

despised as immoral. One of the central aims of the laws is to curb it. It is to be lifted up to the moral level of the mob. Thus civilization has hard sledding among us. The free functioning of those capable of it is deliberately impeded. But it resists that hampering, and in the fact lies hope for the future. The big cities, at least, begin to move toward genuine civilization. They will attain to it if, when and as they throw off the yoke of the rustic Bible-searchers. Their own mobs are become disciplined and quiescent, but they still face danger from the dunghill Goths and Huns. The history of the United States during the next century will probably be a history of a successful revolt of the cities. They alone are capable of civilization. There has never been a civilized yokel.

Dr. Nearing dissents from this view. The future he envisions in "Where is Civilization Going?" is marked by a general leveling. There will be no more unproductive leisure, and no more class distinctions. The common people, having more votes than their betters, will run everything. There will be no more injustice, no more poverty, no more exploitation, no more wars. It is a pretty picture, but I find myself unconvinced by it. Slaves are probably quite as necessary to civilization as men of genius. The human race seems incapable of becoming civilized *en masse*. Some one must milk the cows—and milking cows and being civilized appear to be as incompatible as drinking highballs and standing on one's head. But Dr. Nearing is not to be dismissed as a mere vapid dreamer; he is actually a highly intelligent man, and under any genuine civilization he would be better appreciated than he is in the United States. When one hears of him it is commonly to the effect that some ass of a college president has forbidden him the campus, or some gorilla of a policeman has jailed him for sedition. What our third-rate snivelization fails to estimate at its real worth is the resolute courage and indomitable devotion of such a man. His virtues are completely civilized

ones; he is brave, independent, unselfish, urbane and enlightened. If I had a son growing up I'd want him to meet Nearing, though the whole body of doctrine that Nearing preaches seems to me to be false. There is something even more valuable to civilization than wisdom, and that is character. Nearing has it.

Men in Cages

LIFE AND DEATH IN SING SING, by Lewis E. Lawes. \$3.50. 9 x 5¾; 267 pp. Garden City, L. I.: Doubleday, Page & Company.
CHICAGO MAY: HER STORY, by May Churchill Sharpe. \$3. 8½ x 5¾; 336 pp. New York: The Macaulay Company.

MR. LAWES is the warden at Sing Sing and has been in the New York prison service for many years. He is a man of kindly habit, and apparently suffers greatly under the cruelties that he sees about him every day, some of which he is compelled by law to inflict. Thus, in his introduction, he sets forth his attitude toward the criminal:

I see him as a *man* in prison. I live with this man; I eat with him; I talk with him; I read his mail; I supervise his visits; I know what he reads; I am with him when he is sick; I know how he bears up under sorrow; I see him as he goes to his death. . . . I believe I know him and understand him as few others do.

This experience convinces Mr. Lawes that the present prison system is fundamentally vain and foolish. It does not give society sufficient protection against the incorrigible criminal, for only too often it turns him loose after a time and virtually bids him resume his felonies, and it fails to give the needed support and guidance to the offender who shows possibilities of reform. Many a discharged convict, he says, is driven into fresh crimes on his release, not because he is incurably vicious, but simply because he hasn't money enough to turn around and find himself in what has become a strange world. He needs capital to reestablish himself, and all the state hands him is \$10 and a shoddy suit of clothes. Before he can get a job the money is gone, and there is nothing left for him to do save to snatch another purse

or knock off another Thom McAn shoe-store. Criminals seldom have any friends who are not themselves under suspicion. They bear no letters of recommendation. All the difficulties that confront an ordinary poor man are multiplied for them, and so they tend to succumb.

The author inclines toward the reforms advocated by the New York Commission on Prison Reform and approved by Al Smith when he was Governor. These reforms contemplate taking away the determination of punishments from the judges, who are commonly mere legalistic machines and hence deficient in prudence and imagination, and putting them in the hands of a permanent body of experts. Every convict would be sent to a house of detention, and there studied by these experts. If it turned out that he was insane, he would be clapped into a lunatic asylum, and kept there until he recovered or died. If it turned out that he was simply ignorant, he would be sent to school and an effort would be made to enlighten his mind, and on his graduation a place would be found for him in the world outside, commensurate with his native gifts. And if it turned out that he was really a bad egg, and insusceptible to any kind of reform, he would go to prison and stay there for life.

This scheme has a fine plausibility, but unluckily it is full of holes, and some of them are large enough to admit a horse and cart. Where is Warden Lawes going to find his experts? Are they to be recruited at Columbia University, like the "general experts" that Bird S. Coler once found on the New York City payroll? Or are they to be nominated by Tammany? Or are they to be got by putting want-ads in the New York *Times*? No such experts, I fear, really exist in the world. Even in the narrow field of psychiatry those who pretend to existence are mainly quacks, and judges and juries who believe even policemen commonly laugh at them. For the rest of the job, I suppose, psychologists would be preferred—or maybe endocrinologists.

But what rational man takes any stock in either?

Thus Warden Lawes will have to go a long way before he mans his board, and an even longer way before he convinces the public that it is to be trusted to put down crime. He constantly forgets, like most penologists, that retribution is still a motive in punishment, despite all the fine talk about reforming the criminal. The plain people, facing the criminals' gross invasion of their security and trembling with fear, demand *katharsis*. They want to see him sweat and suffer. They feel cheated and uneasy until he is either broken or done to death. Why were nine out of ten New Yorkers so hotly in favor of the execution of Ruth Snyder and her dupe, poor Mr. Gray? Simply because the crime they stood guilty of was so inexcusable, so cold-blooded and so intolerably brutal that the public horror of it could be appeased only by drastic and ferocious measures. Sending them to prison seemed inadequate and unsatisfying, and with sound logic. To be sure, putting them to death was unpleasant to Mr. Lawes personally, but that was no argument against it. So is the office of the garbage-man unpleasant, and that of the proctologist, and that of the butcher, and that of the Federal judge under Prohibition. But society pays these men for doing what they do, and, until human nature is greatly changed, it will pay men for doing what Mr. Lawes does.

Like most sentimentalists, he frequently permits his theories to run away with his facts. "Have you ever heard," he demands, "of a murder committed by a released murderer?" The answer is yes. I have heard of more than one. Not long ago, in Maryland Irredenta, where old-fashioned notions prevail and murderers are still commonly put to death, one was foolishly released after serving an inadequate term, and committed another murder within six weeks. Two years ago, in the same ancient Commonwealth, I had the honor of attending the bandit Whittemore

in his last moments: he had committed two murders, and maybe five or six, before he was brought to the rope at last. Six months ago two of his old colleagues in assassination, after escaping the noose once, were belatedly stretched for resuming their art. Hanging one scoundrel, it appears, does not deter the next. Well, what of it? The first one is at least disposed of. Life in Maryland is measurably safer since Whittemore and his friends were converted into angels. If they were alive today they would be slaughtering still, and if not outside prison walls, then within them. All three, in fact, were hanged for killing guards.

Mr. Lawes offers, as one of his arguments against capital punishment, that those who suffer it are frequently the victims of chance. Two bandits, let us say, attempt hold-ups, and each fires at his victim. One hits his man in the heart and goes to the chair. The other wings him in the arm and escapes with four years. But this is not an argument against capital punishment: it is simply proof that many criminals escape who ought to be executed at once, as security for the morrow. What reason, indeed, is there for letting *any* gunman live? If society has any right to interfere with criminals at all, then surely it has a right to dispatch that one who grounds his professional activity upon the axiom that life is worthless. The fact that he misses his victim's heart is nothing; the only essential point is that he aimed at it.

The concrete felon, of course, is often an appealing fellow. The chances he takes give him a romantic aspect, and he not infrequently argues for himself very ingratiatingly. I confess that I have never met a criminal without developing a certain sympathy for him, and making some sort of effort to have his punishment ameliorated. At the present moment I have at least ten such enterprises under way. But what I feel about men I have come to know, and what Warden Lawes thinks about men he has dined with—this is not material evidence in the case of the criminal

vs. society. Even Prohibition agents have their friends and are respected by their fellow Hoover men, especially if they are liberal with pre-war goods. But the fact remains that Prohibition agents and bandits, burglars and kidnapers, pickpockets and murderers, make their livings in ways that present an intolerable menace to the rest of us, and that they have no reasonable ground for complaint when our servants lay them by the heels and use them brutally. They set the rules of the game; we don't. They take the chances. They are no more forced into crime than men are forced into aviation.

The punishments that we mete out to them, true enough, are often stupid, and even idiotic. It is a poor thing to lock men in cages like animals, and keep them there for long years, breaking their spirits and making them hopeless and useless. I have frequently advocated cleaner and more rational devices, that would dissuade them from crime or make them incapable of it, and yet leave free play for their courage and enterprise in useful fields, *e.g.*, flogging for petty robbers and thieves, the amputation of the right forefinger for pickpockets, the pillory for such offenders as the Hon. Mr. Fall, the ducking-stool for Methodist bishops, deportation to the Dry Tortugas for Prohibition agents, and so on. In Chicago May's instructive volume of reminiscences she says that one of her old associates, enraged against her for some private offense, threatened to disfigure her face, and so ruin her business as a black-mailer and prostitute. The fellow had sense. It would have stopped her far more effectively than her ten years in a barbarous English prison. When she got out at last she resumed her practice instantly. Now she has given up shaking down suckers and gone to work for Hearst. Beauty is not necessary in her new profession. She might have entered it years ago if her friend had carried out his threat.

Such punishments were once in vogue, and worked admirably. They not only gave society the *katharsis* that it demanded; they

also reformed many criminals. But sentimentalism made war upon them, and, with characteristic imbecility, substituted the slow and irrational torture of imprisonment. Today every town in Christendom has a prison, and all of them are bulging. At least half of their inmates, on being turned loose, return to crime. But the sentimentalists would not consent to their abolition in favor of logical and effective punishments. They pity the criminal far too much to do anything sensible about him, either for his benefit or for that of society. The best they can think of is to convert him into a laboratory animal, and expose him to the experimentation of quacks.

The Nine Against Liberty

LOSING LIBERTY JUDICIALLY, by Thomas James Norton. \$2.50. 8½ x 5¾; 252 pp. New York: *The Macmillan Company*.

MR. NORTON is a railway lawyer in Chicago, and the author of a well-known work upon the Constitution. In the present volume he examines at length the process whereby the guarantees of that ill-starred instrument, and especially of the first ten amendments thereof, have been done to death by judicial interpretation. At the moment, as everyone knows, the Bill of Rights is on its last legs. Occasionally, as if stricken in conscience, the Supreme Court reaffirms some provision of it, but in the main it is now null and void. A lawyer who went into court protesting that his client's right to a jury trial had been invaded, or his right to a reasonable security in his person and habitation, would be laughed at by his brethren of the bar. There is a decision vacating almost every such right. Step by step, at first cautiously but of late boldly, the learned justices have found reasons to sustain the wholesale destruction, first of individual rights, and then of State rights. Today the once free American citizen is a mere subject. Congress is at liberty to do almost anything it pleases to him, and what Congress is afraid or ashamed to do is done gaily by the prehensile bureaucrats of the executive arm.

Mr. Norton traces this gradual destruction of the Constitution at great length, and with much learning. Most of the assaults originated, not in the Federal courts, but in the State courts, especially of the Middle West. It was Kansas and Iowa judges who invented the devices whereby the Americano is now flogged and witch-ridden under the Volstead Act and other such preposterous statutes. But the eminent jurists at Washington, when outraged citizens appealed to them, obligingly furnished the casuistry which converted usurpation into law. At times, I daresay, the business strained them, but always, in the end, they were equal to it. Mr. Norton gives specimens of their reasoning, often *in extenso*. I commend them to all students of logic. They show a truly magnificent capacity for nonsense in its higher and gaudier forms. You will search the editorials of the New York *Herald Tribune* for many years before you find any nobler specimens of paralogy.

Thus we stand, and what is to be done about it I don't know. At almost every step a minority of the judges has protested against the slaughter, but of late that minority seems disposed to give it up. If Al had been elected there might have been a change, for he was pledged to nominate judges who took the Bill of Rights seriously, and in a few years, what with the high judicial death-rate, he might have got robes upon a majority of that variety. But it will be hopeless under Hoover. He owes too many debts to the Anti-Saloon League and to the Methodist Board of Temperance, Prohibition and Public Morals to do anything in that direction. These great moral organizations will be intensely interested in the appointment of new judges, and you may be sure that they will pass no candidate who seems to be tainted with Bolshevism, *i.e.*, who shows any sign of believing that the Bill of Rights means what it says. The ancient liberties wither and decay. They will be revived, if they are ever revived at all, as they were born: by epidemic hemorrhage.