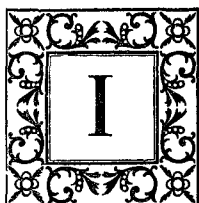


The Juror's Part in Crime

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IN this year of grace, 1925, it is with profound diffidence that any one who has had practical knowledge and experience along any particular line of human activity should air his opinions and conclusions; for the present day is the millennium—the period of jubilee—for the individual who knows a little about a great many topics, and his views, expressed with the utmost authority, are but so many illustrations of Alexander Pope's immortal warning that "a little knowledge is a dangerous thing." In connection with no subject is this more true than with the subject of crime and the enforcement of the criminal law; and I have been so frequently corrected and contradicted in my views on these subjects by young ladies who have taken a six months' course in social uplift, or by those of more mature years who on several occasions have taken fruit to the inmates of some penal institution, or by some person who has read a "magazine article" by a convict describing the discomforts to which he had been subjected while in durance, that it is with much hesitation, after twenty-three years spent in the administration of the criminal laws, I advance any ideas on the present conditions of crime in this country.

Making every allowance for the difficulty of obtaining precise figures, because of the deplorable lack of accurate and scientific criminal statistics in most of the United States, there can be but little, if any, doubt that, compared to nearly all other civilized and many half-civilized and uncivilized countries, the volume of crimes, both against the person and against property, is appallingly large, both in absolute figures and in proportion of the amount of crime to population. It has been calculated that if the ratio of criminal homicides to population were the

same here as in England, we would have about 480 criminal homicides a year in the United States, instead of which we have over 8,000. In the last ten years we have suffered over 85,000 of them (more than our losses in killed in the World War) instead of the 4,800 which the English ratio would have produced. The ratios of larcenies, robberies, and burglaries are indicated as still more unfavorable to us. The larceny business, in all its different forms and ramifications, may fairly be described as one of the most important and flourishing in the country, and the value of its annual "turn-over" is colossal—not less than three billion dollars, according to the calculations of the burglary and theft insurance companies. The larcenies of automobiles alone amount to millions of dollars a year; the amounts of goods stolen while in transit, from railroads, express companies, and steamship lines, run into millions more; while the "hold-up" department of the business has of late years made astonishing progress, and the swindling and "get-rich-quick" departments turn in their millions with increasing regularity, and the workers in the burglary and embezzlement branches can point with pride to their earned profits.

Of course "the law" is blamed for this tremendous exhibition of law-breaking, although few people have in mind clearly what they mean by "the law" in this connection. Certainly our criminal laws—that is, the statutes themselves—are about as good as the corresponding Canadian statutes; yet on one side of an imaginary boundary-line a condition exists differing materially from that on the other, though the criminal laws of the two countries do not differ materially. If by "the law," the administration of the law is meant, a different situation arises. Undoubtedly the administration of the law in all parts of this country is less efficient than in some other countries; but also undoubtedly in some parts of this country it

is at least as efficient as in some other countries—and yet even in such parts the percentage of crime is higher with us. To illustrate, the police department of the city of New York and the machinery of the courts are at least as efficient and up to date as those of the island of Bermuda. On the occasion of a visit there a few years ago, I found the island much excited over their first criminal homicide in twenty years—a stabbing, following a quarrel in a saloon. On the basis of proportion of crime to population, the city of New York ought to have had 300 such killings during those twenty years. It is perfectly certain that they were at least 3,000. While the difference in the administration of the law does account for the excess of crime in this country to some extent, that extent varying greatly in different parts of the country, it comes far short of accounting for the whole excess of crime here.

In my opinion the weak spot in our administration of the criminal law is not so much in our police forces, or our prosecutors, or our courts as in our juries, which is equivalent to saying—in our people's general attitude to the criminal. The tendency of the American jury is not to deliver a verdict according to the evidence, but to pronounce a sort of judgment of Solomon, although the qualifications of the jurors for such a delicate piece of work are usually in striking contrast to those of the monarch whom they imitate. Thus, in a homicide case, they do not decide whether A unlawfully killed B, but whether B had really cheated A out of the \$8.50 which was the subject-matter of the dispute, and therefore ought to have been killed; not whether C stole \$500 from his employers, but whether the latter were paying him an adequate salary in view of his having a wife and eleven children, and also whether the employers were, or were not, using fair methods in competing with the store on the next block; not whether D had criminally abducted the girl, but whether the judge would give him more than one year, if he had so abducted her. A perfect illustration of this tendency is afforded by a murder case that was recently tried before me. The defendant (A) and the deceased (B) were both members of a prominent labor union. Bad

blood had arisen between them, and finally a formal fight was arranged between them, at the close of working hours in the building where they were employed. Although B was the larger and heavier of the two, he had failed to acquire the information that A had been a professional boxer of considerable experience, and he was therefore both surprised and mortified when his smaller antagonist knocked him out with neatness and despatch. Instead of taking his defeat in a chastened spirit, he brooded upon it and waxed sore and vengeful, made many threats against A, and on one or two occasions tried to precipitate another fight. Finally one night, in the meeting-room of the union at the close of a meeting, while some twenty or thirty members still remained, B broke loose and projected himself at A, who thereupon drew a revolver and shot him dead. While the conduct of B left much to be desired from a sporting standpoint, and while he had undoubtedly become a nuisance in A's life, yet the latter had conclusively shown his ability to take care of himself in a fair fight, and the presence of numerous of his friends and fellow-workers in the room insured him against any serious harm from B, yet A was promptly acquitted. Human life (except that of a defendant) is held very cheap in our jury-rooms, and B had made such a nuisance of himself that a jury found that his removal was justified. It is this attitude on the part of juries in homicide cases, as much or more than any one other thing, that causes the enormous percentage of acquittals in this country in such cases, with the consequently enormous number of homicides.

This quality in American juries is the expression of a wide and underlying attitude in the mass of our people toward the criminal. Of course, every one has, and expresses, a dislike for crime in the abstract, but in dealing with the concrete manifestation of crime, which is the criminal, this attitude of good-natured sympathy and tolerance for him, and of indifference to the evil he accomplishes, goes far toward paralyzing the efforts of judges and prosecutors.

In the city of New York about 900 men, women, and children are killed annually by motor vehicles, a substantial

proportion of them being the victims of gross negligence and disregard of the rights of pedestrians at street crossings. The police almost invariably arrest in such cases, and the district attorney prosecutes in a large number. If juries were capable of looking beyond the individual and of making an example for the general good, this evil could be materially reduced by the certainty that a fatal accident due to negligence would bring punishment. But our juries are incapable of anything of the kind, and so constantly acquit even in the clearest and most extreme cases that the prosecutor goes into these cases as foregone failures. The defendants' attorneys draw a pathetic picture of the disrupted home, and inquire whether a model husband and father, who was guilty only of a deplorable lack of judgment under trying circumstances, should be sent to Sing Sing to herd with murderers and thieves—and the juries acquit.

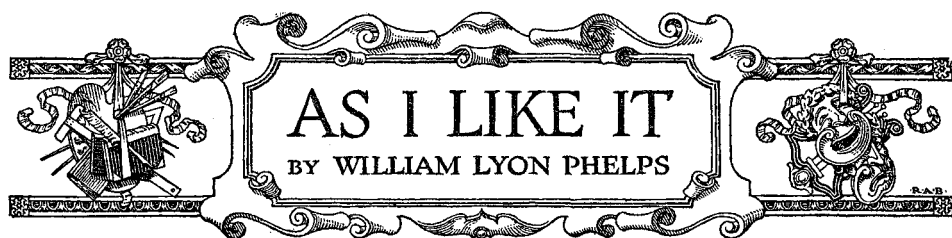
This attitude of juries is well illustrated in their attitude toward the police. It may be stated generally that they have no liking for the police, no sympathy with them in the performance of their duties, and that they rarely believe them if there is any excuse whatever for their not doing so. But the moment that a policeman is himself brought to trial as a defendant, he is taken into the sympathy extended to all defendants, his word is taken and believed (although, of course, his motive to falsify is much stronger than in any case where he testifies merely as an officer), and if any of the witnesses against him are criminals,

their testimony is regarded, for once, with suspicion.

No word, nowadays, is really more abhorrent to the American people than the word "discipline." They hate to subject their children to it, they hate to submit to it themselves or inflict it upon law-breakers, and even when an infinitesimal portion of our criminals reach state's prison, they refuse to bring the hated thing to bear upon them. They seem to regard "discipline" and "cruelty" as synonymous words and, in a well-meaning effort to avoid the latter, throw the former to the winds and provide a summer baseball schedule and a weekly series of motion pictures and vaudeville shows throughout the year to men who are supposed to be used as living examples of the biblical but un-American saying that "the way of the transgressor is hard."

Religion and the teaching and practice of religion involve discipline, and therefore a generation is now on the stage who are well-nigh pagan, according to any religious standards of the past. But you can have discipline without religion, and the pagan youth of Greece and Rome were brought up with a strict sense of discipline in the home and to the state, while our modern pagans are without discipline of any sort. The natural and inevitable result has followed; and short-sighted indeed is the person who seeks to attribute to our statute law, or to our methods of procedure in enforcing that law, the unexampled volume of crime which now afflicts us.





ON a certain New Year's Day in the twentieth century I entered the city of Munich. The sky was cloudless, the air was crisp, and in the strong sunshine the holiday groups were full of animation, as in the second act of "Faust." Military bands were playing; indeed, the whole atmosphere seemed full of music and laughter. We drove up the broad Ludwigstrasse, turned into the Schellingstrasse, and at Number 3 debarked at the Pension Nordland, kept by two charming North German ladies, Frä. Junkers and Frä. Lammers. Our rooms faced the south, and were flooded with sunshine; in the corner stood the ornamental but practical porcelain stove, reaching to the ceiling. I had an indescribable feeling of buoyant happiness; and although Munich and its people were almost unknown to me, I felt like an exile who at long last had returned home.

With a brief Italian interlude, I remained in Munich seven months; the charm of the first impression steadily deepened. Outside of America, it became my favorite town; and if I had not been able to live in the United States I should have chosen Munich over any other place on the globe. Its advantages were many; I will mention a few.

One characteristic remains a mystery. Munich was about the same size as Boston, and yet there were comparatively few people on any street. I never saw the sidewalks crowded. Where were all these hundreds of thousands of people? After dark the place was as quiet as a village in Vermont; the cafés and resorts were brilliantly lighted within, but there were no grandiose or flamboyant entrances. My friend and colleague, the late Professor Henry Emery, arrived in Munich in the evening, and after dinner he drove about in a taxi; not seeing any resorts or any people, he thought the driver must be taking him to some remote quarter. He therefore called out: "Take me some-

where." "Isn't that rather indefinite?" "Why, you know what I mean. Take me where there are plenty of lights, lots of noise, and crowds of people." "What you want is the railway station." And indeed that was the only place in the vast city that could fill such a prescription.

Everything in Munich I wanted to see was within walking distance. The Court Theatre, the Residenz Theatre, The Playhouse, the Art Galleries, the English Garden, the University, the State Library, were all within ten minutes on foot. The tennis courts were in the heart of the city; the golf links was ten minutes by trolley.

Munich seemed to be arranged for the convenience of the average person, not for the pleasure of a leisure class. Grand opera, which I attended twice a week, always began at six o'clock; it was usually over at ten; it was a very long opera, like "Meistersinger" or "Götterdämmerung," that extended toward eleven. Playhouses began their performances at seven or seven-thirty, and concluded not later than nine-thirty. Both opera and theatre were regarded not as luxuries, but as necessities; they were given for people who would have to rise at the usual hour on the next morning, and do the regular day's work. The result was that during all the weeks in Munich, I averaged five nights and two matinées at the theatre or opera, and never felt fatigue.

To go to the theatre or opera in England, France, or America, means—apart from its expense in money—a terrible expense in time and energy. Many plays do not begin until nearly nine, one is not out until nearly midnight, and one is a long way from one's cubicle.

Furthermore, at the Munich theatres the playgoer wastes not a moment. The time when the performance will begin is previously announced, the one "long pause" between the acts is advertised, and the time of closing; all three events take place exactly according to schedule.