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CREATIVE WRITERS AND CRIMINAL JUSTICE: CONFRONTING THE SYSTEM (1890-1920)

Maxwell Bloomfield

By the early twentieth century the modernization of American criminal law had become an issue of widespread public concern, both in professional circles and in the popular press. Bar leaders, such as Roscoe Pound and William Howard Taft, proposed to improve the machinery of criminal justice by tightening procedural rules and enhancing the authority of trial judges. Their efforts at "scientific" law reform led to the creation of the American Institute of Criminal Law and Criminology in 1909.

Creative writers, on the other hand, influenced by the rise of literary realism, tended to produce popular novels and plays that sympathized with the powerless defendant caught up in a dehumanizing bureaucratic process. This essay explores the interplay of legal norms and imaginative literature as it affected two subjects of great public interest in the Progressive Era: (a) changes in the substantive law of crimes and (b) the problem of the criminal corporation.

"That there is a growing disrespect for the law is patent to all observers," declared St. Louis attorney E. M. Grossman at a meeting of the State Bar Association in 1910. "Judges, lawyers, distinguished teachers of the law, sociologists, publicists, and philosophers, as well as merchants and laborers and the man on the street, join in criticism and denunciation of our courts, the bar, the law, and its administration. Our criminal law is, of course, the great cause of popular discontent" (Grossman, 1911, p. 968). Grossman's complaint was all too familiar in legal circles at the turn of the century. Most lawyers, like the general public, believed that crime was increasing throughout the country at an alarming rate, and early statistical studies confirmed this impression (Goebel, 1913, p. 754). Roscoe Pound, William Howard Taft, and other bar leaders blamed the situation on cultural lag. An archaic criminal code was hampering effective law enforcement efforts, they argued. Nineteenth-century lawmakers, reflecting the individualistic values of an agrarian society, had created a hodgepodge of rules that unduly favored the claims of defendants. "Unless the criminal laws are enforced with more certainty, more uniformity, [and] more severity than they now are," Taft warned, murders and other felonies would continue to increase (Taft, 1905, p. 1; see also Alger, 1913, pp. 121-146; and Pound, 1906/1965, pp. 57-73).

Creative writers approached the crime problem from a markedly different perspective. By the 1890s a new school of literary realists had emerged to challenge the conventional pieties of Victorian fiction. Young, often college-educated, and idealistic, these writers sought to portray the

underside of industrial society in unflinching terms. Their factually based novels, short stories, and plays helped to document for middle-class audiences a wide range of contemporary problems, from juvenile delinquency to prison conditions (see Crunden, 1982; Filler, 1961/1968; and Wilson, 1985). Less concerned than legal publicists with improving the machinery of criminal justice, fiction writers sympathized instead with the powerless defendant, caught up in a dehumanizing bureaucratic process.

The distinctive interests of lawyers and litterateurs converged in the restructured publishing world of the early twentieth century. Judges and attorneys often wrote popular essays on criminal law for mass circulation magazines and syndicated newspapers; prosecutors and defense lawyers promoted alternative visions of law reform through fiction; and creative writers drew upon their experiences as police court reporters to produce commercially successful novels and plays. The interplay between legal norms and imaginative literature may be concretely illustrated through a sampling of representative works that dealt with two subjects of widespread public concern: (a) changes in the substantive law of crimes and (b) the problem of the criminal corporation.

CHANGES IN THE SUBSTANTIVE LAW OF CRIMES

Those members of the legal profession who clamored for stronger criminal laws found a literary spokesman in Melville Davisson Post. A former prosecuting attorney in West Virginia, Post achieved instant popularity with his first collection of crime stories, *The Strange Schemes of Randolph Mason* (1896/1975). Unlike previous mystery fiction, which dealt with the detection and capture of wrongdoers, the Mason stories demonstrated, in Post's phrase, that "the highest crimes, even murder, may be committed in such manner that although the criminal is known and the law holds him in custody, yet it cannot punish him" (p. 7). Randolph Mason, one of the more repellent legal characters in American literature, is a consummate technician, an amoral misanthrope to whom the law represents a purely intellectual challenge. When desperate criminals seek his advice, Mason devises ways by which they may carry out their plans without violating the provisions of existing criminal law.

"This book deals with the law as it is," Post assured his readers (p. 9). To substantiate this claim, he prefaced each story with specific references to court decisions that acknowledged the loopholes on which his plots turned. In "The Corpus Delicti," his most famous tale, a wealthy New Yorker stabs his blackmailing mistress to death. Pursuant to Mason's instructions, he then dismembers the body, dissolves the parts with acid in the victim's bathtub, and flushes the remaining "thick murky liquid" down the drain. Although the murderer is quickly apprehended and brought to trial, Mason wins a directed verdict of acquittal from the court. Under

prevailing New York law, he points out, convictions in murder cases must be based on something more than circumstantial evidence, and in this case the prosecution could supply neither a corpse nor any direct proof that an act of criminal violence had been committed (pp. 11-67).

Today the Randolph Mason stories seem excessively contrived and overwritten, even by the standards of formula fiction, but they fascinated turn-of-the-century audiences. When two real-life murders involving dismemberment occurred soon after the book's publication, critics charged that Post's tale had inspired them. The publicity boosted sales and led to the quick release of a new, and equally successful, volume of Mason stories. Some state legislatures reportedly amended their criminal statutes to close the loopholes that Post had identified, and a few law schools used the Mason stories for a time as supplementary reading in criminal law courses.¹

As an advocate of stricter law enforcement, Post never attacked the underlying assumptions of criminal law. Other writers did, however. Arthur Bullard, a radical social worker and agent of the New York Prison Association, challenged the basic terminology of the criminal code in *A Man's World* (1912), an impressive novel of ideas published under the pseudonym "Albert Edwards." This semiautobiographical narrative examines the criminality of the urban poor through the sympathetic eyes of its protagonist, Arnold Whitman. A dedicated reformer who believes that economic pressures drive people to criminal acts, Whitman becomes a special investigator for the district attorney's office, assigned to report on abuses in Manhattan's notorious Tombs prison. He soon discovers that all the institutions of criminal justice, including the lower courts, comprise an interlocking system of entrenched corruption that will never yield to short-lived reform crusades. "The present system . . . works out with unspeakable cruelty to those who are suspected of crime—and their families—it results in the moral ruin of those we employ to protect us, and it is a failure," he concludes. "The amount of money which society expends in its war against crime is stupendous—and crime increases" (p. 142).

To arouse popular interest in the radical restructuring of criminal law, Whitman publishes scathing attacks upon the obsolete formalism of existing penal codes. Civilization evolves from simple to ever more complex forms of social organization, he argues, echoing Herbert Spencer's familiar dictum. Criminal law has not shared in the evolutionary process, however;

¹On the contemporary impact of the Randolph Mason stories, see Howard (1929); Norton (1973), pp. 64-86; and G. W. Putnam to Post (1897, August 17 and September 13), Post Family Papers, Melville Davison Post Collection, Personal Correspondence, 1891-1899, West Virginia and Regional History Collection, West Virginia University, Morgantown, West Virginia. Besides *The Man of Last Resort*, or, *The Clients of Randolph Mason* (1897), Post published a final volume, *The Corrector of Destinies: Being Tales of Randolph Mason as Related by His Private Secretary, Courtlandt Parks*, in 1908. All three books went through several printings.

it continues to rely upon simplistic conceptual categories that conceal the true nature of deviant behavior in modern industrial societies. To illustrate the inadequacy of classical legal terminology, Whitman offers a concrete example: “‘Larceny’—a fixed and formal term—cannot describe the intricate reactions from the varied stimuli of environment, which lead a particular bunch of nerve cells to steal. We must turn our back on the abstract words of the ancient law books and develop a vocabulary which expresses actualities” (p. 244).²

Under Whitman’s proposed classification scheme, the recurrent fact situations involving theft would be separately catalogued, and elements of motive and other background factors would enter into the definition of each offense. Instead of the current system of assembly-line justice, every defendant would receive individual attention, of the sort that patients receive from their doctors. Although European penologists condemn Whitman’s theories as unscientific and sentimental, he remains optimistic that an informed public opinion in the United States will support his therapeutic model of criminology. “Our prisons we will discard for hospitals,” he predicts, “our judges will become physicians, our ‘screws’ we will turn into trained nurses” (p. 142). Such faith in the power of medical knowledge to control the crime problem was common among real-life Progressive reformers, and the ideal of individualized diagnosis and treatment of offenders became part of the official ideology of corrections in later decades (Rothman, 1980, pp. 43-81; Walker, 1980, pp. 150-151).

Although Bullard’s metaphor of “crime-as-disease” meant that individuals were not personally responsible for deviant behavior, it remained for other writers to develop the full implications of a determinist view of criminal justice. Clarence Darrow, the most uncompromising advocate of environmental determinism in turn-of-the-century fiction, began his literary career in the summer of 1902 with a series of short stories for William Randolph Hearst’s Chicago newspaper, the *Evening American*. Collectively titled “Easy Lessons in Law,” these tales include the story of young Jimmie Rich, who drifts into a life of petty thievery when his father is permanently disabled in a trolley accident. Forced to drop out of school, Jimmie can find only exploitive menial jobs at substandard wages. To help his family survive, he begins to steal coal from railroad cars. “But he really did not fully realize how wicked he was to take the coal,” Darrow comments. “The fact is that the idea of private property is largely an artificial creation and must be carefully watched and tended and burnished up from day to day. Children have very indefinite views about property rights—something like Socialists and Aldermen and the like.” By the time he reaches 21, Jimmie has become well known to the police, who catch him

²Bullard expressed these ideas in law journals as well. See, for example, A. Bullard, “The Need of New Criminological Classification,” in *Journal of Criminal Law and Criminology*, 1 (March 1911), p. 907.

robbing a carload of hams. For this offense against the property of the Meat Trust, a self-righteous judge and jury condemn him to five years in the penitentiary. "Of course," Darrow concludes, "after his time should be out there would be nothing left but to go back again. No one stopped to think that if Jimmie's father had not lost his leg when Jimmie was nine years old, or if he could have collected his money from the street car company within a few months so that Jimmie could have gone to school, that he might have been a judge sentencing others to prison instead of going himself."³

A Darwinian universe of blind economic struggle again determines behavior in Darrow's 1905 novel, *An Eye for an Eye*. Jim Jackson, the narrator of this grim story, is a Chicago laborer awaiting execution for the murder of his wife. In a final interview, he goes over the circumstances that led to the killing, and realizes that poverty and chance drove him to an act of instinctive violence. After years of futile efforts to better themselves economically, he and his wife had begun to quarrel over trifles. During one particularly heated argument, Jim recalls, as she upbraided him for cowardice and dared him to kill her, he felt "a prickly feelin' runnin' all though my head and up into my hair." Mechanically, he reached for a poker that lay conveniently at hand and killed his wife with a single blow. The action, he insists, was wholly reflexive, and could not have been prevented by any fear of punishment: "If there'd been forty scaffolds right before my eyes I'd have brought down that poker just the same" (pp. 84, 88).

In describing Jim's subsequent trial and conviction, Darrow enlarges upon the theory of class justice that he had outlined earlier in the tale of Jimmie Rich. Since he has no money, Jim must rely upon the services of an inexperienced young lawyer who is no match for the crafty and politically ambitious prosecutor. The jurors, influenced by sensational newspaper articles that picture the defendant as an inhuman brute, have prejudged the case from the start. Although the killing was unpremeditated, Jim's lawyer does not permit him to testify, and the jury convicts him of first-degree murder. Fearful of a vengeance-seeking public, the judge sentences him to death at the earliest possible date. The entire trial has been little more than a legalized lynching-bee, but Jim accepts his fate with resignation. "I know I never was [any saint]," he muses, "but you see how a feller gets into them things when he ain't much different from ever'body else. . . . I just got into a sort of a mill and here I am right close up to that noose" (p. 208).

Written in a flat, unmodulated style, *An Eye for an Eye* makes up in raw power for what it lacks in literary polish. As a naturalistic crime novel, it is

³Clarence S. Darrow, "Results of the Law's Delay," *Chicago Evening American*, Sunday, August 31, 1902 (Copy in Clarence S. Darrow Papers, Container 6, Manuscript Division, Library of Congress).

a worthy precursor of Theodore Dreiser's 1925 classic, *An American Tragedy*, which represents the finest literary expression of the determinist viewpoint.⁴ Darrow's book also contributed to a growing movement against capital punishment in turn-of-the-century America, as did his essays and jury speeches. By 1917, seven states had abolished the death penalty, and six others were moving toward abolition (Walker, 1980, pp. 158-160).

As the environmentalists undermined the credibility of the criminal justice system from the left, the advocates of biological determinism mounted an equally vigorous attack upon individual guilt from the right. Cesare Lombroso, an Italian doctor, originated the biological argument in 1876 with the publication of *L'Uomo Delinquente (Criminal Man)*, a study whose controversial thesis helped to establish the field of modern criminology. According to Lombroso, most criminals were victims of inherited defects that predisposed them to deviant behavior. Whether true degenerates or merely moral weaklings, these "born criminals" could be identified by certain physical features that resembled those of remote ancestors. Such telltale signs included a low sloping forehead, a heavy lower jaw, prominent ears, and abnormally long arms. Since these latter-day primitives could not control their brute impulses, all talk of free will or punishment was beside the point. Society's only recourse against a hereditary criminal class lay in medical treatment or extermination.⁵

Creative writers quickly perceived the dramatic potential that inhered in notions of atavism and degeneration. In France Lombroso's theories strongly influenced the Rougon-Macquart novels of Émile Zola, while in the United States Frank Norris became the leading literary spokesman for biological determinism. Norris's short story, "A Case for Lombroso," describes the fatal attraction that turns two exemplary young people into abject brutes. Cresencia Hromada, a proud Spanish beauty, bears none of the outward signs of degeneracy, but her genetic inheritance tells a different story: "She had come of a family of mixed blood, whose stock had never been replenished or strengthened by an alien cross. Her race was almost exhausted, its vitality low, and its temperament refined to the evaporation point" (Norris, 1928, p. 36). When she meets the handsome clubman Stayne, her "red-hot, degenerate Spanish blood" causes her to react with hysterical passion. Unable to resist her primal urges, she pursues Stayne shamelessly, submitting to humiliation and abuse in order to prolong their intimacy. For his part, Stayne soon comes to enjoy abusing Miss Hromada; and thus they live on, trapped in a mutually degrading relationship that each abhors but cannot end.

⁴For a good discussion of the background of Darrow's novel and a sampling of reviews, see Ravitz (1962), pp. 70-96. On Dreiser's determinism, see Dunlop (1971), p. 379.

⁵C. A. Ellwood (1912, p. 716) provides a perceptive early critique of Lombroso's argument. See also Walker (1980, pp. 146-148) and Wright (1983, pp. 119-128).

Norris noted that his tale might well have ended in murder or suicide, and in the novel *McTeague* (1899/1903) he created a criminal type whose atavistic rages culminate in a brutal killing. McTeague, who is a self-taught San Francisco dentist, comes from violent stock. His father, a mine foreman, was prone to regular drinking bouts that turned him into "an irresponsible animal, a beast." From his early labor in the mines McTeague has developed an abnormally powerful body. Tall, heavy, and slow-witted, he fits Lombroso's description of the "born criminal" by having big ears and a "salient" jaw, "like that of the carnivora" (Norris, 1899/1903, pp. 2, 3). Still, there is nothing vicious or menacing about him until chance brings him a young patient, Trina Sieppe.

As he watches the girl lying helpless from the ether he has administered, McTeague feels the stirring of primal passion. "The brute was there," Norris observes. "Long dormant, it was now alive, awake. . . . Below the fine fabric of all that was good in him ran the foul stream of hereditary evil, like a sewer" (p. 32). McTeague pursues Trina obsessively until she agrees to marry him. The initial happiness of their life together shatters abruptly when the authorities learn that McTeague lacks proper training and order him to give up his dental practice. Unable to find other work, he turns increasingly to drink, becoming like his father an enraged beast, "an echo from the jungle" (p. 234). Finally, during one of his drunken rages, he beats his wife to death with his huge fists and carries off her savings.

A curious blend of Victorian reticence and pre-Freudian sexual titillation, *McTeague* pursued the theme of hereditary criminality with a grim relish unmatched in any other work of American fiction. Like other writers, however, Norris ignored the most frightening aspect of Lombroso's theory: its potential implications for certain racial and ethnic groups. When Lombroso spoke of "civilized" man, he meant modern industrial man, and it followed from the Social Darwinist temper of the time that less advanced cultures would produce the lion's share of the criminal class. Lombroso suggested as much in one of his last published essays, in which he flatly asserted that the increasing number of crimes in the United States was due "solely to the colored population and to the immigrants" (Lombroso, 1912, pp. 57, 59). Further, if criminality was truly linked to hereditary influences, it followed that society might control crime by preventing the procreation of future criminal types. At this point, Lombroso's theories dovetailed with the broader concerns of a rising eugenics movement, which promised in part to uplift the human race by weeding out the unfit and the deviant. Impressed by the merits of such purportedly "scientific" thinking, a number of states passed sterilization laws in the early twentieth century, most of them directed against the insane. (On the history of the eugenics movement, see Kevles, 1985).

Creative writers never explored the darker aspects of the eugenics issue in their fiction. Instead, they emphasized the development of a superior form

of humanity through scientific breeding, with no mention of race or class. In stories of criminal justice, the selection of the right mate could sometimes check a hereditary weakness and produce a happy ending, as in Forrest Halsey's representative novel, *The Stain* (1913). The heroine of this work, Louise Gray, is a kleptomaniac who has inherited her compulsive trait from her father, a corrupt judge. "It is in my blood," she tells the young lawyer who loves her. "I fight it and fight it, and I think that I have conquered,—and then, something happens. My brain seems to belong to another; my will, my hands, even, are not mine. Some hideous command of the dead who are in my blood rises up, and when I come to myself, . . . I find . . . that I have not conquered, that I am a thief—a thief!" (pp. 234, 235-236) Despite her confession, the lawyer marries her; and at her trial he introduces medical testimony to show that she suffers from an "overmastering hereditary criminal impulse" and is therefore not legally responsible for her actions. After the judge (who, incidentally, happens to be her father) rejects the plea of hereditary criminality, the jury finds Louise guilty. Public opinion, however, soon forces the governor to pardon her, and Halsey concludes by assuring his readers that the union of hero and heroine will produce no new crop of little kleptomaniacs. Rather, their future years will "ring with the laughter of healthy children, children in whom her honest blood and his, their father's, would mingle and cleanse the stain the other father had given" (p. 342).

THE PROBLEM OF THE CRIMINAL CORPORATION

While the determinists challenged prevailing standards of responsibility for traditional crimes, other writers examined a new category of offenses: the impersonal crimes of the large corporation. By the turn of the century corporate wrongdoing had become a central concern of the American public, as well as a fertile source of material for novelists and playwrights. Edward A. Ross, a sociologist at the University of Wisconsin, outlined the problem with unusual clarity in his bestselling study of 1907, *Sin and Society*. "Our social organization has developed to a stage where the old righteousness is not enough," Ross argued. "The growth of credit institutions, the spread of fiduciary relations, the enmeshing of industry in law, the interlacing of government and business, the multiplication of boards and inspectors,—beneficent as they all are, they invite to sin" (Ross, 1907/1973, p. 40). In the interdependent industrial society of the early twentieth century, the most widespread form of criminality had become bureaucratic wrongdoing rather than personal violence. Ross coined the term "criminaloid" to describe the growing number of white-collar offenders whose antisocial practices had not yet been effectively challenged by the law or by public opinion. "Criminaloids" did not think of themselves as criminals. Often models of Victorian propriety in their

private lives, they acted through middlemen and seldom encountered the victims of their business decisions. Yet profit-seeking strategies that permitted the sale of adulterated food products or the maintenance of unsafe workplace conditions made them more dangerous public enemies than any of Lombroso's "born criminals."

To check the growth of corporate crime, Ross urged the passage of regulatory legislation and the mobilization of public opinion. "It is of little use to bring law abreast of the time if morality lags," he contended (p. 69). The public must be taught to recognize and condemn the social harms caused by the corporation, just as it already acknowledged the sinfulness of many private vices. With the support of aroused public opinion, the state might enforce new standards of fair dealing that would transform the corporation into an instrument of public welfare as well as private gain.

With few exceptions, creative writers echoed Ross's analysis of corporate criminality; but in turning the problem into entertainment, they employed a variety of ideological strategies. At one extreme were sentimental stories that personified corporate power in a single character and then proceeded to rehabilitate him. Such a process occurs in William Allen White's popular novel, *A Certain Rich Man* (1909), which went through several printings. White's protagonist, John Barclay, is a self-made man, a poor farm boy who builds up a midwestern grain empire by following the ruthless business practices of the Gilded Age. Like Ross's "criminaloids," Barclay is not inherently wicked; and when public opinion turns against him in the early twentieth century, he begins to reexamine his methods. Finally, in a scene that drips with religiosity, he experiences a midnight vision that convinces him of his sinfulness. Turning over all his secret records to the Federal Bureau of Corporations, he becomes a model of what Ross (1907/1973, p. 151) termed "transfigured individualism."

Moral suasion again triumphs over corporate greed in Charles Klein's *The Lion and the Mouse* (1905), one of the longest-running Broadway hits of its day. The script pits an elderly oil baron against a plucky young woman, who ostensibly has come to interview him for the press. After several earnest conversations in which she points out the injurious social effects of his rugged individualism, the old mogul acknowledges his guilt and takes immediate steps to reform his corporations. He then learns that the young woman is really his son's intended bride, and he welcomes her into the family. The message conveyed to receptive audiences was doubly reassuring: Big Business could be trusted to police itself, and the fabulously wealthy, as in one of Frank Capra's "screwball comedies" of the 1930s, were just plain folks at heart.

Starkly opposed to such middle-class fantasies were several Socialist novels. The Socialists pictured corporate corruption as the inevitable by-product of a functioning capitalist economy. In Reginald Wright Kauffman's work, *The Spider's Web* (1913), a crusading attorney discovers

that antitrust laws and other regulatory measures cannot control a “Money Power” whose influence permeates all aspects of American life. The evil, he recognizes, lies not in any individual wrongdoing but in the false and oppressive social hierarchies established by a system of production for private profit. Only the destruction of the capitalist order and its replacement by a form of democratic socialism will bring an end to corporate criminality and usher in an era of equal justice for all. Before he can rouse the masses to action, however, the attorney is brutally murdered by hoodlums in the employ of the Money Power.

Perhaps because they were appealing in large part to middle-class audiences, other Socialist authors likewise called for the radical restructuring of American society without endorsing revolutionary violence. Thus, *The Jungle* (1906), Upton Sinclair’s famous exposé of conditions in Chicago’s packing houses, ends with a fervent plea to the working class to unite and seize power through the electoral process. The single important work to advocate class warfare—Jack London’s futuristic *The Iron Heel* (1908)—recounts the eventual triumph of Socialism, but only after generations of struggle. Most of the novel details the ruthless suppression of an attempted worker uprising in the early twentieth century by the forces of the ruling oligarchy.

A third type of fiction that eschewed both the happy endings of the sentimentalists and the grim prescriptions of the Socialists dealt with efforts to impose criminal liability on high corporate officials. In *Sin and Society*, Ross had warned that the chief criminaloids might escape punishment by acting indirectly through subordinates. To counter this possibility, he had proposed that the directors of an enterprise should be held personally responsible for corporate misconduct and should serve prison sentences if convicted (1907/1973, pp. 122-131). William Sage’s novel *The District Attorney* (1906) featured the successful prosecution of a company director who had ordered the bribing of city officials. But Sage, like other creative writers, did not adopt Ross’s suggestion of joint responsibility, which would have brought his tale to an edifying moral conclusion. Instead, he emphasized that the law could not reach the defendant’s colleagues, including a powerful tycoon—the ultimate criminaloid—who really formulated corporate policy, leaving the unsavory details to be worked out by others.

Donald Richberg’s *The Shadow Men* (1911), the most ambitious novel of corporate cover-up methods, was even more cautionary in tone. Richberg, a Chicago attorney who had previously published some incisive articles on corporate crime in legal journals, pictured the business world as a battlefield on which privates were routinely sacrificed for the greater glory of their generals (see, for example, Richberg, 1907, p. 156). John Byford, the hero of the story, is a “professional scapegoat,” an honest employee who at the outset has already served a prison term for unwittingly signing

fraudulent reports that had been supplied to him by his superiors. When Byford suspects that his new employers are likewise feeding him false information, he rebels. By burglarizing the company safe, he obtains evidence of phony service charges and resolves to sign no more vouchers. Shortly thereafter a state investigation uncovers the company's misdeeds, and a grand jury indicts Byford for fraud. At the trial, his lawyer argues that Byford never knowingly committed any crime and that the real lawbreakers are his sheltered superiors—those “Shadow Men” who “have concealed their personalities under the disguise of incorporation” (1911, p. 291). The story ends with the jury's acquittal of the scapegoat; but the Shadow Men will not be brought to justice until the American people learn to repudiate the “thief ideal” that still dominates their commercial civilization. Reform-minded reviewers, including Theodore Roosevelt, found much to admire in Richberg's book, despite its plodding exposition and often stilted prose. “It throws a strong beam of light into a little-understood department of modern iniquity,” wrote E. A. Ross, and the noted political scientist Charles Merriam promised to introduce *The Shadow Men* into his course on “Political Parties” as a source for “the facts and the philosophy of . . . graft in the business world.”⁶

CONCLUSION

The widespread public discussion of the crime problem at the turn of the century contributed to some significant developments in both law and literature. Bar leaders responded to media attacks on the criminal justice system by convening the first National Conference on Criminal Justice at Chicago in June 1909. The conference brought together lawyers, social scientists, and corrections officials, who promptly created a permanent organization for “scientific” law reform, the American Institute of Criminal Law and Criminology. Besides publishing an interdisciplinary journal, the Institute sponsored translations of major works by Lombroso and other European criminologists, making them available to American audiences for the first time. But the primary thrust of the Institute's work lay in the direction of improved procedures and administrative efficiency. No significant changes in substantive criminal law resulted from its labors, although a number of new economic regulations were added to the criminal code prior to World War I (see Hall, 1937, p. 616; Millar, 1955, p. 4; and Roalfe, 1962, p. 277).

Creative writers, challenged by the demands of modern mass publishing, likewise developed new approaches to the treatment of criminality in fiction. As David Ray Papke has shown in his fascinating study, *Framing*

⁶See C. E. Merriam to Richberg (1911, November 3) and E. A. Ross to Richberg (1911, October 31), Donald R. Richberg Papers, Container 1, Manuscript Division, Library of Congress.

the Criminal (1987), literary attitudes toward the criminal hardened in the late nineteenth century, with the rise of the modern industrial state. But the authors of the Progressive Era reversed this trend, adopting a more balanced and compassionate view of criminality and its causes. Their humanistic concerns may be traced into other areas of criminal justice which have not been explored in this essay, notably prison conditions and police practices. And those same concerns found institutional expression with the contemporary establishment of the first important civil rights organizations, the National Association for the Advancement of Colored People and the American Civil Liberties Union. Although the American public sanctioned increasingly repressive crime control measures in later decades, many writers perpetuated a literary tradition of “rights consciousness” that began at the turn of the century. Thus creative literature eventually linked the humane initiatives of the Progressive years with the “due process revolution” of the 1960s.

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