

double jeopardy in Article I of the Bill of Rights. What it says, in plain English, is that a man may be tried over and over again for what is essentially the same offense, and that if one, two, three or *n* juries acquit him he may yet be kept in the dock, and so on *ad infinitum* until a jury is found that will convict him. In a booze case the first jury may find, as did the Dunne jury, that he had no liquor in his possession, and yet another jury may find him guilty of keeping it for sale. And what such a series of juries may do may be done by one single jury—by the simple device of splitting his one offense into two, three, four or *n* offenses, and then trying him for all of them. In order to go free he must win verdicts of not guilty on every count. But in order to jail him all the prosecuting attorney needs is a verdict of guilty on one.

I commend this decision to Dr. Dewey and the other Liberals who still cherish the delusion that Dr. Holmes belongs to their lodge. Let them paste it in their Sunday go-to-meeting hats. And I commend to them also the astounding but charming fact that the one judge who dissented was Mr. Justice Butler, for long the chief demon in their menagerie! This is what he said:

Excluding the possession negatived by the finding under the second count, there is nothing of substance left in the first count, for its specifications were limited to the keeping for sale of the identical drinks alleged in the second count to have been unlawfully possessed. . . . The evidence having been found insufficient to establish such possession, it cannot be held adequate to warrant conviction under the first count. The finding of not guilty is a final determination that possession, the gravamen of both counts, was not proved.

Alas, Dr. Butler plainly lacks the literary graces of his late eminent colleague. He

writes in a cramped, heaving, smoky manner. His decisions are bare of epigram. But in the Dunne case, at least, he seems to have gone to the trouble, now most unusual in an American judge, of studying and remembering the Bill of Rights.

Cousin Jocko

THE SOCIAL LIFE OF MONKEYS & APES, by S. Zuckerman. \$3.75. 8½ x 5¾; 356 pp. New York: Harcourt, Brace & Company.

DR. ZUCKERMAN, who seems to hail from South Africa, is anatomist to the London Zoölogical Society, and in the discharge of his duties has had a great deal to do with the primates, and especially with apes. Somewhat unusually for an anatomist, he prefers them living to dead, and has thus picked up some odd and interesting information about their habits. What distinguishes them from practically all of the other animals below man, he says, is their continuous capacity for reproduction. They are perennials in sex, as man himself is, whereas the creatures lower down the scale are mainly annuals or semi-annuals. The effects of this peculiarity upon what may be called anthropoid society are profound. The other animals mate and part, and the only group of any measurable permanence among them consists of the nursing mother and her children. But among the monkeys and apes there is the husband and father, and not infrequently there are also supplemental wives, and even, at times, a couple of bachelor *Hausfreunde*, with prerogatives not unlike those of a boarder in a Slav household of the mining regions. Thus these lowly cousins of ours know the meaning of adultery. In addition, they are acquainted with most of the other sexual villainies described by

Dr. Krafft-Ebing, and are thereby almost ready for conversion to Christianity.

Nevertheless, Dr. Zuckerman, following Dr. Robert Briffault and other recent authorities, believes that they show nothing properly describable as social organization, and are, in fact, quite devoid of the so-called social instinct. The impulse that moves them in their relations with one another, he says, is purely egoistic. In large part, it is generated by the reproductive urge, and for the rest it flows out of a lust for dominance. When a large ape goes to the rescue of a small one beset by an enemy, he is far less concerned about saving the victim than about beating the aggressor. What he longs for is simply a chance to master the situation, to prove that he is boss. Do monkeys groom one another solicitously? Then it is not because they are really solicitous, but because fingering fur gives them pleasure. Do they guard their dead jealously? Then it is only because they are too stupid to distinguish between the dead and the living. Do they nurse their sick, as travelers report? They do not. Usually they abandon their sick, but sometimes they kill them.

Dr. Zuckerman is a learned man and very persuasive, but I must confess that his main argument leaves me with certain doubts. It may be true, as he says, that "sub-human primates have no real apprehension of the social situations of which they themselves form part," but the same thing, obviously, might be said of multitudes of human beings. It may be true again that their social organization is based, not upon any rational concept of mutual aid, but upon the primary

impulses to reproduce and to dominate, but that is manifestly true also of many forms of human society, including, at least in part, some of the highest. All that Dr. Zuckerman really proves is that monkeys do not ponder their acts—that they are even less reflective (though perhaps by no more than a shade) than the great majority of human beings. But that simply chrows him back upon instinct, and leaves him where Darwin was in Chapter IV of "The Descent of Man". He rejects Darwin because he can discern no special *social* instinct, but he forgets that Darwin used the term in a very wide and loose sense, and noted carefully that "the parental and filial affections are here included." Certainly he does not dispose of this hypothetical social instinct by breaking it up into a reproductive instinct, an instinct to dominate, and so on. The important thing is not the precise nature of the impulse—to give it a safer name than instinct—which induces apes to form societies, but the fact that such societies are somehow formed, and by animals which, by Dr. Zuckerman's own evidence, are quite unable to reason.

His book is not easy to read, but it is well worth reading. The author presents a great many first-hand observations, and gets rid of a lot of romantic but irrelevant legend. He fills many gaps in the investigations of Köhler, Yerkes, Thorndike, Bingham, Hartman, Lashley and other scholars. Such inquiries as those he pursues have a very high value, for every time anything is learned about the behavior of the sub-human primates something is also learned about the behavior of man.

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in this issue will be found in Editorial Notes.

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