CHAPTER VI

CONCLUSION

WE have reached the end of this long study of contemporary crime and its repression. I say of contemporary crime, for it will not have escaped the reader that if I have included accounts of former criminal cases as well as my personal reminiscences, it was in order to be able to make a comparison between the present and the past, sometimes to avoid taking my examples from too recent trials in which my functions directly interested me. This might have involved me in regrettable indiscretions.

The moment has now come to draw some conclusions in regard to the present position of France in the sphere of criminality.

Here are some of the questions I will try to answer:

Is it correct that attempts upon life are more numerous now than before the War of 1914–1918?

Is the machinery for the detection and suppression of crime better or worse in France than in other countries?

Lastly, what reforms should be undertaken in order that crime should be prevented and more justly punished?

Is criminality on the increase:

(1) In France?

(2) In other countries?

In 1913 the Assize Courts of metropolitan France tried 3088 persons, of whom 563 were accused of manslaughter or murder.

I have taken these figures from the "General Account of the Administration of Criminal Justice." This is presented every year to the President of the Republic by the Keeper of Seals and is afterwards published by the National Printing Press.

We will ignore the statistics of the period 1914–1918, from which we can draw no conclusions. During this time a large number of men were mobilized and a considerable area of the country was invaded. Let us take the statistics from 1920, eliminating those from the Colmar district—that is to say, from Alsace and Lorraine.

Here is what we find:

In 1920 there were 3257 trials, of which 762 were for manslaughter or murder.

In 1921 there were 3541 trials, of which 738 were for manslaughter or murder.

These two years were characterized by a considerable recrudescence of attempts upon life.

But from 1922 the figures fall again and are soon below those of 1913.

In 1922 there were 2936 trials, of which 575 were for manslaughter or murder.

In 1923 there were 2207 trials, of which 489 were for manslaughter or murder. And

In 1924 there were 2100 trials, of which 547 were for manslaughter or murder.

The disquieting growth of crime after 1918, which caused so much pessimism both in the Press and in Parliament, was not a legend, but it is already ancient history, to which the present happily bears no resemblance.

There are fewer attempts upon life than there used to be, but those which occur are more widely discussed. Hence the persistence of the error. As in the Bible we are told that there is more joy in Heaven over one sinner who repents than over ninety and nine just persons who need no repentance, so more fuss is made over one criminal than over ten thousand honest men.

In several States of North America when a clock over the public highway does not indicate the exact time the proprietor is considered guilty of a misdemeanour and is punished. The clockmaker who uses a clock as his signboard and omits to regulate it according to winter- and summer-time is punishable with a certain number of days of imprisonment.

This little fact, related by Professor J. P. Chamberlain of Columbia University in the *International Review of Penal Law*, will suffice to throw some light on the difficulty of establishing authentic comparisons in the prevalence of crime between different countries. As acts tolerated in one country become misdemeanours in another, and as the line of demarcation between a misdemeanour and a crime is equally variable, any attempt at such a study will have no value unless the author is able to choose one by one in different countries the types of crime susceptible to comparison. This would be, as we say in France, " the work of a Benedictine."

In several countries, notably in the United States, acts which used to be misdemeanours are now qualified as crimes. Likewise, acts which formerly were not punishable by law, are now suppressed as being misdemeanours, sometimes even as crimes. For example, the misdemeanour of blows and wounds—*coups et blessures*—becomes a crime in Illinois and Arizona if the accused is wearing at the moment of attack a hood hiding the entire head. This is directed against the Ku Klux Klan. In Louisiana, Idaho, Nevada, New Hampshire, Virginia, and California accidental

killing or wounding becomes a felony if the accused was driving an automobile in a state of intoxication. In the same States the receiving of a stolen automobile is also a crime, or, more exactly, a felony—that is to say, a crime of the gravest category.

It is also a crime not to submit to sterilization by surgical means if suffering from hereditary epilepsy.

This penal law is not only far more rigorous than that of other countries, but it invades a domain which was and still is regarded as largely inviolable—that of the moral liberty of the individual.

Naturally the number of trials and of persons imprisoned increases in direct proportion to the augmentation of acts declared punishable by law. The average standard of morality of the prisoners being higher, one is led to treat them better. Hence arises the demand for an amelioration of prison régime which would have been considered inopportune and would have caused lively criticism at a time when the prisons were only occupied by the lowest classes of criminals.

Thus in Pennsylvania convicts receive tobacco twice a week and play games in the open air for two hours every day. It is hardly necessary to state that it would be unjust to cite improvements of this sort with a view to depreciating by comparison the prison régime of those countries where the law is less severe and where there is not yet any question of imprisoning absent-minded clockmakers.

In spite of these difficulties and of others, which it would take too long to mention, in spite of the absence of any up-to-date international statistics, certain indications lead me to believe that the proportion of criminals is much lower in France than in most other countries of the civilized world.

We have already seen that, judging by pre-War statistics, criminality in France is on the decrease. Since 1918 France has received—sometimes in obedience to its tradition of hospitality, sometimes to fill up the enormous gaps in the ranks of its agricultural and industrial workers caused by the War—great numbers of foreigners and colonials, Russian refugees, Kabyles, Annamites, Italians, Spaniards, Poles, etc., a floating population often exposed by poverty to the worst temptations and always difficult to supervise. This cosmopolitan mob has naturally contributed a strong contingent to the ranks of criminality. The fact that the curve of criminality has evidently fallen suffices to prove that crime amongst the French population has considerably decreased.

Detection and Repression of Crime in France and in Other Countries

If a nation of a low standard of civilization were concerned, a diminution in the number of criminals brought to trial might indicate inefficiency on the part of the Police. In a country, however, like contemporary France, where a murder can hardly ever be kept secret, and where it is rare for the murderer to escape detection, a decrease in criminality proves that the Police Force satisfactorily fulfils its double function of research and of intimidation. If fewer criminals are brought to trial it is not because many of them escape, but because fewer exist—the would-be criminal is held in check by fear of the Police.

I am certain that I am making no mistake in thinking that the French Police Force, at the head of which I had the honour to be placed, is to be bracketed with the excellent British Force as the best in the world. This opinion is shared by the greater part of the judicial or administrative authorities who have had occasion to study closely the organization and work of the Police of other countries.

It seems that the United States Police owes its reputation to popular romances rather than to a real superiority. In matters of criminal research, American Justice relies largely on the legendary perspicuity of private detectives. I should like to believe that this adventurous career attracts an élite gifted with the most brilliant qualities of intuition and of courage. But those natural predispositions do not suffice to make a good detective.

Police craft is only acquired after a long and laborious apprenticeship. A modern police force is a large and powerfully organized body, provided with full documentation, with photographs and anthropometric records. Often the assassin of to-day is discovered through the aid of some portrait or finger-print of yesterday's thief which is in the possession of the Police. We also have private detectives, but for the most part these people are former agents of the Prefecture who have been trained in that incomparable school and who continue to have recourse to its means of information. I do not quite see how American private detectives can make up for the lack of all this.

The Russian Police are famous, but they owe their renown chiefly to their political activities. Their secret agents, affiliated to the " Okrana " of the Tzarist régime or to the " Tcheka " of the Soviets, are rather anti-conspirators than the auxiliaries of criminal justice.

Germany also, though she certainly keeps order at home, seems always to have paid more attention to the development of the espionage services. As to the other European police forces, we learn from the congresses which are held from time to time in one or other of the capital cities that an appreciable effort is being made to perfect them. But this effort always takes the form of imitation of the British or French Police.

The present conclusions indicate the value of the means used by France to reduce criminality as compared with those taken with the same end in view in other countries. It now seems advisable for me to draw comparisons between the criminal procedures used in different parts of the civilized world.

But, in the words of Mr. Edward Jenks, Professor of London University, and one of the most learned criminologists in Europe, " the modern world has known only two great original systems of law—Roman law and English law."

The " Code Napoléon," which is still the basis of French legislation, is a direct adaptation of Roman law.

What is known as intermediary law, i.e. those points wherein our criminal law and penal code differ from Roman law, is very generally inspired by English law.

Notably, we have borrowed the jury and the assize court from British criminal procedure.

Finally, as M. Emile Seitz, counsel of the Court of Appeal at Nancy, testifies in a recent and remarkable work, *Les Principes directeurs de la Procédure criminelle de l'Angleterre*, " bills recently under consideration in France show a tendency to be inspired by the principles of criminal procedure in England."

It seems to me that it will suffice if I compare briefly the two procedures, English and French, indicating their differences and the proofs of their respective efficacity.

In spite of the admiration in many respects so well deserved by our Code Napoléon, in spite of the solidity which it owes to the robust material which its authors found in Roman law, it must be admitted that it is a work ordered by a dictator of genius to reorganize a society the elements of which were falling to pieces. It is a hasty construction, and its symmetry is that of a barracks, not of a cathedral.

On the contrary, English law is essentially historic. It has been formed little by little ; it has been evolved from the common sense of law makers and magistrates, but the tradition of the race

has always been respected. It has never been codified; it does not apparently present the logical cohesion of a body of doctrine, and one is at first surprised by its archaic formalism and its lack of unity.

But before long one realizes that this common law is the extraordinarily vital expression of the experience of centuries, and that it applies with incomparable flexibility to the diversity of human misdeeds and the social exigencies of society.

As M. Seitz remarks:

"At an epoch when in France ordinary law had hardly been formed and tended to vary infinitely, the circuit judges had established a uniform common law in England. The proceedings and judgments of certain courts were recorded and preserved when the same points recurred. The judges constantly referred to these earlier decisions, which they considered were invested with great authority."

From the most distant period of the Middle Ages English criminal procedure has always offered two advantages. It has respected the liberty of the individual even at the risk of jeopardising the suppression of crime; and it has obliged those who act in the name of the State to do so publicly.

In England the State does not absorb the individual. On the contrary, the citizen forms part of the State, and shares directly or indirectly in the administration of justice.

Excepting at disturbed periods when for reasons of State the Monarch interfered with its decisions, the jury has formed one of the firmest guarantees of the rights of the individual. Those who are summoned to this temporary judicial duty share in the exercise of public authority and become accustomed to respect order. The citizen learns to respect the law which he is obliged to apply himself. Thus, at a time when on the Continent cases were investigated and judged secretly, proceedings and sentences were publicly discussed in England.

The powers of the judge are considerable. He interprets the law, and exercises a very strong influence over the decisions of the jury. But his benevolence and his poise make him an impartial arbiter between the prosecution and the defence.

The English judicial system owes its merit more to the worth of its magistrates than to that of its institutions. This is the highest praise that one can give it.

The English Bench is recruited from legal counsel. These gentlemen, whose knowledge is undeniable but who are largely ignorant of legal doctrine, have great experience of affairs, a

prompt and direct turn of mind, perfect sense of honour, and, above all, complete independence.

No magistrate dreams of making the slightest concession to the most important influence.

The judges, who are few in number, are not exposed to Government influence or the temptations arising from their own ambition, because their positions are permanent and they have no further advancement to hope for. Their material situation is in keeping with their rank, for their income while in the active exercise of their profession is a large one, and they also receive a big pension on retirement.

English judges are also distinguished by two other qualities, sympathy and urbanity. They are neither formal nor pompous. They avoid all useless ostentation. During a trial they are always extremely polite and easy of approach. They are especially benevolent towards the poor, and none of them would allow himself to be discourteous to the accused or to witnesses.

So much for the bright side of the question, as described by a French lawyer who has observed his British model with much penetration. It seems to me to be flattering enough for my readers to allow me to show them the reverse of the medal.

The English judicial system actually possesses several serious defects. It gives the rich man who is accused too many facilities for avoiding punishment. Serious crimes are legally screened from justice if the victim does not complain or withdraws his complaint before trial.

The Public Prosecutor has not, as with us, the power to prosecute by virtue of his office. The guilty person who has the means to make pecuniary amends for the harm he has done and so buy his victim's silence or the withdrawal of the case against him, is more or less sure to escape punishment.

On the other hand it is difficult to conceive of a practice which affords a poor prisoner less facility for proving his innocence. Legal help hardly exists. The unfortunate culprit is only allowed a defending counsel at the discretion of the judge.

When this is the case, or when the prisoner has only been able to raise the sum necessary to brief some comparatively unknown counsel, the latter contents himself with taking a copy of the documents in the case, and handing them over to a probationary member of the Bar—a junior—without serious examination of the matter. The latter, who cannot communicate with his client before the hearing, and who thus finds himself incapable of studying the case, presents almost inevitably a deplorable defence. But more often the accused person appears at the trial

without the assistance of a lawyer and without even having had the opportunity of calling the evidence necessary to his defence. Let it be added that he is not interrogated, or rather that the only question put to him is this: "Do you plead guilty or not guilty?" and that the consequence of an admission of guilt is immediate sentence without a speech for the defence or the benefit of extenuating circumstances being taken into account. As a matter of fact, while in France a bill is in committee to institute *les circonstances très atténuantes* to avoid the repetition of certain acquittals recently pronounced by juries solely because the minimum penalty seemed to them too severe, the English jury does not possess the right to take extenuating circumstances into count. It can only add to its verdict a "strong recommendation to mercy," which the judge generally takes into account, except in cases of murder, when he is obliged to pronounce the death sentence.

I cannot disapprove of this severity in the repression of premeditated attempts upon life, but only on the condition that the prisoner—were he the worst of villains—be assisted by a counsel for the defence capable of thoroughly inquiring into the assertions of the prosecution.

As opposed to this lack in the English system I must cite the example of the French Bar, the most distinguished members of which appear for the defence in criminal cases even when these cases cannot yield them any pecuniary profit.

For my part I should apply M. Seitz' eulogy of British judges equally to the French magistrature. It merits the more praise for its legal competence and its high integrity because it is composed largely of young men who have not the experience of English judges, and because its status is far from conferring upon it the same material advantages and the same moral prestige.

Our magisterial bench is very far from possessing the same influence upon a jury. Here I enter the domain of crime to arrive at one of the reforms which I should like to recommend as a conclusion to this book—the reform of the jury.

Originally the jury represented a guarantee accorded to the persons who had come under the jurisdiction of courts of law. The act of giving the citizen a guarantee that the severest penalties could be imposed upon him only by his peers marks a step forward in the liberty of the individual and a useful reaction against the system of arbitrariness.

Now, on the other hand, does it not appear that the jury is

among those organs of modern justice which are outworn and superannuated? Does it not seem to be an institution which is no longer up-to-date, and from which more harm than good is nowadays to be anticipated?

This is the opinion of many of the most clear-sighted people. The administration of justice has always been a difficult and formidable task, but the present epoch tends more and more to study this task scientifically. It is desirable that the judges should be thoroughly instructed, not only in law, but also in everything which can enlighten them in the problems of human responsibility and in the rights of society, the defence of which is confided in their steadfastness.

Now, when the most serious cases are tried, they are divested of their power!

You have committed the simplest, the most vulgar, of thefts. Let us say that you have stolen a leg of mutton from a butcher's shop window. Then you are judged by three professional magistrates. . . . You are accused of having killed three people and your life is in jeopardy. Then you will be judged by a dozen extemporized jurymen, doubtless very excellent citizens, but of whom the majority know only so much of criminal psychology as can be deduced from the police reports in the popular newspapers and who can be led—since the foreman of the jury is elected by lot—by the most ignorant among them!

However, the institution of the jury will not be done away with, and in the writer's opinion this is for the best. Born of the same principle as universal suffrage, it is likewise an integral part of our social structure.

In the intentions of the French Parliament there is no question of suppressing the jury or even of modifying its composition. The only proposal before Parliament is to associate the jury with the assize bench in the pronunciation of sentence.

When the jury has declared the prisoner guilty, the president of the assize court and his assessors will join the jurymen in the discussion of the sentence to be pronounced. These discussions will end by putting the sentence to the vote. Jurymen and magistrate—the president of the court the last—will vote by secret ballot. If after two attempts there is no majority for any of the punishments applicable a third vote will be taken with the severest sentence waived. If this third vote gives no result, recourse will be had to a fourth, excluding the severest of the remaining penalties. And so on, till a sentence by an absolute majority will be pronounced. A bill to effect this reform has been presented before Parliament by M. Bonnevay, retired Keeper of

the Seals. It is hoped that this procedure will result in reducing the number of acquittals, which, it is believed, are often caused by the fear of the jury that the Court will pronounce too severe a sentence.

Another proposal, the author of which is M. Louis Martin, the Senator, is supported by one of the most distinguished jurists of the Upper Chamber, Senator André Lebert. It is proposed here to obtain the same result by instituting *circonstances très atténuantes*, and by authorizing the jury to ask the Court to put fresh questions to it when it feels that it cannot answer the first with an affirmative verdict. Thus, according to MM. Martin and Lebert the jury can give to its reply " all the *nuances* which in its opinion affect the case, and impose the sentence, maintaining the essential separation between the *judgment of the fact*—but of the fact with all its *nuances*—and the *judgment of the law.*"

To resume, to put an end to acquittals which public opinion is unanimous in considering scandalous, the scale of punishments provided by the code will be extended in the sense of indulgence. This new order of things would undoubtedly constitute a great improvement on the past, but would its application tend to maintain the severe reputation of the Court of Assize, which at present renders it so discouraging to criminality ?

We have seen that the English judge cannot allow himself to be influenced by the " strong recommendation to mercy " submitted to him by the jury when trying a case of murder. While, if the accused has pleaded guilty, he is bound to pronounce sentence of death.

I will not go so far as to recommend the adoption of such severe measures in France. But I should approve a legal provision withdrawing from the jury the right of declaring " not guilty " the author—self-confessed or proved—of a murder and thus forcing the Court to acquit him. Exception, of course, should be made for cases of legitimate defence. I should welcome a law imposing imperatively and automatically a minimum penalty of penal servitude for every attempt on human life, and stipulating that the jury's verdict should only provide for the increase of such a sentence.

In order to diminish criminality as it ought to be diminished in ratio with the increase of civilization, in order that the *idea of respect for human life*, obliterated by four years of war, should at least equal in the mind of the mob *respect for the goods of others*, it is necessary that every murderer should be punished. In one way or another the right to acquit a murderer should be

abolished—and so much the worse if this abolition causes a lessening of the powers of the jury. The jurymen are middle-class Frenchmen, and our national temperament remains the same as when Machiavelli could write:

"A Frenchman is less covetous of his blood than of his money."

For instance, a provincial jury, the majority of its members being retired farmers or smallholders, will punish the burning of a haystack pitilessly—and will show a disconcerting indulgence when dealing with cases of murder. Another jury will be influenced by the threats of certain extremist groups when trying cases of political crimes—we have seen this happen in Paris.

Yet another jury will yield to the prejudice which absolves a murder committed under the pretext of jealousy.

Now, a murderer may be *more or less guilty*, but he is never *innocent*. His acquittal is immoral and contrary to the interests of Society. It is important that the person who feels the temptation to take the life of another for whatever motive should have in advance the *certainty* that his act will not remain unpunished if it is discovered.

Finally, it is not sufficient to attack crime by making it impossible to commit it with impunity. It is equally important to suppress the causes of its *facility*. It is better to prevent than to punish. Although murder is better investigated and better proceeded against now than in other times, it still remains too frequent because it has become *easier*. And the instrument of this modern facility is the *revolver*.

Logically, one should legislate against the revolver with as much severity as against drugs. At least the State should have the monopoly of its manufacture, its importation and its sale.

A measure of this sort is all the more necessary in my opinion because a revolver is not only a weapon too easily accessible to the professionals of crime. It is also *par excellence* the arm used in crimes of passion and it thus often causes as much harm to those who make use of it—honest people maddened by a fit of anger— as to the victims. The knife is the weapon of the Apache. It is only dangerous in a highly-practised hand. It is the weapon of the mob, the use of which is repugnant to persons of a certain degree of culture, and in addition it is a weapon that one can "see coming," and against which one can often put up a defence.

Poison exacts cunning, long premeditation, and a certain degree of intimacy between the murderer and the victim.

Vitriol? Its use is difficult and dangerous. A rifle? Costly and clumsy.

But the too-convenient instrument of the blow given in a second of exasperation and frenzy is the revolver. It is the little Browning, a toy, almost a jewel, which bears company in the lady's hand-bag with the lipstick and the powder-box—or with the cigarette-case in the gentleman's pocket. It is this that insinuates itself into the hand clenched in rage. And so a lover's quarrel which time and reflection would often have allayed becomes an irreparable tragedy.

And it is not even expensive! Its price is within the reach of any pocket, and it can be procured as easily as any fancy article in a bazaar.

I know a lady whose mother, a victim of acute neurasthenia, has the fixed idea of killing one of her neighbours whom she accuses of wilfully disturbing her sleep. Naturally, her daughter does all she can to stop her. If the old lady buys a revolver, she confiscates and hides it, and then watches for the day when she will try to get another. This little game began about six months ago and to-day the poor young woman finds herself the owner of a collection of thirteen Brownings of various calibres!

Not long ago the pilot of a company of Paris steamers appeared before the Assize Court on a charge of murder. One Saturday he had quarrelled with the paymaster and had shot him dead. He was a good fellow, whose conduct and probity had been up to then above reproach. The Examining Magistrate, inquiring how he got his weapon, was told that he had bought it several days beforehand on an easy payment system of 10 francs a month. And it was discovered that, while he was in prison awaiting trial, his unfortunate wife was sued by the vendors because she had not kept up the stipulated monthly payments!

If a State monopoly seems too rigorous a measure, at least an addition should be made to the law forbidding any citizen to carry arms without special authorization, a clause rigorously imposing on the manufacturers and sellers of revolvers a minimum size so large that the person who carries one would find it impossible to disguise its presence. The little Browning would then disappear, giving place to the big revolver, which henceforth would only be carried by a few people—tax-collectors, watchmen, etc.—to whom the possession of a weapon is necessary for their personal safety.

At the same time, many human lives will be saved.

Conforming to the plan that we traced in the first pages of this

book, we have shown our readers every phase in the drama of an attempt on a human life—murder or assassination.

Crimes of self-interest, crimes of passion, crimes of madness, political crimes. . . . Such is the sorrowful cycle. The menace has always existed, and it exists still.

Just as the shepherd must destroy the wild beast which threatens the safety of the flock, so public authority must work without ceasing to protect the sane and quiet section of the population from the criminal and his misdeeds.

Thus arises the necessity of tracing the author of the crime as quickly as possible, and of inflicting such punishment upon him as will render him harmless and at the same time will serve as an example to others.

It is to be remarked that in our time murder is almost always the result of some accidental circumstance. It is the gesture of the outraged husband who suddenly discovers his betrayal, of the burglar surprised at his task, or it is the quarrel in the cabaret which ends with a fatal blow of the knife.

But the crime long premeditated and prepared for reasons of self-interest or to satisfy a perverted passion becomes more and more infrequent. The bandit who stages a murder with the object of robbing his victim is the gravest danger to which Society is exposed.

For him no excuse or extenuating circumstances are admissible —the supreme punishment should not be spared. The death penalty finds in these cases its most justifiable application.

But it would be unworthy of a civilized Society to imagine that its duty is fulfilled when it has limited itself to preventing crime by a perfected organization or to punishing it by repressive laws.

It has better things to do, and it is to the very basis of the social structure that it should devote its attention.

It is in the family itself, in the school, in the workshop, it is everywhere where human personality is formed, that the lesson inspiring horror of crime should ceaselessly be taught.

Afterwards the struggle against crime should be continued by judicious propaganda instilling fear of punishment and picturing the cruel fate of the captured criminal.

We know that in England the moral education of the people is the object of the most profound solicitude of the public services. The character of the child is there cultivated as a very precious thing. A constant propaganda is practised among the working classes, and in the lowest depths of Society the great associations of moral order strive to raise the miserable beings whose distress

or whose instincts mark them out in advance as potential evil-doers.

I hope for my country's sake—and this is my last word—that in this benevolent path it will follow the example which has been given to it by its noble and mighty neighbour.

MORAIN.

PARIS, *18th March*, 1929.

THE END