

say to himself "Ah, here comes Pollock, a grand man Pollock, just the man to make a contract with", what he said was "I do not know who this man is, but at least he is not that ghastly man Said," just as Mrs. Sowler in *Sowler v. Potter* said to herself "I do not know who this woman is, but at least she is not that dreadful woman Robinson." Moreover, the adoption of Professor Goodhart's view could lead to absurdities. Suppose that the plaintiff in *Said v. Butt*, instead of sending a friend on his behalf, had gone to the theatre box-office disguised in a false nose and beard and thereby obtained a ticket, would the contract then have been valid? According to Professor Goodhart's view it would, and Professor Goodhart himself says that if B knows that A does not wish to make a contract with him and therefore disguises himself to look like C, a contract entered into between A and B is void, but that if B disguises himself with a false beard so that A does not recognize him the contract is valid.⁶ But, with respect to the learned author, this is ridiculous, for it means that the validity of a contract—and the fate of property which has passed into the hands of equity's darling, the bona fide purchaser for value without notice—will depend on whether the person who seeks to conceal his identity uses a stooge or a false beard, or even what sort of a false beard he uses: the law is surely not such an ass as all that.

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CRIMINOLOGY: A VIEW FROM THE PAST?

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The average man's idea of a criminal is simply a scoundrel who has chosen to break the law and injure his fellow men. Therefore he deserves to be punished swiftly and without mercy. The criminologists, most of them sob sisters, are swinging from that point of view. They claim that crime is not caused by free will but that a criminal's intents and actions are determined from without. Crime, as they depict it, becomes a disease, either inherited or acquired by contagion.

The criminal is no longer a villain who must be suppressed by force, but an unfortunate individual who is the victim of circumstances. So every time a bounder holds up a bank, robs his crippled grandmother, shoots a politician, steals an automobile, or kicks his neighbour's child

6. *Op. cit.*, at 242.

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in the slats, it is sought to attribute his act to determinism. He is suffering from a mental twist. He must be examined by alienists and psychiaters. These mountebanks must then be called at his trial to expound the reason for the act.

The aim of punishment, according to legal theory, is to act as a deterrent. The criminologists, on the other hand, do not aim to make the prisoner sweat in order to deter others from the commission of similar acts, but to dissuade and rehabilitate him. He must be nursed and coddled and kept under "observation" by a learned psychiatrist, in order that the latter may ascertain the disease unwittingly imposed by an erring ancestor or acquired through association with vicious companions.

It is difficult for the average man to grasp this theory of determinism. It is difficult to imagine an apparently voluntary act that is determined, even materially conditioned, from without. In all the other relations of life the average man sees free will accepted as axiomatic.

What the specialists in mental diseases ask is to separate one concern from the rest and hand it over to determinism. Legislators are condemned for passing harsh laws and judges for executing them. Society is blamed for "coercing" morons into crime. All of which emphasizes the theory that criminals are helpless victims of circumstances.

Suppose these idiotic psychiatric theories were applied in other fields. Suppose the execution of contracts was actuated by determinism and not by free will. Suppose it was argued that an employer's failure to pay his workmen wages was attributable to an evil heredity or the stupidity of society. Suppose it was seriously contended that a dishonest bookkeeper who systematically stole from his employer and dissipated his ill-gotten profits on hard liquor, women, mosquito campaigns and uplift movements, should be excused because he was an unwilling victim of circumstances.

Would the courts accept this reasoning? Would the average man swallow it? Certainly not. Then why the obeisances to the maudlingly sentimental criminologists?

FRIVOLOUS AND VEXATIOUS PROCEEDINGS

Recently, it was pointed out by Cartwright C.J.C. in his judgment for the Court in *Jones v. Bennett*¹ that "the appeal of Attorney-General

1. (1968) 2 D.L.R. (3d) 291 (S.C.C.).