دائـــرة الـقـضـــــاء
JUDICIAL DEPARTMENT

CRIMINOLOGY

And

PENOLOGY

Prof. Dr.

M. Shokry El-Dakkak

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PREFACE

It was to my pleasure and pride that I have been charged by the Judicial Department in the Emirate of Abu Dhabi to issue this book. I accepted, not only because of the honor it bestowed upon me - especially I have been lecturing in English Departments in Faculties of law in the International Islamic University in Malaysia, University of Alexandria and University of Mansourah in Egypt - but also because I consider it as a humbled contribution and a sacred duty towards the students of the English Departments as well as the practitioners in the United Arab of Emirates, such as lawyers, legal consultants, public prosecutors and judges. They may find it of assistance and that it will be useful for them.

In this occasion, it is adequate to express high appreciation and gratitude to His Highness Sheikh Mansour Bin Zayed Al Nahyan the Vice Prime Minister of UAE, the Minister of the Presidential Affairs, the Head of Judicial Department in Abu Dhabi, who availed me this occasion to contribute with my humbled effort in the Criminal jurisprudence field especially in English Language.

Finally, I pray Allah to help me to the right path.

Prof. Dr. M. Shokry El-Dakkak

Part I
Criminology

Chapter One

Importance of Criminology as a Human Science

By criminology we mean the science whose purpose is the study of the phenomenon called criminality, in its entire extent (this is theoretical or 'pure' criminology) whilst side by side with this theoretical science, and founded upon its conclusions, we have what is called practical or applied criminology. Criminology is an inductive science which, like other inductive sciences, observes the facts with the greatest possible exactitude, and endeavors with the aid of available methods to trace the causes of the phenomena corning to its notice (etiology). Vere scire est per causas scire-as Bacon has already taught us.

The subject-matter, therefore, of the science of criminology is criminality, i.e. the crimes which are committed and the persons who commit them; the juridical aspect of the problem, i.e. the legal formulation of the various crimes being at best a matter of indirect interest to the criminologist.

1. Crime and Morality

It may be useful to state briefly what exactly is meant by crime. From the formal or legal point of view, a crime is an action on which the community (in casu the State) has set a punishment-a definition which, like most formal definitions, does not take us much further. Another angle, from which we penetrate further into the essence of the question, is the view that crime belongs to the category of immoral actions. The question which is often asked, whether crime, per Se,

We may, however, be justified in saying that in modern countries practically all actions which are qualified as crimes are felt to be immoral by the great majority of the people-albeit in different measure. Even the professional criminal thinks of theft as of something immoral, namely when it is committed to his own detriment, or to that of a member of his gang.

It is almost superfluous to add that apart from the differences mentioned above, the degree of public disapprobation of all the countless prohibited actions varies very widely, and ranges from a minimum-as in cases of poaching or smuggling-to the height of moral indignation in some of the worst cases of manslaughter or murder.

If one asks oneself what actually constitutes the essence of an immoral action it becomes apparent that there are two sides to it: subjectively, i.e. from the individual's point of view, such actions go counter to moral sentiment; while objectively, i.e. from society's point of view, they constitute a danger to the interests of the community. Sociological (and, more especially, ethnological) research does not leave any doubt upon this point: the term 'immoral' means-from the stand-point of the community, 'anti-social'.

Thus, the utilitarians erred when they imagined they could define morality as utility for the individual; but this view becomes correct when for the individual one substitutes the community; for the whole of our code of morals is designed for its benefit and protection. Man is extremely sensitive to that which might harm the community as a whole; and broadly speaking, this instinct has but rarely proved itself wrong (one instance of this being the persecution of witches). In such cases it was experience which acted as a corrective. In view of the absolute supremacy of society over the still growing and maturing individual the latter, as a rule, tends to accept without demur the moral code prevailing in his time.

An immoral action, therefore, is an anti-social action which is felt as such. A prior4 one cannot speak of any action as being either immoral or criminal per Se; there is, in fact, no such thing as a 'natural' offence. It all depends upon social conditions. Some actions, however, are so obviously hostile to the interests of any and every society that there was hardly ever a time when they were not prohibited, as in the case of theft, because of its parasitical character. Society is continually changing-and, especially in its present phase, very rapidly. Hence

the great changes which take place in our conception of morality, and which are reflected also in criminal law. These, however, take time; and the tension between a rapidly-changing morality and a comparatively static criminal law can, at times, become very great.

Crimes belong to the immoral actions; but they only form part thereof. Generally speaking, one may say that they are the gravest; they form, as it were, the kernel, the grosser but fundamental part. One might compare moral and criminal laws, respectively, with two concentric circles, of which the former would be the larger. The difference in size between the two may vary considerably, according to time and place; sometimes the two circles cover each other completely, whereas at other times their circumferences lie far apart. In the former case this is a bad sign; any society which threatens with punishment almost every transgression is internally weak.

Thus we crime to the conclusion that a crime is a serious anti-social action to which the State re-acts consciously. This reaction, as is already evident from our formal definition, consists of punishment.

2. Punishment

Punishment is to inflict pain; but it is not here that its difference from the moral reaction to an immoral action is to be looked for, for the latter is also of a painful nature. It does not alter matters m the least that sensitivity to this pain varies enormously in different people, and is often very small indeed. The real difference lies in the fact that moral reprobation emanates from one or more individuals spontaneously; whereas punishment is a conscious action on the part of the collectivity (in casu the State). The content of a reproof is nothing but a moral condemnation; but when it is incorporated in criminal law, and pronounced by a judge, it becomes a punishment.

A similar demarcation is indicated in the other direction. Revenge, too, is

pain caused intentionally, but it is an irrational reaction of the emotions, generally of an impulsive nature, on the part of one or more persons, to a wrong which they have suffered.

Punishment, on the other hand, does not come from one or more persons; it is meted out by the group, the collectivity, acting consciously and rationally. Even in cases where nothing else is aimed at but the satisfaction of feelings of revenge, a new and essential element has emerged, i.e. conscious reaction emanating from the collectivity.

3. The Purpose of Punishment

Punishment, however, did originate in revenge; and the latter has certainly played its part in ensuring the safety of the community-be it imperfectly, and accompanied by grave disadvantages. In primitive forms of society taking revenge is, indeed, morally imperative. Gradually, however, as the community begins to take over this function, the position is changed, and has now turned the other way round: it is To criminology also belongs penology, or the science of punishment. The limited size of the present volume prevents a thorough treatment of this subject. A few remarks made here, and in the last chapter, must suffice revenge by the wronged party which is prohibited-not only morally, but in criminal law as well.

Present-day punishment contains two elements:

Firstly, it serves-as it always has done-to satisfy the feelings of revenge and revulsion on the part of the members of the collectivity. No amount of theorizing about 'returning evil with evil', etc., however ingeniously invented, can alter this in the least. But this element, which was at one time supreme, suffered an important check from the second.

Secondly, it is the safeguarding of the community (la defense sociale). To

some extent it has always been present-if only in a more or less unconscious form. It has, however, now entered into the social consciousness, and is already of considerable importance. Society takes certain measures against its harmful members, one of the chief of which is, surely, the attempt to educate them with a view to fitting them once more for social life. Punishment-i.e. the pain which it is intended to inflict-also belongs to society's armory; but the difference between educative and correctional 'measures and punishment is not nearly so great as many theoretical criminologists would have us believe. The pain inflicted by these measures is usually also of a serious nature, for it implies robbing the subject of his or her freedom; it does not, therefore, differ so very much.

To sum up, our conclusion is that crime is a serious antisocial action to which the state reacts consciously, by inflicting pain (either punishment or correctional measures).

4. The Disadvantages of Criminality to Society

We have to do, indeed, with an extensive and deeply rooted social disease, which has dug itself into the very body of society like a kind of ulcer; at times even threatening its very existence, but always harmful to the highest degree. Countless crimes are committed, and millions of criminals condemned, every year.

4.1. Economic Disadvantages

Economically, the disadvantages to society are very great. For example, the United States of America, various estimates have been made. Thus, Schiapp and Smith, in their book The New Criminology (1928) arrive at a figure of four billion dollars ($4,coo,ooo,ooo) per year in respect of direct damages, and between five and six billion indirect losses (1oss of production power, cost of police, etc.), in all between nine and ten billion a year. Other estimates are still higher. I have no means of judging the reliability of these estimates, neither am I in a position to form an estimate, on the same lines, for other countries; but I

think it is undeniable that crime is a source of stupendous waste of money to society.

4.2. Moral Disadvantages

Next to the economic, we have, moreover, the still more important moral disadvantages. If criminality is closely bound up with the moral standards of a people, in return it sends out demoralizing influences towards the normal sections of the population. And when one adds to all this the damage and grief suffered by the victims of the crime, and also the constant menace which criminality constitutes to society, the total obtained is already a formidable one. Neither ought we to forget the suffering on the part of the criminal himself, who-in whatever way one may wish to judge him, is after all, a part of humanity too. Superficially-judging people sometimes try to represent the criminal classes as always playing a winning hand in their war on the community, leading quite a pleasant life on the proceeds of their booty. This may be so in an isolated case here and there; but sooner or later-generally sooner-they lose the fight, and then the hand of society presses on them heavily indeed.

5. The Reasons for Studying Criminology

The reasons for the study of criminology should therefore be clear. Admittedly it is a science which is widely studied for its own sake, just like other sciences; crime and criminals are not a bit less interesting than stars or microbes.

But this point of view is secondary as compared with the practical aspect, just as in the case of medical science. Indeed, comparison with the latter repeatedly suggests itself. Criminology ought before anything to show humanity the way to combat, and especially, prevent, crime. What is required more than anything is sound knowledge, whereas up to the present we have had far too much of dogma and dilettantism. Who-ever is in close touch with what is called socio-pathological phenomena should make a note of this specially criminal jurists, whose knowledge of the law imperatively needs to be supplemented with

that of the subject-matter with which it has to deal.

6. The Sub-Sciences of Criminology

Criminology is a complex science. It consists of:

(i) Criminal anthropology, i.e. the science of criminal man (somatic), a section of natural science; anthropology being sometimes called 'the last chapter of zoology'. It attempts to answer such questions as: what peculiar bodily-characteristics has the criminal? What relation is there between race and criminality? etc.

(ii) Criminal sociology, i.e. the science of criminality as a social phenomenon. Its principal- concern is, therefore, to find out to what extent the causes of criminality have their origin in society (social etiology). In a wider sense, the study of physical (geographical, climatological, and meteorological) environment forms also a part of this sub-section.

(iii) Criminal psychology, i.e. the science of psychological phenomena in the field of crime. The chief subject-matter of its study is the psychology of the criminal, e.g. to what type or types he belongs; further, differentiation according to sex, age and race; and finally, collective or crowd-criminality.

Further, what may be termed the 'psychology of crime (motives and checks) belongs to this section. Lastly, the psychology of the other persons in foro (witnesses, judge, counsel, etc.), and the psychology of the confession.

(iv) Criminal psycho- and neuro-pathology, i.e. the science of the psychopathic or neurotic criminal.

(v) Penology, i.e. the science of the origin and development of punishment, its significance and utility.

These five sections together constitute theoretical or 'pure' criminology (reine

Wissenschaft). Founded on these, we have, further:

(vi) Applied criminology, i.e. criminal hygiene and criminal policy.

Taking the conception of the science of criminology in its widest sense, we should also include in it:

(vii) Criminalisticss (police science) -an applied science whose purpose is to trace the technique of crime and its detection. This science is a combination of psychology of crime and the criminal, and of chemistry, physics, knowledge of goods and materials, graphology, etc.

The present work will treat chiefly of the history of criminology; The various schools will be outlined, a few brief remarks only will be made on the subject of criminal psychology, while certain conclusions concerning applied criminology will form the finish.1 The limited space available in this little book will then have been filled. The author, moreover, is not in a position to write authoritatively either on psycho- and neuro-pathology, or criminalistics, both of which are legitimate fields of study for specialists only.

Chapter Two

Crime as a Human Phenomenon

We can define crime as a human phenomenon by saying that it is the satisfaction of a human instinct in an abnormal way that an ordinary man does not follow in order to satisfy that same instinct due to abnormal conditions that exerted their influence on the doer at the very moment of commission of his crime.

1. What is an "Ordinary Man"

In my opinion the ordinary man is that whose physical and mental traits approach those of the intermediate man.

(a) Taking the stature as physical trait, a man of ordinary stature is a man who is not excessively tall or excessively short in comparison with the medium height of the intermediate man. If he is excessively tall he is called giant and if he is excessively short he is called dwarf. Both are considered abnormal as regards the stature.

(b) Taking the intelligence as psychological trait, a man of ordinary intelligence is one who is not excessively intelligent and excessively dull or mentally retarded.

The physical human traits can either be external or internal. The external traits are called Morphology. Internal traits are called physiology.

An example of Morphology was the stature. An example of physiology is digestion as function of the stomach(internal body function). The intermediate man digests three meals a day. A gluttonous man on the other hand digests twelve substantial meals a day. The sober is contented by one meal. In comparison with the medium state of an intermediate man, the gluttonous represents the

excess, the sober the deficiency, and both are abnormal, because they differ considerably from the average.

We mentioned intelligence as a psychological trait, but this trait is one of many that require a detailed explanation.

It is well established that the psyche contains three interdependent elements:

- The mind which thinks,
- The heart which feels, and,
- The volition which decides.

The human soul consists of thought, feeling, and volition. Whatever the psychological act may be, it could not deviate from anything other than these three elements. It can be a thought, a feeling or a volition.

If a man sees a Beautiful girl, this perception is a thought. If he feels love towards her, this is a feeling. And finally, if he decides to marry her, this is volition.

As the emotions and passions are accompanied by beatings of the heart, literature uses the heart in order to move the audience or reader. In fact, experience proved that a man is pushed to behavior by his feelings much more than by reasoning or thinking.

We defer speaking about the defects of the mind and volition to another place where we shall deal with the method of research in criminology.

2. Instincts as a Source of Human Feelings

Now we face the human instincts as sources of feelings to indicate their abnormalities which drive the human behavior.

The instinct is a natural innate tendency which generates certain desires accompanied by a feeling of pain due to the lack of their satisfaction and therefore leads to an action aiming at the elimination of that pain by satisfying that instinct.

3. Self-Preservation as the Principal Human Instinct

Every human being has the fundamental instinct of self-preservation. This instinct generates, for example, the pain of hunger or thirst which pushes man to procure himself food and water.

All human actions or abstentions emanate from this basic instinct. Nevertheless, psychologists speak about other instincts deriving form this principal one, such as the property instinct, the offence-defense instinct and the sexual instinct.

I- The property instinct is a natural innate tendency to procure oneself to material objects such as money and estate and moral objects such as academic degrees or titles of honor. All these things reinforce his sense of self-preservation.

II- The offence-defense instinct a natural innate tendency to speak or keep silent, to act or to remain inactive, all according to circumstances and to the need of protecting one-self's material or moral existence, namely self-preservation.

III- The sexual instinct is -a natural innate tendency at the adult age to establish a relation with an individual of the opposite sex. At the adult age, a male is desirous of a female and vice-versa. He feels his own existence incomplete without her and vice-versa.

Therefore, the sexual instinct, is, linked, to the self-preservation. On the other hand, this instinct aims at procreation which makes parents feel that a son or a daughter is the continuousness of their own existence. Thus, the sexual instinct is also, an actuation of the self-preservation instinct. Thus, the paternal/

maternal affection for a son/daughter is the most flaming human affection because the parents' love of their children is in fact, love of themselves. Here altruism is reinforced by the egoism of self-love.

On other words the power of self-love is added to, and mixed with, the love of others. All fundamental instincts are driven by self-love.

4. Secondary Instincts

There is what is called a secondary instinct. It is the refinement of a fundamental instinct without abolishment of that instinct.

Indeed, it is impossible to abolish the innate fundamental instincts. Yet a secondary instinct could work towards attenuating its sharpness.

But what does a secondary instinct?

It is an innate or acquired tendency to conserve others' material and moral existence by abstaining from harming it during the satisfaction one's own fundamental instinct.

For example, if the instinct of self-preservation is refined by a secondary instinct, it shall not drive a person to kill another in order to preserve his own existence.

If the offence-defense instinct is refined by a secondary instinct it shall not lead a person to assault or insulting another.

If the property instinct: of is refined by a secondary instinct it shall not lead a person to stealing other people's property..

If the sexual instinct is refined by a secondary instinct, it shall not drive a

person to resort to rape in order to satisfy his sexual instinct, and so on.

It goes without saying that a crime is the result of abnormal conditions which exert their influence on the doer at the moment of its perpetration.

5. Abnormal Conditions

Abnormal conditions can be divided into two parts:

- The preponderance of promoting power that pushes to delinquency.
- The lack of refraining power from delinquency.

5.1. The Promoting Power

The promoting power consists of an abnormal instinctive quantity or quality, with regard to the basic instincts and the feelings they generate.

The abnormal, quantity could be either an excess or a deficiency

(1) Referring to self-preservation instinct, the excess is called pride or exaggerated self-esteem, the deficiency is called hatred of life.

Although the excess and the deficiency of instinctive feeling are opposites, they lead to the same criminal result. Exaggerated self-esteem as well as hatred of life conduce to homicide or murder. The crimes to which the hatred of life leads, are called homicide and suicide.

The abnormal quality relating to self-preservation instinct means a method of life which differs from that of an ordinary man, such as the tendency to appear rich despite one's poverty or to appear poor despite one's richness. Such abnormal instinctive quality leads to deviation and delinquency.

(2) As regards property instinct. its excess is called avidity and its deficiency is called

prodigality. Although avidity and prodigality are opposites. they lead to the same crime against others' property. Avidity is an inclination to accumulate property even if it belongs to others whereas prodigality is inclination to spend all property which leads the spender to compensate his loss of money by means of assaulting the property of others.

The anomaly of quality pertaining to this instinct means the employment of methods that the ordinary man doesn't use in gaining, such as stealing and fraud.

(3) Referring to, the offence-defense instinct, we can say that its excess is rashness and its deficiency is cowardliness.

Although, rashness and cowardliness are opposites, they also lead to the same crime. A rash person, for example, commits a homicide actively and the coward participates passively in it by helping the killer.

The anomaly of quality with regards to this instinct is called hypocrisy. Hypocrisy is pretending to be what one is not. It could be passive or active. Passive hypocrisy is showing approval to what one dislikes. Active hypocrisy is struggling to attain a goal that one detests. The hypocrite appears to act in contrast with what he really believes is right. The police officer who proceeds to torture the political opposition of his president without approval of the latter aiming at pleasing his is a typical example of an active hypocrite.

(4) The last fundamental instinct is the sexual one. This instinct can be affected by an anomaly of quantity or quality.

The anomaly of quantity could be an excess or a deficiency of the sexual feeling. The excess gives rise to the womanizer who exaggeratedly goes in search of women. The deficiency on the contrary means impotency. Both the

excess and the deficiency lead to the same sexual crime such as rape.

The anomaly of quality consists of methods that the ordinary man does not employ for the satisfaction of his sexual instincts. these methods can be perverse manners or inverted manners.

The inverted manner which means the sexual relation between two males (homosexuals) or two females (lesbians).

The perverse manner could be sadism, namely the sexual perversion in which gratification is attained by torturing the loved person, or it could be masochism which means an abnormal sexual passion characterized by pleasure in being abused or dominated. It is clear that masochism is the opposite of sadism. While sadism is the pleasure of giving pain, masochism is the pleasure of receiving pain.

Fetishism is another perverse manners. It is the fixation of erotic interest on a specific part of the body such as the foot or a certain color or article of clothing.

Finally, the sexual perverse manner could be the incest which is a sexual relation between a male and a female whose marriage is prohibited by law.

As we have said, the power which leads to delinquency is the anomaly of quantity or quality affecting one or more of the fundamental instincts and preponderating over the power which refrains from delinquency.

If the refraining power prevails, the anomaly of quality or quantity affecting the fundamental instinct causes a pure imaginative delinquency.

5.2. The Refraining Power

This power consists of two inhibitions:

a- The noble inhibitions represented by the secondary noble instincts.
b- The ignoble inhibitions represented by the fear of the penalty

When the delinquent is guided only by his basic instincts being deprived of secondary instincts, he precipitates to the commission of his crime in such a vehement and automatic way that he no more remembers the penalty by the law, and if he remembers it, he hopes to elude justice.

Such a criminal is called 'constitutional delinquent', because his psychological constitution is characterized by the lack of secondary instincts.

In conclusion we say that the causal factor of delinquency is a criminal predisposition which leads to crime in circumstances that do not conduce to it the ordinary man. Such criminal predisposition is the constant or accidental prevailing of instinctive anomaly of quantity or quality with continuous or temporary missing of secondary noble instincts.

Continuous predominance of criminal predisposition characterizes the constitutional delinquent, while its temporary prevailing gives rise to the 'occasional delinquent' who is the nearest to the ordinary man.

6. Other Factors of Delinquency

Besides the predominance of basic abnormal instincts, there are factors which awaken the criminal predisposition and contribute to its formation. We call these factors the 'animating factors'.

A causal factor of delinquency can, alone and by itself, produce a crime. An evildoer who is dominated by an excess of offense-defense instinct, will tempt others to quarrel with him. He will then seize this occasion to assault or kill

somebody as he finds his delight such fights.

On the contrary an animating factor -such as drinking alcohol or consuming narcotics- does not produce by itself delinquency unless it joins and awakens a criminal predisposition inherent in the person who drank or consumed narcotics.

The abnormal quantity or quality of basic instincts derive from heredity. It remains with the delinquent from childhood, especially in absence of correction and education.

Chapter Three

Schools of Criminology

1. Preliminary Attitudes of Criminology

Criminology has a long history which goes back to the period of Greek philosophers such as Hippocrates, Socrates, Plato and Aristotle. These philosophers ascribed the crime of the criminal to a corrupted soul deriving from physical deformities in his body.

This trend persisted till the Middle Ages where it gave birth to a belief that the character of a person could be discovered by the examination of his hands and legs, of the features of his face and even of his umbilicus.

This theory was followed by another which linked the crime to the planets and made the destiny of man dependent on the planet which was dominating the day of his birth according to whether it was good or wicked. In 1586, Della Porta composed a book or criminology which linked the crime to an individual nature revealed by physical defects which are visible in the face whether in the eyes, the forehead or the nose. His theory, was sustained by natural philosophers like De La chambre and Darwin.

2. The Eighteenth Century Until the French Revolution

Criminal law in the latter part of the Middle Ages, the sixteenth, seventeenth, and the greater part of the eighteenth centuries was exclusively intended to serve as a deterrent and attempted to achieve -this purpose by means of the most cruel punishments. The death penalty, in its most barbaric variations (generally preceded by some sharp form of torture, e.g. the rack) and corporal punishments were quite usual forms; the idea of general prevention of crime being the chief consideration. The person of the criminal was not recognized; he was an object serving as a ‘terrible example’ to others, and the purely objective element of

social danger inherent in the offence was the final consideration. Penal laws were vague (analogy in criminal law), and their formulation ambiguous. The procedure in criminal cases bore a similar character. It was inquisitorial, and the accused was looked upon as a mere object of investigation; it was conducted in secret and chiefly according to documentary evidence. The law of evidence was highly arbitrary, and confession was considered the best form of proof; hence the torture-bench.

2.1. The Call For a Criminal Law and Criminal Jurisprudence.

The grand opposition movement of the third estate against the Ancient Regime also drew criminal law and criminal jurisprudence into its scope. Some intellectuals began to shine in this field too. The Rights of Man were, henceforth, also to apply to the criminal. Montesquieu (1689-I755) started the attack, with his Esprit des Lois (1748), in which he entered the field against the arbitrariness and severity of the punishments, and their undue frequency. The voice of humanity was heard for the first time. Rousseau (1712-78) also joined in the opposition to the cruel treatment meted out to the criminal. Voltaire (1694-I778) enters the lists in 1762, on behalf of the innocently condemned and executed Jean Calas, and becomes one of the doughtiest fighters against the arbitrariness of criminal jurisprudence of his day.

The principal personality in this movement was C. Beccaria (1738-94), who, in his world-famous book Dei delitti e deipene (1764) gave an exposition of all the objections against the existing criminal laws and punishments; while G. Filangieri (17S2-88), author of Scienza della legislazione (1780-85) was one of his best-known allies.

Besides the above-named authors we may mention, for England the jurist-philosopher Jeremy Bentham (1748-1832) founder of uti1tarianism ('the greatest happiness for the greatest number'). His chief work is Introduction to the Principles of Morals and Legislation (1780). He published a plan for a new kind of

prison in 1791, under the title of Panopticon, or the Inspection House. Bentham, amongst others, was one of the first protagonists of correctional punishment.

2.2. The Impact of the Development of Criminology

Already before the French Revolution the work of these authors had not been entirely without some results. In 1780 torture was abolished in France. In this, Frederick the Great had already preceded France in the year 17402. Joseph II abolished the death penalty, and other facts of this kind might be mentioned. However, the greatest changes occurred during the French revolution.

Although the death penalty and corporal punishment were the rule, prisons had been erected here and there, from about the middle of the sixteenth century (e.g. in Amsterdam towards the close of that century). For prisoners on remand these had, of course, always been necessary. Conditions in those prisons were usually shockingly bad, both from hygienic and moral standpoints. We owe an enormous debt of gratitude to John Howard (I726-90), for having drawn attention to this state of things, in his work The state of the Prisons (1777); chiefly relating to England, but, in later editions, dealing also with other countries. In the seventeen-eighties a number of prison societies were founded in the United States, under pressure from the Quakers, with a view to putting an end to the highly detrimental effects of detention in association. Punishment in cells-which was to provide the proper atmosphere for introspection-was to take its place. In 1786 capital punishment was abolished in Pennsylvania.

3. From the French Revolution Until the Nineteenth Century

In 1791, the French revolution, with its Code Penal, put an end to the criminal law and the criminal procedure of the Ancient Regime. A measure of uniformity, system, and precision of formulation was introduced into the new jurisprudence (no more ‘analogy’); all persons became equal before the law, and with this the rights of man were recognized in this field also. Confiscation of property and corporal punishment were abolished; capital punishment was confined to

a considerably smaller number of offences, and performed without previous torture; while detentionary punishments were introduced more frequently than had hitherto been the case. The lack of moderation in punishment which had prevailed during the preceding period was checked, and there was an attempt to fix the punishment proportionally to the crime. The proportion itself remained, of course, an insoluble problem; but still, the practical result was that punishment was not nearly so frequent, nor so severe as formerly.

3.1. Changes in Criminal Law, Criminal Procedure, and Punishments

The greatest improvements effected were those in criminal procedure. Proceedings were held in public during the final stages, when they took on a direct and accusatorial character. The arbitrary power of the judge was put an end to, and the law of evidence was better regulated.

After having been started in France, these reforms were also propagated and carried through elsewhere; first of all in those countries which came under French influence or rule. Thus, for example, the 'Criminal Code of law for the Kingdom of the Netherlands' was introduced there in 1809, to be replaced shortly after, when Holland was incorporated into France, by the Code Penal. England went its own way; but there, too, under the influence of Bentham and Samuel Romilly (1757-1818), author of Observations on the Criminal Law of England (1810), important changes were introduced.

Conditions in English prisons (but elsewhere, too) were bad, and generally remained so, during this period. Howard had, already long before this, been raising his voice in protest against this state of things, and others now came to his supporters, for instance, Bentham, Romilly, and Elisabeth Fry (I780-1845). An extensive literature began to appear; official investigations took place, and even laws were passed, which, however, were rarely put into execution. Only in the United States important changes were effected.

As early as 1791 a prison consisting of cells was erected near Philadelphia by the Quakers, in which the demoralizing influence of detention in association was put an end to; but where the utter misery of loneliness took its place, the prisoner not being even allowed to work! In 1823 the so-called 'Auburn' system was introduced in New York, under which prisoners worked, in company, during the day-without being allowed to talk-and passed the night in their cells.

In the Dutch prison conditions were re-organized as far as the material side was concerned, in 1821. Vide about the Netherlands.

The improvements which the French Revolution has effected in criminal law and procedure should not be under-rated. On the other hand, too much should not be thought of their importance either. The 'injustice' of the preceding period had been abolished. Lip-service was paid to a certain 'abstract' humanitarianism; but of any actual humanness there was, as yet, but little evidence. Punishments still remained extremely severe and hard, and the human factor in the criminal was quite ignored. Once his guilt was established he became a 'case', to be treated, as all other 'cases, to a certain-generally very large quantity of punishment.

Improvements were, indeed, usually of a juridical or formal character, while little or no modification was made in the actual content of the sentences. Next to sheer ignorance, the whole of the new social system must be blamed for this. In the new social order all men were equal, but only formally: their material differences were greater than ever before. True, the Code Civil does not speak of 'rich and poor', but this does not alter the fact of their existence, nor that this fact constitutes the most fundamental contrast in society. And it is just as great a fiction to put down as equals all criminals who commit the same sort of offence. They are not equals; the motives which lead them to commit a given crime are not the same, and they should not, therefore, be treated in the same way.

Punishments were mollified somewhat in the Code Penal of 1791. This,