

## Opinions and Observations

What the Editor Has Been Thinking About

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### THE BOOK OF LIES

School children who are "morally" instructed by a course of Bible reading are not thereby trained in truthfulness. On the contrary—The more Bible reading, the more marked is a propensity to lie. Is this shocking? At any rate, it is the substance of a serious report made before the ninth international congress of psychology in session at Yale university. The report is based upon the examination of 3,316 school children in two middle western states (where the Bible is supposed to be held in high regard) and a comparison of the characters of those children who know their Bible texts and tales and those who do not.

Lying, according to this report, is facilitated by a knowledge of Holy Writ. At least the very young find, as we infer by example, the Bible to be a suggestive book of lies. Whether there is a permanent damage to the morals of the Bible readers is not stated. As they grow older, these children may learn how to lie more judiciously and they may become more skilled in "interpretation" of the Bible so as to avoid the embarrassment of admitted falsehood. Lies may be distinguished from legends, visions, and the like and "spiritual" truth may be set apart conveniently from the genuine, straightforward, realistic truth.

So far, however, as this report goes the conclusion will perhaps be shocking—and of course it will be piously incredible—to the devout believers in the Bible. How, they will inquire in outraged tones, can the Bible encourage to falsehood when it is the one true treasure house in which is contained the secret of man's salvation and the map of the path he should follow toward righteousness? We have been so often and so eloquently assured that instruction in the Bible is the fundamental need for cultivating morality—that our public schools are shrinking their duty and letting the children grow up heedless and virtuous when they leave Bible reading out of the course of study—that it is heathenish to withhold from the young a knowledge of the scriptural foundation of the faith of the fathers.

Those of us who have never been deceived by the propaganda in behalf of Bible teaching, who have a sounder view of the origin and aims of morality, will not be so astonished. We can, in fact, very easily understand how familiarity with the Bible, especially the kind of familiarity which is induced by teaching a belief in that strange collection of wonders and monstrosities, might suggest a weakened regard for truthfulness. Example is insidious. Teach the young lies, pass these lies off as the truth and indeed as a very special and inspired kind of truth, and what can the result be except, to put it mildly, a confused attitude toward truth? For after all, innocent as children may be supposed to be they have a shrewder perception than older people give them credit for having. They are not so easily nor so completely taken in by the tales that are palmed off on them. At first they may believe; but sooner or later suspicion comes alive and two and two are without much difficulty put together and the joke acquires a different cast and influence.

It really seems clear enough that a child who is taught to believe as a chief exercise of faith in the truth of the Bible, with its miraculous impossibilities and nature-denying tales, will when he is more clear-sightedly and skeptically older feel a rude jolt to his moral system. Teaching lies, to use a plain word, certainly ought to be most prejudicial to the cultivation of a decent, truthful attitude toward life. It is a poor preparation for the business of life to have oneself betrayed by one's most respected teachers and to have one's immature, inexperienced mind taken advantage of by men and women who should know better.

Reflect what the effect upon a child might reasonably be. He has been taught to believe certain tales, not simply as poetry or romance, but as literal truth and history and, moreover, the religiously sacred truth. This belief has been impressed upon him by parents and teachers to whom he innocently, confidently looks for honest guidance. In these instructors he places the unsuspecting trust of childhood. Then, as he develops rather more ability to think for himself (and children do think for themselves), as he becomes inevitably more familiar with the facts of life, and as he comes to in con-

tact with skeptical suggestions from others, the child learns that he has been grossly and shamelessly deceived. Perhaps the knowledge comes to him gradually and he still pretends to believe while at the same time developing, naturally enough, a more careless attitude toward truth. Lying seems to be popular, so why not fall into line? One lie leads to another and surely the most prolific breeder of lying should be the kind of lies that are most significantly stressed and that are given a chief place in the teaching of the young. The child must assume that his instructors are fools or liars; he is too young for an understanding of the devious ways of "interpretation" and the tricks, often unconsciously self-deceiving, by which belief in old, false legends is reconciled with reason and honesty. The child, I believe, when a skeptical light dawns upon him, impulsively regards the Bible as a book of lies. And he is right. It is a book of lies. How absurd then to suppose that truthfulness or any other feature of morality could be inculcated by such an utterly false training!

One psychologist, making this report as to the significant relation between Bible teaching and lying, is politely careful to add that no criticism of the Bible is implied. Mere knowledge of the Bible, he says, is not morally sufficient. It must, that is to say, be "interpreted." Tricks of sophistry are required to make the book of lies have the appearance of a book of truth. Or perhaps children should be told frankly that the Bible tales are not true but are merely legends, fairy tales, products of the imagination? In that case, why make them a part of school teaching? The only reason given for Bible teaching is that the Bible is true and holy and a powerful aid to the cause of morality: from the point of view of those who advocate such teaching it can only be offered in the name of truth; imagine our Fundamentalists agreeing that the Bible should be introduced to the school children as a book of legends. The children might, as the Fundamentalists would promptly declare, read Thomas Paine and be done with it.

After all, the Bible, has no major historical importance: it does not deal with major historical events—with the main lines of historical development and culture—and in any case its accounts are a mixture of legends, forgery, and uncertainty, not accepted by scholars as legitimate history. And there is no good reason why the Bible should be taught to school children as literature. As for its moral influence—the greater part of it is the record of barbaric deeds and ideas which are scandalously out of accord with modern ethics. What could be more ridiculous than the view that teaching the Old Testament, with its lurid tales of murder and rapine, intrigue and adultery, cruel dogma and unconscionable falsehood, is morally helpful to immature minds or to any minds for that matter!

One need not, of course, go to the other extreme and say that reading the Bible will lead to an utter, irrevocable moral ruin. Its influence may be outgrown—but, we may add, the only sure way fully to outgrow it is to become an "infidel" and discard all notions of the sacredness of the Bible or its importance in modern life. It is not enough to "interpret" the Bible and still regard it as a peculiarly valuable guide: one is thus caught in a tangle of inconsistency and deceit which certainly has no great moral beauty or force: better to regard it as the book of lies—or, more maturely and politely perhaps, as legend or poetry or what-not—as anything but the truth and anything but a book of sacred revelations and high moral inspiration.

It is quite reasonable to conclude, however, that if Bible teaching (accompanied, as we are supposing, by a measure of belief or an attempt to reconcile its lies with a sensible, truthful view of life) will not certainly tear one's moral fabric to pieces it will not, on the other, strengthen or purify one's character. At the least its tendency is to confuse one's attitude toward truth. It must encourage a disposition toward credulity on the one hand and, on the other hand, toward deceit. Certainly this report of the psychologists—that children who are especially familiarized with the Bible incline more markedly toward deceit than children who are not—has a significance that cannot be ignored. And what else, indeed, could be expected? To teach very impressively and deliberately falsehood under the deceptive guise of truth is obviously to blur the distinction between falsehood and truth. If the children are made to realize that the attitude of their elders toward truth is quite careless, and if they are trained as it were in making the distinctions of sophistry and in pretending to believe the impossible, the effect upon them will surely be to make them less rather than more truthful.

Fundamentalists may protest with scandalized indignation against this

psychological report. Others who are less credulous in their attitude toward the Bible but who nevertheless have a very special and delicate regard for the book (or collection of books) may feel a painful surprise. But we who are thoroughly grounded in an enlightened skepticism—who have studied the origins of the Bible and of all religion and holy books from the standpoint of scientific and literary criticism—will see in this report only a confirmation of our previous views. We have never supposed that the book of lies could have any but a falsifying influence. We have known that it furnishes a most unreliable and contradictory and altogether confusingly poor excuse for a moral guide-book. We have realized that instruction in this book offers nothing that is sound in the way of culture or common sense.

We have also been quite clearly aware that the only motive in Bible instruction is to cultivate a belief in the Christian religion; in short, to bolster up the tottering fabric of credulity in behalf of ancient superstitions that are ridiculously contrary to the viewpoint of modern intelligence. If the Christian religion were not at issue, there would obviously be no suggestion that the Bible should be taught in our schools. Taken solely for itself, as history or as literature, it would not receive a moment's consideration. Back of it is only the influence—the old, traditional, slowly (but surely) yielding prejudice—of religion.

And certainly if school children are stuffed when they cannot help themselves with the lies of religion who can blame them if they develop a taste for lies or a slight, vacillating regard for the truth? Their only chance of moral salvation, so to speak, is to fall into the hands of skeptics and be instructed with a scientific, realistic view of religion—in a word, to have the Bible nonsense thoroughly removed from their minds and to understand, tolerantly enough but none the less firmly, just what is back of the interests of religion. Only the truth—the truth that thrusts religion aside as a folly of the past—can finally and reliably counteract the corrupting influence of the book of lies.

### MAN THE SUPERIOR ANIMAL

An editorial writer for the Chicago Herald and Examiner is righteously incensed at a statement by Professor Joseph Jastrow that "man must snap out of the idea that he is a superior animal." Jastrow is freely quoted by this journalistic critic. Jastrow, we are told, says of man: "He is just a combination of forces, like the pig or the wolf or, indeed, we may assume, like the violet or the peony. He hasn't got anywhere, he isn't going anywhere, and the sooner he climbs down off his pedestal of self-confidence the sooner he will be as happy as a peony or a pig."

I wonder what the scholarly Jastrow would say to this crude, careless interpretation of his remarks. Evidently what the scholar intended was to emphasize the scientific view that man, like all other animals and like all other phenomena of the universe, is a product of natural forces, an organism distinguished from others by the nature of his physical and chemical makeup. He was also, no doubt, scouting the idea that man has any great mysterious destiny—that there is any "spiritual" purpose behind man any more than behind "the pig or the peony"—that, in short, a God of intelligence and purpose rules the universe.

That is strictly the scientific view, which of course is not popular and sentimental enough for a newspaper editor. Man is made of the same materials that, in various combinations, are found throughout nature. He is, like any other animal, fundamentally to be regarded as a physical structure. He is a product of evolution and there is nothing "spiritual" about him—a terms that can have no realistic application, that is meaningless, that involves a kind of superstition or faith for which there is not a shred or syllable of proof.

It does not follow, however—nor, I am sure, did Jastrow say—that man is therefore an inferior or even an equal as compared with other animals. If man is a product of natural forces, there is no doubt that he is a superior product. True, no God is watching over his destiny. No great scheme of the universe is planned especially for him. The time will come—science tells us—when all that is on the earth will be dead and forgotten: when the conditions of life will have disappeared, and the drama of the triumphant human species will be given its curtain. Even so, who doubts that, so long as our history holds good and the conditions of life obtain, man is and will be the superior animal? Jastrow of course was speaking in the most extensive, impersonal, scientific terms, not in terms of immediate or familiar human experiences; and, thus speaking, he is quite correct—

man, like everything else in the universe, is the result of evolution and a concurrence of causative forces.

That, of course, is not telling the whole story. The explanation of the origin and rise of man does not invalidate the history of his achievements—rather it gives us a clearer light upon these achievements. Man is an animal—but he is a superior animal. A Packard automobile and a wheelbarrow are both machines; but who doubts that the Packard car is the superior machine? Both a brilliant sunset and a cloudy evening are explained by natural causes; but the sunset is unquestionably the more beautiful.

As a matter of fact, the editorial writer cannot logically take exception to the remark of Jastrow's unless he affects to go outside nature for an explanation. It is evident that he is really concerned in asserting the "spiritual" significance of man; and his "spiritism" is something that is strikingly elusive in any consideration of the facts of life. In this modern age, the wonderful intricacy and variety of nature should be at least fairly understood. Undoubtedly the workings of nature are a good deal more impressive, more remarkable, more awesome, if you will, than any religious ideas that were formerly believed by unscientific generations. It is amazing, if you will, to know that the material which composes the farthest star and the pig and the peony and the man is the same, only in different sum and combination. Scientifically, not religiously, Tennyson's lines about "the flower in the crannied wall" are true enough. There, in a flower or in a rock or in an insect, is indeed, the physical truth of the similarity of the substance of life. Even the line drawn between the organic and the inorganic, useful and relatively true as it is, is seen not to be dogmatic. There is activity throughout nature. Nothing is quiet or still. Microscopically viewed, the most solid and dead substance is alive with activity. And among animals—a monkey, a pig, a cow responds to stimuli as naturally, as inevitably, as a man responds.

True, with the man there is more subtlety, more training, more evidences of the influence of mind. He is, as we have agreed, a superior animal. In the struggle (or, really, nothing so conscious as that, rather the blind and accidental drama) of evolution he has come out on top. He has made over or controlled the larger portion of the world to suit himself. Civilization has succeeded to the primitive scene. And it is evidently the most far-fetched metaphysical kind of reasoning—unrealistic and unimportant—to argue that civilization is not essentially an advancement upon the primitive life of man. Such a viewpoint is never suggested without much windy, wasted talk of "spiritual" values which, even so, turn out to be denials of the genuine beauty and organization and humanization of life.

What are "spiritual" values, anyway? If we mean wisdom or education, then we observe that the means of material advancement of life—the very agencies which these "spiritualists" affect to scorn—have increased our "spiritually" sentient and ambitious life. If we mean cleanliness and orderliness, then quite obviously the growth of a powerful and skeptical materialism has achieved our purpose.

What indeed can the "spiritualists" possibly claim that has not been realized by the unfolding policy of progressive materialism? Consider the time when "spirit" is supposed to have been in the ascendency, when religion and the mysteriously theological view of life were not only commonly accepted but were approved by men who passed as scholars. Medieval times were, after all, the classic times of "spiritism." Roughly speaking, the attitude of the Herald and Examiner editor was the attitude of the spokesmen for orthodox piety and purpose in the Middle Ages; and what did that attitude signify? We know very well that it involved the most ignorant, unsanitary, disorganized condition of the human race. Boggled in superstition, men could not produce any beautiful or significant evidences of excellent life. Material progress—the progress of science—has made possible all that we enjoy today and all that we take pride in: even the egoistic pean of the Herald and Examiner editor is inspired by the fortunate, evolutionary, scientifically understood working of natural forces.

There is no mystery, in one sense, unless one chooses to make a mystery. If the whole of life is not explained, it is still true that so far as our explanation goes—and it goes pretty far—it is materialistic. There is, for example, no doubt that the same forces that make the pig or the peony also make man. Is that, then, any reason why man should be asflamed or try to deny his nature? Our superiority is surely a matter of final nature and accomplishment rather than of origin. It is really amusing to see a

man getting excited because someone tells him that he is related to the monkeys—one would think that maybe he doubted his superiority and required some artificial proof that he was better than the descendant of a lower animal. On the other hand, I know that very intelligent people are not worried by the knowledge of their relationship to the lower animals. Wisely enough, they consider that it is, if anything, a tribute that they (or their species) have advanced so far. This seems indeed to be the most reasonable attitude: grant that we have evolved from a lower form of life, it seems that our natural feeling should be gratification that we have, whether by our own efforts or by natural forces (really the two working together), been lifted to the plane which we now inhabit.

It seems that the meaning placed upon Professor Jastrow's remark has been unfair. Evidently it was not his intention to degrade the human race nor to suggest that there is no reasonable, effective distinction among the forms of life. But the basic truth that Professor Jastrow expressed—namely, that similar forces of nature work together for different ends, however far apart they may seem—stands as practically unchallenged as the fact that two and two make four. Man is undoubtedly a combination of natural forces. He is, to put it in the words of the most recent scientific viewpoint, a machine. Even so, he is a wonderful machine. The reactions, the dreams, the schemes, the ambitions of man are obviously far beyond anything that could be envisaged by the lower animals. Even as a machine, man works differently. But so, one may say, do a Packard car and a wheelbarrow work differently. A crude machine, whether natural or artificial, has a different line of activity from one that has been carefully worked out. But the mechanical nature makes no difference in the facts of achievement. It is enough that man is recognized as a superior animal and one who can adjust situations to please himself. There is, I believe, no question about the future of the human race. Present principles and policies—scientific ones—are enough. Man is an animal—but a superior, independent, prophetic animal.

## Trial by Jury: A Burlesque of Justice

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I. THE ORIGIN OF JURY TRIAL  
Walter Bagehot is said to have remarked that the chief cure for admiration for the English House of Lords was to go and look at it. It is equally true that in most cases we can be cured of our reverence for contemporary social institutions by a casual investigation of their history. What has been hitherto viewed as a gigantic example of divine solicitude, condescension and revelation, appears upon research to be but a clumsy and awkward product of centuries of historic evolution, embodying, like the great rock formations, a vast number of fossil and vestigial remains, many of them quite as anachronistic today as the theory of the four humors or medieval astrology. Of no other institution is this more true than of the trial jury as an instrument for the ascertaining of the guilt or innocence of men accused of crime.

We have not space here for a thorough review of the history of the jury, founded upon the illuminating researches of Brunner, Pollock, Maitland, Thayer and Haskins, but we may point out briefly the salient facts in the situation. In the first place, more than ninety-nine percent of human history was passed without any such institution as the jury having a place in criminal procedure. It had, indeed, a very recent origin. Even the highly developed Roman jurisprudence knew of it not. Its beginnings in late Medieval times in Western Europe were due as much to accident as to design. During the greater part of the Middle Ages torture, the ordeal, trial by battle and compurgation were the most widely used devices for ascertaining the guilt of the accused. But early in the period the political, rather than the juristic conditions of the times were evolving machinery which, though far removed in its origin from court procedure, was destined ultimately to beget the modern jury.

Its remote origins are to be found in the nature of the *fiscus*, which was related to the royal revenue jurisdiction in imperial Rome. This power was carried over by the Franks, to whom the royal lands were known as fiscal lands. Among the more important administrative activities of the Frankish Empire

was the inquiry into the status of royal lands. In order to establish his rights the King would frequently direct an *inquisitio*, or inquiry into the actual state of affairs. The matter was usually settled after conversations and adjustments between the royal representatives and private citizens. In due time the *inquisitio* was extended still further. The King's representatives would summon a group of leading citizens and extract from them an opinion or statement as to the taxable wealth of the community, the state of the public order, and the prevalence of offenses against the King and his laws. This group of citizens or neighbors, to whom the questions were submitted, was known as a *jurata* and its report to the King or his representatives was called a *verdictum*. Here we have in embryo both the terminology and the procedure of the modern jury.

The first stage of its development, as primarily an administrative rather than a juristic instrument, was most perfectly realized by the Normans, who took the practice to England in 1066. The royal inquisition came to be known as an *assize*. Exactly a century after the landing of William the Conqueror, namely, at the famous Assize of Clarendon in 1166, the grand jury took definite form. A varying number of country gentlemen and burghers were summoned before the royal representatives and compelled to tell whether they knew of anyone accused of crime in the neighborhood. At least twelve of those summoned had to agree as to the accuracy of the report in order to secure royal action. That so large a number was summoned was due to the fact that in the case of powerful violators of the King's peace a single individual feared to make accusation. This jury of accusation, which appeared shortly after the middle of the twelfth century, was, of course, the grand jury rather than the trial or petty jury of today. Those accused of crime by it were commonly subjected to the ordeal or duel in order to ascertain their guilt, though as early as 1166, in certain civil cases, Henry II is said to have allowed the accused to decline trial by battle and resort to a crude form of jury trial. The appearance of the trial jury, as we know it, however, was delayed for half a century or more.

The thing which did more than anything else to establish it was Innocent III's condemnation of the ordeal in 1215. This strong pronouncement of the Church against a prevalent method of ascertaining guilt led to the gradual substitution of the jury trial, which made its appearance in England by the close of the first quarter of the thirteenth century. At first, it was rather common procedure for the grand jury also to act as a trial jury, but in due time the two bodies came to be definitely separated in composition and function. For a century or so a person who preferred to do so might decline a jury trial and resort to trial by battle or accept torture. The incentive in choosing duel or torture was the fact that conviction by a jury led to the seizure of the property of the accused and the possible destitution of his relatives. Trial by battle was gradually outlawed, but torture remained legal in certain countries to the close of the eighteenth century. In the early juries there had been no definite uniformity as to numbers, with the exception that usually twelve of those chosen were compelled to agree before a decision could be made, but in the course of time the English jury came to consist definitely of twelve "good men and true." The choice of the number twelve was unquestionably based upon Scriptural precedent, and the primordial jury was clearly related to the earlier device of compurgation, by which, in the absence of direct evidence, twelve friends of the accused could swear to their belief in the veracity of the defendant when he was protesting his innocence. The Holy Spirit was assumed to hover in close proximity to the compurgators, and when the jury developed it was believed that it watched with equal solicitude over the decisions of jurymen. The Holy Ghost was supposed to be particularly attracted by the number twelve because of the fact that there had been twelve tribes of Israel and twelve Apostles. It is probably only an accident that the sacred Hebrew number seven was not chosen instead of twelve. A definite deterrent advantage might certainly have arisen had the choice fallen on the number thirteen! The following quotation from *Duncomb's Trials* (1665) gives a good idea of the mythical and theological attitude towards the number twelve as applied to the jury system:

As to the sanctity and force-dained character of the number twelve, and first as to their (the jury's) number twelve; and this number is no less esteemed by our laws than by Holy Writ. If the Twelve Apostles on their twelve thrones must try us in our eternal state, good reason hath the law to appoint the number twelve to try our temporal. The tribes of Israel

were twelve; the Patriarchs were twelve, and Solomon's officers were twelve (I Kings iv, 7). Therefore, not only matters of fact were tried by twelve, but in ancient times twelve judges were to try matters in law. In the Exchequer Chambers there were twelve counselors of state for matters of state and he that appealed to the law must have eleven others with him who believe he says true and the law is so precise in their number of twelve that if the trial be by more or less than twelve it is a mistrial.

At the outset the trial jury performed the functions of the present jury plus that of the witnesses. The jurymen were usually men who had some knowledge of the facts in question and they based their verdict upon their own information of judgment. By the opening of the fifteenth century in England, however, the jury was gradually transformed into a body which founded its decisions mainly upon evidence supplied by witnesses. For a considerable period the only witnesses summoned were those for the prosecution, and the defendant was at a distinct disadvantage. Gradually, however, he was given the right, under progressively lessened handicaps, to call upon witnesses to testify in his behalf. Along with this went the development of rules of legal evidence, of the right to challenge jurymen, and of improved methods of impanelling the jury. The rules of evidence and the courtroom procedure which prevail today are a curious mosaic, embodying elements which originated as early as the fourteenth century in juxtaposition to such highly novel devices as the summoning of trained psychiatrists to aid judges and juries in their decisions. The modern rules of evidence and procedure, in other words, present a recapitulation of the entire history of trial by jury.

It should be quite evident from even this brief and casual sketch that the jury is far from the divinely created and sanctioned bulwark of human liberty which right-thinking men now suppose it to be. It took its origin in a non-judicial field and was clumsily adapted to its present purpose simply because nothing better was at hand. Far from being a rampart of human freedom or a safeguard of democracy, it was in its origins one of the most potent and highly prized instruments of royal absolutism and monarchical oppression. Compared to other institutions of the time, trial by jury probably made a fairly respectable showing in the sixteenth century, when there were relatively few highly trained lawyers, and the men summoned for jury service represented the intelligent and cultured upper and middle classes. But the progress of medical knowledge, sociology and jurisprudence, and democracy since that time has made it as preposterous and out of date as the sun dial of James I or the coach of Charles II. Moreover, the average jury is today chosen from an altogether less intelligent class than that which furnished jurymen in the sixteenth century.

### II. INCOMPETENCE OF JURIES

The complete futility and inadequacy of trial by jury can be best indicated by a brief analysis of the actual procedure from the impanelling of the jury to the rendering of the verdict. The selection of the panel is determined by lot, the names of a definite number of citizens being drawn at random from a collection of slips or cards bearing the names of qualified citizens of the county. At best, any such panel can only at rare intervals include a better than average group of citizens. It cannot be limited to those possessing unusual intelligence or special knowledge of criminal matters. In the usual case, the panel is made up of an average collection of farmers, shoemakers, barbers, plumbers, clerks, drummers, hodcarriers, and day laborers, with a few professional or business men sprinkled among them. In some cases, of course, the theory of a choice by lot becomes a legal fiction, and accommodating commissioners of juries are willing, for a reasonable consideration, to draw the names of the men desired by district-attorneys or by lawyers for the defense. Such selected panels are by no means rare, and when one of them supplies a jury the outcome of the trial is practically assured before a single witness has been summoned. Even when a panel is honestly selected it fulfills exactly the democratic doctrine that special training is in no way essential to competence in the handling of public affairs. It is drawn from precisely the classes from which a mob might be raised by the Ku Klux Klan.

In the choice of the actual jury from the panel of potential jurymen we observe the operation of a process that may be called counter-selection. The obviously more intelligent and abler members, drawn from the business and professional classes, are for the most part automatically excused from service, leaving only the farmers, cobblers, barbers, clerks, hodcarriers and day laborers. These men are questioned

forthwith as to whether they have read about or formed any opinion concerning the case. Those who answer in the affirmative are likewise automatically disqualified. It is quite apparent that, in regard to any significant case, any honest man possessing a modicum of literacy is compelled to give an affirmative answer to this interrogation. Hence, the actual choice of jurymen is limited for the most part to the illiterates and the liars.

Naturally, the attorneys on the two sides desire to obtain a jury which will be a priori as favorable as possible to their sides. Therefore, they challenge all jurymen who, because of party affiliation, religious belief, class, club, membership or nationality may possibly be against them. If the defendant is a prominent Democrat, the district attorney will naturally desire a Republican jury, while a Catholic defendant suggests immediately the desirability of having a heavy representation of Baptists and Methodists. If a so-called Red is on trial the district attorney endeavors to get a jury of bank-clerks and stock-brokers, while the counsel for the defense labors to secure venemmen who admire W. Z. Foster. The liberal legal arrangements for challenging for cause, make this maneuvering easy. Only an exactly equal balancing of knowledge and wits on the part of the approving barristers, can prevent it. The jury chosen is thus often either "fixed," "hand-picked" or composed of the most colorless and feeble-minded of the illiterates and liars from which the selection has to be made.

The jury, after a few days of bewilderment in the new and strange atmosphere, settles down into a state of mental paralysis which makes it practically impossible for the majority of its members to concentrate intelligently and alertly upon the testimony and the rulings of the court. At best, it is in a state of distraction or absent-mindedness. The farmer wonders whether his hens are being fed or his horses properly bedded down, and the drummer bemoans his lost sales and "dates." Awakened from time to time from this stupor and these fantasies by the unusual beauty, volubility, resonance or obscenity of the witnesses and testimony, the jurymen suddenly pounce upon some more or less irrelevant bit of testimony and often forget or overlook the most significant facts divulged by the witnesses. Thus we have, in a typical jury trial, the testimony of the witnesses, the arguments of counsel and the rulings of the judge presented to a group of colorless men, drawn from the least intelligent elements in the population, at a time when they have lapsed into a mental state which practically paralyzes the operation of their normally feeble intellects.

The situation as regards the testimony itself is scarcely more satisfactory. Psychologists, following the pioneer work of Munsterberg, have proved time and again that the most honest and intelligent eye-witnesses, having observed an act in question leisurely and directly, are unable to testify about it with any high degree of exactitude or unanimity. The testimony normally produced in a courtroom is, of course, incomparably inferior to that brought forth in carefully controlled psychological tests. In a recent case in Boston a man of excellent reputation named Collins was arrested on the charge that he had snatched purses from women. Five separate women independently identified Collins with great positiveness as the thief who had taken their purses. Though he had an excellent reputation as to probity and honesty, he was given a severe prison sentence. Shortly thereafter, in arresting a criminal, the police found the purses in his room and Collins was released. There is usually a paucity of eye-witnesses, and those that actually exist are rarely persons of intelligence. Quite as likely as not they are among the "undesirable citizens" of the place, who would not be believed under oath if they were disagreeing from any other vantage point than the witness-chair. But even these inferior persons with their inadequate information are rarely allowed to testify in a straightforward fashion. The technical rules of evidence often prevent them from being permitted to tell the most pertinent things they know. On the other hand, counsel may entice them into making all sorts of vague insinuations about things of which they know practically nothing.

But even this is not the worst of it. As everyone who is not absolutely innocent of court procedure knows, witnesses are usually as carefully coached by counsel as prize speakers in a rhetorical contest. Very frequently the "best" type of witness is one who knows absolutely nothing about the case and so may be coached from the beginning to tell a coherent story. Convictions or confessions of perjury in all sorts of cases, from the celebrated Mooney case to the recent case of Sacco and Vanzetti have demonstrated the frequency of this building up of "impressive" testimony by counsel and witnesses without the slightest factual basis. It is one of the outstanding injustices of our criminal procedure that, in the case of a conviction of perjury, the witness alone, instead of the witness and counsel together, is compelled to suffer the penalty of the law. But

even if we had the most accurate testimony by witnesses of the highest intelligence and undisputed veracity, its value and significance would be to a large degree lost upon the illiterate, inattentive and distracted jury. Hence, the outcome is essentially this: a body of individuals of average or less than average ability who could not tell the exact truth if they wanted to, who usually have little of the truth to tell, who are not allowed to tell even all of that, and who are frequently instructed to fabricate volitionally and unblushingly, present this largely worthless, wholly worthless, or worse than worthless information to twelve men who are for the most part unconscious of what is being divulged to them, and would be incapable of an intelligent interpretation of the information if they heard it.

In case there is intelligent, pertinent and damaging testimony, an attempt is made by the lawyer whose side seems most likely to lose by this testimony to obscure its significance and divert the attention of the jurymen from it. Every form of inflammatory oratorical appeal is permitted by the rules and every type of effort is made to stir the prejudices of the jurymen. The jury may even be covertly threatened with mob reprisal if it does not render a certain type of verdict. Particularly in closing appeals is this rhetorical gaudiness utilized. If the evidence is strongly unfavorable to one party, the lawyer representing it is likely to ignore the testimony altogether and to appeal solely to the emotions of the jury. And it need not be emphasized that, to the average jury, an emotional appeal is far more potent than a factual demonstration. Mr. Wellman thus describes the contribution to judicial objectivity and scientific criminological accuracy of one J. J. Parker, a venerable and learned barrister of Mobile, Ala.:

Once, while he was defending a case in the criminal court in Mobile, and during the argument of the prosecuting attorney, who was a rather prosy man, Parker moved his chair around so as to be under the judge's desk and behind the speaker, so that neither could see him. But he was in full sight of the jury. After a short time he began to nod his head as though very drowsy, and to tilt his chair back until it looked as if he would fall backwards. He would then make a little start and right his chair, and then pretend to go to sleep again, much to the amusement of the jury. The prosecutor realized that something was going on to distract the attention of the jury, because their faces were covered with broad grins in spite of his solemn argument. Finally Parker lost his balance and fell over backwards, making a good deal of commotion. The bystanders, who had been enjoying the scene as much as the jurors, broke into uncontrollable laughter, which was joined in by the jury, and the prosecutor's argument was completely destroyed.

Perhaps the most instructive thing about the modern jury trial is that neither the district attorney nor the counsel for the defense is vitally interested about the hard facts. The district attorney commonly desires to convict whether the defendant is innocent or not, and the counsel for defense desires an acquittal whether his client is guilty or not. Moreover, it is the jury which invites the lavish use of money in hiring expensive counsel to obscure facts and create fiction—that transition which Hobhouse describes as the substitution of battle by purse for the ancient battle by person.

Indeed, trial by jury in any important case, comes down essentially to this. It is a battle of wits between counsel, in which the district attorney endeavors to use every method possible to induce the jury to identify themselves with the injured party or his relatives and to hate the defendant, and in which the counsel for the defense devotes himself to the task of making the jury identify themselves with the defendant or his relatives and to sympathize with the defendant. The actual facts in the case are relevant and are exploited only insofar as they will enable the district attorney more effectively to generate hatred for the defendant or will make it possible for the counsel for the defense to lead the jury to identify themselves with the defendant. The extremes to which irrelevant material may be brought into the case for the purpose of thus stirring the emotions of a jury is well illustrated by District Attorney Katzmann's examination of Sacco relative to his views on the status and methods of Harvard University.

The writer once listened to one of the greatest criminal lawyers of all time as he related his method of handling a jury. He frankly confessed that his sole objective was to lead the jury by subtle but effective methods gradually to put themselves in the place of the defendant. He proceeded on the assumption that no man will hang himself. He stated that he had never failed to secure either an acquittal or a disagreement if he could prolong the trial for a sufficient period so as to play adequately on the emotions of the jury. He contended that it was more important to have circumstances favorable to promoting the identification process than to have convincing factual material establishing the innocence of the accused party.

Before a group of trained experts

the vaporings of high-priced counsel of the variety of Martin Littleton would have about as much standing as the pulpit gymnastics of Billy Sunday.

The technical rulings of law are as ineffective before the jury as is the testimony. The average jurymen is as abjectly ignorant of even the most elementary law, and almost invariably misses the significance of the judge's interpretation of it. Even in those cases where the rulings are simple, explicit and direct, the jury often brazenly and defiantly ignores them. A writer cites an interesting case where a judge instructed the jury to bring in a verdict in a certain manner unless they felt that they knew more about the law than he did. Astonished when they disregarded his advice, he reminded them of his charge. Whereupon the foreman responded: "Well, judge, I reckon we considered that point, too." Especially futile are the rulings with respect to the rejection of evidence that has been actually presented. If a jurymen has been impressed with the testimony, in not one case out of ten will he be influenced by a subsequent ruling of the judge that it is irrelevant and must be excluded from consideration.

The burlesque upon science and justice which trial by jury thus presents is carried from the courtroom to the room where the jury deliberates. Here the jury is free to, and hence frequently does, ignore absolutely all the testimony presented, and comes to its decision upon the basis of the prejudices of the members. In a recent notorious murder trial in New Jersey—the Thompson-Dickson case—the jury frankly disregarded all the testimony, knelt in prayers, and then found a unanimous verdict for the defendant. The case was unique only in regard to the frankness of the jury's confession of the method it pursued and the publicity which the confession received in the press. Even in cases where a jury has been reasonably alert in following the testimony, the desirable results of such an unusual phenomenon are likely to be destroyed by the presence upon the panel of a powerful and impressive personality or an unusually stubborn moron. There are innumerable cases of a miscarriage of justice due to the conversion of the jury to the point of view of a prejudiced but convincing orator or to the presence of a juror who through bias, bribery or stupidity has held out against the judgment of his eleven colleagues. And even the most elementary psychology makes it clear that, though we had twelve able men on the jury, they could rarely come to a concise, definite and well-reasoned agreement upon the basis of a study of the same body of facts.

We have thus the spectacle of a "fixed" or "selected" jury, or one of colorless liars and illiterates deciding the matter of the corporeal existence, public reputation, property rights or personal freedom of a fellow-man upon the basis of prayer, lottery, rhetoric, debate, stubbornness or intimidation, in ignorance or defiance of legal rulings which they do not understand and of testimony, perhaps dishonest, which they have only imperfectly followed, and from an intelligence comprehension of which they have been diverted by the fervid emotional appeals or subtle strategy of counsel. If one were to protest against the accuracy of this picture by the counter-allegation that most verdicts are apparently sound and that such a result could scarcely be expected from so grotesque a procedure as we have described, the first answer suggested would be the query as to how one knows a particular verdict is the correct one. The majority of our convicted murderers go to the chair bawling protestations of innocence, while many obviously guilty ones are freed. There being under our system an opportunity only for a verdict of guilty or not guilty, by the mathematical laws of chance verdicts should be right in fifty percent of all cases, taking a sufficiently large number of cases and extending them over an adequate period of time. Surely there is no person of reasonable I. Q., sanity and literacy who would contend that more than half of our jury verdicts are accurate, or that the majority of those which are sound are such for any other reason than pure chance. An equally satisfactory result might be obtained far less expensively and in a more expeditious and dignified manner by resort to dice or the roulette wheel. The writer should be quite willing to defend the thesis that, insofar as certainty and accuracy are concerned, the modern jury trial is not a whit superior to the ordeal or trial by battle.

That the judicial joke perpetrated by the jury often follows them out of the courtroom is borne out by a not unusual episode, the accuracy of which can be vouched for by the writer. A jury in a leading eastern state about a decade ago decided the fate of a woman accused of murder, of which she was found guilty. The jury proved an unusually congenial group whose members regretted greatly the fact that they ultimately had to disband and return to their ordinary drab daily pursuits. But they decided to celebrate properly their emotional affinity and cordiality, and to renew the memory of their cheerful and convivial association. Hence, they formed the "Mrs. X—Jury Picnic Association," and have since met once each year

for a rollicking and vociferous outing at a lakeside amusement park and emporium, the joy of which is not a whit abated by the fact that, less than three miles away, the recipient and beneficiary of their juristic acumen and sagacity withers under the stony stars of "Copper John," as the symbolic figure surmounting the top of the state prison structure is conventionally christened. When, through accident or the grace of God, the jury happens to return an accurate and sound verdict the chances are about even that it will be set aside by the court on the ground of some hair-splitting technicality.

Many would answer this critical attack upon the jury by the question as to what we propose to substitute for jury trial. The answer is self-evident. We should hand over the examination of the accused person to a group of paid experts, who perform no other professional service than the examination of accused criminals. Such a permanent board of experts would be drawn from the professions most directly related to the understanding of the causes and nature of crime, namely, psychologists, psychiatrists, sociologists, criminologists and social workers. In addition to their general preparation in their particular profession, special preparation in the study of criminology and in practical experience in dealing with criminals would be required. The salary paid would need to be commensurate with the legitimate expectations of the capable and highly-trained group which should be assembled for work of this sort.

Such an expert board would have no interest in any other matters than the ascertaining of the guilt of the accused person and the study of his personality. Their sole function would be so to study and treat the defendant that society may be more adequately protected from his deprecatory in the future, this protection being secured in the manner most compatible with humane treatment of the accused. Such a board would be swayed only by the facts, and these facts would be sought in conformity with the rules of scientific evidence rather than the present rules governing legal evidence. There would be no attorneys to represent either the people or the accused. The expert board, actually seeking the facts, would be as much concerned with probing the evidence as to innocence as with investigating the proof of guilt. Today no one thinks it necessary to have a district attorney prosecute a person suspected of being afflicted with dementia-praecox in order to get him into a state hospital. We trust to the ability and good sense of the board of examining physicians. If we ever devise a scientific method of examining criminals we shall place equal confidence in the board of experts in charge of criminals. If a judge is retained to preside over the process of examination, he will become the same rubber stamp that he is today in regard to the disposition of insanity cases.

It is true, of course, that permanent boards tend to develop a certain degree of arrogance and bureaucratic spirit, but at the worst an expert board could never approximate such a state of affairs as exists in the courtroom, with the fictitious "honor" of the court, the savagery of the district attorney, and the sentimentality of the defense counsel. We are coming more and more to depend upon expert boards, and we must always reckon with minor defects which appear to be inherent in human nature and social organization. The medical staff of a public institution for the insane may occasionally become arrogant and bureaucratic, but nobody would suggest that because of this we should turn the insane over to the obscenities of the courtroom.

Ex-Governor Alfred E. Smith of New York State suggested a few years ago that we should keep jury trial but should hand over the sentencing power to a group of paid experts roughly similar to the one suggested above. This would be an immense improvement over the present situation, but it would not be as satisfactory as it would to eliminate the jury altogether and let the expert board have control of matters from the beginning. If we were to retain the jury trial it would mean that a great many persons who are actually guilty would continue to be freed by juries as a result of the adroitness of clever defense attorneys. Such persons would never have the benefit of examination and treatment at the hands of experts. They would be enabled to return at once to their work of preying upon society through their various crimes. Of course, some innocent persons would continue to be convicted by juries, but the chief defect in Governor Smith's scheme would be the freeing of the guilty. In the case of the innocent who are convicted, the expert board could be trusted to undo the wrong in large degree.

We have said nothing about the archaic grand jury, which is still kept for the purpose of examining the evidence against the accused and determining whether he shall be indicted and held for trial. The grand jury is as much of a judicial vestige from medievalism as the trial jury, but its minor and indecisive functions relative to the ascertaining of guilt render it relatively harmless and make it far less of a menace than the trial jury to any scienti-

fic handling of the crime problem. That it is essentially useless may be at once conceded, but if society cares to support this juristic fossil no great harm can result.

III. CRIMINOLOGY BECOMES SCIENTIFIC

The amusing but tragic travesty which almost invariably accompanies a jury trial is due, chiefly, of course, to our democratic hallucination as to the intellectual acumen, information and judgment of the average specimen of *Homo sapiens*, and to our entirely wrong-headed and antiquated concepts in regard to society's proper attitude toward the criminal. Hitherto our criminal justice has been concerned almost entirely with the crime and its commission and not with the criminal and his personality. Modern criminal science repudiates this mode of approach. It is the criminal and not the crime which must be primarily considered, whether we emphasize the reformation of the criminal or the protection of society. The nature of the criminal personality is the point of attack for the rational criminologist, and there is no greater scientific fallacy extant today than that which was urged so tenaciously by Mr. Crowe and his associates in the trial of Loeb and Leopold, namely, that the penalty should be made to fit the crime. Only in a very limited degree is the crime any real criterion of the potential danger of the criminal to society or of the possibility of his reformation. The California Bluebeard, J. P. Watson, who was discovered some four years ago to have killed at least nine, and perhaps more than twenty, wives, was potentially less dangerous to society than a low-grade feeble-minded boy whose chief offense to date has been the pilfering of marbles and candy. Mr. Watson, under the proper therapeutic treatment, could probably have been cured of his compulsion neurosis in a couple of years and restored as a safe member of society, but every criminally inclined imbecile is an incurable potential murderer as long as he lives, even though he may never commit any serious crime of violence during his entire career.

Accepting, then, as basic the notion that we should deal with the personality of the criminal and not with his alleged act, it immediately becomes apparent that criminology is a highly complex technical subject. To be successfully pursued it requires the collaboration of biologists, psychologists, psychiatrists, and social workers. Obviously, its problems are not to be entrusted to lawyers or to the sort of men who serve on juries. The courtroom is no more the place for the functioning of the common man than the operating room of a hospital, the designing room of the American Bridge Company or the research laboratory of the General Electric Company. Least of all can we rationally entrust the decision in a case of alleged insanity to the average man. Imagine, for example, a group of plumbers, barbers and the like being assembled before a class of medical students to diagnose a case of inflammation of the pancreas, or gallstones, or tumor of the uterus. Such a grotesque absurdity would be exactly comparable to the burlesque of calling a jury to decide upon the insanity of a defendant in a criminal case, were it not that the determination of insanity is often a much more difficult and subtle task than the diagnosis of a physical disease. If Mr. Crowe desired to have himself laughed out of the society of rational men, he could have furnished no better ground than his plea for a jury to determine the mental state of Loeb and Leopold.

The following account from the Boston Post of the expeditious trial of Dr. Thierey in Boston in the spring of 1925 indicates what can be done through the cooperation of an honest judge, district attorney and counsel for the defense, even when all three are still formally handicapped by the presence of a jury. The contrast between this procedure and the long days of legal bluster and subterfuge which characterized the trial of Loeb and Leopold is a fair example of what it costs us in terms of both money and scientific accuracy to maintain the archaic rhetorical duel which is basic in modern criminal jurisprudence and procedure. And it also proves that it is the lawyers as much as the jury that need curbing, as the Thierey case was conducted with a jury formally present while Loeb and Leopold were tried without a jury before an intelligent and open-minded judge:

Dr. Raymond D. Thierey of Somerville, confessed slayer of his brother-in-law, David M. Noble, because "God directed him, and everybody wished it," last night was under guard at the Bridgewater State Hospital for the Insane, where he was committed for life by Judge James M. Sisk of the Middlesex Superior Criminal Court yesterday.

A constant vigil is to be kept over Thierey because of fears that he will attempt to take his own life. The trial of the confessed slayer lasted less than two hours yesterday, and the jury at the instruction of Judge Sisk, returned a verdict of "not guilty by reason of insanity." Assistant District Attorney Robert M. Bushnell, who conducted the State's case, declared the government was not opposed to such a verdict. He stated that the government at no time has been able to find a motive for the slaying.

Judge Sisk's instructions to the jury followed immediately after the remarkable confession of Dr. Thierey regarding the crime was disclosed in

the courtroom. In his confession, which was made to alienists, the doctor showed no remorse for his act, it was stated, but believed his act a righteous one and one that Noble, could he speak, would be thankful for.

Three alienists testified that Dr. Thierey was a "constitutional psychopathic inferior." A letter from Dr. L. Vernon Briggs, noted specialist on mental diseases, in which he stated it as his belief that Dr. Thierey was insane at the time of the slaying and still is insane, was read.

Modern criminal science, indeed, makes it clear that a lawyer is a wholly improper person to have any dealings, other than the most formal, with criminals. He is as much out of place in the criminal courtroom as he would be in the hospital or the chemical laboratory. Of course, we shall probably need legal forms and prescriptions for the conduct of the new criminology, in the same way that we now have legal regulation of medical practice and hospital organization, but the lawyer is not today believed to have any proper function in the bacteriological institute, the psychiatric clinic or the observation ward of a hospital. We can, perhaps, tolerate the presence of a judge, but we can safely assume that all the legal guidance necessary may be supplied by this judge without the assistance of prosecuting attorneys or lawyers for the defense. The legal profession, of course, will not welcome any proposal, however scientific and logical, which will forthwith remove a considerable portion of its professional income. But this obstacle, in due time, will be worn down, as it has been in the past in connection with the progress of scientific knowledge in other fields. We have taken the practice of medicine from shamans, and of surgery from barbers, and in time we shall take criminology from the legal profession. No unprejudiced and informed person can deny the need for this reform, for it is probably true that the average contemporary barber is better equipped to perform a major surgical operation than is the average lawyer to deal scientifically and efficiently with criminals.

The new criminology will delegate the study and treatment of the criminal to a permanent group of experts under the leadership of trained and enlightened psychiatrists. Such a group will not be concerned primarily with the mere legal guilt of the person accused. Guilt of criminal action will be regarded as but one of a number of significant considerations to be dealt with in disposing of the criminal. Accusation and guilt will be viewed chiefly as means of bringing a criminal personality into the custody of scientists. The important question will be the menace of the individual to society and the possibility of so treating him as to eliminate that menace. If it is found that his personality is such as to make him a permanent and serious danger to society, he will be segregated for life, whether he has committed a multiple murder or stolen a bag of peanuts. On the other hand, many a person who has committed a murder will be committed to a sanitarium for treatment, with the legitimate expectancy of his ultimate release to a life of freedom if his motivating compulsive disorder is of the type which promises recovery under treatment.

Those who allege that the new criminology will not offer adequate social protection argue badly and in a circle. Surely no person would contend that our present criminal jurisprudence in the United States offers adequate protection against, say, crimes of violence. A careful statistical study by the Metropolitan Life Insurance Company has recently shown that there is only one execution to every one hundred and forty-six homicides in this country and that our homicide rate is seventeen times as high as that of England. There is now being launched an hysterical campaign against lawlessness and crime. The new criminology will prescribe a technique and procedure which will be much more effective than even the English procedure. For the first time in the history of criminal jurisprudence there will be a group of individuals actually interested in the real facts about crime and capable of making use of them in an intelligent manner. Investigation of guilt will no longer be a matter of gubernatorial ambitions on the part of the district attorney or fees and reputation for the counsel for the defense. The new system will go beyond Chief Vollmer in urging improvements in our police, so as to make the discovery of crime and the subsequent retribution swift and sure. It will advocate devices to discover in advance of criminal action the existence of personalities likely to become menaces to society. In the case of a young man suffering from incipient dementia-praecox we do not insist upon waiting until he has assassinated his grandmother with a bread-knife before we commit him to an institution. Likewise, it is not invariably necessary to wait until a potential murderer has committed his crime before he is detected and segregated. Many will allege that it will be very difficult to discover such potential criminals in advance, but it may be retorted that it is also frequently difficult to discover persons who are spreading contagious diseases. Yet it is only as we succeed in this last that we are capable of giving any reality and value to

preventive medicine. In all probability, arrest by ever more scientifically trained police will remain a major method of bringing the criminal to the attention of psychiatrists, but a greater and greater percentage of anticipations will be realized through mental hygienic clinics, compulsory mental testing, and the extension of psychiatry into the work of the public schools.

Even more, the scientific criminology will emphasize the necessity of sterilizing and segregating that class which produces many of our potential criminals, namely, the feeble-minded. There will be no more time sentences; the period of segregation will depend entirely upon the progress made toward the cure of the disorder which motivates and precipitates criminal conduct. The same criteria will guide our procedure that governs it today with respect to the release of patients from hospitals for the insane.

How far we actually are from any prospect of a practical realization of the goal of the abolition of the jury nuisance is to be seen in the following eulogy of the jury by so distinguished and experienced a jurist as the late Joseph H. Choate. It is probable that nothing short of a veritable avalanche of crime and unrepented criminals will suffice to overcome the inertia of legal tradition and the vested interests of the criminal lawyers:

The truth is that the jury system is so fixed as an essential part of our political institutions; it has proved itself to be such an invaluable security for the enjoyment of liberty and property for so many centuries; it is so justly appreciated as the best and perhaps the only known means of admitting the people to a share in maintaining their wholesome interest in the administration of justice; it is such an indispensable factor in educating them in their personal and civil rights; it affords such a school and education in the law to the profession itself, and is so embedded in our constitutions, which declare that it shall remain forever inviolate, requiring an amendment to alter it—that there may be no substantial ground for fear that any of us will live to see the people consent to give it up. I cherish, as a result of a life's work now nearing its end, that the old-fashioned trial by jury of twelve honest and intellectual citizens remains today, all suggested innovations and amendments to the contrary, the best and safest practical manner for the determination of facts as the basis of judgment of courts, and that all attempts to tinker or tamper with it should be discouraged as disastrous to the public welfare.

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**Change & Decay in Religion**  
 L. M. Birkhead

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The old religion is dying. Religious institutions, creeds, religious leaders—all are feeling the disintegrating effect of the forces which constitute what we call modern civilization. Traditional religion is no longer a vital factor. It does not count in the affairs of the present time. Once life was the science of serving the gods, so we are told. If that were once true of life, it is no longer so.

Traditional religion is not at home in the modern world. Modern civilization and traditional religion are enemies. The great forces of our time and religion are in mortal combat. Traditional religion and democracy cannot live in the same world. Science and religion are irreconcilable enemies. No sort of reconciliation can be made between any sort of religion acceptable to the average religionist and what we know as real science.

Education and that which passes as religion never have lived together comfortably. Traditional religion is not the friend of any sort of education except a narrow religious education. Religion decreases with the increase of education. Industrialism has never been anything but the mortal enemy of religion. In his recent book, "Prospects of Industrial Civilization," Bertrand Russell finds no place for religion. It is inimical to social progress, he says. Most of the world's burden-bearers are alienated from traditional religion, and many of them are hostile. The so-called new scholarship, in which is included our knowledge of history, the Bible, and the many religions, cannot be put down as in any sense the friend of what has been called religion. All

of these forces. democracy, science, education, learning, industrialism—are silently but surely destroying religion. And by the destruction of religion, I mean the gradual decay of religious institutions of all sorts, the lessening of the power of religious leaders, and the crumbling of dogmas and creeds.

Religious decadence is not confined to any one country or to any particular religion. The revolt against religion is world-wide. The Orient is as much affected as the Occident. The Orient is being rapidly secularized by modern civilization as the Occident has been. There is a very widespread revolt against religion in India. Many new religious movements have arisen which have attempted a reconciliation with modern ideas. The conflict between Hindus and Moslems, and the spread of Theosophy have also added to the turmoil over religion, and, incidentally, to the decay of religion. Intellectual leaders in China admit that Confucianism has lost its vitality. Traditional Confucianism is dead, they agree. There are several anti-religious and anti-Christian movements in China. A large number of anti-Christian magazines are published. The sentiment against all religion is strong among the students of China.

Political leaders in Japan bewail the loss of faith in traditional religion. They think that the unrest in Japan is due to lack of religion. Those who are familiar with the situation among Moslems say that "the entire world of Islam is today in profound ferment" from Morocco to China and from Turkestan to the Congo," and that "the 250,000,000 followers of the prophet Mohammed are stirring to new ideas, new impulses, and new aspirations." Islam is in the throes of a great upheaval. The political changes in Turkey have resulted in the disestablishment of Islam as the state religion. With the suppression of dervishes, the unveiling of the women, and the spread of feminism and skepticism, a veritable revolution is taking place. One Turkish newspaper recently said that "no thinking Turk can be a Moslem today."

Everywhere in the Orient there is the stir of new life, a life inimical to the old religions. Lothrop Stoddard recently summarized the situation in this fashion: "The 'Immovable East' has been moved at last—moved to its very depths. The Orient today is in full transition, flux, ferment, more sudden and profound than any it has hitherto known."

One of the familiar phenomena of the Occident of our times is the decadence of religion. Christianity in all its expressions is in a bad way. The verdict of those who know is that Christianity is dying in Europe. Bishop Edgar Blake, in a recent statement about the state of Protestantism in Europe, reports that Protestantism is dying. Protestantism is in a weaker condition now than it has been in two centuries, he says. Recently there were 781,000 withdrawals from membership in the Protestant churches of Germany. In a certain German city of 300,000 Protestants, on a particular recent Sunday only 2,248 were present in church. The Greek Catholic church is even worse off than Protestantism. The gradual disintegration of Roman Catholicism is familiar to all who have studied the last hundred years of European history.

England shares with the remainder of Europe in the decline of the churches. W. E. Orchard, in a recent book on "The Outlook for Religion," says that belief in God has collapsed in England; and Bishop Gore, in his book on "The Belief in God," makes a similar statement. There is no movement back to the churches in England. Vivian T. Pomeroy has lately said that "in most of the big centers in England, ninety percent of the people are untouched by any church." Christianity as a system of dogmas is gone, according to Dean Inge. Religious leaders in England agree that there has been a steady decline in church attendance and church membership during the past fifty years.

The situation in America is no better. Seventy-five percent of the people in the United States do not go to church. The church in rural America has declined by more than one-half within a generation. In fact, most rural churches are dead. The churches in the cities have deserted the slums—the great centers of population. The churches in the so-called residence sections are half empty. The people in the cities have ceased to go to church. The so-called tremendous gains in the membership of the churches are mostly propaganda. Church rolls are notoriously padded. The working people are very generally suspicious of the church. The majority of the people frankly say that the church bores them—their services are uninteresting. Boredom and church-going are synonymous in the minds of most people. The preachers are inferior. They are sanctimonious. They utter platitudes and use empty phrases. Their pulpit language, as, for instance, "Beloved hearers," is silly and sickening. The preachers and the churches are both out of date. They are old-fashioned and worship the past. The young people are cynical about religion and the church.

The revolt of the intellectuals against the church is generally known. One of the commonest ad-

missions is that hell has lost its terror and heaven its charm for thinking people. Many thinking people hold both the churches and the preachers in contempt. Professor J. H. Leuba, in his recent study "The Belief in God and Immortality," reports that our intellectual leaders have lost their faith in the fundamentals of Christianity. This rejection of the fundamentals of Christianity is apparently destined to extend parallel with the diffusion of knowledge, he says. Leuba adds: "So far as religion is concerned, our students are groveling in darkness. Christianity, as a system of belief, has utterly broken down and nothing definite, adequate, convincing has taken its place."

What to do to stay this exodus from traditional religion is the concern of religious leaders the world over. In America, many religious leaders believe in resorting to force. The Sunday Laws, the anti-evolution laws, and the attempt to spread the weekday religious schools, are evidences of the appeal to force. Many religious organizations have resorted to all sorts of "ballyhoo" methods. The "Happy Sunday Evening" meeting, moving pictures, sensational advertisements and sensational methods are resorted to by many preachers to attract the attention of the indifferent throngs who are passing up the church. Nothing that religious leaders so far have done seems to have stayed the exodus from the church and temple. The efforts of religious leaders are ineffective. Religion, as we have known it, is done for. The outlook for traditional religion is dark.

But this decadence in religion does not mean that the real values which religion has cherished will be lost. We are all reminded constantly of the fact that various institutions have taken over the functions of religion. Schools, social welfare organizations, clinics, labor unions, forums, libraries, art institutes, lodges, and clubs of all sorts are cherishing the spiritual and humanitarian values once sponsored by religion. The churches and temples, as at present constituted, are not fit homes for the great spiritual values of humanity. The spirit has gone out of these institutions. They are organizations thinking largely of their own existence and success. Spiritual values receive little consideration. The religious leader is no longer the prophet. He is not even the priest. He is the business manager and executive; he is the administrator. He must have what the modern world calls "pep" and must qualify as a "mixer." The qualities which would make him the spiritual leader of his people are of no value. They may, in fact, be a handicap to him. They may make him "unsafe" and "too radical," as a leader of the modern religious organization. The leader of the modern religious society must above all else be "sane." He must deal in trivialities. It is not safe for him to agitate the great human issues. If he does speak of them, he must not speak in the manner of the prophet. He must equivocate. There must be a double meaning in his deliverances to his people. One of the outstanding characteristics of the religious leaders of our times is that they speak always with mental reservations. The prophets of our day are not in the pulpits; they are in the colleges and labor halls, and among the social workers. They are writing books like Browne's "The Believing World," Dorsey's "Why We Behave Like Human Beings," and Wells' "The World of William Clissold."

Is this a dark outlook? I think not. In this, the most irreligious age (from the standpoint of traditional religion) there is more humanity and more concern for the welfare of humanity than ever before in human society. Never were so many constructive efforts made to rid the world of war, disease, poverty, crime, ignorance, and all other human ills. The spirit of science is coming into its own. Devotion to the truth is an increasing motive. There never were so many movements (which are messianic in character) in behalf of social justice. Genuine human goodness is more common than at any other period in human history. The world is headed toward a religion of humanity. Ethical idealism, informed by the spirit of science, is to be the religion of the future. The coming religion is to be experimental and not dogmatic. There will be little fixity of belief. The door will be left open at all times to progress.

What part will traditional religious organizations play in this coming religion? So far as I can see,

no part. The only chance for survival is in a revolutionary change in these organizations which I do not believe is possible. It may be just as well that the spiritual aspirations of the human race are not too definitely identified with any organization. It may be just as well for them in the future not to be subject to organizations of propaganda. They are more likely to dominate the human race if they are diffused through all our literature and our organizations and societies.

pleasent sense of contrasts between whites and blacks. In the movies it is possible to be many places almost simultaneously; thus, one moment we are before the footlights, the other we are behind; one moment we are beneath the dancers, and in another we are above them. This is something that the regular stage cannot give us; it is authentic technique for the pictures. So, too, effects of distance, of perspective, that are denied to the limitations of the theater, are simple and potent in the picture house.

As for sound, the producers have not yet begun to realize the numerous effects possible to the medium. For the present, however, we should be grateful for the reproduction of operetta and play that we have had. The new size of the screen, the use of color—these will bring to the pictures a new realism. Beyond a doubt, the sound screen will be able to bring, in first-class performance, the musical classics of all time, in full versions and in presentations that will possess certain advantages over stage production. The ability to range at will over the stage and the auditorium will break up monotony and add vitality. An inkling of what can be done was afforded in "On With the Show."

Even the radio, with or without television, will develop a finer technique than it has at present. Its sound effects now are crude, merely reproductive. Imagination plays a shadowy role. The dynamic effects of pure sound, as used in music, have been all but neglected over the air. These same effects are available to the talkies. But at present the talkies are too much interested in merely transferring to the picture house the plays that have already achieved success in the flesh.

One's expectation of pleasure in the movie house of the present time is much like the examination of a reprint. In the absence of the original painting, we must be content with a more or less faithful reproduction. We can't all own originals. This service is all right as far as it goes. But some day, and soon, we'll have more little movie playhouses, including sound, and we'll see and listen to experiments in the exploitation of pure sound and pure sight.

If technique comes, can art be far behind? The "Hollywood Revue" is a symbol of the state in which the industry finds itself: all dressed up and don't know where to go. A galaxy of stars, and no light in the sky. A symphony orchestra and no music. Gorgeous scenery and nothing to see against the glittering background. Particularly disgusting was the habit that the leaders had of coming out and smothering themselves in bouquets. You know the cheap vaudeville stuff. So glad to be back here again, where I made my first hit. Me and my personality. I can sing as well as act, even if sounds like hell. Listen to me: I can talk!

Baby has grown up. It's high time the diapers were removed. The stale jokes one has to listen to. The long-bearded hokum. The ancient and dishonorable slap-stick routine. The bald imitations. After you've seen "Broadway Melody," "The Dance of Life," "On With the Show" and a few others, you begin to wonder whether they're not reeling off the same story under a different name. Some of these are good; in fact, none of these pieces I've named is absolutely bad, but enough is as good as a feast. Hollywood must have about 10,000 gang men on fat salaries; can't they think up a new one just once in a year? Or is that asking too much? Doves of "composers" hammer out tunes until the one finger with which they play is worn hollow. Then why do all these ditties sound alike?

It looks as if I had come to pray and remained to scoff. But I still hope.

An art form that must aim to please so many millions seems doomed from the first. Yet within the business there have arisen a few brave souls who are cursed with the itch for experimentation. Now and then, in a single scene, in a short sequence, they show what can be done with imaginative photography, with a sense of pure movement, with a feeling for design in the telling of a tale. The technicians, in fact, are having a glorious time these days in the sound and sight racket. So many practical problems demand solution that they are able to indulge their artistic natures as well. Photography has improved remarkably. The worst of pictures, in this advanced day, are usually well done from the aspect of lighting, grouping and contrast. Even the worst of the talkies are somehow better acted. The ensemble is there, but what is there for all this excellent assembly to do?

This was what struck me forcibly on attending the Boston premiere of the much-heralded "Hollywood Revue." There were as many stars in the picture as you can discover in the heavens on a clear autumn night. A regiment of song writers had got together to write the tunes. Broadway had been combed for the chorus. The screen was widened, to accommodate shots that at times occupied the entire width of a large stage. Color was added for special sequences.

And the thing fell as flat as a tire after the 20,000th mile. Why? For one thing, these producers had tried to rival the living stage. That's silly. The screen as a substitute for the stage has its place. We can't all see the original production of certain performances; the talkie, in this case, acts as an excellent reporter. But if the talkie is to be merely a substitute, it forfeits half its claim upon our interest. The talkie has so many possibilities in its own right that we, in turn, have the right to demand them. What we ask of the movie is what we ask of the movie; that something—especially—itsself which we can get nowhere else.

The "Hollywood Revue," for the greater part, is nothing but weak reproduction of vaudeville stunts. Once or twice there was, however, a glimpse of higher potentialities. The scene to which is sung that droning tune, "Singing in the Rain," was imaginatively staged, with a

### In the World of Books

Weekly Reviews and Other Literary Ruminations  
Isaac Goldberg

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#### THE SOUND AND SIGHT RACKET

There is a type that scorns first and inquires afterward. He comes to scoff and remains to pray. The radio would never be anything but an unmitigated nuisance, he said. The movies would rarely rise above the stage, literally, of an eyesore. As for the talkies, they would combine all the atrocities of the radio with those of the movie. And that was that.

Unfortunately, there was a great deal of truth in what this finicky gentleman said. But then, you see, it is always safe to indulge in gloomy prophecy. Most things don't turn out well. It is in the nature of human striving that too much of it eventuates in failure. The croaker is frequently right not because he has insight, but because fate conspires with him to produce disillusionment. If you want to convince me that you are a prophet, let me judge you, not by your prognostications of failure, but by your predictions of success.

I have been seeing and hearing things lately. The things are the "talkies." Let me disarm you at the outset. I am for all the toys that modern science can give us. As a child I was fascinated by the phonograph and the crude moving pictures; the radio tickles me today as much as it ever did; I curse the movies, and attend them; I abominate the talkies, and spend many evenings there, stopping, looking and listening—and often getting run over despite these precautions.

Most of these entertainments are god-awful. They are adapted to the intelligence of fourteen-year-old romantics. They exhibit a deplorable lack of sensitivity to the medium employed. They tell stories that we would have scorned to read on the second day after we put on long pants. Well, then, what keeps a supposedly intelligent person going to them night after night? Hope springs eternal in the human breast.

An art form that must aim to please so many millions seems doomed from the first. Yet within the business there have arisen a few brave souls who are cursed with the itch for experimentation. Now and then, in a single scene, in a short sequence, they show what can be done with imaginative photography, with a sense of pure movement, with a feeling for design in the telling of a tale. The technicians, in fact, are having a glorious time these days in the sound and sight racket. So many practical problems demand solution that they are able to indulge their artistic natures as well. Photography has improved remarkably. The worst of pictures, in this advanced day, are usually well done from the aspect of lighting, grouping and contrast. Even the worst of the talkies are somehow better acted. The ensemble is there, but what is there for all this excellent assembly to do?

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And the thing fell as flat as a tire after the 20,000th mile. Why? For one thing, these producers had tried to rival the living stage. That's silly. The screen as a substitute for the stage has its place. We can't all see the original production of certain performances; the talkie, in this case, acts as an excellent reporter. But if the talkie is to be merely a substitute, it forfeits half its claim upon our interest. The talkie has so many possibilities in its own right that we, in turn, have the right to demand them. What we ask of the movie is what we ask of the movie; that something—especially—itsself which we can get nowhere else.

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musical old fogies or for the broader routine of life itself. Why should it be impossible for jazz some day to give us symphonic forms? The symphony itself evolves from the suite, which was originally a set of contrasted dances. Gershwin, in his now famous *Rhapsody in Blue*, tried to dance his way out of the fetters that Dance had imposed upon jazz. In this, as in his *Concerto* and in his *American in Paris*, he made a vast stride toward the symphony hall, as did Aaron Copeland.

It is surprising to find Mr. Mendl, in his consideration of jazz and sex, confessedly unable to link the two. (One of the definitions of the word "jazz" links it to a universal, if unmentionable, biological habit.) A primary aspect of jazz, it has always seemed to me, is precisely a flinging away of inhibitions, musical or sexual. The instruments, in the early days, were actually obscene in their unmistakable references to certain bodily noises. One of the first forms assumed by an attempt to shake off routine is sexual indulgence, since the impulse has been repressed by civilization and must occasionally find vent. City life, moreover, encourages sexual hysteria. Yet again, the primitive peoples to whom we owe certain of the jazz characteristics are also symbols of a fuller sexual life than our own. Need one listen to anything more than the words of the jazz tunes? What is music for, if not to sing the myriad aspects of love?

All of which brings us straight to Dr. Spaeth. Spaeth laughs with and at his book. He knows that some of it is meant simply for the goofaw of the minute. He tells you so. Being a sober musician, too, he reserves the third portion of his eminently readable collection for Dr. Spaeth in his more serious, Ph. D.-ic moments. Indeed, it is the third part of the book that serves as the best criticism of the other two. I am with Spaeth; for me, part three is almost the whole of the book. Spaeth has many a salutary word to say about jazz. He expresses his doubts as to the greater rhythmic sensibilities of primitive folk. If his contentions are sound, then we shall have to revise some of our notions as to what we owe to these peoples in the way of complicated patterns. I wonder whether a consideration of primitive dancing would have bolstered up, or undermined, the case of Dr. Spaeth. The rhythms and counter-rhythms of jazz have always suggested to me the independent, yet correlated, dancing of the limbs of the entire body. The head goes one way, the arms another, the thighs a third, the belly a fourth, the legs a fifth. This, too, is counterpoint—rhythm against rhythm. Civilized dancing seems to have centered its attention upon the legs, but it is the whole body that dances. Ellis, I believe, has told us of even hair dancing.

To denounce jazz—even from the musical standpoint—is about as sensible as denouncing the arm for not being a leg or a neck. In the dance of life, every pattern has its place. Jazz is such a pattern, such a process.

**FICTION FLASHES**  
*Nightfall*, by Henri Ardel (Translated by Mrs. Keith Murray), Boston. The Stratford Company. \$2.  
This novel sold 65 editions in France. Don't ask me why. It is a conventional romance of frustration, in which a married woman, about to yield to her lover, develops cancer of the breast and dies before the justified change of passion is legally effected. The translation is as stiff as the characters themselves, who are noble to the point of humorlessness. Between much of the cheaply sexual fiction of today and this staid-glass posing, it is difficult to choose. Or, rather, it is simple: choose neither.

**THE EATER OF DARKNESS**. By Robert M. Coates. New York. Macaulay. \$2.50.  
With the aid of Malcolm Cowley there is an attempt to throw across the personality of Mr. Coates an esoteric veil. "No other American writer of his generation has passed so thoroughly into legend." This means exactly nothing. "The first purely Dada novel to be published in English." Ditto. Coates has done an interesting job, however, in concocting a self-satisfying mystery tale that is sometimes coherent. Before you make out what's what—and it isn't at all necessary that you do—you have to eat several huge chunks of darkness—as dark, indeed, as printer's ink. And yet, if you want to be pleasantly bothered, give Mr. Coates a chance to get you angry.

**BENNET GOES CELLULOID**  
Arnold Bennet is the ace of uneven writers. Good, bad and indifferent pour from him like a cataract. And money, perhaps, comes in the same way. The Literary Guild disgraced itself when it selected for monthly distinction his cheap novel, "The Vanguard." But we shall always remember him for *The Old Wife's Tale*.

It was written in his stars, then, that he should write for the movies. What attracted me to "Piccadilly," indeed, was that Bennet had written directly for the screen. Perhaps the fellow had something new to say. It is possible. Even Romain Rolland is writing for the talkies, now,

and his 100 percent talking film should be worth hearing. To return to Bennet: "Piccadilly" was no circus. When, very early in the screening, it appeared that the picture was to be only another murder mystery, I felt slightly sick to my stomach. (Nor did it help any that I had had some teeth extracted that morning, and was still redolent of those fragrances that bloom only in dentists' laboratories.) The picture was made in England. Gilda Gray was in it, and there was considerably more Gilda than any Hollywood director would put up with. Also, the lighting was much, much worse than Hollywood would condone. The story? A cabaret manager discards his old white love for a new Chinese danseuse, elevated by her native ability from the scullery to the cabaret. White woman jealous; Chinese lover of yellow girl jealous; yellow girl slain, with evidence pointing to the white woman; court scene in which Chinese lover confesses. A silent picture, to which was obviously attached a talking sequence in the guise of a prologue, and a musical accompaniment that made it less unpalatable.

Was it worth the trouble? Bennet ought to come West and get a few pointers from Ben Hecht. The English Gilda had better drop some twenty-five pounds before she takes the same direction again. The director had better take a few lessons from the despised Celluloid Kingdom on the West Coast.

**VIOLENCE**  
I have just opened the package containing "Violence!" A Novel of Love and Justice in the Central South, by Marcell and E. Haldeman-Julius. Most of you read the thrilling indictment of the double social standard when it ran serially. Simon & Schuster have given it an elegant dress, at \$2.50. More of it shortly.

**"I WANT TO BE HAPPY"**  
*The Psychology of Happiness*. By Walter B. Pitkin. New York. Simon & Schuster. \$3.

Perhaps the best review of this book would contain two words: Buy it.

Professor Pitkin, who teaches Journalism at Columbia University, and has been American Editor of the Encyclopaedia Britannica, has always been known for a mind that is at the same time hard and resilient. There is no room in it for such moony adventures as mysticism, although there is space and to spare for an understanding of those traits in man that lead him to the milder organized lunacies. His approach of life is scientific; his approach to the arts, too, as may be seen in his early book on the short story, may be even too practical. Certainly he has his suspicions of intelligence, and of the place that intelligence will occupy in a world more and more given over to the dubious triumphs of industrialism. "The Twilight of the American Mind" may have been somewhat sensational in its statements and in its general thesis; we are producing intelligent men and women, maintained Pitkin, at a rate far greater than will permit of their absorption into work that shall be at once useful and suitable to their powers. Nevertheless there was something to ponder in the contention.

In "The Psychology of Happiness" it is again the creature of intelligence who is faced with the greater difficulties of adjustment to a world wherein happiness must be won anew daily. Intelligence increases sensitivity to stimuli; it is often a drain upon the health; it multiplies contact; it makes the world more complex, therefore more puzzling. Yet it is a question whether even Prof. Pitkin would surrender his intelligence for the more bovine pleasures that are open to less exigent creatures.

Happiness, based upon health, is essentially an equilibrium between our energies and our desires. If we are fortunate enough to wish only for what we can accomplish, and if circumstance interposes no insuperable obstacles to its fulfillment, we achieve happiness. It looks like a formula, but it is not. For Pitkin insists that each of us is a problem in himself. We are born with different endowments of health, of energy, of insight. We are not created free and equal. Our early environment establishes certain habits, certain attitudes that we absorb from our parents—certain life patterns. There are countless possibilities of a bad start, whether physical or psychic.

We are to learn, first of all, just who and what we are—how much strength we have to spend—how well we are adapted to what we think we want—what we can afford to ignore. Not the least valuable part of Pitkin's book is that devoted to studying the life-patterns of various famous personalities. The study of Papini, for example, is better than any I have read from the hand of a professional literary critic, whether in Papini's own Italy or in this country. Pitkin's book, indeed, should be read by every critic of the arts; it suggests certain practical standards of approach that cannot but enrich one's knowledge of the things that fashion genius.

I am not sure, by the way, that Pitkin sometimes doesn't confuse the value of his diagnosis with the esthetic values of the work done by his subjects. Papini, for example,

is in certain respects a failure as a man; but his book, "A Failure," is a masterly study in utility. Something like this, too, holds true of the Russians, for whom Pitkin has never had much fondness. The Wagner who lived through certain undignified adulteries may have been a pretty poor specimen; but the composer of "Tristan and Isolde" is one of the miracles of human personality.

Pitkin, like most who write upon personality, insists upon integration. It is not any single quality that makes for happiness; it is a totality of traits, harmoniously patterned. That harmony may be achieved only by acting upon self-knowledge. Remember that Pitkin is concerned with happiness, not art. If often the palm goes to the stupid, it is because their range of wishes is limited, and their problem of adaptation simple. It is remarkable, too, how many minor intelligences, through a certain shrewdness, actually make a virtue of their defects, and so turn them to advantage as to wrest happiness from the most unfavorable environments.

Here, as elsewhere, one man's meat is another man's poison. The plan that works for A might prove disastrous for B. We cannot live another's life; we must live our own. And the significance of knowing one's self, of living one's own life, lies not in spiritual divagations but in getting better acquainted with the gentleman who lives inside your house. Pitkin begins his book with a fine description of the numerous human types. Some of these, to be sure, are predestined to lives of mysticism and of exclusively spiritual values; the great mistake comes when, by force of their personality, they are able to twist others to their mode of living—others who, by the very structure of their bodies and nerves, are meant for a different life entirely.

Perhaps Pitkin might have emphasized, too, the possibilities of alternation. Modern life presents so many attractions; we can enjoy more of these if we use one set to balance the other. The city wears us; we go to the country. Our hands tire; we use our brains. Even so, as we sleep, we naturally, and without quite waking, shift to a position that involves the use of a different set of muscles.

"Look upon the art of living as the greatest, noblest, and hardest of the arts." You may recall that Mr. Krutch, recently, in his "Modern Temper," sought to ridicule the notion that Life may be an art. The possibilities, however, grow daily. For more and more man acquires control over his environment; more and more he achieves the equilibrium of which Pitkin speaks so hopefully; more and more he is enabled to establish, between his powers and his desires, a satisfactory adjustment.

Pitkin, without waxing Pollyanna—he knows that he has made only the first baby-step toward a true psychology of happiness—is scientifically optimistic. "For the first time in the career of mankind happiness is coming within the reach of millions of people. Until the twentieth century it was the luck of a few. And most thinkers believed it to be a freakish accident in these instances. Man, they said, was not built for happy living. He must learn to give up the pleasant dream, at least so far as this life and world are concerned. Let him cultivate a thick skin, to endure the hardships and adversities of life! Let him kill all his natural cravings and aspirations for the good things of the flesh!"

Happiness, after all, remains something of a mystery still. But the virtue of Pitkin's treatise is to show how frequently it is amenable to our control—how often, and in how many ways, we may woo her with signal success. Happiness, asserts Pitkin, is attainable by at least sixty percent of the population. It is a high figure; but the exactness of the guess is not important. What is important is the practical manner in which Pitkin goes at his subject, and the healthy, earthy, scientific attitude he maintains toward it. If every church and synagogue shut up shop for a day, and turned to his text instead, we should have some salutary results.

Happiness is not a gift, it is a constant re-conquest. It is a form of action. It is an unstable equilibrium. It is a balance between our inner forces and our environment. It is more susceptible to control than we had thought. This, in a nutshell, is the tenor of Pitkin's stimulating, informative and gladdening opus.

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TOO often have love and sex been forbidden subjects. They have been heavily veiled with secrecy, hypocrisy, and euphemism. They could not be discussed, much less written about and read about by "respectable" people. Modern times have changed this—for the better. Psychologists have demonstrated how much human happiness depends upon a sound knowledge of sexual physiology. Intelligent people realize that the only sensible course to follow is to face the facts—the facts of history, of tradition, of physiology, of biology, of psychology. And it is these FACTS that Joseph McCabe, eminent scholar, presents in his 225,000-word work, in eight volumes, known as THE KEY TO LOVE AND SEX. The aim of THE KEY TO LOVE AND SEX is to give to everyone a thorough, dependable knowledge of sex and love and their influence on human lives. This work is a key in the sense that it opens wide heretofore closed doors to those subjects—it enables you to understand why it is that traditions of love still exist, why it is that sex has so profound an influence on human beings, why it is that full understanding of the sex-life is necessary to healthful and happy living. These books are candid, straightforward, and scientific. Joseph McCabe uses plain language: why should he not? It is as essential to be clear and honest about love and sex as about diet and digestion, or about bacteria and disease, or about any of the other facts of history, science, or literature. What, indeed, has figured more prominently in the world's literature than love and sex? . . . FACTS mean ultimate happiness. FACTS mean the abolition of superstitions, the banishment of misunderstandings, the elimination of sources of irritation and the correction of causes of incompatibility. Now you can get these FACTS, in compact form, in reliable pages, complete, at a total cost of only \$2.65 prepaid. Read the list of contents at the right. Use the blank below.

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The following sentences from Joseph McCabe's Introduction to this work give a clear idea of what he offers his readers in his KEY TO LOVE AND SEX:

"Even in the legends of primitive peoples, sex is from the first the outstanding fact of life. So completely does sex dominate the mind that even the gods and goddesses are credited with it in a super-human degree. All early literature is very largely inspired by the sex-theme. History, although it is in the main the record of battles and dynastic revolutions, tells in every chapter of the intrusion of the sex-interest into the most momentous affairs of man. In every age the literary man has burst through the accepted tradition that sex is an impulse essentially belonging to what it called the lower nature of man and unfit for discussion and description; and in this age of ours, which is in emotional and intellectual development the highest yet known, there is an immensely larger and more serious literature about sex than was ever known before. . . .

"The revolt of woman against her social, political, and economic subjection on the one hand, and the discovery, on the other, that half the traditions which have come down to us are false, have led our generation to confront the problem or problems of sex more seriously than they were ever confronted before. The practice of quoting the sex-novel or the book about sex as a symptom of degeneration of our time is absurd. Errors about sex, whether in the individual mind or in legislation, are amongst the most disastrous that one could quote. Millions of lives are starved, soured or poisoned under the influence of erroneous ideas. The crudest of ideas are still current as regards the relations of sex-hunger and love, or of the sex-act and generation. Even esteemed and candid writers on sex often fail to reach an entirely sound conclusion because they are ignorant of the historical circumstances in which the antagonism of moralist and humanist, or male and female, actually arose.

"Here I attempt to throw full light on the question of sex and reach a solution of the many problems it entails. None will contest the need of a sound and thorough guide to questions of sex. My work will contain a body of truths and discoveries which will help the ordinary man and woman to attain a clear and, I think, rational attitude toward the great sex-problem, in all its facets, which confront our time.

"The study of sex must be based upon a very careful scientific study of the situation today and must explore very many avenues of the past in which our ideas and standards were mainly fixed. My aim is to gather into a complete, orderly and informing work all that we know about sex-life, both in its actual complexion and in its historical sources. The normal and the abnormal, the natural and the merely conventional, art and literature, religion, history, science and sociology will be equally studied to explain the confusion of the present and suggest the way in which modern civilization may develop all the mighty resources for happiness of love and end all the friction, suffering, tyranny and morbidity which are associated with the sentiment today."

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