broadcast to the community. If there is a reason for forbidding the showing of such pictures of crime on moving-picture screens, there is an even greater reason for forbidding the stories of crime to be printed by the newspapers. And yet, unless the public is fully informed of all the gruesome details that follow from homicide, according to the deterrent theory the example of the killing by the state will be lost.

Mr. Bridges falls into the common habit of characterizing all effort to humanize prisons or lessen punishment as sentimentalism. It is passing strange that a mechanistic view of life leads to sentimentalism and a "spiritualistic" view is synonymous with stoicism, if not hardness. It is doubtful if anything for helping man or ameliorating the conditions of life ever had its inception except in sentiment. Sentiment is really the child of the imagination, and should be cultivated rather than restrained. Of course I am aware that when one disapproves of some particular "sentiment" one calls it "sentimentalism."

Crime at its best is gruesome and distressing enough. Other abnormalities and defects of human conduct have been studied and more or less understood. After the cause is diagnosed, intelligent treatment is given. Although the scientist and student of crime have long and clearly shown that the manifestation of conduct called crime can be understood and treated, and in this way materially lessened, the world persists in believing that there is no cure or mitigation except punishment.

The whole life of man on the earth abounds in the record of the cruel vengeance administered by the state. It is a record of killing in the most ghastly way—killings for what are still crimes and what are no longer crimes. Only a very small fraction of the victims put to death have suffered for acts that the world punishes to-day. Deaths for sorcery, witchcraft, and heresy have claimed a far larger number of victims, and the punishment has been meted out in a far more odious and horrible way. All this shows that society punishes those whom it hates, and any fanaticism, religious or social, claims its victims by the thousands. Death is administered because organized society hates and gets joy in killing the ones it hates.

Those of us who believe that all conduct is the result of law, and that all men are controlled by their heredity and environment, are as anxious as the rest that crime should disappear. We, however, believe that it can be diminished, if not finally obliterated, only by finding the causes and intelligently treating these causes rather than rending and destroying in anger and hate.