

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.).

[of British Columbia] from the acquittal² of the plaintiff was, on motion made by counsel on behalf of the plaintiff, stricken out as frivolous and vexatious³. A subsequent inquiry, sent by a member of the Faculty of Law, University of Manitoba,⁴ to the ten provincial Deputy Attorneys-General and Ministers of Justice asking whether, in the recollection of the members of their departments, any proceedings of their departments, had ever been "stricken out as frivolous and vexatious", brought a negative reply from all of the provinces with the exception of two provinces which did not bother to reply.⁵

2. Of criminal charges, separate and apart from the case with which the Supreme Court was concerned, laid by the Attorney-General of British Columbia.

3. *Supra*, note 1 at p. 293.

4. Cameron Harvey.

5. British Columbia and Ontario.