

(September 27, 1933)

## Crime and Punishment

BY MR. LEWIS ST. G. STUBBS.

PRESIDENT SIFTON:—Brother members of the Canadian Club, we have with us today Mr. Lewis St. George Stubbs, a very interesting character. Judge Stubbs' family were originally in the United States from which they went to the British West Indies as United Empire Loyalists. Some of the best people, of course, in this country, came from the United States to Canada at the same time. He was born in the British West Indies and from there he went to England to Christ College, Cambridge, where he studied under a son of Mr. Darwin, the man who wrote the famous *Origin of Species*. His studies at Cambridge were interrupted by the South African war to which he went, enlisting in the British army. From there he returned and came to Canada where he became a homesteader in Western Canada. He then articulated himself in Chief Justice Perdue's firm and became a very successful lawyer and went on the bench. When he was on the bench his particular methods of dealing with matters that came before him were the subject of a technical examination as to his proper and correct attitude as a judge and he lost his position. Since that time he has gone into politics, and very aggressively and I think, having more fun than he ever had in his life, because the thing he loves best is a first-class fight and that is a quality which appeals to every Canadian. He is known in Western Canada among some of his enemies as the "Gandhi of the Prairies". I look forward with great interest to his address and I think it is a great occasion and very interesting and entertaining and stimulating for us to listen to.

MR. STUBBS:—Mr. Chairman and Gentlemen of the

Canadian Club, this is an unexpected honor, because it is an honor. When I returned to Toronto yesterday morning from Hamilton I then first learned that I was to address the Canadian Club today. I am being managed just at present, and my manager made this arrangement for me and I had to ask him what I was to talk about because I had not been consulted and I did not even know what subject had been chosen for me by him. But he told me the subject was "Crime and Punishment", and fortunately I had along with me in my grip an address which I have given several times on that subject, so that it will come in very handy on this occasion.

The Chairman has made passing reference to my removal from the bench and to my present activities. After some reference to the strenuous time he had passed in connection with these activities Mr. Stubbs returned to his subject, advising the members of the Club to read one of the latest books published on this question, "The Law Breaker", by E. Roy Calvert and his wife Theodora. Mrs. Calvert is a barrister at the British bar. E. R. Calvert is the secretary of the organization for penal reform in Great Britain. You will find this an excellent book well worth reading.

One of the greatest problems confronting our civilization is the question of the criminal. Although society from time to time gives a reluctant consideration to the problems of crime and the criminal it does not give them the attention they deserve. In determining the relative importance of social problems several factors must be taken into consideration. One of these is the relation of the problem to life and happiness and another is its economic significance. The third is the relation of the problem to social progress. On all three counts the question of the criminal deserves consideration. The criminal is a menace to life and happiness. He imposes a financial burden upon society and is himself an economic liability. He is a great obstacle in the way of social progress and is a striking example of social inefficiency. Considerable progress has been made in many departments of social work. Notably in connection with health and child wel-

fare the procedure in dealing with crime has not advanced but in a comparative degree. We are continuing to follow the futile and traditional procedures of another day in spite of an enormous amount of information relative to the nature and causes of crime which has been accumulated in the last few decades. Modern society is already in possession of sufficient knowledge with respect to crime to warrant sweeping changes in our present procedure. However, such knowledge is not widely disseminated and there is little likelihood of it being put to any immediate use. We will not improve our present technique in dealing with the criminal until we have popularized the knowledge we now have. We have the knowledge to improve conditions but we have not yet developed the will to use it. It has become increasingly necessary to disseminate our present knowledge of criminal science and bring the social group to a better understanding of the problem. We shall make little progress toward intelligent and scientific treatment of crime and criminals until that has been done. The method of attack upon the problems of crime and the criminal must be the same as for all other social problems—education of the public alone offers encouragement for immediate success. The public must be sufficiently informed to appreciate the need for a change and be willing to pay for it and when the time comes it must have an available supply of technically trained persons to make the new methods and machinery successful. Professor J. H. Robinson makes the assertion that one of the greatest needs of the present time is to make the important findings of modern science a part of the common knowledge of the people. This is obviously true in reference to the problem of the criminal. Available knowledge about crime and criminals lends itself readily to the situation by reason of its intense human interest. However, society will not successfully carry out some intelligent crime program until it is more generally in possession of the salient facts regarding crime and criminals and the futility of methods of dealing with them.

Reform, however, depends upon men and methods more than it even does upon machinery. No doubt, the

present system would function much better than it does if it were manned by a properly trained and organized personnel. If the handling of crime is to become scientific, as medicine and nursing have become and as education is becoming, it is imperative that it should be done by trained men and women. The immediate requirements would seem to be (a) professionally trained police force, at least that part of it dealing with crime and criminals. (b) Criminal experts for studying the crime and the criminal who committed it. (c) Specially trained persons to supplant the present jury, together with socially educated judges and lawyers for determining the necessary social treatment of the offender and the protecting of society.

My friends, today our judges do not know any more about the nature of crime and its proper treatment than does the common policeman. All they know is what the Criminal Code tells them about a certain crime and what punishment is laid down for it there. There is not one judge in fifty in this country who gives any intelligent scientific study to this very important question. He deals with the matter purely perfunctorily and not scientifically. Anyhow, it does not pay to deal with it scientifically. If you do, they will put you off the bench. (d) Properly trained persons for carrying out the decision of these bodies, either outside or inside of adequately equipped institutions.

Unfortunately, a considerable part of our problem lies in the concept that political equality implies the capacity of all individuals to handle society's affairs. This notion has been abandoned in education, in medicine, and in health work, but it still prevails in the matter of government and legislature. Nowhere is the notion less true than in the treatment of the crime problem. If democracy is to survive, it will have to adopt the principle of delegating technical functions to such persons as are qualified to perform them.

What is this thing we glibly call crime? What is the nature of the conduct which brands the doer as a criminal? Is there any act or group of acts which constitute crime and which are criminal always and everywhere. Contrary

to popular and widespread notion, there is no such act or body of acts. In spite of the common belief that what is once a crime is always a crime, and that there is a sort of criterion of right and wrong, by which all men in all ages are bound, we find that the kind and nature of crime are never stationary. The concept of crime depends in a large measure upon the prevailing group interests and group interests vary from time to time with changing social and intellectual conditions. Bearrien called our attention to this when he launched his crusade for a saner attitude on the part of society towards criminals and the whole subject of crime. He said, "Whosoever reads with a philosophic eye the history of nations and their laws will generally find that the ideas of virtue and vice, or a good or a bad citizen, change with the revolution of ages." Crime is not a static quantity nor can it be considered in absolute terms. There is actually no such thing as crime in sin. Crime changes with the changing of customs. As someone points out, all good and evil is simply a matter of latitude and longitude. Actions which once aroused the populace into frenzy may pass in a subsequent generation without protest. Things held vital by one generation may lose their value or relative importance in the next.

A glance at the criminal laws of England will reveal the length to which law has gone in its attempt to make property safe. It was once a crime to buy produce on the way to market or to purchase with a view to selling at a profit. Today we clamour for relief from powerful corporations which amass wealth from speculation in food supplies. It is possible and frequently true that an act which constitutes a crime in one social group may be a legitimate and even honorable action in another. For instance, a group of students of the University of Manitoba may organize a cruel brutal attack right in front of the Parliament Buildings on a demonstration of unemployed and nothing happens because they are University students. But these unemployed themselves cannot demonstrate, cannot even use the streets if the police do not want them to, and the slightest demonstration gets them into the police station. Yet the students committed a wil-

fully brutal physical attack upon these people. Professor Lasky refers in one of his books to what happens in London when the students run wild. I know what they do. I was at Cambridge University myself. They go through the theatres and upset and smash the property of the house, but nothing happens. Why? Because they are privileged fools belonging to the privileged classes. But let the poor man do anything of the sort and look what happens to him. The savage kills his enemy but is restrained from doing injury to members of his tribe.

The religious fanatic thinks he is doing his god a service by maltreating or even putting to death a member of his own group or household for holding heretical opinion. Some of the darkest chapters in history have been the result of theological notions which have given rise to conduct contrary to natural social laws. Many instances of what appear to be absurd criminal laws might be given. Socrates suffered death for an offense which would appear to us today as trivial. The Carthaginian killed their generals when they lost the battle. In ancient Rome play actors were deprived of citizenship. By the Julian law celibacy was a crime. In Sparta confirmed bachelors were stripped in midwinter and publicly scourged in the market place. Such things are now a matter of individual discretion.

Today under normal conditions it is a crime to kill a human being. But if society places a gun in your hand and sends you forth to slaughter your kind, it is a crime not to do so. Truly crime is only what communities agree temporarily to designate as criminal; and one may say that any thought, word or deed, which runs counter to that of the herd, will be considered by the community as criminal. So crime is only an idea in the mind of the herd obsessed with the frenzy of self-preservation. The herd has decided in truth that might is right and exercises its might in characterizing all that it conceives to be inimical to it as criminal. This is natural and inevitable.

The danger is that this same instinct of self-preservation should be mistaken for the voice of God. The instinct was the same in Palestine as it is in Canada. The

one produced the Ten Commandments. The other produced the Criminal Code of Canada. There is no essential difference between the law of Moses and the law of Canada. While crime itself changes little throughout the ages, the point of view of organized society on the criminal does seem to show some definite progress toward reform. To see how far we have gone, it is only necessary to look back a few generations. In England at the close of the eighteenth century over two hundred crimes called for capital punishment and filthy prisons were filled with needy debtors. It is not one hundred years since under English law they stopped hanging little children for petty pilfering. Our police systems are barely one hundred years old and our conception of penology, as anything more in fact than sheer retaliation, is far more recent.

I have pretty nearly exhausted the time allotted to your speakers and about all that I have been able to do is to open up an introduction to this most vital subject. While criminology is a comparatively new science and a much neglected one, yet in the last quarter century substantial progress has been made. Many interesting investigations and studies have been conducted and valuable data collated and a number of important treaties have been published and, what is equally important, public interest is being slowly aroused in the question. But time will not permit me to deal with these latest developments, I can only indicate their general nature and trend.

Briefly, the result of the scientific study of crime and the criminal has been to show that crime is a social disease and that the majority of criminals require much more specialized and much more individualized treatment than is offered by the ordinary crude routine methods employed in our penal institutions. Reports from prisons, reformatories and courts in the United States, where special investigations have been made, show that at least fifty per cent. of the inmates of State prisons are suffering from some form of nervous or mental diseases or defects. And of the inmates of prisons throughout the country where studies have been made 27.5% are found to be feeble minded. The large percentage of criminals suffering from

physical disability is also attested by reports coming from prison institutions throughout the country. Of one group of one thousand delinquents, which was specially studied, forty-seven per cent., practically every other person, were suffering from syphilis or gonorrhoea. Only positive laboratory findings were included. These facts and conditions show the absolute necessity for medical clinics in connection with our courts and our penal institutions and the time is coming when they will be a regular part of their equipment. Certainly something more than good advice is needed. General supervision in the community and securing employment is needed to solve the problem presented by the mentally defective delinquent or the delinquent who is scattering disease throughout the community. The help that medical clinics will be to the courts in determining the presence of these conditions and securing the proper protection to the community and treatment of the individual is obvious.

In conclusion, I presume while speaking on the subject of "Crime and Punishment" you expect me to express my views on the use of the lash or the paddle or other mode of corporal punishment as a method of punishment, as that question is being much debated at the present time. I am strongly opposed to the use of the lash or any form of physical torture in the punishment of criminals. Read, gentlemen, the history of crime and see how futile has been this method. At one time they used to cut your legs off or your hands off, sometimes both, or they would brand you on your face or forehead or do most horrible things to you. Yet crime flourished more in those times than today. I am also utterly opposed to capital punishment, but if you want to understand that subject, read the book on capital punishment by the same author; Mr. Roy Calvert, "Capital Punishment." Cruel punishments have an inevitable tendency to produce cruelty in the people. They are the root and justice of a barbarous age. In our age, with the resources which civilization has placed within the reach of civilized government, there is no need or justification for it. The lesson of history and every consideration of reason and humanity are against them.

I would urge you to take the trouble to make some special study of this great question for yourselves. I am glad to see that it is arousing considerable public interest at the present time. If you look into this question you will be absolutely amazed to find out how backward, how barbarous, our methods are in dealing with criminals in our penal institutions. A good deal of it, as I have said, is due to the personnel in charge of these institutions. Most of the men in charge of our prisons are not fit to be in charge of cattle. There is a great deal of trouble in the personnel alone. They don't know how to treat human beings and the inmates of our institutions are not treated as human beings. I am glad to see that some public interest has been aroused on this question. I have been raising a voice in my small way in connection with it for the past three or four years. In fact, my doing so is one of the crimes charged against me. My friends, the only offence I have committed is not to fall down and worship our present system of justice and say that it is the best possible system in the best possible of worlds.

PRESIDENT SIFTON:—Mr. Stubbs referred in his opening remark to the Canadian Club of Toronto and I think I am safe in assuring him, particularly before this large audience, that the Club is interested in points of view. We are all pretty busy. We have these meetings and we are interested in getting every possible point of view, on every possible subject, and we are very grateful to those gentlemen who come here and give us an hour of their time. Mr. Stubbs, we thank you.