CHAPTER 2
HISTORICAL BACKGROUND OF THE CRIMINAL JUSTICE SYSTEM

The survival of the country through a welter of agitations, linguistic movements, political adventurism, mass hysteria, student indiscipline and other forms of anti-social activity are the most remarkable developments in the history of India. The record of service of the police in India during its formative years is indeed a chronicle of their courage, loyalty, and devotion to duty; but as Lord Lloyd has aptly said, those men "who have so often risked and too often lost their lives at the call of duty need no rhetoric". ¹

1. Traditional Crime In India

Now, more than a decade after the emergence of India as a sovereign republic, it can claim to have settled down to a state of normalcy, although some recent exacerbations emphasize the need for continuous vigilance. Progress is no doubt the country's watchword, but no progress can be real if it were dependent on the shifting stands of internal disorder. In this context, a review of the administration of criminal justice, closely linked with historical and sociological factors on the one hand, and the concept of a democratic constitution and progressive principles of modern criminology on the other, transforms itself into a matter of vital importance to the nation. The time for such a review is indeed ripe for it is not too near the transfer of power to cloud the issues with a haze of political bitterness and not too distant to lose the perspicacity of detail or sense of realism.

Thanks to a series of experiments and administrative reforms over nearly two centuries, India can take pride in its efficient police forces capable of withstanding either the periodical orgies of lawlessness of a political and parochial nature or the serious outbreaks of professional crime today. But a

¹ Lord Lloyd, Preface to The Indian Police by J.C. Curry, Faber and Faber Ltd. London.
hundred years ago, the conditions were entirely different. Harrowing tales of the deeds of dacoits, highway robbers, professional prisoners and predatory hordes who infested the countryside were too numerous to be dismissed lightly as the exaggerated accounts of loquacious historians. Crime was then normalcy itself a part of the precarious life that people led. Although in ancient and medieval India the principles of criminal justice were well evolved, the absence of an effective and continuing instrument for enforcement of laws and maintenance of order precluded settled conditions. There disturbing conditions had another deleterious effect too; they forged the criminality of large sections of people to whom crime became an avowed profession.

The secret society of thugs which flourished till the middle of the last century traced its origin to the medieval ages, the earliest reference to it having been made in Ziad-din-Barni’s chronicle of Jalaluddin Firoz Khilji of the thirteenth century. It was an organised system of murder which had attached to itself an aura of meretricious glamour under the cover of pseudo-religious sanction. It was also associated with considerable daring and a spirit of adventure. Banded together under a name which signified deceit and linked by the devotional loyalty to Goddess Bhavani, the thugs travelled on the highways as ostensible pilgrims and way-farers. Their agreeable companionship was a welcome source of courage to the weary traveller who fell in readily with the cavalcade. But he did not know that even as he and his companions sat eating the afternoon meal by the roadside, the robbers would slip their handkerchiefs round the necks. The immensity of the organisation and the devastation which the bands of ruthless thugs spread in the country can be gauged by the contemporary accounts of lawlessness as narrated by Meadows Taylor. Although some half-hearted attempts were made by the early British, it was not till the advent of Sir William Sleeman more popularly known as

---

Thuggee Sleeman that an effective campaign was initiated against the deprivations of that notorious banditry. Even so, the operations took nearly nine years (1829-37) and needed the whole-hearted support of Lord William Bentinck and a series of comprehensive acts to strengthen the hands of specially selected officers to destroy the thug organisation.

It is a far cry from the days of Sleeman to the present when crime is systematically tackled by well-organised law-enforcement agencies in the country. Crime is no longer a part of the established order accepted in a spirit of philosophic resignation as it was in the thirties of the last century. It continues to occur, but what has to be recognised is the revolution in the nature of crime.

From the annual reports on crime in India it is observed that, on an average, about six lakhs of cognizable crimes of serious nature against person and property and the state are reported every year. The annual variations in the total volume of crime and under each head are explained with reference to prevailing socio-economic conditions. Among the many causes which contribute to the comparative inaccuracy of statistics are public apathy, distrust of the police, disbelief in the efficacy of the courts, tendency on the part of affected parties to take the law into their own hands, fear of disclosure of facts unfavourable to complainants, caste and communal panchayats, interference by influential parties, lack of reporting facilities, suppression of crime and manipulation of statistics by the police, and a general tendency to disregard crimes which are of a trivial nature or where juveniles are involved.

There are large tracts of the country which are inadequately policed; and section of communities and tribes whom the law touches only nominally; they are generally left to their own animistic and tribal customs to deal with conduct which runs counter to their established ways. Even in the year 1958, a number of states have attributed increases in crime in their statistics to better reporting facilities made possible by opening new police stations and
improvement in communications. With the gradual emancipation of the backward areas and spread of education among the handicapped communities, it is reasonable to assume that there will be better reporting of crime and consequently an increase in the figures in the years to come.

It is practically impossible to ascertain with any degree of accuracy the exact proportion of unreported and unregistered crime or to proceed with the study of crime on the basis of constancy of this proportion, for the reason that “all these factors do not come into play together, and even if they do, it is with varying intensity; consequently the percentage of crimes reported is not always the same”. These features of uncertainty and variability in crime statistics make criminological studies in any country and much more so in India difficult.

An important issue which presents itself immediately is whether we are concerned with the bulk of crime, its fluctuations and classification or with the criminality of the people. As population increases, there is bound to be a corresponding increase in crime without increase in over-all criminality. Consequently, the number of cases reported to the police must invariably be stated in proportion to the population. In India census figures are collected once in ten years and the crime rates worked on the basis of decennial figures have no accurate relation to reality. As Sutherland and Gressey observe, “the population figures must be corrected for variations in age, sex, racial composition and urban-rural compensation and much of this information is available only in the years in which decennial enumerations are made”.

Yet another difficulty which confronts the student of crime is in deciding whether the index of criminality has to be gauged by the number of criminals arrested by the police or those convicted by courts. The differentiation in the classification of crimes as cognizable and non-cognizable as well as the multitude of offences of varying degrees of

---

1 Crime in India, 1958.
2 L. Radzinowics, Criminal Statistics.
3 Sutherland and Gressey, Principles of Criminology.
seriousness, and a host of trivial violations do not provide a proper index of crime-mindedness. Out of all this confusion, two methods of evaluating the extent and character of crime have emerged and been accepted. These are statistics of crimes reported or known to the police and the number of persons arrested by the police. In regard to the latter, the disproportionately small number of cases detected, the lack of identification of many criminals and the fact that a single person can be responsible for a series of offences are some of the limiting factors which militate against taking them as an accurate criterion of criminality. This view has now been accepted by all countries which follow a uniform system of classification and collection of criminal statistics.

It has to be stressed that for a comprehensive study of crime which is in fact only an aspect of human behaviour, it is not only the number of crimes committed or the criminals arrested that matter, but a host of details and other subsidiary factors which have a bearing on crime, have to be collected, analysed and interpreted in the light of practical experience. There is considerable truth in the statement: “Taken in themselves, statistics are nothing more than symptoms of unknown casual processes”.

Statistics are, at best, only an incomplete source of information unless buttressed by other relevant and subsidiary factors, properly correlated for sociological research and enquiry”. Whether it is due to the sense of fatalism which pervades Indian thought or lack of facilities and avenues of research, the fact remains that India lags woefully behind in the field of criminal science. It is not merely a question of academic interest, but criminal statistics and allied data of sociological nature are the only means available for the regulation of the conduct of thousands of unfortunates who pass through prison every year and pose a serious challenge to society. As in any other field of scientific thought, a spirit of inquiry has to be inculcated not only in the student of criminal science but also in the policeman who stands in the front line of the battle against crime.

7 W.I. Thomas, The Unadjusted Girl.
The Government of India in their survey of crime for the year 1959 recorded a total number of 5,82,008 cognizable crimes under the Indian Penal Code and classified them under the main heads recognized by the United Nations Social Welfare Board and the International Police Organization. The report shows that during the same year as many as 2,63,924 persons were convicted and 2,48,583 acquitted or discharged by courts. A serious crime is thus committed in this country every minute and there is one criminal among every 1570 persons (1961 census). If it is remembered that these statistics pertain to a single year and a very large percentage of convicted persons are new entrants to the field of crime, the alarming conclusion that there is a gradual increase in overall criminality becomes inescapable. If the innumerable breaches of minor laws are taken into consideration—particularly social legislation of the nature of prohibition or anti-vagrancy laws—the ranks of criminals would be greatly swelled. Indeed, the number of arrests which the police make all over the country is staggering.

Road violations, gambling, prohibition crime, prostitution, vagrancy, begging and public nuisances are some of the crimes which contribute to the astounding number of offences which were estimated at 32,13,156 during the year 1955. Even if one is inclined to ignore the bulk of petty prosecutions, the matter is of paramount importance in as much as it involves the conflict of a large mass of people with the law-enforcement agencies.

Among the states which showed high incidence of crime per lakh of population are Madhya Pradesh (274.6), West Bengal (239), Assam (208) and Bombay (206.0). What strikes even a casual observer is the wide divergence between the neighbouring states of Madhya Pradesh (274.6) and Uttar Pradesh (101.7). The study of crimes and their distribution on a geographical basis, familiarly known as ecology, leads to certain conclusions regarding the

---

respective degrees of efficiency of preventive policies, as may be gathered from the statement of crime and police strength areawise.\textsuperscript{10}

However, reasonable such conclusions may appear from statistics; they can at best be random guesses for crime cannot be explained by simple arithmetical calculations and formulae. Various factors such as political, religious and economic ideologies-population density and composition-distribution of wealth-the extent of employment play a part in the incidence of crime. It can also be due to culture conflicts as in the case of the long-standing problem of dacoity which can be traced to the lack of consistency and harmony in the influences which direct the individual.

The trend of crime in the last twelve years also provides an interesting study.\textsuperscript{11} Crime in India which rose to a peak figure of 6,54,000 in 1949 decreased by slow stages till 1955 and thereafter, it tended to rise. In 1958, it reverted almost to the position in 1952. Hence, two vital questions present themselves: Was the decrease in 1955 real? Is not the present trend of increase alarming when there are unmistakable signs of stabilization of conditions in the country? Are the fluctuations in crime a reflection on the degree of control exercised by the law-enforcing agencies or are they dependent on other economic and sociological factors, and if so, to what extent?

The problems of crime can also be examined from a comparative study of crime in different countries. Such a study, no doubt, suffers from the inherent defects of criminal statistics which are dark and capricious but can furnish an idea of national criminality to a limited extent. The following statement tabulated by the International Criminal Police Commission for the year 1952 is of considerable interest.\textsuperscript{12} A feature which strikes one immediately is the low rate of crime in India which is confirmed by the latest studies conducted by the United Nations. Mrs. Perin C. Kerawala compared

\textsuperscript{10} The Statistics have been compiled from the time to time in the Indian Police Journal on the basis of 1951 census.

\textsuperscript{11} \textit{The Indian Police Journal; Vol. VII, No. 3, (January 1961).}

\textsuperscript{12} \textit{The Indian Police Journal; (January 1995).}
the 1952 crime rates in India with those of the rural areas of the United States for the year 1953 in respect of certain important categories of crime per hundred thousand of population.¹³

The low crime rates in India are gratifying, but all the same crime in this country is an expensive affair, costing nearly fifty crores of rupees annually.¹⁴ If stability in administration, availability of well-trained and well-equipped agencies to enforce the laws, and material progress are the main criteria in limiting crime, the United States of America ought to have the minimum incidence of crime. And yet, we see the intriguing spectacle of that country being continually faced with a gigantic crime problem which is variously estimated to cost the American tax-payer billions of dollars every year. This merely illustrates the contention that it is not possible to explain crime on the basis of certain elementary causes or reduce delinquency to simple arithmetical formulae. They lead to the logical conclusion that crime is a product of a large number and a great variety of factors and these factors cannot now and perhaps ever be organized into general propositions which have no exceptions.¹⁵

Crime according to Clarence Darrow is an act forbidden by the law of the land, and one which is considered sufficiently serious to warrant providing penalties for its commission.¹⁶ This definition closely follows that of Parmalee who describes it as an act forbidden and punished by law, which is always almost immoral according to prevailing ethical standards, which is always usually harmful to society, which it is normally feasible to repress by penal measures and whose repression is necessary or supposed to be necessary.¹⁷ The two definitions between them give us the legal definition does not distinguish between a heinous crime and an ordinary misdemeanor like a traffic violation or a road nuisance. The legal definition is, therefore,

¹³ Perin C. Kerawala, A Study in Indian Crime.
¹⁴ Ibid.
¹⁵ Sutherland and Cressey, Principles of Criminology.
¹⁶ Clarence Darrow, Crime: Its Cause & Treatment.
¹⁷ M. Parmalee, Criminology.
sociologically inadequate in view of the changing laws and new legislations which create new crimes. The inadequacy of the legal definition lies in the inadequate nature of law itself, its changing values according to the prevailing concepts of moral and social obligations cast upon the members of society. Crime is, thus, changing concept which is dependent on the social evolution of the people.

Whether viewed from a purely legal angle or a purely sociological angle, whether it be argued that a forbidden act is really harmful to society or the individual, and whether the group which has the power and authority to enforce its beliefs is right or wrong, crime is no more than a failure to adjust oneself to the dictates of society. Crimes are, therefore, classified as those against property, against public peace or order, against religion, against family, against morals and against the conservation of the resources of society. All these acts can not acts which are inimical to the established interests of society. They may vary from age and from country to country, but so long a society views in the light of injuries, it takes upon itself the responsibility for their prevention through the instrument of criminal law.

Up to the later part of the eighteenth century, the force of religion, superstition and demonology influenced the concepts of crime which was ascribed to the possession of evil spirits. Punishments were arbitrary and were viewed in the nature of retributory measures or as propitiation to gods. A more rational explanation of crime was attempted by the significant departure from the primitive traditions came with the publication in 1764 of his famous Essay on Crimes and Punishment in which he criticized the inhuman punishments meted out to criminals in an arbitrary manner. The importance of Beccaria’s contribution lies not in the immediate results it produced, but in the rational approach made for the first time to problems of crime and punishment and the emphasis on pre-determination and free will in criminal behavior.

---

18 Clarence Darrow, Crime Its Cause and Treatment.
19 John Lewis Gillin, Criminology and Penology.
The epoch-making discoveries during the middle of the nineteenth century and the spirit of inquiry and investigation which marked this period were to have considerable influence on the criminologist who had just begun to be puzzled by the apparently inexplicable behavior of criminals. Among the scientific advances which were to have considerable effect on the researches of criminologist, particularly that of Cesare Lombroso (1936-1909), was the theory of evolution of Charles Darwin, first enunciated in *The Origin of Species* (1859). The essence of Lombroso’s theory which later came to be styled as the Neo-classical school and which was enunciated in 1876 was that a criminal behaved as he did because he was born so, and the typical criminal could be recognized by certain physical characteristics. Lombroso’s theories of criminal types with characteristic biological features have been disproved and were noted more for the controversies they raised than for their lasting contribution to the science of criminology. Yet we have to gratefully acknowledge that even on the shores where the tide has ebbed the farthest, it has left behind it treasures of great price.20 His theory marked a definite departure from the old, dogmatic and moralistic views and paved the way for the stress on the examination of the personality of the criminal for a proper study of the crime.

While Lombroso studied the anatomical features of criminals it was left to his pupil Enrico Ferri to examine the sociological factors which contributed to crime. His contention was that crime was the synthetic product of three major types of factors: physical, or geographic; anthropological and psychological; and social.21 Rafael Garafalo laid greater emphasis on the psychological aspects of criminals rather than the physical and stressed the importance of heredity in this respect. Thus, the studies of these eminent criminologists of the Italian school included such widely divergent factors as heredity and environment of the criminal, ecological influences, economic and political conditions and psychological traits.

21 Ibid.
Considering that the new approach to criminological research was made as a reaction against the cruelty and barbarity of punishments, it was logical that the new ideas should have far reaching results in the field of penology. Professor Franz von Liszt was the leader of the new movement which insisted on understanding the causes of crime before dealing with the criminal for his act. Although Gesare Lombroso and Garafalo stressed the physical and psychological traits which made up the personality of the criminal, it was not till the publication in 1902 of “Crime and its Repression” by Gustav Aschaffenburg of Cologne, that the value of the psychiatrist’s contribution to the problem of crime was recognized. The defect of the work of the early criminologists - if it can be called a defect at all - was their inability to see that crime was the result of no single factor, but the cumulative effect of a number of factors. Today we know that a normal man’s behaviour is the result of interplay of a number of factors, and much more so, a criminal’s. Although giant strides have been made in the field of psychiatry and psychoanalysis, the human mind is still a mystery and a source of wonder. It is to the revolutionary theories of Freud and his explorations into the dark recesses of human mind that we owe our knowledge of yet another important factor in crime causation.

Biology, sociology, medical science and psychology have been thus pressed into service to understand the meaning and causes of crime. It is obvious that in India too a multitude of factors come into play in the causation of crime. Nationality, racial characteristics, geographical factors, political developments and the impact of modern civilization have in their own measure contributed to the criminal potential of the country. Religion, social customs, superstition, caste and communal hatreds, sectional vendetta, alcoholism and drug addiction are other factors which have appreciable influence on the incidence of crime in India. The crime pattern in India therefore follows the familiar conclusion of Dr. Cyril Burt that ‘crime is assignable to no single universal source, nor yet to two or three. It springs from a wide variety and usually from a multiplicity of alternative and
converging influences'. A proper study of crime can only mean the knowledge of generalized criminal behaviour as a whole with particular reference to specific individual behaviours and conditions. Every criminal has his little world of make-believe. The student of crime, be it the academic criminologist or the practical policeman, has to explore these worlds so that the knowledge gained can be usefully utilized in the field of prevention of crime and enlightened treatment of the criminal.

The Justinian Code was the last formulation of law between the ancient Roman Empire and the social chaos that was the middle Ages. When Justinian assumed the throne of the Eastern Roman Empire in Constantinople in 518 A.D., he commissioned ten commissioners to go through all existing constitutions and codes and to select the valuable Sections and render them useful to the Empire. The resulting code was promulgated in 529 A.D. In the years that followed, until his death in 565, more revisions were made to the code. Four books were finally produced and they became the standard of law throughout Europe during the middle Ages in the absence of any other standard. The common law as it is known today, both English and Continental, is basically derived from the code of Justinian courts.

As the feudal fields developed into empires, all subjected peoples and slaves were forced to go to the courts for redress of wrongs. In many areas free citizens could manage their own affairs through trial by combat or other individual efforts. Ancient and medieval noblemen were above the law and did not need to use the courts, and conflicts with neighboring lords were settled by arms.

With the downfall of the Roman Empire in 476 A.D., Europe was in chaos. The organized church developed as a political entity. The Church maintained control of territories and the peoples. Canon law was enforced by the arm of the Church. Ecclesiastical prisons were constructed to supplement the places of confinement of the time, which were mainly the gatehouses of

---

the abbeys. The last ecclesiastical prison was constructed in Paris in the sixteenth century. A good example of the old confinement facility still remains in Provins, a town of northern France. The prisoner’s tower serves as a belfry to the church of St. Quiriace, which was built in the twelfth century. The base now is surrounded by a thick mound of masonry added by the English in the fifteenth century when they held that territory.

Any secular ruler in Western civilization had to have the blessings of the pope. Charlemagne, around 800 a.d., began to organize secular control in Europe. The Holy Roman Empire, established around 1200 a.d. incorporated the entire Justinian Code and operated under the blessings of the pope. The Church was an important agent of social control, including crime from the fourth century through the eighteenth century. The height of ecclesiastical jurisdiction was reached in the late middle Ages in the Holy Roman Empire. Based on Matthew the Church assumed the sanction of excommunication as spiritual coercive authority. After the Council of Nicaea in 325 A.D. at which the relationship of Christ to God was settled for Christians by a close majority (in favor of his being divine as opposed to being only a prophet), major developments occurred on the criminal side of church law and enforcement. The issue was so emotion-laden and the vote was so close that the victors pressed their advantage harshly, zealously punishing and eliminating their opposition. Heresy became a major crime. Christianity ceased to be a sect of Judaism and became an independent religion. Episcopal provincial synod sentences of excommunication could be appealed in the church hierarchy. The secular arm of the system of justice supported the decrees of the Church. The practice of adding banishment by the emperor to synodical condemnation strengthened the controls even further. The third and fourth ecumenical synods in the fifth century were really trials for heresy of Nestorius and

Referring to Joseph Stalin’s comment-How many divisions does the Pope have? the Pope did have divisions which participated in the local wars on the Italian Peninsula. He was also effective in the diplomatic area throughout the world.
Dioscorus, who occupied the thrones of Constantinople and Alexandria. The fifth ecumenical council came close to becoming a trial for the pope.

The system developed in which an ecclesiastical offense would be handled by the bishop. If a clergyman were accused of a secular crime, the bishop would have original jurisdiction and might or might not refer the case to secular courts. By the tenth century in England, the two were generally mixed in the same case, the bishop enforcing secular laws by ecclesiastical censure and the alderman enforcing ecclesiastical laws with secular punishment. On the Continent, Charlemagne empowered the bishops to act as real judges and provided that secular matters could be taken to the bishop’s tribunal. By the eleventh century, the tribunals or courts were church-operated and a class of church lawyers had emerged. The king did not hear complaints and accusations, but referred them to the bishops, who appointed the ‘vicar-general’ or ‘chancellor’ to hear them. While the feudal and spiritual courts were kept separate, the influence of the Church was unmistakable.24

In the late Middle Ages, the ecclesiastical courts had jurisdiction over most issues, civil and criminal, except those involving real property. Some clerks in the ecclesiastical courts became an issue because of the way they handled criminal cases. Rising criticism resulted in the Constitutions of Clarendon in 1166 a.d., in which Henry II attempted to restore the power of the Crown over the church courts. For example, benefit of clergy was afforded everyone (not merely clergymen) who was able to read; thus, these people were relatively safe from serious penalties for rape, burglary, homicide, or almost any crime, at least for the first offense. On the Continent, the history of courts was almost congruous with the history of the Roman Catholic Church.

Penalties were divided into (1) punishments and (2) censures. For most serious crimes, imprisonment in the bishop’s prison or ecclesiastical prison for life or for a lesser amount of time could be imposed. Dismissal or degradation

24 In England, the Constitutions of Clarendon in the twelfth century gave the convicted person power to appeal to the king, which really meant a rehearing by an archbishop.
in the ministry or church rank was also used. In the cases of heresy, apostasy, and sorcery, the secular courts were brought in to impose the death penalty, which was generally burning at the stake. The fourth Lateran Council in 1215 relegated incorrigible offenders to secular courts, which usually meant death. The most serious censure, of course, was excommunication.

In England, the beginnings of law enforcement can be traced back to the Anglo-Saxon period from 600 A.D. to 1066 A.D. For purposes of security and mutual economic benefit, the tribes and clans were replaced by ‘tuns’ and the ‘hundreds’. Ten families made up a tun (town) and ten tuns made up a hundred. The hundred was roughly congruent with the shire or county in subsequent political subdivisions. The hue and cry of the night watchman or old lamplighter set up a community chase against any thief or other offender. Generally, the offender was branded for purposes of punishment and for identification.

1.1 Crime and Superstition

In the little village of Ghanasara in Andhra Pradesh, all was quiet on January 24, 1959. The leading family in the village was that of Chengala Ramchandra, the traditional headman who by virtue of his office and social position wielded considerable influence in the community. The family consisted of Ramchandra, his wife, three sons - Krishnamurthy, Varahalu, and Chinnam - a widowed daughter and Rathi, wife of Varahalu. During the course of nearly twenty five years, the family had risen from comparative penury to affluence which was attributed to the good graces of the family deity. In course of time, a delusional frenzy of an intense nature gripped them all, and Ramchandra’s wife had a dream in which Dhanasakti appeared and demanded human sacrifice in return for the worldly wealth she had bestowed on them.

The deity was no other than Dhanasakti, the Goddess of Wealth, whom the family believed to reside in a large wooden chest, and worshipped on every Tuesday.
In order to propitiate the Goddess the entire family conspired and planned to offer the lives of some children who were in the habit of playing in an open ground in front of the house. On the night of January 27, the women in the house lured Damodar, a child of eight, throttled him to death before the deity, and after performing some ritual, handed the lifeless body to the male members in the house for disposal. A superficial investigation which followed the discovery of the body in a near-by well resulted in a verdict of death by misadventure.

One month later, two other boys-Venkatrama and Meghnath disappeared from the village. But in fact, they were lured into the house of Ramchandra. Later in the night both the children were strangled to death and their bodies were thrown into a distant well. A report was sent to the police by Ramchandra himself, and once again the police investigation followed a pattern of inefficiency. After a perfunctory investigation, the cases were closed.

The village was now full of fantastic rumours. A vague suspicion against the village headman and his family gained for some inexplicable reason a sudden momentum. A spate of anonymous petitions brought the district police chief to the scene and an exhumation followed. Thereafter, the investigation took a sensational turn and it was not long before the police could gather overwhelming evidence of Ramchandra's complicity in the diabolic murders. In the course of a protracted trial, all the accused were sentenced to death, but the High Court of Andhra Pradesh, modified the sentences later to imprisonment. The women in the case were acquitted on the ground that the charge of murder could not be brought home in view of the perfunctory nature of investigation in the first instance and a number of legal difficulties.26

26 The case is an instance of the effect of age old superstitions which continue to dominate the minds of large Sections of population in the remote villages yet untouched by the impact of modern education.
There are vast tracts far from towns and in virtual isolation on the verge of forests where old practices and primitive beliefs persist strongly. Even in towns and cities where one can reasonably expect a greater measure of enlightenment, cases originating from superstition come to notice frequently. A recent crime in the city of Hyderabad illustrates the point. A Muslim Jagirdar whose fortunes had dwindled depended upon his son to retrieve them through a suitable alliance. The latter, however, fell in love with the daughter of a poor school teacher. No amount of parental pressure and appeals would have any effect on the adamant youngster. Instead, the opposition seemed to have had strengthened his determination. He married the girl clandestinely and began to live with her in her house. The distraught parents of the boy gathered the impression that he was under a spell cast by the girl, and concluded that it had to be suppressed by counter spells. They approached a practitioner of black magic, living in a secluded and disused temple on the outskirts of the city. The magician promised relief and performed Bhanamati on a number of occasions on the strength, of which he squeezed considerable sums from the gullible couple. When, however, the ritualistic attempts failed in their object, the parents became impatient and began to press for the return of the money. The impostor put forward an explanation that his Pooja did not have the desired effect on account of the piety of the girl’s father which acted as protective armour against the forces of his black art. He proceeded to suggest that the only way to wean away the boy from the spell of the ill-chosen spouse was to remove the spiritual influence of the school teacher. In their deep frustration, the ignorant couple fell in with the suggestion readily and engaged a few goondas to abduct the poor old man while he was on his way to the school. He was carried by force in a car to the deserted temple and strangled to death. However, before the priest could exhibit his talents in the art of black magic, the Jagirdar and his wife found themselves facing a greater crisis in the form of a murder charge.

These two cases which are of recent occurrence indicate the grip of superstition on people and its contribution to crime in this country. It is true
that the difference between India and other countries in the matter of superstitious beliefs is only one of degree. Even in advanced countries, demonism persists in some form or the other, and in the traditional beliefs of the people. Although beliefs in witches and demons are practically extinct in the United States, there are even today some ‘Culture pockets’ where it is still prevalent. There are some Sections of people who believe in the efficacy of charms to ward off evil spirits. Barnes and Teeters recount an incident from Philadelphia a few years ago in which a ‘neurotic superstitious father’ was found babbling about witchcraft, and spirit warnings when questioned by the police about the murder of his baby. It may be interesting to recall here that ancient theories attempted to explain criminal conduct as the result of possession of evil spirits. To a great extent this primitive view continues to hold sway among many. A majority of Indians are full of superstitious beliefs which pervade their daily life to an extent which is incomprehensible to a foreigner. Even today, no journey is undertaken and no business started unless the omens are propitious.

Astrology and soothsaying play a dominant role in the lives of the people. Sacrificial rituals, offerings to village Goddesses, propitiation of evil spirits by animal sacrifice are still common in most of the states. There are instances where prophetic forecasts of coming events have worked deleteriously on the minds to such a pitch of frenzy that crimes were committed. Section 508 of the Indian Penal Code which provides for the punishment of those who induce persons to follow a particular course by making them believe that they would be objects of divine displeasure, shows the extent of superstition in the country and its effect on crime. The penal Section was intended originally as a safeguard against such practices as ‘Dhurna’—at one time a familiar mode of realizing a debt or demand under threat of divine displeasure. To a superstitious mind, such threats cause as much mental torment as physical injury and its intensity “varies in inverse

\(^{27}\) Barnes and Teeters, *New Horizons in Criminology*.

\(^{28}\) Ibid.
ratio with the education and the enlightenment of the accused, the result being that the ignorant and the weak fall an easy prey to this species of imposture”.

A strong belief in spells and sacrifice to obtain material wealth is a frequent cause of crime. From time immemorial human sacrifice has been considered efficacious in exorcising evil spirits. More frequent are murders committed in the belief that human sacrifice would reveal hidden treasure. This was a motive in a case where a native of Bellary district was tried for the murder of his own child. A few years ago, in Mysore, two persons were charged with the murder of a woman and her infant child who were presumably offered as a sacrifice to secure some treasure which was believed to be hidden near the scene of the crime. Two Kuruvas, in Madras State, installed an idol and attracted a number of children by distributing fruits and sweets. After gradually winning the confidence of the children, they were taken at the close of daily worship and sacrificed to the deity. Here again, the motive was gain.

Similar to this, but less serious are those cases where superstitious beliefs of gullible people are exploited. The methods of cheating are universal and are based on the promise of easy money. During 1955 and 1956, a series of cases occurred in Secunderabad where a band of intrepid cheats in the guise of ascetics went to a middle class family and predicted that there was a huge treasure beneath the house which could be secured only by propitiation of a particular Goddess over an extended period. The family fell in with the suggestion and made necessary arrangements for pooja which had naturally to be conducted in utmost secrecy. For the purpose of pooja, however, the priests required Kanakambaram, a precious and rare type of incense - which could be procured only from a Sadhu known to them. It was explained that the Sadhu was opposed to the use of this precious incense for material advancement, but might stretch a point in their favour if they interceded and made a proper

---

29 Hari Singh Gour, *The Penal Law of India.*
approach. The price of the sacred incense was very high-valued at a thousand rupees for a packet, but that was only a matter of secondary importance. The main difficulty lay in persuading the Sadhu to part with the incense which he had gathered after many years of penance and wanderings in the Himalayas. By now, the cupidity of the family was roused to such a pitch of expectancy that they began to entreat the visitors to procure the incense at all costs. After considerable hesitation, the bogus priests agreed and returned later with a packet of the incense for the ‘reasonable sum’ of a thousand rupees. That very night pooja was performed within closed doors with all solemnity and secrecy befitting the occasion. The priests brought out during the early hours of the morning an earthen pot containing a little jewellery and a snake. The gullible family was not allowed to examine the contents closely on the ground that the treasure was being guarded by ‘Nagaraj’ the King of the snakeworld and there was nothing more to do but further propitiation and pooja. This went on for a number of times and the family mulcted of a thousand rupees on each occasion. Thereafter, the culprits vanished, leaving no clue to their identity.

A similar case, in a slightly variant form occurred a few years ago in the house of a rich zamindar in East Godavari District of Andhra Pradesh. So implicit was the faith of the gentleman in the spiritual integrity of a Sadhu who promised material and spiritual well-being that lie allowed him to perform pooja in the strong room where the family heirlooms and jewellery were kept. It was not till another six or seven months when an inspector of Visakhapatnam arrested the Sadhu on suspicion and recovered the valuable jewels that the Zamindar knew that he had all along been harbouring a notorious cheat under his roof.31

The garb of the ascetic and the pilgrim have been more popularly adopted by the criminals than any other cover. This is primarily due to the religiosity of the people who do not hesitate to undertake the most arduous pilgrimages to fulfil vows made to their favourite gods and goddesses. Bogus

31 Edger Thurston & K. Rangachari, Castes & Tribes of Southern India.
saints claiming miraculous powers of curing various ills appear periodically in all parts of the country and attract hundreds and thousands of devotees. The craze persists till people are disillusioned by some sordid exposure. It is surprising how quickly and easily such experiences are forgotten for hardly the sensation dies down, when another Sadhu arrives at some other place a few miles away and people go to him with offerings in cash and kind.

Sometimes, the inability of the people to distinguish between the bogus and the genuine sadhus who wander in the country leads to serious consequences. A few cases of missing children in Andhra Pradesh a few years ago created wild and fantastic rumours in all big towns that gangs of Sadhus were roaming in the country and kidnapping children for purposes of sacrifice in the Himalayas. For a number of days, the scare was such that children were not allowed to go out of their houses. All sorts of rumours were set afoot, with the result that many innocent persons were assaulted and beaten up by enraged people under the impression that they were the kidnappers.

As stated already, belief in spells also leads to considerable amount of crime in this country. In an old case of child murder the motive was that the accused believed that his wife would produce a healthy baby if she was washed in the blood of a slain child. Murder also results from hatreds aroused by people who cast an evil eye. Gases of torture to drive away evil spirits are very common all over the country. A man suffering from prolonged dysentery, who was advised by a witch doctor that his illness was due to a spell cast on him by another, went to the extent of killing the suspected person. Gases of murder of black magicians continue to occur in certain parts of the country even today. In South Ganara two men were found guilty of shooting a man dead because they believed that the deceased was neither curing their brother nor allowing other witch-doctors to cure him.32

Witchcraft and black magic continue to promote the incidence of crime in many ways. Perhaps the most famous black magic art is Bhanamati,3

32 H.R. Roe, Crime and Superstition in India.
prevalent in certain districts of Andhra Pradesh and Mysore. The fact that belief in this cult has been, and still is, responsible for some of the most atrocious crimes is borne out by police reports and judicial proceedings. Some years ago, the Hyderabad High Court was called upon to hear two cases which were sent up for confirmation of the sentences passed by the Sessions Court in Medak District. The first one related to one Mouri Elliga who was sentenced to transportation for life for the murder of another villager, Dugloo, reputed to be a black magician. In defence, the accused stated that he awoke one night to find Dugloo sprinkling some liquid round his sleeping wife and suspected that he was bent upon abducting her by means of black magic; he, therefore, armed himself with an axe and lay in wait for Dugloo and killed him when the latter made his appearance the following night.

In the second case two villagers were found guilty of strangling a man whom they believed to be a black magician. They took his body to a neighbouring temple to create an impression that the Goddess had punished him for practising black magic. There are typical cases which continue to occur in the rural areas of certain districts of Andhra Pradesh and Mysore where Bhanamati is considered an efficacious cult. There are instances of whole villages being deserted as they were considered to be notorious haunts of black magicians, and there was no sense of security of life or property. It is not possible here to examine whether there is any truth in the weird tales recorded from time to time relating to Bhanamati. It has, however, to be mentioned that the Hyderabad Police prior to 1956 not only believed that the cult was real with immense potential for harm but also had trained staff to deal with the menace of black magic. The annual reports on the administration of the police department in the former Hyderabad State furnish statistics of Bhanamati cases cured by sub-inspectors and inspectors of the Hyderabad police who were themselves well-versed in the cult, and had the necessary magical anti-dotes to the spells cast by unscrupulous black magicians. The
report for one year showed that the police department of Hyderabad took up the treatment of 114 Bhanamati patients and cured 112 of them.\footnote{Report on Administration of Police, Hyderabad, 1340 Fasli (1940-41).}

*Bhanamati* practitioners are generally drawn from the lowest class who abuse it to extort property or put the victims to considerable physical and mental strain and thus bring them under their power. The broad details of the art of black magic consist of making a small effigy from wood, wax or earth of the intended victim and, after performing the prescribed ritual, certain symbolic bodily injuries are inflicted on the image so that the same may be reproduced in the victim. There are many types of incantations employed in *Bhanamati*, the principal effects of which are loss of consciousness, appearance of blisters, paralysis, blindness, outbreak of dreadful diseases, clothes catching fire, stones and filth falling inside the house unaccountably and many other physical ailments and strange phenomena. While a great proportion of the cases reported may be explained away as due to the wild fancies and delusions of the people concerned who are only too willing to believe the most incredible stories provided a spiritual atmosphere is created to surround the most ordinary happenings and while many of them may also be ordinary cases of hysteria in women, it cannot be denied that year after year there are a few unaccountable happenings which have defied scientific inquiry and investigation.

It is on record in the administration reports and contemporary newspapers that Mr. Goad, an officer of the Indian police who was in Hyderabad State, was specially deputed to enquire into the incidence and veracity of the cult of *Bhanamati*, started as a sceptic, but after going through the voluminous material gathered regarding the activities of Black magicians in Medak, Bidar and other districts, was so convinced that it was at his instance that the Hyderabad police had to be trained and equipped for the battle against the dark and unseen forces of evil.
There are other cults similar to Bhanamati in some parts of the country. The effigy method of sorcery continues to a small extent in Tamilnad. In some parts of Kerala there are still a few Sections of people who believe that the well-versed among the black magicians are endowed with the power of destroying whomever they please.34

In view of the hazardous nature of operations of criminals and the constant risk of apprehension which they face, they are prone to be superstitious. Some of them set aside a portion of their booty for a favourite saint or deity and make pilgrimages to selected shrines. Some criminals dedicate their burglary tools to their chosen deities before they set out on predatory excursions. Many of their superstitious beliefs are related to the Moon since a criminal considers dark nights as more suitable for his activities. A number of criminals place great faith in omens; their propitious days and superstitious beliefs have often provided the necessary clues in running them to earth. Although superstition does not provide any motive for the professional criminal, it influences his thoughts and actions.

It is amusing to know that detection of crime in olden days depended to a certain extent on the gullibility and superstitious beliefs of suspects. Edgar Thurston narrates an incident where all the suspects in a theft were given small quantities of rice to chew, while a priest pronounced incantations with due solemnity. They were then asked to spit out the rice. The person whose rice was not properly masticated or which exhibited any trace of blood was adjudged guilty. The faith in the proceedings, the fear of the priest’s power, and the guilty conscience combined to suppress the natural flow of saliva without which the hard particles of rice bruise and cut the gums, causing them to bleed. These methods are perhaps not strictly scientific methods of detection, but it will not be proper to brush them aside as solely based on superstition. When analysed properly, it can be seen that these improvised methods attempted to gauge the effects of a guilty conscience just as the

34 Edger Thurston and K. Ranggachar, Castes and Tribes of South India.
modern lie-detector and truth serum attempt to do. Although India has made rapid strides in the matter of education and enlightenment of vast Sections of people, specific instances where superstitious beliefs influence ordinary crime are not infrequent. They indicate that superstition continues to exist in considerable measure among the illiterate and ignorant masses and among scheduled tribes and aborigines, and even among more advanced communities in varying degrees. It is only through the gradual uplift and education of the community in general that this source of crime can be eliminated. It is of course bound to be a slow process.

2. Evolution of the Police in India

A remarkable feature of the administration of criminal justice in ancient India was that, although the concepts of crime and punishment were highly developed, no serious attempts were made to forge an organized and effective instrument of law-enforcement in the form of an investigative and preventive agency. The reason lay in the manner of evolution of Law itself which began under the pastoral conditions of the Vedic age when the duties of the King (Rajadharma) and the principles of justice were enunciated. Crime is as old as man, and we find references to robbers in the Rig Veda. But the very fact that these anti-social acts did not lead to the establishment of an executive arm of law was due to the ancient concept that the king needed no special agency; all his subjects were required to assist him in the prevention and detection of crime. The transition from pastoral and agricultural conditions to urban life with cities of such magnitude and splendour as Ayodhya, Mithila and Hastinapura posed new problems in the maintenance of order. The king’s responsibility for ensuring internal order was reiterated in the context of growing complexities of life in the epic age. The new cities required some governmental machinery for the control of multitudes in public places. References to such an organization can be gleaned from classical, literature as,

---

35 The Rig Veda, (1, 42, 2, 3).
36 The Mahabharata, Sabha Parva.
for example, the following passage from *Valmiki Ramayana* (Sundarakanda, IV. 16)

Hanuman saw in Lanka..........  

Those that carried heavy clubs and

Batons as weapons (*Dandayudharanapi*)³⁷

The *Dandayudhadharas* whom Hanuman noticed in the streets of Lanka can be identified with policemen posted in the thoroughfares maintain order. The weapon *Danda* which might have been a short lathi or a truncheon symbolized the supremacy of law, and the man who wielded it was the representative of the King in the name of law. All the same, it will be merely hazarding a guess to see in these stray references a perfect system of police as understood by us according to modern concepts. The evolution of the police cannot be entirely divorced from a scientific spirit of inquiry in the investigation of crime. This was absent in the Epic Age, and hence the widespread recourse to ordeals by fire and water.

Yet another development which retarded the growth of a police organisation in ancient India occurred during the Age of Laws and Philosophy (800-300 B.C.) when law was codified by eminent sages, Manu, Gautama, Narada and others. They laid the responsibility for investigation of crimes on the judges (*Dharmapalakas*) themselves. The modern concept that it might be better done by a separate and specially trained agency had not occurred to them. Instead greater facility for investigation was sought to be given to the courts. For, *Sukraniti* lays down: “Foresters are to be tried with the help of foresters, merchants by merchants, soldiers by soldiers and in the village by persons who live with both parties”.³⁸ The principle underlying these

---

³⁷ By courtesy of Shri. C Sivaramamurthy, Keeper (Archaeology), National Museum Delhi.  
³⁸ Sarkar, *Sukaniti*. 

- 87 -
recommendations was the recognition of the need for expert local knowledge as accepted by Manu himself.  

While thus the development of a law-enforcement agency was halting and confused in the Epic Age, the king did not neglect intelligence. The extensive employment of spies civil as well as military—was recommended by ancient Hindu writers. The Ramayana and the Mahabharata are replete with references to the duties and the exploits of spies. The spies kept the king well-informed not only of the plans and intentions of his enemies but also of the movements of his own ministers and officials and the reactions of the common man. The idle gossip of awas Herman which was the genesis for the poignant developments in Uitara Rama Charita, was carried to the ears of the king through an efficient, if tactless, intelligence organization.

The administration of criminal justice did not undergo any significant changes in Buddhist India (300 B.C. - 300 A.D.). It was an age of deep humanitarianism which attempted to imbue the administration with those high ideals. Although Asoka inherited from his forbears an efficient bureaucratic set-up, the stress was on the observance of the law of piety which in its turn was expected to lead to proper justice and reduction in crimes. The Dharma Mahamatras whom King Asoka appointed were, therefore, more in the nature of censors of public morals.

Although the Brahminical and Buddhist traditions embodied in the Puranas and the Mahavamsa supply scraps of information regarding the socio-political conditions prevailing during the overthrow of the Nandas, it is to the works on politics and literature that we have to turn for a clearer picture of the police system. Arthasastra has been ascribed by historical tradition to Kautilya (Vishnugupta) belonging roughly to the period 350-275 B.C.. The book may be described as a “manual of political economy as well as a work on polity” and in the words of the author “that science which treats of the means of

---

40 Bhavabhuti, Uttararamcharita.
41 R.S. Pandit, Visakhadatta’s Mudra-rakshasa.
acquiring and maintaining the earth,” as distinct from the sciences which deal
with Dharma, Karma and Moksha. It was also called “Dandaneeti” – the
science of the sceptre. We are mainly concerned with that part of the book
which deals with civil and criminal law. The Arthasastra lays down that, in
regard to law and order in the state, it was the duty of the king to exercise his
executive authority to prevent violence which was governed by Matsyanyaya,
for in the absence of stability and security of person and property, the strong
would attack the weak just as in the limitless bounds of the ocean the stronger
fish prey upon the weak. Kautilya was fully aware of the supreme necessity of
instituting punishment for the maintenance of social order. “When the law of
punishment is kept in abeyance, it gives rise to such disorders as implied in
‘matsyanyayamudbhavayati,’ for in the absence of a ‘dandadharaabhavate’
(magistrate or policeman), the strong will swallow the weak”. JVagaraka
mentioned in the Arthasastra can be identified with the chief of city police. He
performed some police functions and controlled the city with the assistance of
Gopas who were in charge of wards and kept a close check on the movements
and incomes of the citizens.\footnote{Arthasastra, Bk. 1 Ch. IV (Translated by R. Shamasastri).}

It is, however, Sudraka who furnishes better glimpses of the police in
ancient India, for contrary to literary tradition, he drew his characters from
every class of society—from the high-souled Brahman to the conscientious
policeman. In his superb play Mrichhakatika we find the city of Avanti with
its streets teeming with glamour, courtesans, irresponsible gamblers, drunken
courtiers and potential murderers. Where else could the policeman be more in
need? And no wonder J Sarvilaka, engaged in the nocturnal venture of
burglary, prays: ‘My trade would fain from watchman’s eyes be shrouded’.
\footnote{Ibid.}

His anxiety is a pointer to the existence of efficient patrolling in the
city at night. We also see policemen being mobilised in an emergency such as
the escape of a dangerous prisoner; his pursuit; the conduct of searches; and

\footnote{The Marichakatika, Act 3 (Translated by A.W. Ryder).}
the system of passports issued by the police, to guarantee safe travel. But what is of immense interest is the concept of duty of the policeman as voiced by Viraka, whose code of discipline and devotion to duty is admirable.

I do not know my father when I’m serving my king. The concept is further developed in the ensuing conflict of Chandanaka, another captain of the King’s guard. Caught between the dictates of duty and a desire to help a good man in distress, his predicament is as vividly portrayed as was done centuries later by Victor Hugo when he sent sensitive Inspector Javert to self-immolation on the banks of the Seine in the haunting climax of ‘Les Miserables’. Chandanaka solved the problem differently:

He who gives aid to frightened men,
And joys his neighbour’s ills to cure,
If he must die, he dies; but then,
His reputation is secure.

We may not approve of Chandanaka’s conduct in assisting Aryaka to escape, but the policeman’s predilection in the discharge of his duties highlights the eternal conflict between the call of pity and the rigidity and impersonality of law.

The Mrichakatika is also important from our point of view for the interesting light it throws on judicial processes. The Judge lays down the rules: “We have to consider the allegations, then the facts. Now the, investigation of the allegations depends upon plaintiff and defendant. But the investigation of the facts must be carried out by the wisdom of the judge”. It may be noted that the emphasis was on the capacity of the judge to ascertain the true facts, mainly in the Court itself. But there was no ban on entrusting it to an intermediate agency like the police. Indeed, during the course of

---

47 The Mrichakatika, Act. 3. (Translated by A.W. Ryder).
Charuclatta’s trial on charges of murder, the police captain is deputed to investigate and confirm the existence of the *corpus delicti*. The questions put to him by the Court and Viraka’s answers confirming foul play purely on circumstantial evidence are strangely reminiscent of modern Court proceedings and cross-examination of investigating officers.

That the police as a separate organisation, albeit in an elementary form, existed during the Gupta Age is confirmed by Visakhadatta’s *Mudrarakshasa* written in the fifth century A.D. No doubt this literary work has as its central theme the science of diplomacy supported by a powerful army and an efficient intelligence service as prescribed in the *Arthasastra*. It is a story of spies and their machinations in the remorseless duel of wits between two astute ministers, but it contains stray references to the police too. The reference to *Kalapasa* and *Dandapasa* emphasise the efficiency of the administration of criminal law, a noteworthy feature, however, is that these, two officials are conjointly mentioned whenever punitive action is intended.\(^{48}\) Literally they mean holder of the noose of death and of executive authority—an example to indicate that the magistrate combined in him both the judicial and executive powers.\(^{49}\) Here again is a confirmation of the Hindu classical theory according to which the royal sceptre symbolized the rod of punishment. The stability of administration in the Imperial Gupta Period may in reality be ascribed to the efficiency of law-enforcing agencies, as reflected in the creation of a superior cadre of officers bearing the impressive names of *Dandanayaka* and *Mahadandanayaka*. Sir John Marshall and Prof. D. R. Bhandarkar are among the noted authorities who considered these dignitaries as purely police officials.

Although Fa-hien mentions the comparative freedom of movement in the Gupta Empire, it is more than likely that the system established in the Mauryan Age had continued with varying degrees of efficiency in the

\(^{48}\) *Mudrarakshasa*, Act. 1. (Translated by R.S. Pandit).

\(^{49}\) R.S. Pandit, *Commentary on Mudrarakshasa*. 
centuries immediately after Christ. In Act 5 of Mudrarakshasa, Siddartha ignores the advice of the monk in attempting to steal through the city without an authorization and is in consequence arrested by the officers of the 'Gulmastkana' (watch and ward Station).\(^{50}\) According to R. S. Pandit, the word 'Sthana' survives through Prakrit 'Thana' which occurs in the play in the modern Thana-police station.\(^{51}\) The play is also noteworthy for the ingenious manner in which the case against Rakshasa is proved by documentary evidence. Overwhelmed by the mass of evidence arrayed against him, the innocent minister might well despair:

That the letter is not mine is no answer
Since mine is the seal
Thus I would rather yield herein
As the better way than vouch
Inelegant reply.\(^{52}\)

Through the inscriptions relating to the age of Harsha and Hiuen Tsang’s account of criminal justice, it is safe to assume that the mechanism of the government under Harsha was in conformity with the Gupta organisation and the cruel punishments of the Mauryan Age continued in the seventh century. But we have practically little knowledge of law-enforcement and preventive agencies, although Hiuen Tsang himself was robbed on the highways a number of times. It is also inexplicable that Bana’s Harsha Charita which devotes ‘an entire chapter on Sthaneswar is irritatingly silent on the police organization.\(^{53}\)

Even these scraps of information are lost to us during the political interregnum between the death of Harsha (650 A.D.) and the rise of

\(^{50}\) Mudrarakshasa, Act. 5, Section 1.
\(^{51}\) R.S. Pandit, Commentary on Mudrarakshasa.
\(^{52}\) Mudrarakshasa, Act 5, Section 4.
\(^{53}\) Cowell & Thomas, The Harsha Charita of Bana, (1897).
Muhammadan power in North India, and we have perforce to turn to the more stable kingdoms of the south to trace the development of social and administrative institutions, some of which have survived in their content even today. The most important of these is the strengthening of the earlier principle that the enforcement of criminal justice should be vested in the village communities whose organisation attained an acme of perfection under the Gholas. The system of village autonomy with Sabhas and their committees existed in an embryonic stage under the Pallavas and the Pandyas in the eighth and ninth centuries, but it is under the Chola administration that the full development and adoption of law enforcement through village organisations could be achieved. The committees did this with the assistance of paid village officials who detected crime, while the Nyayattars (Judicial Committees) pronounced the innocence or guilt of the accused, leaving the question of punishment to royal officers or a special panel of judges. Rightly does Prof. Nilakanta Sastri say in his monumental work on the Gholas: “Between an able bureaucracy and the active local assemblies which in various ways fostered a live sense of citizenship, there was attained a high standard of administrative efficiency and purity”.54 Cattle-lifting, theft and robbery were common crimes and some inscriptions as well as the epic of Silapathikaram show that on the principle of setting a thief to catch a thief, individuals who had intimate knowledge of the criminal classes and their techniques were appointed as watchmen. Of considerable importance is a record from Uttipakkam which furnishes a detailed account of the efforts of the state to apprehend a desperate band of dacoits and murderers led by Alkondavalli and Pambanayan in the latter part of the thirteenth century. When their murderous excursions in the countryside were brought to the notice of Prince Pottapi Araiyan, the latter ordered the Chief Valluvanadu, Alvan Irungolar and a attachment of Malayala soldiers to arrest the criminals. The force was, however, totally inadequate and suffered badly at the hands of the intrepid dacoits. Even the satisfaction of laying two of its main leaders arrested was short lived, for, in a surprise

54 K.A. Nilakanta Sastri, The Cholas.
attack, the entire guard was killed and the prisoners were liberated while being escorted to the capital. Under the orders of the king, the criminals were ultimately captured by the people themselves, proving the need for public cooperation in the apprehension of evil-doers, irrespective of the strength of government agencies.  

In contrast to the earlier Hindu kingdoms, the organisation of the police received considerable attention in the medieval Vijayanagar empire, presumably due to the influence of neighbouring Muslim states. A noteworthy feature of the police force was its division into two categories—one maintained by the State and the other by the people. In the capital itself there was a special police force whose business it was, according to Abdul Razak, “to acquaint themselves with all the events and accidents that happen within the seven walls and recover everything that is lost, or that may be abstracted by theft; otherwise they are fined”.56 The system of penalizing police officials for the incidence of anti-social behaviour is confirmed by Nuniz, and was, extended even to the Prefect who can be identified with the Police Commissioner in modern times.57 In the days of Devaraya II the commissioner had his office opposite the mint and commanded a force of 12,000 policemen who were paid 30 panams each per month.58 The city police was famous for its achievements in the field of detection, and the exploits of Penugonda Yiranna are mentioned in the Lepakshi inscriptions.59 In the provinces, the Nayakas who were responsible for the preservation of order in their jurisdictions, appointed Kavalghars generally drawn from the criminal tribes to prevent thefts from their own castemen.60 They in turn appointed the village Talaiyaries who were liable to be punished if they did not discharge their duties properly. In some parts of the empire the Kavalghars were appointed by the villagers who sold the right of policing (Pandikaval). Sometimes the Kaval

56 B.A. Salatore, Social and Political Life in the Vijayanagar Empire.
57 T.V. Mahalingam, Administration & Social life under Vijayanagar.
58 Ibid.
60 K.A. Nilakanta Sastrī, Further Sources of Vijayanagar History.
rights were granted in recognition of services rendered. Thus it was largely the people themselves who made arrangements to prevent social disorder.

Contrasted with the paucity of information on the administration of criminal justice in ancient India, we are in a happier position in tracing the development of the police system under the Sultanates from the narratives of Muslim chroniclers who had a high sense of historical accuracy and orderliness. The police duties were performed by the Kotwal whose office was most identical with that of the Sahabi Shurtah in the Caliphate. The Kotwal in the Sultanate was assisted by the local inhabitants and a picked civil force which patrolled the thoroughfares and guarded the city. He maintained a register of full particulars of all the inhabitants and kept himself well-informed of their activities and movements. He acted as a committing magistrate and administered the rural areas also, sometimes in the dual capacity of a military commander of a fort. Some of the normal functions exercised by the police in modern times, however, were performed by another official—the Muhatasib. The Muhatasib was in reality the censor of public morals. He too had a small civil force under his command. He was expected to suppress illegal practices and maintain a high code of conduct of public behaviour. Among the duties he had to perform were control of gaming, sale of liquor, and prevention of indecency. He was essentially an executive officer as distinct from the quadi, whose powers were purely judicial. It is interesting to note that exploitation of human labour and cruelty to animals came under his purview, as well as the care of orphans and foundlings. In short, the muhatasib was an important official combining in himself police and quasi-judicial duties. A feature of the system under the Sultans was that a single individual held simultaneously the offices of Kotwal and Muhatasib both being under the control of the ‘Amir-i-dad’. Although these innovations did not modify the indigenous principle of relying on the villages for ensuring the security of person and property, there is no justification for the sweeping

61 T.V. Mahalingam, Administration and Social Life Under Vijayanagar.
statement of J. C. Curry “that not until Mughal times do we see anything like a police (organization).\textsuperscript{62}

We gather a clear picture of the police organisation during the Mughal times from Abul Fazl’s ‘\textit{Ain-i-Akbari}’. It furnishes a detailed account of the duties of the Kotwal who corresponds to the modern Police Commissioner and whose name survives even today in many big cities. He was responsible for watch and ward duties in the city and the control of social evils like prostitution, distillation of liquor, and regulation of public gatherings. He had under his control a regular staff of watchmen to patrol the streets at night and a set of paid informers to keep him in the know of all developments. It is interesting to note that the menace of pick-pockets and sneak thieves was considerable, and the Kotwal made adequate arrangements at all public gatherings to prevent their activities. The Kotwal was an important official who attended the Emperor’s \textit{Durbar} regularly and was known for his efficiency and at times for savage barbarity in dealing with public disorders.

Apart from \textit{Ain-i-Akbari}, other valuable sources of information on the police organisation are the \textit{Mirat-i-Ahmadi} written in 1748 by Ali Mahammad Khan and Manucci’s \textit{Storia do Mogor}. In a \textit{sanad} of appointment the Kotwal was urged to ensure that no theft occurred in the city and that the citizens went about their trades in peace and security. According to Manucci the Kotwal was subordinate to the Kazi but commanded an efficient body of men. “Under his orders there is a considerable body of cavalry and a great number of foot-soldiers, who, in a sort of way go the rounds”.\textsuperscript{63} All the sources, however, confirm a high degree of efficiency of the police in towns compared to the loose control exercised in the rural areas under the overall supervision of the \textit{Fauzdar}.

Broadly speaking, no code of civil or criminal law existed during the Mughal period, but the emperor was the final appellate authority in all matters

\textsuperscript{62} J.C. Curry, \textit{The Indian Police}, Faber & Faber Ltd.
\textsuperscript{63} Judunath Sarkar, \textit{Mughal Administration}. 

- 96 -
of litigation and his judicial representative was the Kazi. The executive authority on the other hand was the Fauzdar or the Kotwal (police commissioner) who assisted him to arrive at correct decisions according to the Koranic Law. A certain amount of confusion and overlapping occurs in respect of the duties of these two officials, but broadly the fauzdar was a rural executive authority with revenue and police functions with an extensive jurisdiction; while the Kotwal was essentially a city officer. No systematic development of the police force actually took place under the Mughals since the administration in so far as maintenance of internal order was concerned, was inherently weak and incapable of improvement. The autocratic element in the administration which combined a number of powers and duties in single officers or agents of the government was an important factor in retarding the growth of an efficient police system covering both rural and urban areas. As correctly assessed by Curry, “the Mugal Thanedars were but editions in petto of the Fauzdars”. They mainly concerned themselves with keeping peace and preventing turbulence, but detection and prevention of ordinary crime was left entirely to the village agencies without an adequate element of supervision. As Jadunath Sarkar says: “the policing of the vast rural area was left to the locality; it was done by the local chaukidars who were servants of the village community and maintained by the villagers themselves out of the village land...There was no doubt a government agent there viz. the Fauzdar; but his jurisdiction was too large to attempt the supervision of the police of all the villages in that region”. And finally, the imperfections of the Mughal judicials ystem and the intolerable degree of corruption which characterised it had their own reaction on the police.

The dissolution of the Mughal Empire was the signal for wide-spread anarchy and total breakdown of law and order. “In the midst of arms, the laws are silent,” a proverb says, and the Marathas proved it by their periodic forages of murder and pillage throughout the length and breadth of the land.

---

64 J.C. Curry, The Indian Police, p. 213.
The dislocation in civic life due to war, pestilence, famine, crime and governmental oppression reached a new height and ‘the extent of failure of law enforcement can be gauged by the callous irresponsibility of Raguji, one of the Maratha governors who was reported to have said when a complaint of murder, was made: “Why trouble me? If the man has murdered one of you, you can take his life yourselves, can’t you, without troubling me?”  It was in this context of political confusion, anarchy, total breakdown of administrative systems and successive waves of crime and violence that the British took over the reins of administration by gradual stages and began to evolve some order out of the prevailing chaos. The process was necessarily slow and beset with insurmountable difficulties. The initial experiments naturally met with failure. As Curry says, “the history of the police in British India for the century prior to 1860 was, as a part of the general; administration, that of a long series of experiments, often of I unsuccessful experiments”.

The first of these experiments was made in the Presidency town of Bombay in 1672 when an irregular body of militia was formed to perform watch and ward duties, but it was not till 1779 that it could be properly organised under a chief executive police officer. The prevailing conditions of disorder and insecurity in the country first drew the attention of Warren Hastings. He thought in terms of reviving the Mughal system of Fanzdars depending to a greater extent on the landowner to assist the state in the prevention and detection of crime. The experiment did not succeed in the changed conditions of the eighteenth century, and the arrangements were finally withdrawn in 1781. Cornwallis abolished the Zamindars who had heretofore been responsible for the maintenance of Thanedars and police establishments; and appointed in “their stead District or Zillah judges with full control over the police. Each district was divided into convenient jurisdictions under Darogahs who commanded bodies of salaried police and also sought the assistance of the village watchman. Although these reforms

66 J.C. Curry, The Indian Police, p. 215.
were initiated with the best of intentions, the *Darogahs* turned quickly into petty tyrants due to lack of supervision. Corruption and social tyranny marked their administration and the office of the *Darogah* became the most sought after position under the early British.

The successors of Cornwallis sought to remedy the evils which began to emerge from the unsuitable system against a background of rising tide of crime. In Bombay the Grand Jury of 1793 pressed for the reorganisation of the personnel under a Superintendent of Police. Wellesley and Bentinck appointed commissions to enquire into police affairs in 1801 and 1806, respectively. In Madras a special committee formed on the direct intervention of the Court of Directors attempted to revive the village police as a vigorous and effective organisation in place of the *Darogah* system which had fallen into disrepute. The most important outcome of the special committee’s recommendations, however, was the re-transfer of the control over the police from the Zillah Judge to the Collector who had comparatively greater knowledge of local conditions. Similar developments were inevitable in other provinces of the East India Company. In Bengal, however, the process was modified due to historical reasons. The entrustment of concurrent criminal jurisdiction with District magistrates was an effective and wholesome feature of the system which was later extended to Patna, Benares and Bareilly. But in 1829, the control over the police was transferred to the newly constituted Divisional Commissioners, and the change revived the pernicious tyranny of the *Darogahs* in an intensified degree. The system was once again reviewed in the light of past experience, and the committee formed by Sir Thomas Metcalfe in 1838 came to the logical conclusion that the failure of the police systems tried through all the years was due, either directly or indirectly, to lack of supervision.

---

67 A Superintendent of Police was appointed in 1808 over the divisions of Calcutta, Dacca and Murshidabad to facilitate effective campaigns against clacoi gangs.
All these experiments have to be sympathetically viewed in the light of deplorable conditions of law and order prevalent throughout the vast subcontinent in the first half of the nineteenth century. Evils of immense magnitude like: Thuggee, Suttee, infanticide, human sacrifice, rooted deeply in religion and social custom, could only be eradicated with difficulty by bands of inspired officers and progressive administrators.

Confused by the successive failures to forge an effective instrument of law-enforcement, the early British learnt, from. Their experience in putting down the Thugs and other anti-social forces, that in the maintenance of law and order, in India at any rate, extraordinary situations called for full-blooded measures. The early police familiarly known as ‘barquandazi’ which had grown partly from the darogah system and from the subordinate revenue establishments were totally inadequate to perform their duties due to their inherent weaknesses and lack of supervision. The solution was ultimately found in Sind where Sir Charles Napier had constituted a police force on the annexation of the province in 1847 on the lines of the Royal Irish Constabulary. The example was followed by Sir John Clerk, Governor of Bombay, who in 1858 appointed a Superintendent of Police in every district assisted by a number of Indian officers over whom the over all control was exercised by the provincial government. Similar changes were effected in other states, particularly in Oudh and Madras. Thus, by 1860 the varied experiences of different provinces in the organisation of the police could be pooled for attempting a solution on an All-India basis. This became imperative with the annexation of the Punjab and the far-reaching constitutional changes after the Mutiny. In August 1860 the Government of India appointed a commission to enquire into the whole question of police administration in British India.

The Police Act of 1861 which was the result of the labours of the above commission is the base on which the modern police structure in India stands
today. The appointment of Inspectors-General of Police responsible for
maintenance of peace in the provinces was its most significant contribution
doing away, once and for all, with vague and ineffective supervision by
unconnected authorities. But the act did not forsake the ancient system of
village police; instead, it visualised more effective supervision over them by
the Superintendent of Police so that valuable contacts between the police and the
people were not lost.

The police in India from ancient times have passed through many
vicissitudes depending upon the alternating cycles of order and chaos in the
country. Its development was haphazard, halting and influenced throughout by
political and social considerations. All the same, a most gratifying feature of
its development was the continuous reliance on the people in the vital tasks of
social defence. The failures were not due to any inherent defect in the
principle, but to lack of imagination on the part of the administrators to
improve the machinery to suit the changing needs of the times. They stressed
the basic truth that, whatever may be the degree of technical advance and
organisational efficiency, no police force can afford to act in isolation from
the people whom it wishes to protect.

By criminal, or penal, law is now understood the law as to the
definition, trial and punishment of crimes, i.e., of acts or omissions forbidden
by law which affect injuriously public rights, or constitute a breach of duties
due to the whole community. The sovereign is taken to be the person injured
by the crime, as he represents the whole community, and prosecutions are in
his name. Criminal law includes the rules as to the prevention, the
investigation, prosecution and punishment of crime. It lays down what
constitutes a criminal offence, what proof is necessary to establish the fact of
a criminal offence and the culpability of the offender, what excuse or
justification for the act or omission can be legally admitted, what procedure
should be followed in a criminal Court, what degrees and kinds of punishment
should be imposed for the various offences which come up for trial. Finally, it
regulates the constitution of the tribunals established for the trial of offences
according to the gravity of the infraction of law, and deals with the organization of the police and the proper management of prisons, and the maintenance of prison discipline.

Many acts or omissions, which are technically criminal and classified as offences and punished by fine or imprisonment, cannot be said to have a strictly criminal character, since they do not fall within the popular conception of crime. To this class belong such matters as stopping up a highway under claim of right, or failing to repair it, or allowing a chimney to emit black smoke in excessive quantities, or to catch fire from being unswept, or breach building by-laws, or driving a motor car on a highway at a speed in excess of the legal limit. Such breaches of law are, under French law, described as contraventions. In England most of them are described as misdemeanours or offences punishable on summary conviction, or less happily as “summary offences,” and some writers speak of them as mala prohibitiva as distinguished from mala in se, i.e., as not involving any breach of ordinary morality other than a breach of positive regulations. Continent at times speak of crimes de droit commun (i.e., offences common to all systems of law as distinguished from offences which a crimes only by a particular municipal law). To this class of crimes de droit commun belong most of the offences included in extradition treaties.

Criminal and civil law overlap, and many acts or omissions are not only “wrongs” for which the person injured is entitled to re cover compensation for his own personal injury or damage but also “offences” for which the offender may be prosecuted and punished in the interest of the State. In non-English European systems care is taken to prevent civil remedies from being extinguished by punishment: it is quite usual for the civil and criminal remedies to be pursued concurrently, the individual appearing as partie civile and receiving an award of compensation by the judgment which determines the punishment to be inflicted for the offence against the State. Under English common law civil and criminal remedies cannot be pursued in the same proceeding, or compensation awarded to the injured party in criminal proceed-
ings, and he is left to seek his remedy by action. But there are statutory exceptions, and among these are the restitution of stolen goods on conviction of the thief if the prosecution has been at the instance of the owner of the goods and the award of compensation to persons who have suffered injury to property by felony.

As Sir Henry Maine says: “All civilized systems of law agree in drawing a distinction between offences against the State or community (crimes or criminal) and offences against the individual (wrongs, torts or delicto). But the process of historical development by which this distinction has been ultimately established has given great occasion for study of early laws and institutions by eminent men, whose researches have disclosed the extremely gradual evolution of the modern notion of criminal law enforced by the State from the primitive conceptions and customs of barbarous or semi-civilized communities. Of the oldest codes digests of customs which are available to the student it has been said the more archaic a code the fuller and minute is its penal legislation: but this penal legislation is not true criminal law it is the law, not of crimes, but of wrongs. The intervention of the community or tribe is in the first instance to persuade or compete the wronged person or his family or tribe to abandon private vengeance or a blood feud and to accept compensation for the wrong collectively or individually sustained; and in the tariffs of compensation preserved in early laws the importance of the injuring person was the measure of the compensation or vengeance which was recognized to be entitled to exact, and the scales of punishment or compensation are fixed from this point of view.

While primitive peoples had a wide variety of responses to offending behavior from ceremonial singing and other approaches to resolving conflict in a consensus model to death inflicted by the victim or his family, the concept of compensation and vengeance in proportion to the offense

---

69 Larceny Act, 1916, Section 45.
70 Forfeiture Act, 1870.
ultimately emerged. Lex talionis became a limitation of retaliation to make the punishment fit the crime. This concept is embodied in the Law of Moses and has been expressed in both the Old Testament and the New Testament as follows:

Deuteronomy 19:21 (650 B.C.)- "Thine eyes shall not pity, but life shall go for life, eye for eye, tooth for tooth, hand for hand, foot for foot".

Matthew 5:38, 39 (65 A.D.)- "Ye have heard that it hath been said, an eye for an eye and a tooth for a tooth: but I say unto you, that ye resist not evil: but whosoever shall smite thee on thy right cheek, turn to him, the other also".

Leviticus 24:20 (570 B.C.)- "Breach for breach, eye for eye, tooth for tooth as he has caused a blemish in a man, so shall it be done to him again".

Although ancient cultures developed this idea of justice relating to vengeance, retribution, and compensation after the rise of the great religions and the concept that sin and crime were offenses against God, punishments became more severe because these offenses were over and above damage to society; they were now infractions of divine law and God’s will. About the tenth century, the king became strong enough to extend his power and protection and the mitigation of the blood feud resulted in other agencies taking responsibility for law and order. By the sixteenth century punishments had become severe and bloody, completely out of proportion to the seriousness of offenses. Common penalties were flogging, public boiling, mutilation, stocks and pillory (persons placed in public view with head and hands secured so the public could pelt them with stones and other missiles), blinding, cutting out tongues, the rack (stretching a person by binding ankles and shoulders and pulling in opposite directions), cropping (cutting off the

---

71 Exodus, Chapters 19-22.
ears), disemboweling alive, drawing and quartering, burning, and similar tortures.\textsuperscript{72}

The death penalty was used frequently and several ingenious devices were employed. Visitors to the Scandinavian countries reported seeing the remains of offenders still dangling from the wheel at the gates of the cities. Although the idea of natural rights was introduced into the theological milieu in an attempt to lessen the harshness of criminal disposition, punishments remained severe. Offenders were given horrendous types of punishment until as late as the sixteenth and seventeenth centuries. Convict ships were built during this period that sailed the seas, sometimes aimlessly with a cargo of felons. Torture equipment was incorporated in the ship’s equipment. One of the most grotesque devices was the iron maiden, which was a container attached to the mainmast.

Half of this was stationary and the other half was hinged like a door so that a person could be placed inside. When the door was shut, protruding spikes, both back and front entered the body of the victim. Needless to say, many convicts died on these ships. These vessels may have been offshoots of the ‘hulks’ or nonseaworthy vessels that had been anchored in the Thames River and elsewhere as places of confinement. Later, when major offenders began to be transported to distant lands as punishment, these convict ships became unnecessary. They had been an expensive torture luxury. Reaction against this type of treatment appeared in the writings of social philosophers in the sixteenth to eighteenth centuries. Grotious (1583-1645), Hobbes (1588-1679), and Locke (1632-1755) expounded the concept of government at the consent of the governed. This paved the way for Montesquieu (1689-1755), Voltaire (1694-1778), and Rousseau (1712-1778) to bring the philosophy down to the individual citizen. Justice had replaced vengeance.

\textsuperscript{72} Harry Barnes, \textit{The Story of Punishment: A Record of Man’s Inhumanity to Man}, (1930), pp. 52-54. Republished by Patterson Smith (Monotclair, N.J., 1972.)
3. Criminal Law In United Kingdom

The beginnings of law enforcement and the administration of justice as it is known today were in the eleventh and twelfth centuries. When William the Conqueror invaded England in 1066 and established Norman control over the Anglo-Saxons, a new phase of social control began. England was divided into fifty-five military districts, or shires, and a trusted lieutenant known as a reeve was placed in each district. A comes *tabuli* assisted the reeve by keeping the stables, a position that eventually evolved into that of constable. The position of *shire reeve* eventually became that of the sheriff. Soon after William’s arrival in England, a census was taken, including an assessment of wealth for tax purposes. This information was included in the *Doomsday Book*, the first record of such a census and taxation on this basis.

The Assize of Clarendon (Constitutions of Clarendon),\(^73\) formalized Court procedure. The jury system including the grand jury and the petit jury was structured essentially as it remains today. The sheriff was recognized as an officer of the law and his responsibilities were delineated. The construction of jails was authorized. Certain offenses against the king’s peace were defined including arson, robbery, murder, false coinage and crimes of violence. The beginnings of classification of crimes as felonies and misdemeanors appeared.

In 1215, King John issued the Magna Carta under compulsion from his barons. It became a symbol of a general movement toward civil and constitutional rights, although in itself it was not intrinsically so significant. The king’s Court had become more powerful and the barons’ courts were losing business to it. Increasing oppression and demands for armies, fines for barons who did not accompany the king on campaigns, increased demands in a losing fight for Normandy and the final defeat in 1214, and the king’s alienation of the Church by placing its property into lay hands and sending the revenues into the royal treasury finally led to the barons’ action in June 1215. Administrative reform and a growing philosophy concerning government at

\(^{73}\) It is called by Henry II in 1166 a.d.
the consent of the governed were intertwined in the Magna Carta. Nevertheless, it was a symbolic document that seemed to mark the beginning of civil and constitutional rights in English-speaking countries.

The Westminster period (1285-1500) refers to the effects of the Statutes of Westminster passed during the reign of Edward I. The first passed in 1275, held that all persons shall be treated alike before the law, whether rich or poor, and without respect for persons and, further, that all elections shall be free and no man shall disturb them. The second, passed in 1285, remodeled the institutions of justice to eliminate some abuses, enabled a curfew to be imposed, and established a bailiff or night watch. Statutes of treason were passed in 1352. The office of justice of the peace was instituted in 1361. Local government and its regulations were inaugurated in 1370. Courts of the Star Chamber or *ex parte* proceedings were instituted in 1487 to try offenders against the State. Testimony could be coerced in these proceedings. During this period, the security of the State was being consolidated and social control methods to accomplish this consolidation were being legitimatized and formalized.

Parliamentary government began in England in the fourteenth and fifteenth centuries and legislation was introduced to secure the social order. Laws forbidding war against the king, forbidding serfs to leave the land in search of work, and forbidding dogs from being kept by persons not owning property were involved in an effort to maintain the social status quo. Persons guilty of murder at this time were sentenced to short imprisonment or fines. During the sixteenth and seventeenth centuries, legislation was aimed at consolidation of Church and State. Treason and heresy became capital crimes, as did swearing, adultery, and witchcraft. During the eighteenth and nineteenth centuries, piracy, forgery, and banking offenses were made crimes. In the twentieth century, white-collar and commercial crimes resulted from the changing social order.

In 1764, Beccaria published his *Essay on Crimes and Punishments*, which was a reaction against the harsh penalties of the time and a call for
punishments to fit the crimes. He said that the basis of all action should be utilitarian; that crime should be considered to be an injury to society; and that prevention is more important than punishment. Beccaria supported fair and speedy trials, and imprisonment and deterrence. He thought with Bentham that man was hedonistic in that he sought pleasure and avoided pain, and that he could choose his behavior. An important result of Beccaria’s ideas was that crimes became codified and well-delineated in the statutes. Before that time, there was no criminal law as it is now known. Wrongs were heard on their own merit and punishments meted out according to the judgment of the Court. The feeling expressed by Beccaria was central to social thinking of the time, even though he first published his book anonymously to avoid reprisal. William Blackstone and Jeremy Bentham of England, as well as others, joined in the contention. Blackstone recodified English criminal law and defined specific crimes, formulating the punishments that would result from different offenses. For the first time, definitions of crime and criminal procedure were formulated in law.74 Edward Livingston [1764-1836] was central in codifying American criminal law and procedure. The criminal law had now come to focus primarily on the seriousness of the offense rather than on the welfare of society.

After the downfall of the feudal system, the mercenary armies were disbanded and persons without skills congregated in the cities. This condition, combined with the suppression of the monasteries and the decline of the craft guilds, resulted in mass unemployment and pauperism. The city of London established a workhouse at St. Brigit’s Well called Bridewell in 1557. A similar workhouse was opened in Amsterdam in 1596. The use of workhouses as institutions to hold minor offenders and beggars became widespread throughout Europe. In America, the colonial jail served the same purpose. At that time, the serious offenders were transported into banishment or exile.

74 By 1800, English criminal procedure had a basis in statutory law. It was at this time (1789) and under these influences that the American Constitution was written and adopted.
The replacement of the feudal system by the developing capitalistic system was a gradual process that was completed with the Industrial Revolution, generally considered to be around 1750. The invention of the steam engine, the importation of gunpowder from China, and increased commerce, particularly the seeking of spices in the absence of refrigeration, all contributed to this change. Slavery was no longer profitable, either on land or in the galleys by sea. Consequently, criminals had to be exported. Russia sent hers to Siberia. Spain and Portugal sent theirs to Africa. France sent hers to South America, and her last penal colony, the infamous Devil’s Island, was not closed until 1944. The destruction of the Spanish Armada in 1588 made the seas safe for England. Consequently, England sent her criminals to America.

In 1717, the British Parliament formally designated the American colonies as England’s penal colony. The first prisoners had been shipped in 1650. By 1776, there had been an estimated 100,000 (some estimates are as low as 11,000) prisoners shipped in chains to the American colonies. (In 1776, after the battles of Lexington and Concord on April 19, 1775, 2,000 serious offenders were sent to the American colonies.) Stories in The London Times in the late 1700s indicate that persons convicted of murder and other serious crimes were frequently sentenced to service beyond the seas in the American colonies. At the beginning of the American Revolution in 1776, however, the American colonies were closed to English prisoners because the government did not want to risk shipping more able-bodied Englishmen who would take up arms against the mother country.

Prisons were eventually seen as the substitute for banishment and for capital punishment. England had used capital punishment extensively for more than 200 years. During the reign of Queen Elizabeth alone, for example, there were about 72,000 executions. The Penitentiary Law of 1775 was passed by

---

Subsequently, convicted prisoners were sent to Australia until 1879, when that practice was informally terminated.
the British Parliament under the sponsorship of John Howard and Sir William Eden, but prisons as such were not constructed in England until later. Newgate Prison was constructed in London in 1769 as a large holding operation with little or no control inside and no attempt at program. It was demolished in 1902. A workhouse opened in Ghent, Belgium, in 1773, which made the first known attempt at programming for its inmates. Thus, some have referred to this workhouse as the first ‘prison’ in the modern sense; others dispute this claim.

The Western Hemisphere was first settled by Spanish and Portuguese, and all territories south of the United States are referred to as; Latin America. A large minority of America’s poor, in the cities, on the; farms, and as migrant workers, are Spanish-speaking-and they contribute disproportionately to the prison populations. The first city settled by white Europeans was Santo Domingo in 1496, just four years after the voyage of Columbus, and it is now the capital of the Dominican Republic. San Juan, now capital of Puerto Rico, was established in 1508. On what is now the continental United States, Pensacola was settled in 1559, but the first major city was St. Augustine, established in 1564. Despite the fact that these first settlers were Spanish and Portuguese, the cultural heritage of the United States came from England. The language and social institutions that evolved were basically English, and other ethnic and racial groups had to adapt to English traditions.

The early history of the United States guided the direction of its culture, and with it, its criminal justice system. The early humanitarian penitentiary movement was an American contribution that European observers came to inspect, including Alexis de Tocqueville in 1831. Combining the religious concepts of sin with the protection of the rights of citizen-offenders, the American system became unique. But the emergence of a corrections system in America had a harsh beginning. Early colonists became increasingly intolerant of differences in established religion to the extent that Roger
Williams, a minister, had to leave the original colony in 1636.76 (The famous witchcraft trials in 1692 were probably prompted by the fervor of the Rev. Parrish, who depicted Satan and Christ fighting for supremacy. The American ethic was formed out of temper, hard work, and rooted in the religious literature, particularly Genesis, Exodus, and Deuteronomy. Even the celebration of Christmas was considered to be sacrilegious and was outlawed by a General Court statute of 1659. (It was repealed in 1681.) Extremely severe criminal codes were derived from England and made applicable to Pennsylvania from 1676 until 1683, when William Penn’s First Assembly passed 'The Great Law'. The comparatively humane Quaker criminal code functioned until 1718, when it was repealed and the colony reverted to the former system. (Coincidentally, the former system became operative the day after William Penn died.)

The first prison in the United States was Newgate of Connecticut in an old abandoned mine at Simsbury. Administration buildings were constructed over the shaft in 1773. Three parallel excavated caverns about 800 feet long, with one pool of fresh water, constituted the prison. The first known prison riot was there in 1774. The condition of prisons at this time was terrible. Men and women, adults and children, sick and well, were all placed together. Many jails and prisons were housed near taverns for convenience. In fact, one at Hartford, Connecticut, shared the same roof with the tavern. There too, the food was minimal, sanitary conditions were deplorable, and discipline was nonexistent. Newgate Prison in New York City was built in 1796 in what is now Greenwich Village.

The Philadelphia Society for Alleviating the Miseries of the Public Prisons, a Quaker organization under the leadership of Dr. Benjamin Rush and including Benjamin Franklin in its membership was organized in 1787. By 1790, this organization had established the first penitentiary in the world at the Walnut Street jail. Here the women and men were housed in separate

---

76 He then established Rhode Island.
facilities. It is interesting to note that after the separation, the average daily female population was three or four as compared with thirty-five or forty before the separation. Cells were constructed to provide solitary confinement in order to eliminate moral contamination from other prisoners and to force the prisoner to meditate on the evil of his ways. The religious motivation created a humane prison aimed at treatment by solitary confinement, religious instruction and Bible reading, and work in the cells. A small exercise yard was attached to each cell. An excellent history of the beginnings and early years of American prisons was published in 1922 by the Prison Association of New York, and reprinted in 1967.  

In 1815, New York established a prison at Auburn that imposed a silent system, individual confinement at night, congregate work during the day. Harsh discipline and strong security measures were taken at Auburn. European penologists came to America to examine both the Philadelphia and the New York prison, and generally considered the Pennsylvania system as being more humane and treatment-oriented. On the other hand, most American states adopted the Auburn plan as being more economical and administratively feasible. Vestiges of the Auburn plan are seen in most of the large penitentiaries and prisons in the United States today.

Parole is a form of release under supervision after a prisoner has served some time in an institution. Captain Alexander Maconochie used it on Norfolk Island in 1840 when he thought inmates who had been banished from England could safely return home. They were given a ticket-of-leave to cover their return. Maconochie was dismissed in 1849 for being too radical. Subsequently, his ideas became central to the Irish system introduced by Sir Walter Crofton in Dublin in 1854 and were central to the discussions in the first meeting in Cincinnati in 1870 of what is now known as the American Correctional Association. Maconochie and the Irish System had a profound

---

influence on American corrections following 1870. As early as 1832, Richard Whately, Archbishop of Dublin, advocated the indeterminate sentence with release back to the community following incarceration. In the United States, Michigan was the first State to take legislative action on the indeterminate sentence in 1867, due to the efforts of Zebulon R. Brockway, then superintendent of the Detroit House of Correction. Parole, in its true meaning, including supervision, was first used at the Elmira Reformatory in New York in 1876, when Brockway was hired as superintendent of that institution. All states now have some form of parole.

Probation and the suspended sentence have been practiced since ancient times, although not according to the modern meanings of these terms. Probation today means supervision of a convicted offender by Court personnel without sending him to prison. Historically, probably the oldest type of mitigation was the 'right of sanctuary' in ancient times, by which certain places were designated as places where an offender might go to escape punishment. Holy places were frequently used for this purpose. A later concept was the benefit of clergy, which first applied only to the clergy, but was then extended to persons who could read a test verse in Psalms 51 beginning, 'Have mercy upon me'. The beginnings of probation as we know it started in Boston when a cobbler, John Augustus, introduced the practice when he visited the courts in 1841 and requested the judge to let him pay the fines and give him supervision of minor offenders. By 1858, he had bailed out 1,152 men and 794 women and girls. In addition, he had helped thousands of others. He died in 1859 and his supporters continued his work. The first probation law was passed in Massachusetts in 1878 to enable the city of Boston to appoint a probation officer. 78

The first police department in its modern concept was established in London in 1829 as a result of riots in several English cities. These dis-

78 All states now use some form of probation, though their probation laws may differ.
turbances assisted Sir Robert Peel in introducing and passing legislation creating a municipal police department. Police departments were established in New York, Baltimore, and Boston soon after. The United States Secret Service and other treasury agents of law enforcement were established with the beginning of the country as a measure against counterfeiting, smuggling, and tax evasion. The Federal Bureau of Investigation was established in 1908 and subsequent governmental agencies for law enforcement were established later.

The juvenile Court was inaugurated in 1899 in Illinois, thus completing the pattern of major correctional services in existence today. In review, the penitential movement began in Philadelphia in 1790. Parole began with the ticket-of-leave system by which the British let deserving offenders return to England from their penal colonies and was part of the Irish system of reduced custody in stages throughout the period of imprisonment. Probation began informally in 1841 with John Augustus in Boston and was formally recognized by the Massachusetts legislature in 1878. Juvenile institutions began privately in 1825 in New York and publicly in 1847 in New York and Massachusetts. The reformatory movement was implemented at Elmira, New York, in 1876 following:

The first meeting of what became the American Correctional Association in 1870 in Cincinnati. The juvenile Court began in 1899. These form our basic correctional services.

In England under Alfred some part the Levitical law (Exod., xxi. 12-15) was incorporated, just as 1567 the criminal law as to incest in Scotland was taken body from Leviticus, xviii. 79 On the eve of the Norman Conquest what we may the criminal law of England (but it was also the law of torts civil wrongs) contained four elements which deserve attention its past history had in the main consisted of the varying relate' between them. We have to speak

79 The stage which the development of criminal law had reached in England by the reign of Edward the confessor is thus described by Pollock and Maitland (Hist and Law).
of outlawry, of the blood for "(faidus), of the tariffs of wer and wite (fredus or friede), hot, of punishment in life and limb. As regards the malefactor community may assume one of four attitudes: it may make on him; it may have him exposed to the vengeance of those who he has wronged; it may suffer him to make atonement; it inflict on him a determinate punishment, death, mutilation or like". The wite or some paid to the king or lord is now thought to have been originally not a penalty but a fee for time and trouble taken in hearing and determining a controversy. But at an early stage fines for breach of peace were imposed. An evil result from the public point of view followed from the system of atoning for crime by pecuniary mulct. "Criminal jurisdiction became a source of revenue". So early as Canute's time certain crimes were pleas of the Crown; but grants of criminal jurisdiction, with the attendant forfeitures, were freely made to prelates, towns and lords of manors, and some traces of this jurisdiction still survive (e.g. the criminal jurisdiction of the justices of the soke [soc] of Peterborough, and the rights of some boroughs, e.g., Notting-lam, to forfeitures). Outlawry soon ceased to be a mode of punishment, and became, as it still is, a process to compel submission of justice.\(^\text{80}\) Certain rimes, such as murder, rape, arson and burglary, became unamendable or bootless, i.e., placed the offender's life, limb, lands and goods at the king's mercy. These crimes came to be generally described by the name felony. Other crimes became punishable by fines which took the place of wites. These were styled trespasses and correspond to what is now called misdemeanour.

Minor acts of violence, dishonesty or nuisance, were dealt with in seigniorial and borough courts by presentment of the jurors of courts by pillory, tumbrel or stocks. Grave acts were dealt with by the sheriff as breaches of the peace. He sat with the freeholders in the country Court, which sat twice year, or in the hundred courts, which sat every four weeks. So far as this involved dealing with pleas of the Crown the sheriff's jurisdiction was

abolished and was ultimately replaced by that of the justice or conservators of
the peace. The sheriff then ceased to be a judge in criminal case, but remained
and still is in law responsible for the peace of his country, and is the officer
for the execution of the law. The royal control over crime was effectually
established by the itinerant justices sent regularly throughout the realm, who
not only dealt with the ordinary proprietary and fiscal rights of the Crown but
also with the graver crimes (treason and elony), and ultimately were
commissioned to deal with the less rave offences now classed as indictable
misdemeanours. The change resulted from the strengthening of royal authority
throughout England, which enabled the Crown gradually to enlarge the eas of
the Crown and to weaken and finally to supersede the criminal jurisdiction,
notably of the sheriff, but also of prelates and lords in ecclesiastical and other
manors and franchises. “In the early English laws and constitution there
existed a national sovereignty and original criminal jurisdiction, but the ideas
of legislative power and crime were very slowly developed”. During the 12th
century the criminal law was affected by the influence of the Church, which
introduced into it elements from the Canon and fosaic laws, and also by the
memory of the Roman empire and the renewed study of the Roman law, which
enabled lawyers to law a clearer distinction than had before been recognized
between the criminal (dolus) and civil (culpa) aspect of wrongful thoughts.
The Statute of Treasons (1351) is to a large extent an admixture of Roman
with feudal law; and to the same source is probably due to the more careful
analysis of the mental elements necessary to create criminal responsibility,
summed up in the me what misleading expression nemo reus est nisi mens sit
rea. In the 14th century justices of the peace and quarter sessions are
established to deal with offences not sufficiently important of the king’s
judges, and from that time the course of criminal justice in England has run
substantially on the same lines, with single and temporary interruption caused
by the Court of Star Chamber.

The penal laws of modern States jussify crimes somewhat differently,
but in the main on the same neral principles, dividing them into: (1) Offences
against the eternal and internal order and security of the State; (2) Offences against the administration of justice and against public authority; (3) Acts injurious to the public in general; (4) Offences against person; (5) Offences against property.

The terminology by which crimes are described by reference to their comparative gravity varies considerably. In many Continental codes distinctions are drawn between crimes and contraventions.81 (Ital. contraventioni; Span, faltas).

The classification adopted by English law is peculiar to itself, ‘treason, and ‘felony’ and ‘misdemeanour’, with a tentative fourth class described as summary offences’. The particular distinctions between these three classes are dealt with under the titles Treason; Felony; Misdemeanour, etc. Here it is enough to say that the distinction is a result of history, and that felonies were those crimes that formerly involved capital punishment, and until 1870 forfeiture of the offender’s property. Treason and most felonies and some misdemeanours would under foreign codes fall under the head of crime. Misdemeanour, roughly but not exactly, corresponds to the French delit, and summary offence to contravention.

3.1 Elements of Criminal Responsibility

In all systems of criminal law it is found necessary to determine the criterion of criminal responsibility, the mental elements of crime, the degrees of criminality and the point at which the line is to be drawn between intention and commission.

The full definition of every crime contains expressly or by implication a proposition as to a state of mind, and in all systems of criminal law, competent age, sanity and some degree of freedom from coercion, are assumed to be essential to criminality; and it is also generally recognized that an act

---

81 (Ger. Verbrechen; Norse vorbrydelser; Span, crimenes; Ital. reato), delicts (Ger. Vergehen; Ital. delitti; Span, delitos).
does not fall within the sanction of the criminal law if done by pure accident or in an honest and reasonable belief in circumstances which if true would make it innocent; e.g., when a married person marries again in the honest and reasonable but mistaken belief that the former spouse is dead. Honest and reasonable mistake of fact stands on the same footing as absence of the reasoning faculty of which is a good example, as in infants, or perversion of that faculty, as in lunatics. But ignorance of law does not excuse.

Besides the elements essential to constitute crime generally, particular mental elements, which may differ widely, are involved in the definition of particular crimes; and in the case of statutory offences adequately and carefully defined, the mental elements necessary to constitute the crime may be limited by the definition so as to make the prohibition of the law against a particular act absolute for all persons who are not infants or lunatics. As a general rule of English law, it is enough to prove that the acts alleged to constitute a crime were done by the accused, and to leave him to rebut the presumption that he intended the natural consequences of the acts by showing facts justifying or excusing him or otherwise making him not liable. Children are conclusively presumed to be incapable of crime up to seven years of age; and from seven to 14 the presumption is against the capacity, but is not absolute.

Under the common law, insanity was an absolute answer to an accusation of crime. As to insanity the rule applicable is to be found in McNaghten's Case decided in 1843, where it was laid down that to establish a defence on the ground of insanity it must be proved that at the time of committing the offence the accused was labouring under such a defect of reason as not to know the nature and quality of the act he was doing, or, if he did know it, he did not know that what he was doing was wrong. It is true that the rules in McNaghten's Case have been much criticized by writers, but they have been accepted and acted upon by the courts down to the present time.

---

82 Reg. v. Tolson, 16 Cox. CC 629.
Since 1883, where insanity is proved to have existed at the date of the commission of the incriminated acts, the accused is found guilty of the acts but insane when he did them, and is relegated to a criminal lunatic asylum. Insanity produced by drunkenness would be a defence to crime, but that may be considered the limit to drunkenness as an excuse for crime, save when a specific intent is necessary to constitute a crime. But the mere fact that the mind is so affected by drink that violent passions are not controlled affords no defence, and it was so held by the House of Lords, in 1920, reversing the Court of Criminal Appeal in Beard’s Case where the accused, under the influence of drink, in the course of committing an act of rape suffocated his victim.

Physical compulsion or coercion is an excuse for crime, but not where the force is moral such as threats or duress. There was also at common law a presumption that a married woman committing certain crimes in the presence of her husband did so under his coercion. But this presumption was abolished by the Criminal Justice Act, 1925, and coercion made a matter of proof. Speaking generally, the attitude of English law towards criminal responsibility is to be found in the maxim actus non facit reum nisi mens sit rea. But to this there are certain well-defined exceptions. By a particular statute the necessity for intent or knowledge may be negatived, such as in the case of breaches of the licensing law and the law as to the adulteration of food. Again, as we have said, ignorance of the law is no excuse, so a bond fide belief that the accused has been divorced, where only a decree nisi has been pronounced, is no defence to a charge of bigamy.

Distinctions are also drawn between degrees of guilt or complicity. English criminal law punishes attempts to commit crime if the attempt passes from the stage of resolution or intention to the stage of action, when the completion of the full offence is frustrated by something other than the will of

---

83 26 Cox. C.C. 573.
84 Rex v. Wheat, 26 Cox. CC 717.
the accused. Except in the case of attempt to commit murder, which is a felony, attempts to commit a crime are punished as misdemeanours. It also punishes the solicitation or incitement of others to commit crime, as a separate offence if the incitement fails, as the offence of being accessory before the fact or abettor if the offence is committed as a result of the incitement; and it punishes persons who, after a more serious crime felony has been committed, do any act to shield the offender from justice. In the case of the crimes described as felonies the law distinguishes between principals in the first or second degree and accessories before or after the fact. In the case of misdemeanours the same punishment is incurred by the principal offenders and by persons who are present aiding and abetting the commission of the offence, or who, though not present, counselled or procured the commission of the offence. Besides these degrees of crime there is one almost peculiar to English law known as conspiracy, i.e., an agreement to commit crime or to do illegal acts (including interference with the due course of justice), which is punishable even if the conspiracy does not get beyond the stage of agreement.

The English law does not, but most European laws do, allow the jury to reduce the penalty of an offence by finding in their verdict that the commission of the offence was attended by extenuating circumstances; but when the jury recommend to mercy a person whom they find guilty the judge may give effect to the recommendation or report it to the Home Office.

In systems of criminal law derived from England the forms of crime or degrees of complicity above stated reappear with or without modification, but as to conspiracy with a good deal of alteration. In the Indian penal code, for instance, conspiracy is limited to cases of treason (Section 12), and when it goes beyond agreement in the case of other offences it is merely a form of abetment or participation (Section 107).

The criminal law of England is not codified, but is composed of a large number of enactments resting on a basis of common law. A very large part is reduced to writing in statutes. In 1861 various consolidation acts were passed dealing with larceny, malicious damage, forgery, coinage offences, and
offences against the person. And of recent years, still further progress has been made in dealing with the law relating to particular subjects in one consolidating statute.\textsuperscript{85} The unwritten portion of the law includes (1) principles relating to the excuse or justification of acts or omissions which are \textit{prima facie} criminal, (2) parts of the law relating to procedure. The law is very rich in principles and rules embodied in judicial decisions and are extremely detailed and explicit. So far as the legislature is concerned there is an absence of systematic arrangement. The definitions of many crimes are still to be sought in the common law and the decisions of the judges. Thus the crime of murder, as settled by the existing law, would include offences of such very different moral gravity as killing and deliberately for the sake of robbing him, and killing a man accidentally in an attempt to rob him. On the other hand, offences which ought to have been criminal were constantly declared by the judges not to fall within the definition of the particular crimes alleged, and the legislature has constantly had to fill up the lacunae in the law as interpreted by the judges.

3.2 Jurisdiction

The jurisdiction to deal with crime is primarily territorial, and can be exercised only as to acts done within the territory or territorial waters, or on the shops of the law-giver. Extra territorium jus dicenti impure non paretur. No State will enforce the penal laws of another nor permit the officer of another State to execute its laws outside its own territory. But international law recognize the competence of a State to make its criminal law binding on its own subjects wherever they are, and perhaps even to punish foreigners who outside its territory do acts which menace its internal or external security, e.g., by dynamite plots or falsification of coin. Apart from extradition arrangements the national law cannot reach such persons, be they citizens or

\textsuperscript{85} Examples of which are the Children Act, 1908, the Perjury Act, 1911, the Forgery Act, 1913, the Indictment Act, 1915, and the Larceny Act, 1916.
aliens, until they come within the territory of the State whose law has been broken.

The codes of France, Germany and Italy make the penal law national or personal and not territorial. In some British colonies whose legislatures have a derived and limited legislative authority indirect methods have been taken to deal within the colony with persons who commit offences outside its territory.

Throughout the development of the English criminal law it showed one particular characteristic that crime was treated as local, which means not merely that the common law of England was limited to English soil, but that an offence on English soil could be “enquired of, dealt with, tried, determined and punished” only in the particular territorial division of England in which it was committed, which was and is known as the *venue*). But from time to time exceptions have been made by statute, and now by the Criminal Justice Act, 1925, a prisoner can be tried where he was apprehended, and there are wide powers under that statute to commit for trial to “convenient” assizes or sessions if the accused will suffer no hardship. Each township was responsible for crimes within its boundaries, a responsibility made effective by the “view of frankpledge,” now obsolete, and the guilt or innocence of every man had to be determined by his neighbours. This rule excluded from trial by the courts of common law, treasons, etc., committed by Englishmen abroad and piracy; and it was not till Henry VIII’s reign (1536-1544) that the common-law mode of trial was extended to these offences. The legislature has altered the common law as to numerous offences, but on no settled plan, and except for a bill introduced about 1888, at the instance of the 3rd marquess of Salisbury, no attempt has been made to make the English criminal law apply generally to subjects when outside the realm; and in view of the complicated nature of the British empire and the absence of a common criminal code it has been found desirable to remain content with extradition in the case of crimes abroad, and with the provisions of the Fugitive Offenders Act, 1881, in the case of criminals who flee from one part to another of the empire.
The localization in England of crime, and the procedure for punishing it, differ largely from the view taken in France and most European countries. The French theory is that a Frenchman owes allegiance to the French State, and commits a breach of that allegiance whenever he commits a crime against French law, even although he is not at the time within French territory. In modern days this theory has been extended so as to allow French and German courts to punish their subjects for crimes committed foreign countries, and by reason of this power certain countries refuse to extradite their subjects who have committed crimes other States.

The principle of the French law, though not expressly recognized in England, must be invoked to justify two departures from the English principle—(1) as regards offences on the seas, and (2) as regards certain offences committed outside Britain. In early days offences committed by Englishmen on the high seas were punished by the lord high admiral, and he encroached so much on the ordinary courts as to render it necessary to pass an act in Richard II's reign (15 Rich. II. st. 2, C. 3) to restrain him.

In the time of Henry VIII (1536, 28 Hen. VIII. C. 15) an Act was passed stating that, as the admiral tried persons according to the course of civil law, they could to be convicted unless either they confessed or they or the witnesses were submitted to torture, and that therefore it was expedient to try the offences according to the course of the common law. Under that act a special commission of over and terminer was issued to try these offences at the Old Bailey, and English law was satisfied by permitting the indictment to state that the offence was committed on board a ship on the high seas, to wit in the county of Middlesex. Further provision was made by the Admiralty Offences Act, 1844, and in 1861 each of the Criminal Law Consolidation Acts of that year provided that all offences in those statutes mentioned committed on the high seas may be tried as if they had been committed in England. As regards offences on land, it was found necessary as early as the reign of Henry VIII. (1543) to provide for the trial in England of treasons and murders committed on land outside England. This was largely due to the constant presence
in France of the king and many of his nobles and knights, and the aid of this statute was invoked in 1903 in the case of Lynch, tried for treason in South Africa, and in the case of Casement in 1917. By Section 9 of the Offences against the Person Act, 1861, any murder or manslaughter committed on land out of Great Britain, whether within the king's dominions or without, and whether the person killed were a subject of His Majesty or not, may be dealt with in all respects as if it were committed in England. The jurisdiction has been extended to other cases such as slave trade, bigamy, perjury committed with reference to proceedings in an English Court, and offences against the Foreign Enlistment Act, 1870, and the Official Secrets Acts, 1911 and 1920. But these offences must be committed on land and not on board a foreign ship, because if a man takes service on board a foreign ship he is treated for the time as being a member of the foreign State to which that ship belongs. The principle has been also extended to misdemeanours committed in India, and oppressions, crimes and offences committed by public officers out of Great Britain, whether within or without the British dominions.

3.3 Punishment

An essential part of the criminal law is the punishment or sanction by which the State seeks to prevent or avenge offences. See also under Criminology. Here it is enough to say that during the 19th century great changes have been made throughout the world in the modes of punishing crime.

In England until early in the 19th century, punishments for crime were fierce. The severity of the law was tempered by the rule as to benefit of clergy and by the rigid adherence of the judges (in favorem- vitae) to the rules of correct pleading and proof, whereby the slightest error on the part of the

---

86 Thus a governor or an inferior officer of a colony, if appointed by the British Government, may be prosecuted for any misdemeanour committed by him by virtue of his office in the colony; and cases have occurred where governors have been so prosecuted, such as that of Gen. Picton at the beginning of the 19th century, and of Governor Eyre of Jamaica in 1865.
prosecution led to an acquittal. Bentham pointed out that certainty of punish-
ment was more effective than severity, that severe punishments induced juries
to acquit criminals, and that thus the certainty of punishment was diminished.
But his arguments and the eloquence of Sir Samuel Romilly produced no
effect until after the reform of parliament in 1832, shortly after which statutes
were passed abolishing the death sentence for all felonies where benefit of
clergy existed. Subsequent statutes have abolished the death penalty save in
the cases of murder, treason, piracy and offences against the Dockyards
Protection Act, 1772. By the Children Act, 1908, the death sentence is not to
be pronounced or recorded where the offender is under 16. The severity of
capital sentences was greatly modified by the pardoning power of the Crown,
which pardoned convicts under sentence of death on their consenting to be
transported to convict settlements in the colonies. The punishments now in use
under the English law for indictable offences are:

1. Death inflicted by hanging, and carried out within prison walls since
   1868, with a provision that decapitation may be authorized by royal
   warrant in cases of high treason.

2. Penal servitude, which in 1853 was substituted for transportation to
   penal settlements outside Great Britain. The minimum term of penal
   servitude is three years (Penal Servitude Act, 1891), and the sentence is
   carried out in a convict prison, in Great Britain, but there is still power
   to send the convicts out of Great Britain.

3. Imprisonment in a local prison, which must be without hard labour
   unless a statute specially authorizes a sentence of hard labour. At
   common law there is no limit to a term of imprisonment without hard
   labour for misdemeanour; but for many offences (both felonies and
   misdemeanours) the term is limited by statute to two years, and in
   practice this limit is not exceeded for any offence. But where a person
   is liable to terms of imprisonment in the aggregate for three years or
   more, the Court by the Penal Servitude Act, 1926 substitutes penal
servitude for imprisonment. The treatment of prisoners is regulated by the prison acts and rules.

4. Police supervision under the Prevention of Crimes Act, 1871 and preventive detention on conviction as a habitual criminal under the Prevention of Crimes Act, 1908. This statute also instituted Borstal treatment for youthful offenders between 16 and 21 years of age.

5. Pecuniary fine, a punishment appropriate only to misdemeanours and never imposed for a felony except under statutory authority, e.g., manslaughter (Offences against the Person Act, Section 5). The amount of the fine is in the discretion of the judge, subject to the directions of Magna Carta and the Bill of Rights and of any statute limiting the maximum for a particular offence.

6. Whipping was a common law punishment for misdemeanants of either sex. The whipping of females was prohibited in 1820, and the punishment by the Criminal Justice Administration Act, 1914, may not be inflicted on males except under statutory authority. That is given in the case of certain assaults on the sovereign, of certain forms of robbery with violence, of some offences against women and girls, of incorrigible rogues and certain other offences by youthful offenders.

7. Recognizances to keep peace and be of good behaviour, i.e., a bond with or without sureties creating a debt to the Crown not enforceable unless the conditions as to conduct therein made are broken. It may be required in addition to other punishment. This bond may be taken from any misdemeanant, and, under statutory authority, from persons convicted of felony (except murder).87

8. In the case of any offence which is not capital the Court, if any grounds for mercy appear, may simply bind the offender over to come up for

---

87 The Malicious Damage, Coinage Offences, and Offences against the Person Acts of 1861, the Forgery Act, 1913, and the Larceny Act, 1016.
judgment when required, intimating to him that if his conduct is good no further steps will be taken to punish him. Provisions as to probation orders and recognizances are contained in the Probation of Offenders Act, 1907, the Criminal Justice Administration Act, 1914, and the Criminal Justice Act, 1925.88

Except in the case of the death penalty, the Court of trial has discretion as to the quantum of a particular punishment, no minimum being fixed. In the case of offences punishable on summary conviction the maximum punishment is always fixed by statute. As to the punishment of youthful offenders and children. In the criminal law of Europe the scale of punishments is on similar lines in most States, and is more elaborate than that of England, and less is left to the discretion of the Court of trial.

3.4 Tribunals

In England indictable offences which are not such as can be dealt with summarily by justices and must be tried by a judge and jury are thus dealt with:

1. Courts of assize (sitting under old commissions known as commissions of assize, over and terminer, and general gaol delivery), are held three times or oftener in every year in each county and also in some large cities and boroughs. They are the lineal successors of the justices in eyre of the middle ages; but they in now integral parts of the High Court of Justice. These courts can try any offence which is not specifically excluded from their jurisdiction.

2. For the counties of London and Middlesex and certain adjoining districts, a special Court of assize known as the central criminal Court sits monthly.

---

88 By the Criminal Justice (Amendment) Act, 1926, the Court may order the offender to pay costs, damages or compensation.
3. In all counties the justices of the peace sit quarterly or oftener under the commission of the peace to try the minor indictable offences. In cities and boroughs with a separate Court of quarter sessions, cases are tried before the recorder (q.v.).

4. The High Court of Justice in the King’s Bench division tries a few special offences in its original jurisdiction, and where justice requires may transfer indictments from other courts for trial before itself.

5. The Court of criminal appeal has been instituted by the Criminal Appeal Act, 1907; to it all persons convicted on indictment have a right of appeal; and there is a limited right of appeal from this Court to the House of Lords.

   Summary jurisdiction in criminal cases is exercised by justices of the peace at petty session. It extends to all offences that can be dealt with summarily and certain minor indictable offences. In most cases the bench must consist of two or more justices, but a stipendiary magistrate, who is appointed under statute, can act alone.

   The substantive law as to crime applies in England to all persons except the reigning sovereign, and criminal procedure is the same for all subjects alike, except in the case of peers or peeresses charged with felony, who have the right of trial by their peers in the House of Lords if it be sitting, or in the Court of the lord high steward.

   There are in England no courts of a special character, such as exist in some foreign countries, for the determination of disputes between the governing classes themselves or with the governed classes, whether of a civil or criminal character. There are a few exceptional courts with criminal jurisdiction. The Court of chivalry, which used to punish offences committed within military lines outside the kingdom, is obsolete. Special tribunals exist for trying naval or military offences committed by members of the navy and army, but those members are not exempt from being tried by the ordinary tribunals for offences against the ordinary law, as though they were civilians.
The ecclesiastical courts, which were formerly very powerful in England, and punished persons for various offences, such as blasphemy, perjury, swearing, and sexual offences, have now almost fallen into disuse. Their authority over Protestant dissenters from the Established Church was taken away by statute; their authority over lay members of the Church of England has disappeared by disuse. Occasionally suits are instituted in them against the clergy for offences either against morality or against doctrine or ritual. In these cases their sentences are enforced by penalties, such as suspension, or deprivation of benefice, or by imprisonment, which has replaced the old punishment of excommunication.

3.5 Procedure

A system of procedure, with the judicial machinery required to work it, may be created either by the direct legislative action of the supreme power or by custom and the action of the courts. Both at Rome and in England it was through usage and by the courts they that the earlier system was slowly moulded; both at Rome and in England it was direct legislation that established the later system.

Criminal prosecutions are ordinarily undertaken by the individuals who have suffered by a crime. There is not in England, as in Scotland and all European countries, a public department concerned to deal with all prosecutions for crime. The result is that the prosecution of most ordinary crime is left to individual enterprise or the action of the local police force or the justices’ clerk.

The attorney-general has always represented the Crown in criminal matters, and in State prosecutions appears in person on behalf of the Crown, and when he so appears has certain privileges as regards the reply to the prisoners’ defence and the mode of trial. Under these acts the director of

---

89 In the Prosecution of Offences Acts of 1879, 1884 and 1908 there is to be found the nucleus of a system of public prosecution such as obtains in other countries in case of crimes.
public prosecutions (*q.v.* (up to 1908 an office conjoint with that of solicitor to the Treasury) acts under the attorney-general, but unless specially directed be only undertakes a limited number of prosecutions, *e.g.*, for murder, coining and serious crimes affecting the Government.

The procedure of the trial of persons accused of criminal offences in England may now be considered; firstly, where such offence may be dealt with summarily by justices at petty sessions and secondly where the nature of the offence requires a trial before a jury either at quarter sessions, assizes or the central criminal Court.

### 3.6 Summary Trials

Justices of the peace may under many statutes convict in a summary manner (without the intervention of a jury) for offences of minor importance. The procedure for punishing summary offences is before two justices, or a stipendiary magistrate. This proceeding must not be confused with the preliminary enquiry before justices for an indictable offence which may be sent for trial before a jury (which will be dealt with later) nor with the procedure before justices in relation to civil matters’ such as the recovery of small sums of money. The proceeding begins either by the arrest without a warrant of the accused, or by the issue of a warrant for the arrest of the person charged, in which case a sworn information must be filed, or by a summons directing the person charged to appear on a certain day to answer the complaint made by the prosecutor. The justices must hear the case in open Court; the person charged can make his defence either in person or by his solicitor or counsel, he can cross-examine the witnesses for the prosecution, call his own witnesses and address the justices in his defence. The justices, after hearing the case, either acquit or convict him, and in case of conviction award the sentence. Imprisonment with or without hard labour can be inflicted as the provisions of the statute authorize, but aggregate sentences must not exceed 12 months. If the sentence is a fine, and the fine is not paid, the person convicted is liable to be imprisoned without hard labour for the term fixed by
the justices, not exceeding a scale fixed by statute, the maximum of which is
three months, but this has been exceeded by some acts of parliament.

Of late years this summary jurisdiction of the justices has received very
large extensions, and many offences which were formerly prosecuted as
serious offences by an indictment before the Court of assize or quarter
sessions have, where the offence was a trivial one, been made punishable, on
summary proceedings before justices, by a fine or a term of imprisonment.

The principal statutes dealing with the jurisdiction of justices to dispose
of cases summarily are the Summary Jurisdiction Acts, 1848 and 1879, the
Criminal Justice Administration Act, 1914, and the Criminal Justice Act,
1925. Extended powers were given these tribunals of dealing with children
and young persons, save in the case of homicide and by the last-mentioned
statute the power of the justices to deal with adults in specific cases and under
certain circumstances, always with the consent of the accused, was further
enlarged.

In all cases of summary trial where peremptory imprisonment for more
than three months can be inflicted, the accused has a right to trial by jury and
must be informed of this right. Ana by statute there is a general right of appeal
to quarter sessions from a conviction by or an order of a Court of summary
jurisdiction where there has not been a plea of guilty, or even in the latter case
against the sentence.

3.7 Trials at Quarter Sessions and Assizes

We now come to consider the trial of the more serious indictable
offences at quarter sessions or assizes, which cannot, or owing to their nature
should not, be dealt with by Justices at petty sessions. Where such an offence
has been committed the accused is arrested, with or without the warrant of a
justice, according to the nature of the offence, or is summoned by a justice
before him. On his appearance a preliminary enquiry is held for the purpose of
ascertaining whether there is a *prima facie* case against him.\textsuperscript{90} It may be, though rarely is held in private; it is an enquiry and not a trial.

The evidence of the witnesses given on oath, and any statement made by the accused is taken down by the clerk, and then the justices have to consider not whether the man is guilty, but whether there is such a *prima facie* case against him that he ought to be tried. If they think that there is, they commit him to prison to wait his trial, or require him to give security, with or without sureties, to the amount named by them, for appearing to take his trial either at quarter sessions or assizes. Otherwise they discharge the accused.

At common law any person could prefer an indictment for an indictable offence to a grand jury, and so, even although justices declined to send an accused person for trial, the prosecutor might proceed further. But by the Vexatious Indictments Act, 1859, in the case of certain offences, which have been extended by subsequent legislation, no indictment is to be presented to a grand jury without the consent of a judge or law officer, or unless the accused has been committed or the prosecutor has been bound by recognizance to prosecute. Justices are bound to take that recognizance even although they have declined to commit.

### 3.8 The Grand Jury

Whether there has or has not been a preliminary enquiry before a magistrate, no person can be tried for any of the graver crimes, treason or felony, except upon indictment found by a grand jury of the county or place where the offence is said to have been committed or is by statute made cognizable. In olden days, and even now in theory, the grand jury enquire of their own knowledge, by the oath of good and lawful men of the neighbourhood, into the crime of the county, but in practice the charges against the accused persons are always first submitted to the proper officer of

\textsuperscript{90} The procedure is regulated by the Indictable Offences Act, 1848, and is entirely different from the procedure for summary offences.
the Court. The grand jurors are instructed as to their inquisition by a charge
from the judge, as regards the indictments concerning which they are called
upon to enquire whether there is a *prima facie* case to send them for trial to
the petty jury.\(^91\)

But any person who prefers an indictment is entitled to have it
presented to the grand jury. Officers of the Court lay the indictments before
the grand jury. The charges are then called bills, and if the grand jury
considers that there is good ground for the trial of the accused, they find a
"true bill", but if they think there is no *prima facie* case the foreman endorses
the bill with the words “no true bill” and it is then presented to the judge. The
jury are then said to have ignored the bill, and if the person charged is in
custody he is released, but is liable to be indicted again on better evidence.

In many colonies the Scottish system has been adopted, by which the
ordinary form of accusation is by indictment framed by the public prosecutor,
and a grand jury is only empanelled in cases where an individual claims to
prosecute an offence as to which the public officials decline to proceed. In
England criminal informations by the attorney general, or by leave of the
Court without the intervention of a grand jury, are permitted in cases of
misdemeanour, but are now rarely preferred.

If a coroner’s jury, on enquiring into any sudden death, finds that
murder or manslaughter has been committed, that finding has the same effect
as an indictment by a grand jury, and the man charged may be tried by the
petty jury accordingly.\(^92\) But now by the later statute if criminal proceedings
are pending, “in the absence of reason to the contrary”, the inquest is to stand
adjourned until their conclusion.

\(^{91}\) The grand jury must consist of not less than 12, nor more than 23, good and
lawful men of the county.

\(^{92}\) The law and procedure of the coroner’s courts are now regulated by the Coroners
Acts, 1887 and 1926.
3.9 Trial by Jury

When an indictment is found by the grand jury (12 at least must concur) the person charged is brought before the Court, the indictment is read to him, and he is arraigned and asked whether he is guilty or not guilty. If he pleads guilty he is then sentenced by the Court; if he pleads not guilty, a petty jury of 12 is formed from the panel or list of jurors who have been summoned by the sheriff to attend the Court. He may peremptorily challenge jurors in cases of treason or felony and “for cause” also in misdemeanour. He is tried by these jurors in open Court.

On the trial before the petty jury the procedure and the rules of evidence differ in few points from an ordinary civil case. The proceedings as already stated are accusatory. The prosecutor must begin to prove his case. Confessions and admissions alleged to have been made by the accused are regarded with suspicion and are not admitted unless it is clear that they were not extracted by inducements of a temporal nature held out by persons in authority over him. The accused may not be interrogated by the judge or the prosecuting counsel unless he consents to be sworn as a witness. The accused may, if he choose, be defended by counsel, and if poor may get legal aid at the public expense if the Court certify for it. He is entitled to cross-examine the witnesses for the prosecution and to call witnesses in his defence. At the conclusion of the evidence and speeches the judge sums up to the jury both as to the facts and the law, and the jury by their verdict acquit or convict. Immediate discharge follows on acquittal; sentence by the judge on conviction.

3.10 Appeal After Trial by Jury

In English law until 1907, where a criminal case had been tried by a jury, the verdict of the jury of guilt or innocence was final and there was no appeal on the facts. Any considerable defect or informality in the procedure might be the subject of a writ of error. And if any question of law arose at the trial, the judge might, if he chose, reserve it for the opinion of the Court for
the consideration of Crown cases reserved, by whom the conviction might be
either quashed or confirmed.

By the Criminal Appeal Act, 1907, a new Court was established to
which any person convicted on indictment or criminal information might
appeal. This statute abolished writs of error and the old practice of the King's
Bench as to granting new trials. It allowed appeals on questions of law and
fact and on mixed questions of law and fact, and also against sentences, and
on the certificate of the attorney-general that a point of law of exceptional
public importance is involved, a further appeal is permitted to the House of
Lords. There is no provision for appeals against acquittals and no power to
order a new trial.93

3.11 Costs

The expenses of prosecution for crime in England are dealt with in the
following manner. In the case of summary offences justices under the
Summary Jurisdiction Acts can order the defendant on conviction to pay to the
prosecutor all costs that are just and reasonable, and where the information is
dismissed can order the prosecutor to pay costs to the accused. At common
law there was no jurisdiction to order costs, and the power to do so rests upon
statute. The subject, so far as indictable, as opposed to summary offences are
concerned, is governed by the costs in Criminal Cases Act, 1908, and by that
statute (1) a Court of assize, including the central criminal Court, or a Court
of quarter sessions before which any indictable offence is tried; (2) a Court of
summary jurisdiction dealing summarily with an indictable offence; and (3)
justices examining but not trying an indictable offence may direct the payment
of the costs of the prosecution or defence out of the funds of the county or
county borough as in the act provided. There is power under the same act for
the Court to order the costs of the prosecution to be paid by the accused if
convicted, and in certain cases a private prosecutor may be ordered to pay the
costs of the defence. In the case of an appeal to the Court of criminal appeal

93 A Court of criminal appeal was established for Scotland in 1926.
under the act of 1907, no costs are allowed on either side, but the expenses of assigned counsel or solicitor and of witnesses are to be defrayed out of local funds.

3.12 Characteristics of English Criminal Law

The characteristics of English criminal law and procedure which most distinguish it from the procedure of other countries are as follows:

1. It is litigious or accusatory and not inquisitorial. It is for the prosecutor to prove by legal evidence the commission of the alleged offence, and the accused is not required to prove his innocence.

2. According to the law of England there is no prescription in criminal law (with a few exceptions created by statute). Tempus non occurrit regi. An offender is always liable to punishment whatever time may have elapsed since the committal of the offence. On the Continent of Europe the limitation of a judgment and sentence for a crime is 20 years; five years for a delit, and for a contravention two years. No proceedings can be taken as regards a crime after a lapse of ten years, whilst as regards a delit the limit is three years, and two years for a contravention.

3. A criminal prosecution directed on European criminal procedure at once passes into the hands of the State as an infringement of law which must be repressed, on the ground that the whole community bases its security on obedience to law. It is true that in England prosecutions are carried on in the name of the Crown, but only in serious matters do the attorney-general, the director of public prosecutions, or the police act, and much of the repression of minor crime is left to the injured party.

4. In England every criminal trial from beginning to end is public. Preliminary enquiries into an indictable offence may be, but rarely if ever are, conducted in private. On the Continent of Europe, with rare exceptions all preliminary proceedings in a criminal charge are secret, and there are limitations to the rights of the legal advisers of the
accused. At the trial the powers of counsel are much wider. In England also it is an established law that an accused person should have the right of publicity of the proceedings and the right to defend himself by counsel and by witnesses at all stages of the proceedings.

5. In England the single-judge system is universal, save in courts of summary jurisdiction, at quarter sessions for counties and on appeal; on the Continent of Europe plurality of judges is insisted upon, save in the most trivial cases, where the punishment is insignificant.

6. In England the accused has a right to be tried by a jury for all serious crime, and all professional judges are chosen from the bar, and do not form a particular caste, and are only removable for misbehaviour.

3.13 Northern Ireland and Scotland

The criminal law of Northern Ireland is to a great extent the same as that of England, resting on the same common law and on statutes which extend to both countries or are in almost the same terms, and is administered by courts of assize and quarter sessions, and by justices, as in England. In a few instances statutes passed for England or Great Britain before the Union have not been extended to Ireland, or statutes passed by the Irish parliament before the Union or by the British parliament since the Union create offences not known to English law.94

Criminal procedure in Scotland is regulated by an act of 1887 which greatly simplified indictments and proceedings. The prosecution of crime is in the hands of public officers, procurators fiscal, under the control of the lord advocate. Private prosecutions are possible, but rare. Except in the case of the law of treason, imported from England at the Union, no grand jury is required, and the indictments are filed by the public officer.

94 In Scotland not many crimes are constituted by statute law, the common law having great elasticity.
The criminal law of England forms the basis of the criminal law of British possessions abroad, with a few exceptions, e.g., the Channel Islands (still subject to the custom of Normandy), and the anomalous case of Cyprus, where Ottoman law is to some extent in force. As to India, see infra.

In many British colonies the criminal law has been codified or at the least consolidated. The criminal law of South Africa, which is based on the Roman-Dutch law, including the Constitutio Criminalis Carolina (1532), is not codified. In the Transvaal and Orange River colonies codes of criminal procedure are in force, drawn mainly from the common and statute law of the Cape Colony with the addition of provisions borrowed from English and colonial legislation.

### 3.14 Codification

Criminal law has everywhere grown out of custom, and has in all civilized States been largely dealt with by direct legislation. In most civilized States (including Japan) it has been codified by statute, to the general satisfaction of people; and the conspicuous success of the Indian Penal Code shows that English criminal law is susceptible of being so treated.95

The expediency, if not the necessity of codifying the criminal law of England has long been apparent. The writings of Bentham drew attention to many of its substantial defects, and the efforts of Romilly and Mackintosh led to certain improvements embodied in what are known as Peel’s Acts (1826 to Qr 1832).96 The nature of the instructions indicate the crudity of the ideas then ruling as to codification97 The commissioners were directed to digest into one statute all enactments touching crimes and the punishment thereof, and into another statute the provisions of the common unwritten law touching the same. The commission was renewed in 1836 and 1837 and in 1843 a second commission was appointed. Numerous and voluminous reports were

---

95 Bryce, Studies, ii. 34.  
96 In 1833, at the instance of Lord Chancellor Brougham, a royal commission was appointed to deal with the criminal law.
published, including (1848) a bill for consolidating and amending the law as to crimes and punishments and (1849) a like bill for criminal procedure, indicating that the commissioners had in the meantime learned the distinction between substantive and adjective law. Lord Brougham unsuccessfully introduced the first bill, and in the end the only fruit of the reports has been certain amendments of procedure in 1851 and the passing of the seven Criminal Law Consolidation Acts of 1861, which deal with the statute law as to larceny, forgery, malicious injuries to property, coinage offences and offences against the person. During the present century the law relating to perjury, forgery, indictments and larceny has been consolidated in several statutes.

(i) India

The Indian Penal Code and Criminal Procedure Code by their history, their form, and the extent and diversity of the races and peoples to which they apply, are perhaps the most important codes in the whole world. Between 1834 and 1837 Macaulay with three other commissioners, Macleod, Anderson and Millet, prepared a draft penal code for India, for which they drew not only upon English and Indian laws and regulations but also upon Livingstone’s Louisiana code and the Code Napoleon. Little or nothing was taken from the Mohammedan law. A revised draft of the Penal Code by Sir B. Peacock, Sir J. W. Colville and others was completed in 1856. In framing it the reports of the English criminal law commissioners (published after Macaulay’s draft code) were considered. The draft was presented to the Legislative Council in 1856, but owing to the mutiny and to objections from missionaries, etc., its passing was delayed until Oct. 6, 1860. A draft scheme of criminal procedure was prepared in India in 1847-48, which, after submission to a commission in England, was moulded into a draft code which passed the India Legislative Council in 1861 (Act No. XXV.) And came into force in 1862. It has been reenacted with amendments on various occasions and in 1898 (Act V.).

The result is that in India the criminal law is the law of the conqueror, though for many civil purposes the law of race, religion and caste governs.
Under the codes, one set of courts has been established throughout the country, composed of well-paid, well-educated judges, many of the high judicial appointments being held by Englishmen; all those who hold subordinate judicial posts at the same time are subjected to a combined system of appeal and revision. The arrangement of the Indian Penal Code is natural as well as logical; its basis is the law of England stripped of technicality and local peculiarities, whilst certain modifications are introduced to meet the exigencies of a country such as British India.

Passing on to the system of criminal procedure which is set forth in detail in the Code of Criminal Procedure as re-enacted in 1898, it is no doubt modelled on the English system, but with considerable modifications. The principal steps are: (1) arrest by the police and enquiries by the police; (2) the issue of summons or warrant by the magistrate; (3) the mode of procedure before the magistrate, who may either try the accused himself commit him to the sessions or the high Court, according to the importance of the case; (4) procedure before the Court of session; appeals, reference and revision by the high Court.

(ii) Foreign Codes

It has been stated that most European States had codified their criminal law. The earliest of Continental codes is that of Charles V promulgated in 1532, and own as Constitutio Criminalis Carolina. Austria made further des in 1768 (Constitutio Criminalis Theresiana) and 1787 (Emperor Joseph’s Code). A new code was framed in 1803 and amended in 1852 by reference to the Code Napoleon; and in 1906 completely new code existed in draft. The Hungarian Penal Code dates from 1880. The Bavarian Code of 1768 of Maximilian, revised in 1861, and the Prussian Code of 1780, have been superseded by the German Penal Code of 1872. The most important of the Continental criminal codes are those of France, the Code Penal (1810) and the Code d’Instruc-on Criminelle (1808) - the work of Napoleon the Great and his advisers, which professedly incorporate much of the Roman law.
The Belgian Codes (1867), and the Dutch Penal Code (1880) closely follow the French model. The Spanish-American republics for the most part also have codes. Portugal has a Penal Code (1852). In Italy the Procedure Code and the Penal Code, perhaps the completest yet framed, are of 1890, but a new penal code under the Fascist regime is now (1928) under consideration. The Swedish Code dates from 1864. The Norwegian Code was passed in May 1902, and came into force in 1905. Japan has a code based on a study of European and American models. In the United States no Federal criminal code is possible; but many States have digested their criminal law and procedure more or less effectually into penal codes. It may be generally stated that the English criminal law and procedure forms the basis of that which obtains in English-speaking countries, while the French Codes of Napoleon are the models of Continental criminal law.

4. Criminal Law in United States

In one sense there is no single body of criminal law of the United States. For purpose of the administration of criminal justice each of the 48 states, and the Federal Government, is a sovereign state with its own law, its own exclusive jurisdiction, its own judges and other officers of the Federal Constitution. Yet, in another sense, there is a criminal law of the United States.

When the American Colonies were first settled by the English, it was held by the settlers and by the judges and lawyers of England, that they brought with them so much of the common law of England and the statutes then in force there as was applicable to their local situation and change of circumstances. But each Colony judged for itself what parts of this common law were applicable to its new condition and adopted some parts and rejected others. The common law here spoken of is that great body of principles evolved by the English judges during the centuries.

---

97 In Spain the Penal Code dates from 1870, the Procedure Code from 1886.
Therefore, while each of the several states of the United States has its own distinct body of criminal law, these bodies of law have a common source, viz, the common law of England and this common law furnishes a great body of principles which forms the basis of the law of each of the several states and of the Federal Government. Thus, subject to exception mentioned hereafter, every act that was a crime by the common law of England at the time the English immigrated to America is a crime to-day in the several States. There are three exceptions to this statement. (1) Under the rule that the English brought with them to America only so much of the common law as was suited to their changed conditions, offences cognizable only in the ecclesiastical courts in England, such as incontinence, were generally held not punishable in America unless made so by statute. (2) In a few State the legislatures have undertaken to codify the criminal law, and the courts of these States have held that in so doing the legislatures intended to include in the code all acts that were thereafter to be punishable, and that no act not animadverted upon in the code should henceforth be a crime in that state. (3) The Federal courts hold that there are no common law crimes against the Federal Government; that only such acts as have been declared criminal by Congress can be punished by the Federal courts.

Not only were some common law crimes rejected in the United States, but many of the common law punishments in vogue in England at the time of the settlement of the Colonies were not accepted there. It was rejected, as not accommodated to the circumstances of the country, and against the notions of punishment entertained by this primitive and humane community; and although they adopted the common law doctrine as to inferior offences, yet they did not follow their punishments. ... A gross libel in England was sometimes punished by the pillory. I believe Mr. Prynne lost both his ears. Though the offence is the same here, yet the sentence is very different”.

98 In an early Pennsylvania case the Court said: “The common law punishment of ducking (which was the punishment for the offence of being a common scold in England) was not received nor embodied by usage, so as to become a part of the common law of Pennsylvania.
On this basis of the common law of England, each of the States and the Federal Government has separately, through the medium of legislation, built their individual bodies of criminal law. The criminal law legislation has been exercised mainly in the direction of the creation of new crimes, the changing of the penalties of the old ones, the organization of courts and changes in procedure.

Offences are usually classified in the United States in respect to their effect, as offences (1) against the law of nations, (2) against public justice and authority. (3) Against the public peace, (4) against trade, (5) against public decency, (6) against the person, (7) against property. The United States has inherited from England the classification of crimes, in respect to their gravity, into treason, felony and misdemeanour. In England many crimes were placed in the category of treason. In the United States this term has been restricted to one offence; viz., the levying of war against the State or adhering to its enemies. Felonies, at common law, included all crimes punishable by death and forfeiture of property, but since forfeiture of property for crime was abolished early in the United States and the death penalty was restricted to a few crimes, this term has lost its original signification and now, generally speaking, characterizes all the more serious crimes. Furthermore, this category has been affected by statutes, so that what is a felony in one State may be only a misdemeanour in another. In some States a general rule has been adopted defining felony, as in New York, where all offences punishable by imprisonment for one year are declared felonies; while in other States, as in Pennsylvania, the legislature, in defining each crime, prescribes whether it shall be a felony or a misdemeanour. The term misdemeanour includes all offences punishable by the State which are not treason or felony.

4.1 Fixing Responsibility

The elements of a crime under the laws of the Federal Government and of the States are the same as in other systems of law. The rule is expressed in the maxim every crime consists of an act or an omission to act and an accompanying state of mind. The act must be a willed act and the omission
must be legal as distinguished from a moral duty. A blow caused by a mere muscular reflex will not make one criminally liable nor will an omission by a stranger to rescue a drowning person though such rescue could be effected by a minimum of effort. Except in a small but growing class of statutory offences of a minor character, there must exist together with the act or omission, an accompanying state of mind, to render the person causing injury criminally liable. This state of mind varies in the case of different offences and is malice, negligence, knowledge of certain facts or some particular intent. Thus murder consists of an act causing death to a human being, accompanied by malice; voluntary manslaughter consists of the same act with intent to kill, but without malice; while in involuntary manslaughter we have the same act done with a merely negligent mind. Most of the serious offences require in addition to an act a certain specific intent. Thus in burglary there must be the act of breaking and entering a dwelling house in the night time with an intent to commit some felony therein; in larceny there must be coupled with the act of taking an intent to deprive the owner permanently of the property taken; in robbery there must be the forcible taking of property with the intent required in larceny. In addition to these common law crimes there is a long catalogue of statutory offences requiring a specific intent for their commission; such are assaults with intent to kill, to maim, to wound, etc.

To be responsible criminally for his acts, the person charged must be of competent age and sane. The burden of proving such knowledge is on the prosecution. While in law both of England and the United States an insane person is not responsible for his acts, the legal test of the kind and degree of that insanity which excuses him is not the same. Indeed, it is not the same in all the States of the Union. In England, the test adopted in 1843 in McNaughten’s Case in accordance with the medical theories of the day, was what has become known as the right and wrong test, viz. did the accused know

\[99\] In the United States as in England, a child under seven years of age is not criminally liable for any act and between the ages of seven and 14 he is presumed not to have such knowledge and discretion as to make him liable.
the nature and quality of the act he did, or, if he did know it, did he know that he was doing wrong. This test has been adopted in many of the States, and under it is held in these States that a person is not excused who kills another under an insane irresistible impulse, or homicidal mania. A growing number of States, however, influenced by modern psychiatry have repudiated the right and wrong test and hold that even if the accused knew the nature and quality of his act and knew that it was wrong, yet if he was driven to do the act by an insane, irresistible impulse, he is not responsible. A third group of States hold that there is no legal test of insanity; that insanity is a question of fact, not of law, and if the defendant had a mental disease, and the act done by him was a product of that disease, he should not be convicted. If insanity exists in such a degree as to excuse, the origin or cause of such insanity is immaterial; thus insanity brought on by indulgence in liquor, if it be real insanity a disease of the mind and not merely a temporary irrationality due to intoxication is as effective to render one nonliable for acts due to such insanity as though the insanity were congenital. Insanity plays another role in the criminal law in that though the accused was sane at the time he committed an offence, he cannot be put on trial if he is insane when his case comes on to be tried, as in such event he cannot intelligently present his defence; nor can he be punished if he is insane at the time of the sentence.

A person cannot be convicted of larceny, if at the time he took the property he was too drunk to entertain the intent to steal; nor can he be convicted of arson if he was too drunk to have the intent to burn. Ignorance or mistake of law or of fact affords a valid excuse for a crime if such crime requires a specific intent or knowledge, and the ignorance or mistake negatives the existence of the requisite intent or knowledge. Thus, if a person mistakenly thinking that a piece of property belongs to him, carries it away, he is not guilty of larceny since his mistake negatives the intent to deprive the owner of the property which intent is necessary to larceny; or if a person votes, believing erroneously that he has the right to vote under existing law,
he cannot be convicted under a statute providing penalties for knowingly voting illegally.

Since the theory of the criminal law is that a crime is an offence against the State rather than against the individual, the consent of the person injured affords no defence except in crimes such as rape, larceny, etc., that require the non-consent of such person by their very definition. Thus on an indictment for murder it is no defence to show that the person killed consented to his death or asked the accused to kill him. For the same reason contributory negligence or guilt or condonation of the person injured defence in criminal law. Physical compulsion or coercion valid excuse for what would otherwise be a crime because in case the act done is not the act of the person seeming to act of the person compelling. Moral compulsion such as threats been held in the United States to excuse some crimes and not excuse others. Thus, where an American enlisted in the enemy army it was held he was not guilty of treason if he enlisted through fear of immediate death. On the other hand, one is never excused for killing an innocent person even to save oneself from immediate death at the hands of a third person. On the fact that one was induced or commanded to commit a crime affords no excuse. There are two partial exceptions to this rule. A wife is excused for the commission of any but one of the more serious crimes if she coerced by her husband and the crime is committed while he is present; and a person in the military or naval service is excused for illegal acts done by command of his superior officer unless the order was so clearly illegal that a person of ordinary intelligence would recognize its illegality on its being given. In addition to the above-mentioned excuses, there are certain justifications for acts which without such justification would be criminal. In this category are the arrest, detention and in the cases of serious crimes, even the killing of a person who has committed or is about to commit a serious felony, if there is no other means of arresting him or of preventing the felony. A parent or one standing in loco parentis may

100 Respub v. McCarty, 2 Dallas 86.
101 Brewer v. State, 72 Ark. 145.
likewise justify a battery on the person in his charge if the battery is for purposes of correction and is not excessive. The well-known doctrine of self-defence likewise comes within the category of justifiable acts. Also, what one may do in self-defence, another may do in defence of him. A person may also protect his dwelling or his property by force, short of killing or serious bodily harm.

4.2 Combinations of Persons in Crime

A person may be concerned in a crime either as a principal in the first degree, a principal in the second degree, an accessory before the fact or an accessory after the fact. The principal in the first degree is one who commits the crime with his own hand or acting through a legally irresponsible agent—such as a child under seven years of age, an animal or a mechanism. A principal in the second degree is one who is present, aiding or abetting the principal in the first degree. An accessory before the fact is one who induces the principal in the first degree to commit the crime but is not present when it is committed. An accessory after the fact is one who knowing that another has committed a felony, shelters him or aids him to escape. These degrees of participation in crime hold only in the case of felonies. In treason and misdemeanours all persons concerned are principals.\footnote{In the United States as in England attempts falling short of the commission of the crime intended are themselves regarded as crimes unless the crime intended is of a very minor character.}

In this class of crime as in others, there must be a concurrence of act and intent. A distinction is made between preparation to commit the offence and attempt to commit it. If the act done toward the commission of the crime has not gone beyond mere preparation to commit it, the technical act has not been done and no offence has taken place.

Thus, buying a pistol for the purpose of killing a person is not an attempt to kill, it is only preparation, but if the actor has proceeded so far as to point the pistol at his victim the attempt is complete though his attempt should be frustrated or he should at this point voluntarily relinquish his
design. Many fine-spun distinctions have been made both in England and in the United States as to whether one could be convicted of an attempt to do something, the doing of which was at the time impossible as an attempt to pick an empty pocket. There is authority in England to the effect that this is not a punishable attempt. The authority in the United States is generally to the contrary. There is general agreement, however, on the proposition that one cannot be guilty of an attempt to do thing which is legally as distinguished from factually impossible. Thus a person could not be guilty of an attempt to steal goods even though he proceeded far enough in his attempt to pass beyond preparation, if it happened that unknown to him at the time, the goods were his own goods.

4.4 Punishment

The punishments inflicted in the United States hot crime are:

1. Death. In some States the death penalty is ‘inflicted by hanging, in others by electrocution and in one by ‘lethal gas. In several States the death penalty has been abolished. Death is the usual penalty for treason and for murder in the first, degree generally a wilful, deliberate and premeditated murder, or a killing done in the commission of or attempt to commit one of the more serious felonies. In the Southern States rape is also generally punished by death.

2. Imprisonment in the State penitentiary. The more serious offences not punished by death are thus punished.

3. Pecuniary fines varying in amount with the gravity of the offence.

4. Whipping as a penalty for certain offences is still practised in Delaware.
5. Imprisonment in the county goal- The less serious crimes are punished in this manner. In many States, second and subsequent offenders are punished more severely than first offenders.103

In general, in the United States the maximum punishment for each offence is fixed by statute, the trial judge being given discretion to mete out any given penalty less than the maximum. In some States the jury may in convicting the accused, recommend him to mercy, and in others the jury itself instead of the judge, fixes the penalty in each case. There are provisions also in many States for the probation and parole of prisoners, especially in the case of first offenders. Cruel and unusual punishments are forbidden by the Federal Constitution.

4.5 Jurisdiction and Venue

Jurisdiction as here used means the power of the State to punish offences; venue means the local sub-division of the State in which an offence must be tried. Without a special statute authorizing it, a State can punish only those offences which are committed within its boundaries and perhaps, crimes affecting its well-being by its own citizens elsewhere. By statute, however, a State can punish anyone who does an act anywhere against its sovereignty or security. Statutes so providing have been enacted by the U.S. Congress. Also the peace officers of a State have no authority beyond its territory and hence cannot apprehend one who has committed a crime within the State and taken refuge in another State. The only recourse in such a case is for the governor of the offended State to request the governor of the State to which the criminal has fled to procure his arrest and return. Whether the request will be efficacious depends entirely on the good pleasure of the second governor though in practice the request is seldom refused. By special agreement between some of the States, concurrent jurisdiction has been given these States over crimes committed on rivers separating them. Much difficulty is

103 New York has gone furthest in this direction, punishing by life imprisonment one who is for the fourth time convicted of any felony.
experienced in the administration of the criminal law in the United States, not only by the fleeing of criminals from one State to another, but also by fugitive witnesses whose testimony is needed at the trial. To obviate this difficulty, agreements have been made by a few States under which the State to which a witness has fled will return the witness to the State needing his testimony. The common law principle that an offence must be prosecuted in the county in which it was committed obtains generally in the United States. Several States, however, have enacted statutes allowing prosecution in another county; e.g., in the cases of a wounding in one county resulting in death in another, of offences committed near the county line of adjoining counties and of offences committed on moving trains. By the Federal Constitution and by most State Constitutions, all persons are protected from being prosecuted more than once for the same offence. In the Constitutions of a few States this protection is confined to capital cases. These provisions do not prevent the Federal Government from prosecuting a person for an act for which he has already been prosecuted by a State, if the act is an offence against both the State and the Federal Government, and the same principle applies to a prosecution by a State after a prosecution by the Federal Government.

All but a few States provide in their Constitutions that, before conviction, every person accused of crime shall have the right to be released from custody on bail, except in capital cases. In a few States this right is not guaranteed in the case of murder, whether murder be a capital offence or not; and in a few States treason is also accepted.

Though known by varying names, there are in general in the United States three classes of courts having jurisdiction in criminal cases in each State: (1) Courts having cognizance of petty offences. These are generally known as magistrate’s courts or courts of the justice of the peace. (2) Courts having jurisdiction of indictable offences- Various named. (3) In some of the larger cities there are also courts having cognizance of juvenile offenders. (4) Courts of appeal. In only two States are there courts of appeal for criminal
cases alone. In the other States the same Court hears appeals in both civil and criminal cases.

4.6 Procedure

In the United States the prosecution of the criminal is not left, as generally in England, to the initiative of the individual who has suffered by the crime, but is conducted by an officer of the State whose sole public duty is the enforcement of public justice. He is known by various titles such as States attorney, prosecuting attorney, district attorney, solicitor, etc., of whom there is usually one for each county or district in the State. Important cases are sometimes conducted by the attorney-general. The summary prosecution of cases both before a magistrate or justice of the peace and before a Court having jurisdiction of indictable offences in the United States is so similar to the prosecution before the justice of the peace in England as not to require a separate description. It is believed that no legislation similar to the Vexatious Indictments Act of England exists in the United States and that, therefore, an indictment may be considered by the grand jury in all cases of indictable offences whether or not the magistrate has declined to hold an accused person to trial. The finding of a ‘true bill’ by a grand jury as a prerequisite to putting a person on trial for all but petty offences was a part of the common law inherited by the United States from England, and still obtains in half of them. In 24 States, however, the prosecution may be begun without the intervention of a grand jury by the filing of an ‘information’ i.e., accusation by the prosecuting attorney except in a few States in cases punishable by death or imprisonment for more than ten years. It is still lawful to proceed by indictment by a grand jury in these States, but in practice

---

104 In the United States generally, only one magistrate hears the case, though in many States he may call in a magistrate of another county to sit with him if he so desire.
prosecution by information has superseded that by indictment as simpler less expensive and more expeditious.

4.7 Trial by Jury

When an indictment has been presented, or information filed against a person he is arrested, if he is not already in custody or released on bail and is brought before the Court. On appearing, he is arraigned. The indictment is read to him even though in some States he has been given a copy of the indictment a prescribed time previously. He is then required to plead by being asked whether he is guilty or not. In answer to this he may plead any one of the following pleas: (1) guilty; (2) not guilty; (3) former jeopardy; (4) former acquittal; (5) former conviction; (6) no pro contendere which is for practical purposes, equivalent to a plea of guilty; (7) to the jurisdiction; i.e., that the Court has no jurisdiction of the case; (8) in abatement-as that he has been erroneously named in the indictment; (9) he may demur to the indictment; (10) in some States the accused must enter a special plea of insanity if he desires to defend on this ground; in others this defence may be given under the plea of not guilty. If the accused pleads guilty, no trial is necessary in most States, but the judge proceeds to sentence. In a few States, however, the judge, or jury is required to hear the witnesses as to any facts that may aggravate or mitigate the offence. If the accused refuses to enter any plea, a plea of not guilty is entered for him by the Court. If the defendant pleads not guilty, or stands mute, a jury is selected to try the case. In most States this jury is composed of 12 persons, and the accused cannot be convicted unless all the jurors unite in finding him guilty. In some States a trial may be had by a smaller number of jurors, and in some a unanimous verdict is not required in the case of all crimes.

The burden of proving the accused guilty is on the prosecution and the prisoner is entitled to acquittal unless the jury is satisfied beyond a reasonable doubt of his guilt. The accused is entitled to be represented by counsel, and if he is unable to procure counsel, it must be assigned to him in some States in
all cases of felony, in others in cases of trials for homicide. He is entitled as is
the State, to have process to compel witnesses to attend and testify. When the
evidence has all been heard, counsel for the State and for the prisoner address
the jury, and the judge instructs the jury as to the law of the case. In the
Federal courts and in the courts of a few States, the judge may comment on
the evidence of the case in order to assist the jury in reaching a just verdict,
but in most States the judge is forbidden by law to comment on the facts.

In all States the accused on conviction may petition the Court which
tried him for a new trial of the case, which will be granted if the Court is
persuaded that his conviction was not in accordance with the law. In addition
to this, the accused has the right to have his case reviewed by a higher Court
in a few States as to matters of law only in most States as to both the law and
the facts. The appellate Court in its review is confined to the record and
cannot examine witnesses, nor can it modify or increase the sentence. It can
only affirm the legality of the original trial or send the case back for a new
trial.

Criminology a modern term invented to describe the results of recent
inquiries into the personal or social factors which determine criminal
misconduct, but which has in the hands of its more recent exponents, come to
include the whole problem of crime and its treatment in human society. A
comprehensive study of the subject to-day would, therefore, draw its material
from history, sociology and law, as well as from psychology, anthropology
and social ethics. It gathers criminal statistics with the view of ascertaining
the crime rate and its upward or downward trend in different countries and, in
the same country, in different areas of population, in communities of varying
national or racial origin or living on different economic levels. It seeks the
springs of misconduct and of criminal propensity through the intensive study
of the mental and social history of the individual delinquent, and it undertakes
to classify criminals on the basis of the causative factors thus disclosed. It
aims to establish a rationale of punishment or of other treatment of the delin­
quent by a similar study of the efficacy and the social utility of the machinery
of criminal justice in various countries, ranging from the method of the police and the courts to the prisons, the death penalty and the modern devices of probation and parole.

All these fields of activity are being industriously and hopefully explored by eager students in all parts of the civilized world. If the results thus far realized are too meagre and uncertain to constitute a body of true scientific knowledge, the same may be said of any other of the so-called social sciences. Certainly criminology has struck at the core of its problem in its present resolute effort to win an understanding of the criminal mind.

Lombroso’s theory of the criminal as a sub-human anthropological freak, marked by anatomical and other stigmata and doomed by his nature to a criminal career was at once accepted by a majority of students in Italy, and by scholars and writers of distinction in other European countries. Though subjected to weighty criticism, and though never received in any English-speaking community, it became, and for a generation remained, the dominant doctrine of European students of the problem of crime.  

But the central doctrine of these thinkers did not long stand in the unqualified form in which it was originally promulgated. Even Lombroso himself before his death in 1909 had modified his views to the extent of admitting that the born anthropologic, criminals numbered perhaps not more than half of those committing criminal offences. These were the true criminals, the other half being made up of the victims of circumstances. These modifications of the original doctrine were the result partly of the researches and conclusions of some of Lombroso’s immediate Italian disciples, such as Raffaele Garofalo and Enrico Ferri but even more, perhaps, of the challenging writings of the Dutch publicist, William A. Bonger, who emphasized the influence of economic conditions, and of the French philosopher, Gabriel Tarde, and others, who attributed criminality mainly to the psychic impulse of

\[154\]

\[105\] The adherents of the doc at first known as the Italian and later as the Continental of criminology have under the influence of its most eloquent and learned modern interpreter, Enrico Ferri, claimed the of the Positive school.
imitation. While all these efforts, like the doctrine impeached by them, were vitiated by the aim of furnishing a single explanation of the extremely complicated and puzzling problem of the persistence of crime in an orderly civilization, each and every one of them, nevertheless, made a contribution to the criminology of the future.

It remained, however, for an English physician, Dr. Charles Goring, medical officer of H.M. prison service to demonstrate the fallacy of the central assumption of the Italian criminologists. Adopting more rigorous methods of examination and measurement of inmates of the English prisons and correlating the results with similar examination and measurements of members of the law-abiding community, he proved conclusively that criminals, as a class, differ more widely among themselves than they do from the community outside and that the latter show the same stigmata of criminality that criminals possess. In his work, Dr. Goring announced, as an inevitable conclusion from his researches that there is no such thing as a physical criminal type, a conclusion which is now accepted by every criminologist of standing. Dr. Goring’s further conclusion stated with equal positiveness, that there is no such thing as a mental criminal type, while it is also generally accepted, rests upon no such satisfactory basis of evidence and may be regarded as open to contradiction.

Whatever may be the merits or the defects of the specific doctrine which will always bear Lombroso’s name, his work has these outstanding merits: it first gave the study of the criminal a scientific basis and it powerfully stimulated technical as well as popular interest in the problem. Prior to his time there had been few to question the traditional view of the criminal as a wicked person deliberately and perversely choosing the evil rather than the good. Even the penal reforms with which the names of the Italian Beccaria and the English Romilly and Bentham are associated were inspired almost entirely by humanitarian motives. But since Lombroso’s death

---

106 The English Convict (1913).
the scientific study of the criminal and of the personal and social factors that are favourable to his development has been going on with increasing momentum.