

**Criminal Compulsions: The Medicalization of Crime in  
Progressive Era America**

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*For my family*



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## INTRODUCTION

On July 16<sup>th</sup>, 1883 in Fort Bend, Texas, H. H. Harris stole a horse. He rode it one hundred and seventy-five miles away, crossing rivers and telling lies, until he sold the animal for seventy dollars in Cuero, Texas. Within three weeks, the horse was back home in Fort Bend and Harris was in jail for horse theft. The case seemed simple enough. All along the trail from Fort Bend to Cuero, witnesses could place Harris, his distinctive blue clothes, and the branded horse. Harris, however, claimed he possessed an uncontrollable desire to steal things and pled insanity. Despite the insanity defense, a jury found Harris guilty of larceny and sentenced him to seven years in the penitentiary. *H. H. Harris v. The State* became the seminal case regarding kleptomania when the appellate court ruled that “kleptomania is a species of insanity which, if clearly established, will render its subject morally irresponsible for the crime of theft.”<sup>1</sup>

H. H. Harris, a former sergeant of the guard and member of a distinguished family, worked in Fort Bend as a guard at Robert Ransom’s sugar plantation. He worked closely with A. F. Wheeler, the owner of a sorrel horse with a distinct brand on its shoulder. According to Mr. Wheeler, the two were good friends and he considered Harris to be “an unusually intelligent man [who] had never, prior to this theft... been suspected of dishonest practices.”<sup>2</sup> In fact, Harris had been frequently found guilty of dishonest practices but they seemed simply eccentric and inconsequential. Witnesses for the defense repeatedly commented upon Harris’ strange behavior. Many had known him for years. They recalled that “he bore a most excellent character, and for that reason was intrusted [sic] with the most important of the

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<sup>1</sup> 18 Tex. Ct. App. 287; 1885 Tex. Crim. App. LEXIS 93.

<sup>2</sup> 18 Tex. Ct. App. 287; 1885 Tex. Crim. App. LEXIS 93.



ranch interests... he was intrusted [sic] with the care of the horses because of his humane treatment of them.”<sup>3</sup> In 1875, he had a severe illness from which he had not been expected to recover. Though he regained his strength, witnesses stated he was no longer the same person. Andrew Dow testified that “his sickness changed him greatly in appearance and habits... he changed into a remarkably morose, cross, and captious person... he was deprived of [the horses] care afterwards because of his cruelty and abuse of them.” Harris also began to act on compulsions to steal. G. W. Butler, a former employer, stated the ‘articles stolen by the defendant... he had no earthly use... he was stealing and secreting articles of little value and no use to him.” One of his victims, from whom he stole a valise, believed honestly “that the defendant was irresponsible for his action... and made no complaint against him.”<sup>4</sup> Harris used this testimony to demonstrate his kleptomania, which became the basis of an insanity defense. Ultimately, the jury was unconvinced and sentenced Harris to seven years in prison for horse theft.

The Texas Appellate Court ultimately reversed and remanded the decision, stating that kleptomania, or the propensity to steal, is a “well recognized species of insanity and, if clearly established by the evidence, constitutes a complete defense in a trial for theft.”<sup>5</sup> The insanity defense itself, officially codified in 1842 by the English House of Lords as the M’Naughten Rule<sup>6</sup>, was most commonly used to defend murderers, not to excuse thieves for their misdeeds. Kleptomania and other forms of medicalized criminality are an interesting counterpoint with which to examine how criminal behavior became a disease and the ways in which this impacted the legal system.

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<sup>3</sup> 18 Tex. Ct. App. 287; 1885 Tex. Crim. App. LEXIS 93.

<sup>4</sup> 18 Tex. Ct. App. 287; 1885 Tex. Crim. App. LEXIS 93.

<sup>5</sup> 18 Tex. Ct. App. 287; 1885 Tex. Crim. App. LEXIS 93.

<sup>6</sup> Abraham Goldstein, *The Insanity Defense* (New Haven: Yale University Press, 1967), 44.

During the 19<sup>th</sup> and 20<sup>th</sup> centuries, certain high profile cases brought many criticisms and critiques of the insanity defense. The most famous of all was the 1881 trial of Charles Guiteau, a man with delusions of grandeur who assassinated President James Garfield. Throughout the trial, Guiteau claimed that at the moment of the crime, he was legally insane but maintained that he was not medically insane.<sup>7</sup> This distinction between legal and medical definitions of insanity was troubling to many people. In the past, insanity had been considered a marker of some physical abnormality in the human brain, the product of a deformity, injury, or like H. H. Harris, illness that affected the individual's ability to distinguish right from wrong.<sup>8</sup> However, new medical science pointed towards an intangible difference. Insanity was no longer defined as a physical mutation but something more ephemeral and difficult to understand. This new definition was making its way into the legal code, much to the consternation of many people. Though Guiteau was found guilty and executed, this discomfort with diagnoses of insanity continued to pervade the public mind. Most confusing and upsetting were new diseases or conditions that seemed to excuse sinful, larcenous behavior. Murder by reason of insanity was one thing, but medicalization of all crime was something very different.

Crime was medicalized in two different ways. The first was to characterize it as an involuntary compulsion. Involuntary compulsions included diagnoses like dipsomania (the compulsion to drink), pyromania (the compulsion to set fires), and kleptomania (the compulsion to steal). Kleptomania was first described by a French doctor in 1816<sup>9</sup> but it

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<sup>7</sup> Charles Rosenberg, *The Trial of the Assassin Guiteau: Psychiatry and the Law in the Gilded Age*. (Chicago: University of Chicago Press, 1968), 124.

<sup>8</sup> Gerald Grob, *Mental Illness and American Society*. (Princeton, New Jersey: Princeton University Press, 1983), 27.

<sup>9</sup> Thomas Lenz and Rachel MagShamhrain, "Inventing Diseases: Kleptomania, Agoraphobia, and Resistance to

attracted public attention around the turn of the twentieth century. Doctors associated compulsions of this sort with either brain damage or internal psychology. Lawyers argued that compulsions were distinguished by uncontrollable, irresistible impulses. Some experts hypothesized that hormonal factors were causing women to steal perfume bottles and fans. Others delved into the subconscious to unearth sexual desire and dysfunction. Still others attacked the hypocrisy inherent in the diagnosis, that rich women were kleptomaniacs and institutionalized while their poor equivalents were branded thieves and imprisoned. The diagnosis of kleptomania excused larcenous behavior by designating it a disease instead of a criminal act.

The second way in which crime became illness was through the concept of inherent criminality. Though involuntary impulses could be hereditary, inherent or instinctive criminality was separated from the irresistibility that defined kleptomania. The turn of the century saw the birth of the eugenics movement which sought to improve humanity by rewarding good traits and punishing deviance. A major concern to many eugenicists was the increasing rate of crime in the United States. Some blamed this on the new waves of immigrants from undesirable countries, others looked to bad breeding habits among undesirables, and some combined the two. Repeat offenders were often institutionalized and imprisoned to prevent the further degeneracy of the American people. In some states, recidivism could result in sterilization. Responses to inherent criminality in the criminal justice system turned criminal behavior into a disease that required dramatic medical treatment.

There is one common element between both forms of medicalization: blame is shifted

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Modernity,” *Global Society* (2012): 281.

from the individual to their mental instability. This paper will examine the ways in which kleptomania and inherent criminality affected the person afflicted, their movement through the criminal justice system, and the consequences of the diagnosis. These questions have often been ignored in existing works. Scholarly research regarding kleptomania has focused on the role of women in a newly capitalistic and consumerist society.<sup>10</sup> While this is helpful when examining how women are portrayed in popular media, it fails to examine the very real consequences of the diagnosis on the lives of women. What did it mean to be a kleptomaniac? How did that definition change the way women were treated in the criminal justice system? How did that differ from common female thieves? These works also fail to account for kleptomania among men. What did it mean to be a man with kleptomania? Why did this disease become so strongly gendered? By ignoring this side of the story, historians have inadvertently perpetuated the idea that kleptomaniacs were solely women of means. I hope to show the disease was more complex than the stereotype.

Medical historians specializing in eugenics have traced the history of involuntary sterilization, mental illness, and the intersection between law and medicine.<sup>11</sup> Two books, *The Surgical Solution* by Philip Reilly and *Breeding Contempt* by Mark Largent, explore the emergence of eugenic sterilization. Reilly examines social influences that led to sterilization programs, including the professionalization of scientific research, the development of medical ethics, and changing cultural conditions that led to the increased isolation of mentally ill and retarded individuals. Reilly does not examine legal ideas of responsibility, nor does he examine criminal behavior. Mark Largent examines the social conditions that

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<sup>10</sup> Elaine Abelson, *When Ladies Go A-Thieving: Middle-Class Shoplifters in the Victorian Department Store*. New York: Oxford University Press, 1989.

<sup>11</sup> Philip Reilly, *The Surgical Solution: A History of Involuntary Sterilization in the United States*. Baltimore: Johns Hopkins University Press, 1991.

allowed forced sterilization instead of the few eugenicists or eugenics organizations that advocated such extreme measures. By examining “how good intentions and professional authority can produce horrible results”, Largent creates a dialogue between twenty-first century identity based history and traditional narratives that focus on individual actors in the eugenics movement. As critical as these books have been for my research, their focus is on mental illness and mental retardation. Largent and Reilly occasionally comment on eugenic policies and criminality, but very rarely.

Research about pathological thieves and the eugenics movement is similarly lacking. In fact, there is little modern scholarship regarding the history and implications of hereditary criminality. Instead, most research either focuses on eugenic policies like sterilization and imprisonment or eugenics as it intersects with race and gender.<sup>12</sup> Because of the dearth of secondary sources, archival research has become my primary method of gathering information. Digitized medical journals and legal documents have helped define the terms in question, while newspapers and writings by prominent eugenicists have provided glimpses into fears and responses. Though archival medical records proved difficult to access, prison records have shown patterns of criminal behavior and treatment for mental illness and asylum records helped provide the scope of the problem. Though no specific definition of habitual criminality exists in any one of these sources, taken together, they provide a full picture of inherited criminal behavior as it was understood in the early 1900s.

My hope is that this thesis will provide an alternative to existing narratives that simplify the complexities associated with mental illness and criminal behavior. The turn of the century was a time of great social change. Progressive era Americans itself attempted to

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<sup>12</sup> Mark Largent, *Breeding Contempt: The History of Coerced Sterilization in the United States*. New Brunswick, New Jersey: Rutgers University Press, 2008.

change the social and moral fabric of society but the complexities of mental illness and the legal system remained difficult to understand. Kleptomania and habitual criminality were products of the time, used to place blame or grant forgiveness. Medical and legal definitions of both differed, but the problems they represented remained the same.

Histories of criminology and the insanity defense examine large scale problems of responsibility, free will, and how those issues were determined. Books like Charles Rosenberg's *The Trial of the Assassin Guiteau*, Rudolph Gerber's *The Insanity Defense*, and Abraham Goldstein's *The Insanity Defense* all examine the historical legacy of criminal responsibility. Rhetoric regarding kleptomania and habitual criminality focused on uncontrollable forces acting upon the individual that compelled them to steal, but each diagnosis resulted in very different treatment of the criminal in question.

When removed from legal and medical jargon, the labels of kleptomania and habitual criminality describe the same phenomenon: crimes caused by involuntary compulsions. Though the actions were essentially the same, legal and medical professionals diagnosed patients and prisoners based on their social class, gender, and the conventionality of their crimes. H. H. Harris got sick, stole a horse, went to jail, went to court, and established kleptomania as a defense for thievery. Had he been poor and socially disconnected, or if he had been previously convicted of a crime, or if his crimes had been less bizarre, H. H. Harris would have likely stayed in prison for the duration of his sentence. By examining how kleptomania and habitual criminality were discussed and studied by academics, lawyers, and doctors and the ways in which those discussions were or were not picked up in public discourse, we can better understand how mental illness and criminal behavior were transformed from social issues into medical problems.



## **CHAPTER ONE, Or, The Irresistibility of Objects**

Kleptomania, or the compulsion to steal, is a disorder that gained notoriety at the end of the nineteenth century. Closely tied to an increasingly capitalistic America, rising crime rates, and the growing authority of new scientific disciplines, kleptomania became a confluence of late nineteenth and early twentieth century social problems. Because the disorder is defined by its relationship to crime, legal scholars had much to say about the problem. The intersection of law and medicine created social dynamics that greatly influence the status of kleptomania in American society.

Kleptomania is also an example of a social problem turned into a medical disorder. Social problems like crime and poverty were overwhelming to many turn-of-the-century reformers. They debated which problems were the most pressing, the most solvable. They argued about causes, interventions, and treatments. Medicalizing crime provided answers to their questions. Kleptomania could be caused by illness, injury, or heredity. It could be treated with corrective surgery or psychotherapy. Both a symptom and a disease, kleptomania took a legal problem and changed it into a legal excuse.

### **Section One: Kleptomania and the Law**

Prior to the Gilded Age, mental illness was widely understood as a physical abnormality. Benjamin Rush, the father of American medicine, thought insanity a strictly physical ailment produced by “hypertension in the brain’s blood vessels” and advocated repetitive bloodletting until the patient was cured.<sup>1</sup> Other physicians believed insanity was

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<sup>1</sup> Leland Bell, *Treating the Mentally Ill: From Colonial Times to the Present* (New York: Praeger Publishers, 1980), 7.



produced through extreme illness or a sudden change in physiology.<sup>2</sup> H. H. Harris's insanity, produced by severe sickness, fit squarely into medical and legal understanding of insanity. External forces created some forms of insanity, but many root causes were internal and based in biology. Experts before 1870 believed insanity was caused by physical abnormalities.

Biological sex played a large role in the nature of insanity. Experts believed that men and women developed mental illness for different reasons. Based on established gender roles, doctors prescribed causes of insanity based on societal norms. Men, governed by intellect and reason, were less likely to fall prey to insanity while women, who were creatures of feeling and emotion, were thought to be both more susceptible and less likely to be cured. Insanity in men was caused by an overworked brain. In women, states of excitement produced mental illness.<sup>3</sup> For this reason, certain mental illnesses were more often associated with women. Kleptomania, or the compulsion to steal, was a distinctly feminine phenomenon and was inextricable from new patterns of consumerism.

Nowhere were female brains more likely to be overtaxed than in the department store. With the emergence of these palaces of consumerism, women were under new pressure. No longer kept solely in the domestic sphere, more and more women entered the public arena to the consternation of their male counterparts. Prior to department stores, the only women in public spaces were prostitutes or lower class women who needed to work to survive.<sup>4</sup> Women became primary consumers and the main purchasers in middle-class families.<sup>5</sup> They also had more free time than ever before, since feminine work of previous generations could

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<sup>2</sup> Charles Rosenberg, *The Trial of the Assassin Guiteau: Psychiatry and the Law in the Gilded Age* (Chicago: University of Chicago Press, 1968), 36.

<sup>3</sup> Bell, *Treating the Mentally Ill*, 31-2.

<sup>4</sup> Tammy Whitlock, *Crime, Gender and Consumer Culture in Nineteenth-Century England* (Hampshire, England: Ashgate Publishing Company, 2005) 151.

<sup>5</sup> Tammy Whitlock, *Crime, Gender and Consumer Culture*, 7.

now be purchased in a shop. Women found themselves with more social capital than ever. Instead of only being wives and mothers, they were now shoppers as well. Shopping allowed women new opportunities but also produced circumstances in which women were tempted in new ways.

Because shopping was an activity beloved by women, so too were crimes affecting the marketplace. According to New York City Police Chief Byrnes, shoplifters in the late 1900s were known to be women because “there are few ladies to whom the visitation of the shops... [is] not joy which transcend all others on earth. And the female shoplifter has that touch of nature in her which makes a clothing... establishment the most delightful spot to exercise her cunning.”<sup>6</sup> According to many articles of the day, shoplifters were manipulative and cunning. A strategy used by many shoplifters was to enter a store and ask to see multiple samples, find fault with all, and storm off with the purloined item while leaving the sales staff overwhelmed.<sup>7</sup> Chief Byrnes identified two classes of shoplifters: the criminal professional and the kleptomaniac. The criminal professional was a shoplifter by trade who profited from her stolen goods. The kleptomaniac was a mentally ill but respectable woman unable to control her impulses.

The new-found freedom of shopping brought new temptations that deeply disturbed male doctors at the time. Reports of shoplifting skyrocketed after the advent of department stores. Of course, shoplifting had always been a problem in the mercantile world, but this wave of theft was distinctly different than past crimes. The biggest change was the identity of the thief. Past shoplifters were the poverty-stricken—those stealing for survival’s sake. Now, the thieves were middle-class and upper-class women who could easily afford the trinkets

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<sup>6</sup> Thomas Byrnes, *Professional Criminals of America* (New York: Cassell and Company, Limited, 1886), 24.

<sup>7</sup> For a visual representation of this, see the Edwin Porter’s 1905 film “The Kleptomaniac”.

they purloined. The women were well-bred, well-educated, and wealthy. The items they stole – handkerchiefs, fans, perfume bottles – were hardly needed to survive and were easily affordable.

The dilemma of the kleptomaniac is stated explicitly in a book by Chief Byrnes:

It does seem strange that a wife and mother whose home is an honest one, who attends religious service regularly, and who seems far removed from the world of crime, should be so carried away by her admiration of some trinket... as to risk home, honor, everything to secure it... It is the sex's fondness for finery that nine times out of ten gets them into trouble.<sup>8</sup>

Again, the kleptomaniac was identified without question as a well-established, well-respected woman. A pillar of republican motherhood, her duty was to teach her children how to be good, honorable citizens. The kleptomaniac forfeited these responsibilities for the fleeting joy of possession. Of course she must be wealthy, the entry continues, because “poverty is held by the world to be the badge of crime”<sup>9</sup> and poor women in department stores are observed with eagle-like intensity. Women became shoppers and thus consumer crimes became intrinsically linked to that gender.

Doctors diagnosed sticky-fingered women with mental disorders because for them, disease was the only conceivable reason for their illegal actions. Women couldn't help their actions; they were compelled to act contrary to their upbringings. Elaine Abelson, a historian who specializes in women's history, writes that “in the study and treatment of respectable thieves, the role of physicians ... become[s] vitally important... doctors explained [the women's] actions not in terms of what the women were doing – shoplifting- but in the language of physical and mental illness.”<sup>10</sup> Crimes were therefore excused because they were

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<sup>8</sup> Byrnes, *Professional criminals of America*, 25.

<sup>9</sup> Byrnes, *Professional criminals of America*, 25.

<sup>10</sup> Abelson, *When Ladies Go A-Thieving*, 7.

symptoms of disease. The concerns of male doctors were at the forefront of kleptomania research and firmly linked the disorder with the identities of their patients.

Kleptomania was only associated with the wealthy. A textbook wrote that the disorder was “shown in persons of excellent moral character in other respects, and whose easy, and even affluent circumstances, preclude the idea of want as a motive inciting to the crime.”<sup>11</sup> Indeed, kleptomania could only be demonstrated in wealthy people. A contributor to the *British Medical Journal* wrote the public was correct in noticing that there appeared to be two laws when judging theft: one for rich and one for poor. This was because in order to prove kleptomania, a lawyer needed to demonstrate it was an irrational action. The easiest and most common way to prove irrationality was to demonstrate that the defendant was wealthy enough to afford the stolen item in question.<sup>12</sup>

In the courtroom, kleptomania was treated as a form of insanity that rendered the defendant not guilty of their actions. Criminal insanity had long been a staple of the legal system, but understandings of insanity changed dramatically in the nineteenth century. For centuries, people believed insanity to be something obvious and observable. The insane ranted and raved and were cared for by family members.<sup>13</sup> In 1843, however, Daniel M’Naghten, paranoid and delusional, attempted to assassinate British Prime Minister Robert Peel. Instead, M’Naghten shot and killed Peel’s secretary. The trial that followed created the first standard for the insanity defense. The M’Naghten test stated that all men are assumed sane until proven otherwise and that in order to demonstrate insanity, “it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under

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<sup>11</sup> John J. Reese, *Text-book of Medical Jurisprudence and Toxicology*, ed. Henry Leffmann (Philadelphia: P. Blakiston, Son, and Company, 1894), 563.

<sup>12</sup> “Kleptomania: The Case of Mrs. Castle,” *The British Medical Journal* 2, no. 1872 (1896): 1462.

<sup>13</sup> Grob, *The Mad Among Us*, 6.

such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or if he did know it, that he did not know he was doing what was wrong.”<sup>14</sup> This standard linked demonstrable insanity to ideas of responsibility, of free will, and self-control. To be insane, defendants had to be unaware that their actions were immoral or illegal.

Kleptomania, however, did not fit into that category. Most kleptomaniacs were perfectly aware that stealing was both immoral and illegal. The disorder compelled them to steal anyway. A new test developed to supplement the M’Naghten rule. Dubbed the irresistible impulse test, it told jurors “to acquit by reason of insanity if they [found] the defendant had a mental disease which kept him from controlling his conduct.”<sup>15</sup> The irresistible impulse test emerged alongside psychiatry and relied heavily on the testimony of expert witnesses. Legal textbooks of the era gave practical advice to defense attorneys working with mentally ill clients. An 1892 treatise devoted an entire chapter to legal insanity defenses. The insanity defense would only work if “at the time of committing the act the prisoner was not of sound mind, but affected with insanity, and such affection was the efficient cause of the act, and ... [his] mental powers must be so deficient at the time of the crime that he has no will, conscience, or controlling mental power.”<sup>16</sup>

Whether labeled as kleptomaniacs or shoplifters, women accused of thievery often found themselves in the criminal justice system. If a woman claimed to be a kleptomaniac, certain facts had to be ascertained before a lawyer could utilize that defense. These facts were

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<sup>14</sup> Abraham Goldstein, *The Insanity Defense* (New Haven: Yale University Press, 1967). 45.

<sup>15</sup> Goldstein, *The Insanity Defense*, 67.

<sup>16</sup> Stewart Rapalje, *A Treatise on the Law of Larceny and Kindred Offenses: Such as Adulteration, Blackmailing, Burglary, Conspiracy to Defraud, Embezzlement, Extortion, False Pretenses, Frauds and Cheats, Piracy, Receiving Stolen Goods, Robbery, and Trepasses Depriving of Property* (Chicago: Wait Publishing Company, 1892), 250.

either medical or psychiatric. Medical details that indicated a changed personality or biological causes for the crime spree could be used to demonstrate diminished capacity or limited free will. Psychiatric symptoms, like compulsive behavior, depression, or erratic mood swings, could prove moral insanity or uncontrollable, irresistible impulses. These medical diagnoses could and would win legal cases and prevent imprisonment.

## **Section Two: Medical Understanding of Kleptomania**

Kleptomania was first introduced as a diagnostic in Dr. Esquirol's 1838 *Des Maladies Mentales* and was defined as "failure to resist an impulse or drive to engage in pleasurable, but harmful behaviors. Following the behavior, the individual may or may not feel guilt."<sup>17</sup> It entered the American public lexicon in the late 1870s as doctors observed an unsettling phenomenon. More and more ladies of good breeding were being arrested for shoplifting. It was unthinkable that middle-class women were thieves: "mental instability provided a more plausible explanation."<sup>18</sup> Indeed, doctors quickly linked this strange form of insanity with female biology. Kleptomania demonstrated another example of women's mental and physiological weaknesses.<sup>19</sup> Doctors sought to explain away a disturbing social reality with a new disorder that essentially medicalized theft. According to historian Elaine Abelson "medical texts and papers and public statements by physicians constructed (or attempted to construct) a social and psychological reality: kleptomania. Women, the common argument ran, were at risk simply because they were women."<sup>20</sup>

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<sup>17</sup> Lorrin Koran, *Obsessive-Compulsive and Related Disorders in Adults: A Comprehensive Clinical Guide* (Cambridge: Cambridge University Press, 1999), 219.

<sup>18</sup> Whitlock, *Crime, Gender and Consumer Culture*, 149.

<sup>19</sup> Whitlock, *Crime, Gender and Consumer Culture*, 190.

<sup>20</sup> Abelson, *When Ladies Go A-Thieving*, 11.

To understand kleptomania as a mental disorder, one must look at the medical terms used to describe it. A 1890 medico-legal text defined kleptomania as a partial moral mania characterized by “a propensity to theft [that] is most common in women in prosperous circumstances.”<sup>21</sup> Moral mania was defined as “a morbid perversion of the natural feelings, affections, inclinations, temper, habits, and moral dispositions, without any notable lesion of the intellect, or knowing and reasoning faculties, and particularly without any maniacal hallucination.”<sup>22</sup> Why, then, was stealing more alarming than moral perversion? Perhaps because it implied that thievery was not a natural condition of womanhood; kleptomania was the exception, not the rule. By this definition, kleptomania is a change in behavior that doesn’t affect a person’s intelligence or logical functions. It simply compels some law-abiding citizens to behave badly.

Irresistible impulses were another component of a kleptomania diagnosis. Irresistible impulses went hand-in-hand with moral insanity because they removed a person’s free will without damaging their sense of self. While under the influence of an irresistible impulse, “a person may know that he is doing wrong when he does an act, but, by reason of the duress of a mental disease, he may have lost the power to choose between the right and wrong, and to avoid doing the act, his free agency being at the time destroyed.”<sup>23</sup> Irresistible impulses, therefore, removed the concept of good behavior from the equation entirely. Kleptomania did not degrade a woman’s morality; it made it impossible to abide by it. Kleptomaniacs knew right from wrong but were unable to control their behavior. The notion of irresistible impulses was especially applicable to women with mental illness. Often, “the lady shoplifter

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<sup>21</sup> C. E. Armand Semple, *Essentials of Legal Medicine, Toxicology, and Hygiene* (Philadelphia: W. B. Saunders, 1895), 53.

<sup>22</sup> Semple, *Essentials of Legal Medicine*, 54.

<sup>23</sup> William Lawrence Clark, *Handbook of Criminal Law*, (St. Paul, Minnesota: West Publishing, 1915), 70.

was a nonthreatening figure, often seen as irresponsible, more childlike than adult, unable to resist momentary temptation and ready to succumb to the ‘lust of possession.’”<sup>24</sup> Women, naturally weak-willed, were controlled by a disease. This component of mental illness solved physicians’ worries about the morality of their middle-class clients. It reassured them that middle class values were still safe.

No matter how relieved doctors may have been about the security of middle class morals, they still needed to find a cause of kleptomania. During the Progressive Era, a new type of psychiatry changed the way mental illness was perceived in the Western world. Freudian analysis focused on the subconscious and repressed desire to understand physical manifestations of abnormal behavior. Dr. Wilhelm Stekel wrote an article in 1911 that applied Freudian analysis to kleptomania. The article, aptly entitled “The Sexual Root of Kleptomania”, made waves throughout the psychiatric establishment. It was translated from German, published in the *Journal of the American Institute of Criminal Law and Criminology*, and lauded as the “new conception of kleptomania.”<sup>25</sup> In Stekel’s research, kleptomaniacs were by and large well-to-do women who suffered from ungratified and unfulfilled sexual desire. His patients were constantly “tempt[ed] to commit a sin” but their sense of morality prevented them from acting upon it. By psychoanalyzing his patients, Stekel became convinced that “the root of all these cases of kleptomania is ungratified sexual instinct... [kleptomaniacs] are engaged in a constant struggle with their desires. They would like to do what is forbidden, but they lack the strength.”<sup>26</sup>

Stekel used case studies by other doctors to solidify his theories about the sexual

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<sup>24</sup> Abelson, *When Ladies Go A-Thieving*, 151.

<sup>25</sup> Wilhelm Stekel, “The Sexual Root of Kleptomania,” *Journal of the American Institute of Criminal Law and Criminology* 2, (1911): 239.

<sup>26</sup> Stekel, “The Sexual Root of Kleptomania,” 240.



nature of compulsive theft. The case studies, taken from psychiatrists working with kleptomaniacs, draw large conclusions from often a single patient. They also closely link the female reproductive system to the action of theft. Dr. Gross wrote of a patient stole bracelets, purses, rings and other “things into which one puts something.”<sup>27</sup> To Gross, the stolen items represented repressed sexuality, since purses represented the female reproductive system. The patient in question stopped compulsively stealing once she became pregnant. Dr. Krafft-Ebing, also referenced in Stekel’s article, noticed distinct differences between male and female kleptomaniacs. Working class men stole things as a sexual fetish; without purloined handkerchiefs or snatched stockings, they were impotent. Women thieves, on the other hand, hide the stolen objects and “do not dare to touch them.”<sup>28</sup> He implied that the difference stemmed from inherent feminine weaknesses.

Some psychiatrists found the connection between repressed sexual desire and kleptomania tenuous at best. Dr. Henry Crane from the University of Michigan wrote in a review of Stekel’s book that “to go to the extremes to which the writer in question goes seems absurd.”<sup>29</sup> He admitted there could be a link between desire and mental illness but thought Stekel exaggerated his findings. Indeed, Stekel’s fascination with the sexual root of psychiatric distress “might well itself be looked upon as symbolic of a perverted sexual basis.”<sup>30</sup> Crane was also frustrated by Stekel’s lack of a definitive treatment. The patients who recovered from kleptomania did so without direct interference by the doctor.

Psychiatrists needed to develop a method to treat compulsions instead of hypothesizing about

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<sup>27</sup> Stekel, “The Sexual Root of Kleptomania,” 241.

<sup>28</sup> Stekel, “The Sexual Root of Kleptomania,” 242.

<sup>29</sup> Henry W. Crane, “General Reviews and Summaries: Criminal Psychology,” *Psychological Bulletin* 9, no. 12 (1912): 451-453.

<sup>30</sup> Crane, “General Reviews,” 452.

their causes.

Treating kleptomania was particularly difficult. While Stekel might have believed that the act of discussing unconscious desires would treat the disorder, other medical professionals turned to more direct methods. Dr. Quackenbos found that hypnosis was a particularly effective cure for young people with an open mind.<sup>31</sup> Other doctors believed “the proper place for the true kleptomaniac was the asylum.”<sup>32</sup>

Because kleptomania was often a symptom of a more serious disease, no definitive treatment existed. Instead, women with serious mental illnesses were sent to asylums. Many noted that serious mental illness often produced kleptomania. The prominent journalist turned psychological correspondent, H. Addington Bruce, wrote an article in 1912 for the *Chicago Daily Tribune* entitled “Why the Kleptomaniac Can’t Help It”. In it, he tells the story of a new mother who would suddenly become “violently hysterical... and she would implore the maid to lock her in her room lest she should murder her child.”<sup>33</sup> She was caught stealing, examined by a medical expert and sent to an asylum. Other doctors noted similar stories. Again and again, doctors found that women who compulsively stole were either entering into puberty, suffering from postpartum depression, or leaving reproductive age.

Medically, kleptomania was hard to define, detect, and treat. The distinction between kleptomania and thievery was difficult for even medical professionals. John Duncan Quackenbos, a professor at Columbia University and advocate for hypnosis, wrote that

A kleptomaniac, though perfectly sane in every other direction, fails to recognize the gravity of his weakness; he impulsively steals, and is not morally responsible. A thief deliberately

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<sup>31</sup> John Duncan Quackenbos, *Hypnotism in Mental and Moral Culture*, (New York, Harper & Brothers, 1901), 132.

<sup>32</sup> Whitlock, *Crime, Gender and Consumer Culture*, 192.

<sup>33</sup> Addington Bruce, “Why the Kleptomaniac Can’t Help It,” *Chicago Daily Tribune* (Chicago, IL), May 19, 1912.

steals, and is morally responsible. The distinction between the two is sometimes difficult to draw, and depends largely on the mental condition of the subject and the neurotic history of his family, considered in connection with the character and value of the articles purloined and the circumstances of the stealer.<sup>34</sup>

With that in mind, let us examine the most widely-reported and sensational case of kleptomania in turn of the century America: the case of Mrs. Castle.

### **Section Three: Kleptomania and the Castles**

On October 9, 1896, news hit the United States of international scandal. A prominent American couple was in jail, accused of an outlandish crime. Walter Michael Castle, a prominent industrialist from San Francisco, had been visiting London with his wife, Ella Weil Castle, and their son. On October 6<sup>th</sup>, right before they were to return to the United States, an employee of The Hotel Cecil entered the family's room and found something remarkable. The room was filled with stolen items. The trunks were overflowing with items marked by shopkeepers, marks would have been removed after purchase and that informed police that the items had not actually been purchased.<sup>35</sup> He also found trinkets that had disappeared from hotel guests and from the Hotel Cecil itself. The value of the stolen objects was estimated at over \$2,500, a shocking amount of money at the time. The hotel employee informed the police who quickly arrested Mr. and Mrs. Castle and took them to the Holloway Prison. Their son was sent to a family friend until bail could be posted or a court date set.

Americans were flabbergasted. Telegrams flew from embassy to capitol, from governmental office to state house and back again. The Secretary of State Richard Olney

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<sup>34</sup> Quackenbos, *Hypnotism*, 132.

<sup>35</sup> "Queer Castle Case," *Dallas Morning News* (Dallas, TX), Oct. 9, 1896.

contacted the American Embassy in England in search of answers.<sup>36</sup> The governor of California and the mayor of San Francisco both sent flurries of telegrams to English officials, vouching for the Castle family and their sterling reputation. Prominent bankers across the English-speaking world were flummoxed. All of them proclaimed that it didn't make sense. The Castles were too wealthy to steal. They were too well-connected, too well-respected to behave in such a way. They couldn't be thieves— "at worst it is a case of kleptomania."<sup>37</sup>

Neither his friends nor the British police believed Mr. Castle to be guilty. His attorney asked family in San Francisco to wire "proofs of the honesty and integrity of Walter" and messages of support overwhelmed London offices.<sup>38</sup> At worst, he was guilty of failing to control his wife. A few days after the arrests, the Castle's lawyer proclaimed that "Mrs. Castle did take these articles, but her husband is perfectly innocent of any knowledge whatever of her doing so."<sup>39</sup> Though supporters sympathized with her husband, well-wishers were less convinced of Mrs. Castle's innocence. Kleptomaniacs were widely believed to be wealthy women with little self-control. Mrs. Castle fit the description. Physicians examined Mrs. Castle while the couple were imprisoned in Holloway Jail to ascertain her mental condition.<sup>40</sup> Their conclusions would be revealed in court a week later.

Mr. Abraham, the couple's lawyer, was under no obligation to keep Mrs. Castle's diagnosis a secret. He quickly alerted the American embassy and the press to a possible defense: kleptomania. Mrs. Castle was examined by a noted British physician whose determination would "support the defense." Mr. Abraham, well aware of legal strategies used

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<sup>36</sup> "Queer Castle Case," *Dallas Morning News* (Dallas, TX), Oct. 9, 1896.

<sup>37</sup> "Queer Castle Case," *Dallas Morning News* (Dallas, TX), Oct. 9, 1896.

<sup>38</sup> "Arrest of the Castles" *Sioux City Journal* (Sioux City, IA), Oct. 10, 1896.

<sup>39</sup> "Mrs. Castle Is Guilty" *Oregonian* (Portland, OR), Oct. 11, 1896.

<sup>40</sup> "Believe It Kleptomania" *Omaha World Herald* (Omaha, NE), Oct. 10, 1896.

in insanity trials, was also quick to refer to Mrs. Castle's past afflictions. She had a history of severe head pain, memory loss and other "irregularities often associated with delusion."<sup>41</sup> Before the arrest, she was diagnosed as suffering from melancholia.<sup>42</sup> To American readers, these various symptoms and afflictions painted Mrs. Castle as woman who should be absolved of her crimes. The Idaho Statesman thought it clear that Mrs. Castle was "one of the innumerable victims of kleptomania" and that "if the matter had occurred in [the United States], the matter would have been hushed up with the return of the goods or the payment of the bill." They also charged that "in England, no generosity is shown kleptomaniacs."<sup>43</sup>

On October 13<sup>th</sup>, the Castles went to court to determine bail. The Marlborough Street Police Court was packed with spectators and American representatives from the embassy. Mrs. Castle entered the courtroom stylishly dressed and violently sobbing.<sup>44</sup> The prosecutor accused Mrs. Castle of stealing from The Hotel Cecil, her fellow hotel guests, and the shopkeepers of London. Finally, after days of speculation, the list of catalogued objects was released. Mrs. Castle had allegedly stolen:

eighteen tortoise-shell combs, seven hand mirrors, two sable boas, two muffs, two neckties, seven gold watches, nine clocks, 17 valuable fans, 16 brooches, seven tortoise-shell eyeglasses, two plated toast racks marked 'Hotel Cecil', and a large number of smaller articles, such as trinkets, etc.<sup>45</sup>

The list of stolen goods visibly upset Mrs. Castle. Many remarked that she "seemed on the point of losing consciousness."<sup>46</sup> Witnesses came to the stand, explaining how Mrs. Castle would enter their businesses, ask to sample wares, declare the prices too high or the

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<sup>41</sup> "Mrs. Castle Is Guilty," *Oregonian* (Portland, OR), Oct. 11, 1896.

<sup>42</sup> "Case of the Castles" *Sioux City Journal* (Sioux City, IA), Oct. 11, 1896.

<sup>43</sup> *Idaho Statesman* (Boise, ID), Oct. 14, 1896.

<sup>44</sup> "Case of the Castles" *Oregonian* (Portland, OR), Oct. 14, 1896.

<sup>45</sup> "Case of the Castles" *Oregonian* (Portland, OR), Oct. 14, 1896.

<sup>46</sup> "Case of the Castles" *Oregonian* (Portland, OR), Oct. 14, 1896.

items of low quality, then leave in a huff. Only afterwards did they realize some of the goods had disappeared. This story was echoed by shopkeepers from around the city. The prosecutor expressed doubt regarding Mrs. Castle's disease. Not a word had come from San Francisco about her predilection for stealing and Scotland Yard contended "that if this claim... be true it is the most remarkable case of acute kleptomania they have ever seen," implying that it had come on so suddenly as to be unbelievable.<sup>47</sup> Despite the testimony, the Marborough court was relatively lenient. At the end of the day, the Castles were released on a \$150,000 bond.

Throughout the scandal, journalists debated the legitimacy of kleptomania. Not only did they question the diagnosis itself, they questioned the social basis of the disease. Kleptomania is for rich people, they wrote, while the poor were sentenced to prison. Most people were "probably inclined to regard kleptomania with incredulity. They think that... a kleptomaniac is a thief with a fine name and that the name has been invented by medical experts for the purpose of saving from prison well-to-do persons caught in the vulgar act of larceny."<sup>48</sup> And indeed, the Castle case seemed to fit the category. As the *Wheeling Register* put it, "Was not Mrs. Castle guilty of the crime charged against her? Undoubtedly. Was there a doubt of her guilt? Not one. Then why should she not suffer the penalty?"<sup>49</sup> Before they were awarded bail, the Castles were "treated with every consideration in Holloway jail. They wear their own clothes, provide their own food, and are living in decent rooms."<sup>50</sup> Clearly, there were two sets of laws: one for the rich and one for the poor. To many Americans who valued their nation's emphasis on equality, this was intolerable. "Is it not possible," a

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<sup>47</sup> "England's Interesting American Prisoner" *Kansas City Star*, (Kansas City, MO) Oct. 14, 1896.

<sup>48</sup> "The Castle Case – Theft or Kleptomania?" *Baltimore Sun* (Baltimore, MD), Oct. 20, 1896.

<sup>49</sup> "The High and The Low" *Wheeling Register* (Wheeling, WV), Nov. 9, 1896.

<sup>50</sup> "Case of the Castles" *Sioux City Journal* (Sioux City, IA), Oct. 11, 1896.

journalist from the Omaha World Herald asked, “that scores of men and women, unknown, are driven to desperate acts by some form of lunacy? It cannot be that this mental irresponsibility is confined to those who enjoy all the good things of life.”<sup>51</sup>

On November 6<sup>th</sup>, a month after the initial arrest, Mr. Castle was acquitted of all charges. No one was surprised. Mrs. Castle’s sentence, however, was unexpected. Mrs. Castle was sentenced to three-months imprisonment without hard labor.<sup>52</sup> Even the journalists who had disparaged Mrs. Castle and her made-up disease were unprepared for this outcome. Almost immediately, more telegraphs sped across the ocean, insisting that Mrs. Castle be pardoned. Most English newspapers predicted she would be released within a few days. Indeed, Mrs. Castle was released into the care of her husband on November 10<sup>th</sup>, weak, and insensible. Mr. Castle announced that the family would be returning to San Francisco to recover from their international ordeal.<sup>53</sup>

Mrs. Castle served four days in the infirmary of the Wormwood Scrubs prison with constant medical supervision and nurses to see to her every need.<sup>54</sup> On November 6<sup>th</sup>, the same day Mrs. Castle was sentenced, a seamstress and governess were convicted for six months’ hard labor for stealing a fur collar. They were not provided medical experts, no lawyers said their health would suffer due to their sentence, and no one petitioned for their release. Clearly, kleptomania afflicted the wealthy while the poor remained immune. British and American journalists were torn on how to react. On one hand, mental illness was a mediating circumstance that should result in lighter sentencing. On the other, the defenses

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<sup>51</sup> “The Castle Case” *Omaha World Herald* (Omaha, NE), Nov. 4, 1896.

<sup>52</sup> “She Pleads Guilty” *Minneapolis Journal* (Minneapolis, MN), Nov. 6, 1896.

<sup>53</sup> “Mrs. Castle Released” *Duluth New Tribune* (Duluth, MN), Nov. 11, 1896.

<sup>54</sup> “Mrs. Castle Released” *Duluth New Tribune* (Duluth, MN), Nov. 11, 1896.

only worked if the defendant was wealthy. It would take a long time for the two to be reconciled.

The Castle case proved to the Americans who devoured the story that thieves with a mental defect were not truly responsible for their actions. Instead, their crimes depended on a team of lawyers and medical experts who could adequately prove the validity of the illness. Kleptomania defenses made clear that the wealthy were excused for their actions while the poor suffered. The legal distinction between insanity and kleptomania is crucial but difficult to comprehend. Kleptomania, itself a kind of insanity, was not classified as such. Instead, kleptomania remained a disorder that didn't carry the same stigma as insanity. Women caught stealing weren't branded as thieves or even as sufferers of insanity. They remained wealthy, socially mobile women. The diagnosis perhaps solidified the claim of respectability. In this way, crime was medicalized in such a way that removed the stigma of both mental illness and crime. This was wildly different from ideas of criminal hereditary or habitual criminality.





## CHAPTER TWO: How to Treat A Criminal

When examining the medicalization of criminal behavior, there are two distinct factors to consider. The first is irresistible criminal behavior. Within this category, one finds diagnoses of moral insanity, of compulsive disorders, and debate regarding free will and disease. People could be compelled by both internal and external factors to behave badly. H. H. Harris, the Texan horse thief, survived a debilitating illness but afterwards was a changed man who compulsively pocketed useless items. Reports exist of head injuries that resulted in criminal behavior until an enterprising doctor drilled into the skull. Afterwards, the patient was cured. When caused by external factors like trauma or illness, turn-of-the-century doctors understood irresistible criminal compulsion. Internal sources of deviance were more alarming.

Referred to by many names, hereditary, born, or biological causes of crime had much greater societal implications than a bump on the head or a severe illness. Though the terms are used interchangeably, hereditary causes could refer to bad blood, bad family, or a combination of both. Many eugenicists believed low intelligence, bad temper, and poverty to be linked to one's family and to the likelihood of becoming a ward of the state. Which traits were most likely to produce miscreants was fiercely debated, but most eugenicists agreed the criminal most dangerous to society was the hereditary criminal driven by biologically produced compulsions.

We will be examining these groups in this chapter. The classification of criminals distinguished between insane, instinctive, and habitual offenders. Though the differences are often minute, it is important to understand the ways in which criminal behavior was quantified and categorized. The classifications in turn determined the treatment options for

mentally ill convicts. Eugenicists disagreed about both the causes of and solutions to criminal heredity. The disarray regarding the intersection of criminology, medical science, and eugenics is particularly pertinent when examining how criminal behavior became a disease. These conflicts had real life impacts on medical professionals and criminals alike. By examining state prisoners and institutionalized patients in Michigan, a determination can be formed about these complicated diagnoses and treatment outcomes.

### **Section One: The Classification of Biological Criminals**

At the turn of the century, many members of society were alarmed by the changes they witnessed in their communities and in their country. Rural Americans and foreign immigrants both arrived in urban centers, creating a massive swell in population that city infrastructure could not support. Poverty became visible in a new way as slums grew and disease spread.<sup>1</sup> Most distressingly, criminal activity seemed to be rising exponentially. Public discourse about crime tended to compare it to a virulent disease. Like tuberculosis ravaged the body, crime destroyed society and plagued American cities. It had causes and symptoms, but very few could determine, or agree upon, a cure. Instead, prominent academics and social thinkers turned their attention to classifying types of both crime and criminals in order to assess a manageable treatment.

Criminal anthropologists identified five essential types of criminal. Ranked based on the danger posed to society, the classification created a hierarchy of criminals in order to identify and treat prisoners whenever possible. The classifications were as follows: criminals by passion, occasional criminals, habitual criminals, instinctive criminals, and insane

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<sup>1</sup> Stephanie Griffiths, Jarkko Jalava, and Michael Maraun, *The Myth of the Born Criminal: Psychopathy, Neurobiology, and the Creation of the Modern Degenerate* (Toronto: University of Toronto Press, 2015), 34.

criminals.<sup>2</sup> Though names change from source to source, the essential characteristics of each classification remain the same. Neither criminals by passion (those who act when provoked by extreme emotion and feel shame, remorse, and guilt) nor occasional criminals (those who commit crimes when only compelled to do so by economic pressures) will be discussed here for these particular groups were understood by criminologists to be ever present and unchangeable. The remaining types greatly concerned well-to-do Americans because they could not be rehabilitated, their behaviors were hereditary, and they seemed to be reproducing at alarming rates.

The most hated criminal was a product of the new American city. Instead of applying themselves to improving their condition through acceptable channels, men and women instead turned to a life of crime and became professional deviants. A professional criminal was utterly unsympathetic. Hardened criminals were created by a single deviant act that left them feeling guilty and remorseful. However, repeated offenses with no punishment removed moral responses and created individuals focused solely on illicit profit. In his book, *The Present Day Problem of Crime*, religious scholar Albert Currier declared those “who deliberately choose... to live in defiance of the laws of society” to possess a “depraved and worthless character.”<sup>3</sup> Other middle class thinkers simply believed them to be “human parasite[s],”<sup>4</sup> feeding off hard-working and industrious individuals.

To Currier and his middle-class readers, disregarding societal standards was unconscionable. These miscreants used their God-given intelligence and talents to “engage in

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<sup>2</sup> J.F Sutherland, *Recidivism: Habitual Criminality and Habitual Petty Delinquency* (Edinburgh: William Green and Sons, 1908), 37.

<sup>3</sup> Albert Henry Currier, *The Present Day Problem of Crime* (Boston: Gorham Press, 1912), 18.

<sup>4</sup> Charles R. Henderson, *Introduction to the Study of the Dependent, Defective, and Delinquent Classes* (Boston: D. C. Heath and Company, 1893), 107.

criminal undertakings as a matter of business, reckoning [their] changes of profit and of punishment with as great deliberation as the merchant... gives to [their] enterprises.”<sup>5</sup> Professional criminals were rarely apprehended and rarely rehabilitated. Arrests and convictions yielded no change, because, like a businessman accustomed to setbacks, the professional criminal took them in stride and would become even more enterprising. Hardened criminals were therefore unlikely to be rehabilitated despite the best efforts of prison staff. Professional criminals were people of reason who consciously chose their path and therefore were completely at fault. More alarming to many were the legions of offenders who had no choice in their deviant behavior.

Habitual criminals “linked lawless acts into a chain of habit” from which they could not escape.<sup>6</sup> Though they became criminals due to personal choices, habitual criminals were understood to be of lesser moral character and intelligence. The sociologist and penologist Charles R. Henderson found this type of criminal was the most sympathetic because more often than not, they were the “corrupted child... of honest and worthy parents.”<sup>7</sup> Though Henderson did not elaborate on the cause of corruption, other criminologists and eugenicists did. Societal problems like poverty, lack of education, and familial discord created situations in which immorality flourished and created miscreants. Though morally corrupt, habitual criminals displayed “superior cunning, craft, boldness, energy, and tireless activity to accomplish [their] nefarious ends... these inmates of the prison are more energetic, forcible and capable than those of the jail, though more depraved.”<sup>8</sup> State prisons were reserved for

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<sup>5</sup> Currier, *The Present Day Problem of Crime*, 18.

<sup>6</sup> Henderson, *Introduction*, 106.

<sup>7</sup> Currier, *The Present Day Problem of Crime*, 19.

<sup>8</sup> Currier, *The Present Day Problem of Crime*, 19.

more serious and dangerous criminals while local jails tended to hold drunks and those guilty of minor misdemeanors. Therefore, Henderson believed the prevalence of habitual criminals in state prisons reflected the severity of their defect and their danger to society.

However, habitual criminals were not an organic category. It was created through legal codes and practices. After all, Henderson's distinction was based on the severity of the crime, not necessarily the criminal records of imprisoned men. Henderson also fails to convincingly differentiate professional and habitual criminals. How could a police officer distinguish between a run-of-the-mill professional criminal and a cunning habitual criminal unable to differentiate between right and wrong? Instead of considering the nuances, some states conflated the two. An Indiana law passed in 1908 stated that any person twice convicted of a felony "shall be deemed and taken to be an habitual criminal, and he or she shall be sentenced to imprisonment in the state prison for... his or her life."<sup>9</sup> In Indiana, a habitual offender was determined only by previous convictions. Personal history and mental ability were not considered.

Treatment was difficult and often unsuccessful because once lost, morality was difficult to regain. Of utmost concern to urologist Dr. G. Frank Lydston was the ability of this particular criminal class to reproduce. He wrote in the book *The Disease of Society* that "society should concern itself, not so much with the criminal as he is, but with the conditions that produce him... we cannot often cure or reform him, but we may, in a measure, prevent his propagation."<sup>10</sup> Ultimately, societal influences created situations in which impressionable

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<sup>9</sup> Louis Ewbank, *Indiana Criminal Law: A Treatise on Criminal Procedure, Pleading, Evidence, and Instruction, and the Law of Public Offenses, with Special Reference to the Indiana Criminal Code* (Indianapolis: Bobbs Merrill, 1908), 482.

<sup>10</sup> G. Frank Lydston, *The Disease of Society: The Vice and Crime Problem* (Philadelphia: J. B. Lippincott, 1904), 33.

and unintelligent youth formed deviant habits that led to a life of habitual criminality.

The next rank on the criminal hierarchy alternatively listed born, instinctive, or hereditary criminals. The label born criminal originated from the Italian criminologist Cesare Lombroso, who believed criminals to be biologically atavistic and a reversion to a less evolved hominid.<sup>11</sup> Charles Henderson, however, preferred the term “instinctive criminal” because “it includes not only hereditary but also all social and personal causes.”<sup>12</sup> Currier also identified hereditary criminals as the “degenerate offspring of miserable parents” and were characterized by weak minds and feeble bodies. Whichever term one used, this type of criminal was best described by the Wisconsin branch of the American Institute of Criminal Law and Criminology. They met in December 1911 for their annual meeting to discuss issues pertinent to the people of Wisconsin. Committee B included a minority report by Judge A. C. Backus of Milwaukee entitled “Should the Function of the Courts Be Limited to the Guilt or Innocence of the Accused?” In it, Judge Backus defined instinctive criminals as “persons who cannot adjust themselves to the social order on account of heredity or inborn defects.”<sup>13</sup>

Finally, the most alarming form of criminal were those suffering from insanity. Diseased in thought and irrational in behavior, insane criminals were unpredictable and uncontrollable. But did insane criminals even belong in the hierarchy? Many criminologists and psychiatrists of the time found fault with this classification. An 1898 article in the *Medico-Legal Journal of New York* wrote that “there is no insane criminal. The act of the

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<sup>11</sup> Cesare Lombroso, *Crime: Its Causes and Remedies* trans. Henry Horton (London: William Heinemann, 1912).

<sup>12</sup> Henderson, *Introduction*, 107-8.

<sup>13</sup>A. C. Backus, “Minority Report” (Madison, WI: Wisconsin Branch of the American Institute of Criminal Law and Criminology, 1911), 94.

insane, which in the sane would be criminal, lacks every element of crime.”<sup>14</sup> Because the insane criminal was morally irresponsible and lacking free will, their actions did not constitute a crime in a standard sense. English psychologist J. W. Hume-Williams attributed criminal acts by insane people to delusions or monomaniacal insanity, moral mania, or impulsive insanity; in other words, symptoms of the disease.<sup>15</sup> Finally, Havelock Ellis, author of the seminal text on the links between mental unfitness and criminal behavior, wrote in 1890

the person who, being in a condition of recognizable mental alienation, performs some flagrantly anti-social act... [the insane criminal] is clearly in a category of his own. He is only a criminal in the same sense as an infant or an animal who performs some noxious act.<sup>16</sup>

Removed from all personal responsibility and deemed legally incompetent, insane criminals were in a category all their own. Though they were included in the criminological ranking system, many scholars did not believe they belonged there. Instead, they fit into psychiatric categories, patients for whom criminal acts were symptoms of a larger disease. Still, because their actions were determined by disease, they were uncontrollable and thus subject to eugenic and legal consequences.

Classifying criminals into distinct groups was an effective way to assign blame to particular types of criminals. Professional criminals made their own choices and actively sought illicit activities; they were to blame for their imprisonment and immorality. Those who committed crimes as a result of poverty were victims of societal inequities and failings. By definition, habitual, instinctive, or insane criminals could not be held responsible for their misdeeds. The society that allowed degeneration of the lower classes was culpable for their

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<sup>14</sup> John Goodman, *Insanity and the Criminal* (London: Hutchinson and Company, 1924), 254.

<sup>15</sup> J. W. Hume-Williams, *On Unsoundness of Mind* (London: William Clowes, 1880), 96.

<sup>16</sup> Havelock Ellis, *The Criminal* (New York: Charles Scribner's Sons, 1890) 3.



actions and therefore had to develop new treatments to the societal illness of crime.

## **Section Two: Eugenists and Solutions to Criminal Deviance**

As concerns about social conditions increased, new fields of study developed to seek out treatments. Eugenics emerged with many other new academic and scientific disciplines at the turn of the nineteenth century. Fields like sociology, criminology, and psychiatry were brand new and forced the medical and legal fields to adopt new ways of examining the world. Eugenists came from many different fields. Some were medically trained doctors while others specialized in agriculture, religion, law, and politics.<sup>17</sup> These different backgrounds account for the differences in opinion about causes for, manifestations of, and solutions to societal degeneracy. Experts in new fields, seeking to gain authority, crowed that never before had societal problems been examined scientifically. Bad behavior yielded consequences—a “dogma accepted on faith and hardly questioned.”<sup>18</sup> Now, eugenists pushed against assumptions that had always been true and advocated for new and novel solutions to old problems. One of these problems was that of crime.

There existed two general schools of thought on criminality. The first was that heredity produced defective people, including criminals. The second insisted that environmental factors influenced behavior and produced badly behaved people. Charles Davenport, a trained horticulturist and one of the fathers of the eugenics movement, believed that social ills were strictly due to heredity. Davenport set up a distinct divide between

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<sup>17</sup> Human Betterment Foundation, *Human Sterilization Today* (Pasadena, California: Human Betterment Foundation, 1939), 6.

<sup>18</sup>A.G. Morphy, “Crime and its Punishment,” *Canadian Medical Association Journal* (1929): 873.

eugenics, the importance of blood, and euthenics, the importance of environment.<sup>19</sup> He argued Mendelian genetics demonstrated that blue eyed parents would produce a blue-eyed child regardless of the environment in which the child was raised. “Even criminals,” he wrote, “like poets and artists, are born and not made. It is not poor conditions that create insanity but poor blood.”<sup>20</sup> Despite his fervor in favor of heredity, he often acknowledged the validity of euthenic thought. Both external and internal influence acted upon a child, but environmental aspects could not and would not change traits hardwired into the system.

Some professionals disagreed. W. C. Sullivan, the medical superintendent of Holloway Prison, believed that sociology was more influential to criminal behavior than heredity. He argued that the term “criminal” was not inherently biological but rooted firmly in cultural definitions. Because crime is socially constructed and because criminals take many shapes,

We cannot expect to discover in a group... any distinctive biological characters which we can regard as indicating a criminal disposition; and in the absence of such characters we cannot connect thieving with any particular sort of stock.<sup>21</sup>

He acknowledged that some delinquents were congenitally defective, but disagreed with Davenport’s conclusions that this indicated flawed and dangerous heredity. He wrote “what may be inherited is not criminality but the incapacity to acquire the elements of good or social conduct”<sup>22</sup> and explained that sociological factors like poverty, lack of moral education, and bad family dynamics led to criminal behavior. In Sullivan’s view, eugenics should focus not on better breeding but on social welfare.

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<sup>19</sup> Charles Davenport, “Euthenics and Eugenics,” from *The Popular Science Monthly* in *Papers* (1904-14), 449.

<sup>20</sup> Davenport, “Euthenics and Eugenics,” 447.

<sup>21</sup> W. C. Sullivan, “Eugenics and Crime,” *Eugenic Review* 1, (1909): 113.

<sup>22</sup> Sullivan, “Eugenics and Crime”, 116.

These positions were not static and in fact often ran together. Indeed, Dr. W. Norwood East, in an article published by the *Eugenics Review*, wrote that “the casual relation between inherited physical and mental dispositions and crime is difficult to assess... it must be remembered always that crime results from a plurality of influences.”<sup>23</sup> Criminal parents often begat a criminal child, but whether the child’s path was determined by her biology or the environment in which she grew up was difficult to empirically prove.

For that reason, eugenicists and other social reformers focused much of their attention on juvenile offenders. “Too much attention has been lavished hitherto on the reclamation of the professional or habitual criminal,” wrote a contributor to the *British Medical Journal* in 1901.<sup>24</sup> Juvenile delinquents, rehabilitated before criminal habits could be formed, could be turned into productive members of society. Children and teenagers convicted of criminal behavior were often removed from their homes and sent to reform schools. Their treatments included technical training for future employment, basic education, rewards for good work and behavior, and physical drills. The stated goal of the interventions was to “cut off the supply of recruits for the habitual criminal class,”<sup>25</sup> though it is unclear how successful these efforts proved to be.

Juvenile offenders were dangerous for another reason: they were about to become sexually mature and were already unable to resist temptation. Major Leonard Darwin, the president of the British Eugenics Society and son of Charles Darwin, believed that criminals should be segregated “during the period of their fertility” in order to prevent the undesirable consequence of future criminals. The British Eugenics Society was in favor of segregating

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<sup>23</sup> W. Norwood East, “Hereditry and Crime: Blood Tests and Inheritance in Law,” *Eugenics Review* 20, (1928): 169.

<sup>24</sup> “The Repression of Crime,” *British Medical Journal* 2, no. 2127 (1901): 993

<sup>25</sup> “The Repression of Crime,” 993.

mentally deficient criminals from the population during their reproductive years, though Darwin failed to provide a way to round up these wayward youths and how to pay for their lengthy imprisonment. He also acknowledges that “the prolonged segregation... on eugenic grounds” of the “weak, stupid, or otherwise worthless” individual who had not been convicted of any crime was unpopular among the public.<sup>26</sup> Of course, many of the so-called weak, stupid, and worthless people often found themselves under governmental authority despite the lack of eugenic policies.

Reformatories, prisons, and state-run hospitals were critical to the control of deviant classes of people. Isolating defective people not only kept them from creating chaos but prevented them from reproducing. Because these classes of people were believed to be incapable of or unwilling to consider the consequences of having children, eugenicists believed they needed to be sequestered away. Eugenic organizations like the Human Betterment Foundation found that the birth rate of families that received public aid was 50% higher than “self-supporting families” and children in state institutions for the feeble-minded came from homes that reproduced at twice the rate of the general public.<sup>27</sup> To eugenicists and concerned citizens alike, it was clear that degenerate, feeble-minded, criminal, poverty-stricken and idiotic individuals were a threat to society and should be separated from the mainstream culture.

However, housing and treating mentally deficient patients and prisoners was an enormous burden on the state. As the American population in prisons, asylums, and other state-run institutions increased, so did the cost of maintaining those facilities. According to Chicago surgeon Albert Ochsner, statistics compiled by the government in 1915 found that

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<sup>26</sup> Leonard Darwin, “The Habitual Criminal,” *Eugenic Review* 6, (1914): 212.

<sup>27</sup> Human Betterment Foundation, *Human Sterilization Today*, 2.

\$89,189,000 was spent by the government to maintain poorhouses, state hospitals, prisons, and asylums.<sup>28</sup> By 1925, that number increased to \$162,469,000.<sup>29</sup> Ezra Gosney, a philanthropist and the founder of the Human Betterment Foundation, estimated “the civilized world was paying \$5,000,000,000 annually” to care for defective members of society.<sup>30</sup> Obviously, this money could be better spent, though again there was disagreement about what needed attention. Leonard Darwin believed that social reform led to harmful eugenic consequences. Public health campaigns like clean running water or disease education made it easier for defective people to survive and propagate. Though public health departments were taking up the challenge of race betterment by enacting marriage laws and encouraging better families,<sup>31</sup> Major Darwin believed environmental reforms “with their agreeable immediate results” were less effective and less important than “eugenics reforms which are intended only to benefit posterity.”<sup>32</sup>

The most effective way, then, to benefit posterity was to prevent defective people from being able to reproduce at all. Since isolation was expensive and rehabilitation often unsuccessful, one option remained.<sup>33</sup> Sterilization emerged as the treatment of choice by almost all eugenicists. It served a dual purpose of treating the condition and preventing the

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<sup>28</sup> The source does not specify the level of government that was paying hundreds of thousands of dollars to care for the nation’s underprivileged.

<sup>29</sup> Albert J. Oschsner, “The Surgical Treatment of Habitual Criminals, Imbeciles, Perverts, Paupers, Morons, Epileptics and Degenerates,” *Annals of Surgery* (Sept. 1925): 322

<sup>30</sup> E. S. Gosney and Paul Popenoe, *Sterilization for Human Betterment: A Summary of Results of 6,000 Operations in California, 1909-1929* (Pasadena, California: Human Betterment Foundation, 1929), viii.

<sup>31</sup> H. W. Austin, “What the United States Public Health Service is Doing for Race Betterment”, *Official Proceedings of the National Conference on Race Betterment 1*, (1914): 386.

<sup>32</sup> Darwin, “The Habitual Criminal,” 205.

<sup>33</sup> Or at least, the only realistic option. According to an article in the Washington Post, New York Judge George Holt advocated that habitual criminals should be put death. The author of the piece did not agree. In another newspaper story, a plastic surgeon insisted that he could cure habitual criminals with a face life because “the strange connection between facial configurations and criminalities” was well established. See “The Habitual Criminal,” *The Washington Post* (Washington DC), July 17, 1910 and “Pretty Up Criminals to Reform ‘em, Says Dr. Aufrecht,” *Boston Daily Globe* (Boston, MA), May 29, 1927.

growth of degenerate classes. Based mostly in animal husbandry and horticulture experiments, this science equated “degenerate” people to animals. Like a raging bull turned into a placid steer following castration, eugenicists hypothesized that so too would a violent lunatic regain control of his senses. Furthermore, as selectively bred animals produced healthier offspring, so would the human race if undesirable members ceased reproduction.

Theoretically, sterilization seemed like a magic bullet. In practice, it was not as successful. An article in the *California State Journal of Medicine* advocated for the use of vasectomies to improve the mental condition of the afflicted, prevent future violence, and to protect mankind “against the transmission by heredity of morbid and vicious elements of ... tendencies which add so much to the world’s misery and human disgrace.”<sup>34</sup> Compared to castration (the main form of sterilization prior to vasectomies), this new surgery was “shown to be free from the dreaded after effects, mental depression and hypochondria which in the past... were attributed to the excision of the testes.”<sup>35</sup> Albert Oschner stated in his presidential address to the American Surgical Association that doctors in California found vasectomies in their state asylums resulted in “marked improvement in the mental condition” of patients.<sup>36</sup> Indiana physicians were less optimistic. They had “never seen any unfavorable symptoms in mental or nervous conditions, while [the doctor] has noted improvement in the condition of some patients.”<sup>37</sup> But just because bad symptoms were not observed does not mean they didn’t exist.

It is difficult to know how patients experienced sterilization procedures. The Human

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<sup>34</sup> C. N. Ellinwood, “Vasectomy,” *California State Journal of Medicine* 2, no. 2 (1904): 60.

<sup>35</sup> Ellinwood, “Vasectomy,” 60.

<sup>36</sup> Oschner, “The Surgical Treatment,” 324.

<sup>37</sup> Oschner, “The Surgical Treatment,” 325.

Betterment Foundation published a study in 1929 entitled “Sterilization for Human Betterment”. In an effort to sway public opinion to favor eugenic policies, it examined the 6,255 sterilizations in California between 1909 and 1929.<sup>38</sup> The two authors, both avid proponents of eugenic intervention, interviewed patients, relatives, and parole officers to determine whether or not the operations were successful. They found that most patients who volunteered to be sterilized were satisfied with the procedure and that it was a “source of great relief.”<sup>39</sup> Among those who had undergone compulsory sterilizations in state institutions, “there [was] naturally not quite such unanimity of feeling.” Popenoe and Gosney contacted 173 former patients and found that six out of seven “were either well pleased or not dissatisfied” while the remainder “were regretful.” The investigators explained the discontent by noting that these people were “still more or less disturbed mentally... they [found the surgery] as good an excuse as any to give vent to the feelings of persecution which animate many of the victims of such diseases.”<sup>40</sup> Gosney and Popenoe concluded that the vast majority of sterilized patients, along with their families and parole officers, were grateful for the surgery.

It is important to note that in California, sterilization was often a requirement for a patient to be able to leave the institution. Consent was required in nearly all sterilizations. If the patient was not able to consent to the procedure, closest relatives were contacted. For one out of every six patients admitted to state-run institutions in California, written consent was provided by family members.<sup>41</sup> The issue of consent was critical to the success of eugenic

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<sup>38</sup> Gosney and Popoenoe, “Sterilization for Human Betterment,” 29.

<sup>39</sup> Gosney and Popoenoe, “Sterilization for Human Betterment,” 30.

<sup>40</sup> Gosney and Popoenoe, “Sterilization for Human Betterment,” 32.

<sup>41</sup> Human Betterment Foundation, *Human Sterilization Today*, 5.

laws. Eugenicists repeatedly emphasized that sterilization was in no way punitive. In the past and across the nation, violent sexual offenders had often been castrated. These laws were struck down as unconstitutional for a number of reasons: besides being “repulsive” and interfering with “the criminal’s right of enjoyment of ‘life, liberty, and the pursuit of happiness,’” castration was considered “a cruel and unusual form of punishment.”<sup>42</sup> Sterilization was, in the mind of eugenicists, a superior alternative. Not only did it prevent deformity and allow for a sexual life (though without the possibility of reproduction), it could be applied to non-criminal classes instead of solely convicted rapists.<sup>43</sup> Because compulsory sterilization could be applied to more types of people, it became a tremendously popular solution to many social ills.

### **Section Three: Sterilization in Michigan**

In order to understand both the consequences of criminal definitions and of eugenic intervention, it is useful to look at a particular state as a case study. Michigan, the seventh state to pass sterilization legislation,<sup>44</sup> demonstrates the ways in which sterilization failed to address the issues in question. The Michigan statute, which allowed sterilization in institutions run with public funds, did not specifically address criminality and was not as successful as similar pieces of legislation in California and Indiana. Indeed, it was declared unconstitutional within five years of its creation.<sup>45</sup> Two public institutions, the Michigan State Prison (later, the Jackson Prison) and the Ionia State Asylum (later Ionia State

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<sup>42</sup> “Ochsner, “The Surgical Treatment,” 321.

<sup>43</sup> “Ochsner, “The Surgical Treatment,” 323.

<sup>44</sup> Harry Laughlin, *Eugenical Sterilization in the United States* (Chicago: Psychopathic Laboratory of the Municipal Court, December, 1922).

<sup>45</sup> Laughlin, *Eugenical Sterilization*, 143.



Hospital), offer interesting case studies with which to examine the ways in which habitual and instinctive criminality were understood by real people.

The Michigan State Prison was first erected in 1837 and housed thirty-five inmates in the first year.<sup>46</sup> Despite prison breaks and dilapidated buildings, the prison continued to grow over the next fifty years, getting so big that cots were placed in the corridors. Inmates were treated, educated, and employed in local mines and at the twine factory in order to develop skills and promote societal ideals. The goal of these procedures was to rehabilitate inmates for life outside the prison walls. Though it focused on the eventual reintegration of prisoners into society, the Michigan State Prison was working much as it had for the past fifty years. Eventually, changing notions about the science of crime arrived in Jackson.

H. F. Hatch became the first reformist warden of the Michigan State Prison in 1885. He believed “that all men convicted of crime should be sentenced indefinitely, and paroled when adjusted to the requirements of free society.”<sup>47</sup> Though this was never accomplished, it reflects the influence of eugenic ideas on the warden. Instead of a sentence determined by judges based on the facts of the crime, eugenic advocates would argue people convicted of crimes should be taken off the street until their behavior demonstrated an ability to live by societal standards. The focus on rehabilitation was widely criticized because it did away with “the terrors of prison and... encourage[d] crime.”<sup>48</sup> However, when examining the policies from a eugenics perspective, it’s clear that Hatch thought criminals driven by passion or economic hardship (those who already fit into society but had briefly deviated) would return to their communities. Instinctive, insane, and habitual criminals, all considered unable to be

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<sup>46</sup> Michigan State Prison, *The Michigan State Prison: Jackson 1837-1928* (Jackson, Michigan: Michigan State Prison Print, 1928), 13.

<sup>47</sup> Michigan State Prison, *The Michigan State Prison*, 47.

<sup>48</sup> Michigan State Prison, *The Michigan State Prison*, 49.

rehabilitated, would never leave the prison walls and thus society would be protected from their degenerative ways.

The Michigan State Prisoner Records provide statistics that serve as a microcosm of criminological and eugenical theories about criminality. I went through prisoner record books from July 3<sup>rd</sup>, 1900 to November 10<sup>th</sup>, 1916 and tracked prisoners who were, at one time or another, transferred to the Ionia State Asylum. I recorded their prisoner number, their date of incarceration and sentence time, their age, race, criminal history (when provided), their conviction, and the dates during which they were at the asylum. Due to restrictions in the archive, I was unable to examine Ionia State Hospital's records of the men in question, though the records do exist. However, by matching the prisoner with the patient through dates of institutionalization, the conviction, and at age of the patient, it is possible to determine their conviction. The annual reports of the asylum provide tables and charts from which information can be pulled about their conditions and prognosis.

During this period, 3,743 convicts entered the Jackson State Prison. 141 of these men were sent at least once to the Ionia State Hospital.<sup>49</sup> This amounts to approximately 4% of the new arrivals. In each book of records, approximately 35 offenders became patients.<sup>50</sup> I hypothesize that specific number corresponds with the number of beds available for Michigan State prisoners, though I have been unable to confirm this suspicion.

The prisoners-turned-patients had been convicted of a variety of crimes that can be divided into violent and property crimes. The asylum housed murderers and rapists along with burglars and horse thieves. Common stereotypes about asylums, especially ones housing

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<sup>49</sup> 36 prisoners were transferred between July 1900 and May 1905, 32 between May 1905 and July 1909, 37 between May 1909 and December 1913, and 36 between December 1913 and November 1916.

<sup>50</sup> Michigan State Prison, "Record of Prisoners" (Archives of Michigan, Michigan Historical Center, 1905-1916), Volume 46-9.

the criminally insane, would assume that all inmates were homicidal and unstable. However, within each record book, approximately 50% of patients were convicted of property crime.<sup>51</sup> Violent criminals were more likely to be transferred to Ionia Hospital with no previous convictions while thieves typically had been convicted at least three times. Habitual criminals were more likely than not to be thieves, robbers, and burglars.

The prison also collected the race of each prisoner – though race, in this case, means ethnicity. In the sixteen years examined, there was a distinct shift in the ethnic makeup of the Michigan State prisoners sent to Ionia. Within the first book, only one prisoner was not either American or Western European. By the final book, thirteen of the thirty-six were of either Eastern or Southern European heritage.<sup>52</sup> It's unclear whether these men were immigrants themselves or the children of immigrants, but the increase of non-American asylum patients and prisoners was alarming to many nativist thinkers. It's difficult to say whether the change in the ethnicities of patients is due to stereotypes about the hoards of degenerate immigrants flooding the United States or if the stereotypes developed from the change in population. Either way, the shift in demographics of the Michigan State Prison reflects nativist fears about an increasing segment of the population made most of degenerate, feeble-minded, criminals.

Unlike Indiana, Michigan laws at the time did not specify a punishment for habitual criminals. The Michigan State Prison records show that even men with over ten convictions had a set release date.<sup>53</sup> It is unclear whether prisoners sent to an institution while incarcerated were able to leave once their sentence ended, or if patients found not guilty by

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<sup>51</sup> Michigan State Prison, "Record of Prisoners," Volume 46-9.

<sup>52</sup> Michigan State Prison, "Record of Prisoners," Volume 46-9.

<sup>53</sup> Michigan State Prison, "Record of Prisoners," Volume 46-9.

reason of insanity had to remain in the asylum until they recovered. Despite the gaps in the legal record, Michigan was one of the first states to propose legislation that would allow the castration of certain types of criminals and degenerates, but it did not pass.<sup>54</sup> In 1913, Michigan became the seventh state to legalize the sterilization of certain groups of people.

Michigan Act 34 authorized “the sterilization of mentally defective persons maintained wholly or in part by public expense in public institutions.”<sup>55</sup> Public institutions, asylums, reformatory schools, hospitals, and prisons were, by law, permitted to perform vasectomies or salpingectomies, the removal of the fallopian tubes. However, the only person sterilized before the law was repealed was a patient at the Psychopathic State Hospital in Ann Arbor.<sup>56</sup> According to the superintendent of the Eugenics Records Office, Harry Laughlin, authorities in Michigan “considered the sterilization law as of doubtful constitutionality from the first” and allowed only one test case.<sup>57</sup>

This is not to say that Michigan physicians, wardens, and psychiatrists thought the law was a bad idea. In fact, Dr. Munson, the medical superintendent of the Traverse City State Hospital wrote “I do not regard sterilization as of any value except with reference to patients who are likely to leave the hospital...those [patients] of procreative age about to be discharged might rightfully be considered with great care and some should doubtless be sterilized.”<sup>58</sup> In other words, Dr. Munson did not believe sterilization to be therapeutic in nature. It was only a means to prevent the spread of undesirable traits. However, Laughlin

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<sup>54</sup> Jeffery Alan Hodges, “Dealing with degeneracy: Michigan eugenics in context,” (Ph.D. Dissertation, Michigan State University, 2001), pg. 45

<sup>55</sup> Laughlin, *Eugenical Sterilization*, 57.

<sup>56</sup> Laughlin, *Eugenical Sterilization*, 73.

<sup>57</sup> Laughlin, *Eugenical Sterilization*, 73.

<sup>58</sup> Laughlin, *Eugenical Sterilization*, 74.

notes that the Michigan law was not meant to be punitive in nature nor did it directly reference criminals or criminalistics tendencies.<sup>59</sup>

In 1918, the Michigan Supreme Court declared Act 34 unconstitutional. *Nora Reynolds vs. H. A. Haynes* found that the statute denied equal protection of the law.<sup>60</sup> Nora Reynolds was a feeble minded woman institutionalized in the Michigan Home and Training School and was scheduled to be sterilized in 1913. Her court appointed guardian protested the decision and the local probate court found that the statute was unconstitutional.<sup>61</sup> The Michigan Home and Training School was one of the only Michigan public institutions that petitioned for the sterilization of its patients. Medical superintendent Dr. H. A. Haynes, the defendant, wrote that he “petitioned to have a number of our patients operated upon, as provided by the sterilization law, but their parents or guardians objected.”<sup>62</sup> The Michigan Supreme Court declined to comment on whether or not the medico-legal aspects of the law were sound. Instead, it stated that it is unconstitutional to divide one class of people into two groups and apply different laws to each side. Because the law only applied to mentally defective people held in state-run institutions and not to all mentally defective Michiganders, it was unconstitutional.<sup>63</sup>

In 1923, the Michigan legislature retooled the 1913 statute. The new law applied to idiots, imbeciles, and the feeble-minded but not the insane. It also specifically handled the issue brought up by the Michigan Supreme Court by including not only patients housed in

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<sup>59</sup> Laughlin, *Eugenical Sterilization*, 118.

<sup>60</sup> Laughlin, *Eugenical Sterilization*, 143.

<sup>61</sup> *Haynes v Lapeer Circuit Judge*, 201 Mich 138, 142; 166 NW 938 (1918).

<sup>62</sup> Laughlin, *Eugenical Sterilization*, 74.

<sup>63</sup> Laughlin, *Eugenical Sterilization*, 214.

state institutions but those at large.<sup>64</sup> In 1929, the law was amended to include the insane, epileptic, moral degenerates and sexual perverts.<sup>65</sup> No version had any provisions about criminals or those likely to be victims of instinctive or habitual criminality. However, state institutions like prisons could feasibly sterilize patients if they fit the aforementioned classifications on top of their status as prisoners.

The Human Betterment Foundation found that by 1936, Jackson Prison (formerly the Michigan State Prison) had performed “one castration and six sterilization on feebleminded inmates, with another seven vasectomies on ‘others,’ presumably sex offenders.”<sup>66</sup> Interestingly, the official history of the Michigan State Prison, published in 1928, makes absolutely no mention of sterilization, either in practice or in law. It is likely that the fourteen procedures occurred after the 1929 expansion, but it’s interesting that even the earlier pieces of legislation warranted no official response.

Because Michigan eugenic law made no mention of imprisoned criminals, it may be more useful to examine an institution whose patients were always under the threat of sterilization. In 1885, the Michigan Asylum for Insane Criminals was opened in Ionia, Michigan. Because not all patients were criminals, within a few years the name was changed to the Ionia State Hospital. It housed insane felons, sexual psychopaths, insane prisoners from other prisons, and those charged with a crime but acquitted due to insanity.

The only annual reports available from the Ionia State Asylum are from 1898 to 1920. Within the reports are a number of tables that detail the population of the hospital. The most pertinent tables are the ones that show the number of convicts and ex-convicts transferred to

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<sup>64</sup> Julius Paul, "Three Generations of Imbeciles Are Enough: State Eugenic Sterilization Laws in American Thought and Practice," (Washington, D.C.: Walter Reed Army Institute of Research, 1965), 372.

<sup>65</sup> Hodges, “Dealing with degeneracy,” 141.

<sup>66</sup> Hodges, “Dealing with degeneracy,” 170.

the asylum, the tables that detail the form of insanity for patients deemed insane or dangerous, the tables that show the nativity of patients and their parents, and finally, the tables that show the result of treatments.<sup>67</sup> These four groups of tables demonstrated what types of criminals were arriving in the Ionia Asylum and their treatment outcomes.

Between 1898 and 1900, seventy prisoners were transferred from various Michigan correctional institutions. Twenty of them were from the Michigan State Prison. Eighteen of the seventy had been convicted of theft-related crime, which amounts to 25% of the patients.<sup>68</sup> Unfortunately, this table does not list the diagnoses of the patients. However, other tables show that one patient convicted of burglary was diagnosed with melancholia passiva. According to an 1908 volume of the Vermont Medical Monthly, patients suffering from melancholia passive “lie in bed like an inert mass... the movements are apathetic and clearly show mental inhibition.”<sup>69</sup> This particular patient was unable to undertake their defense by reason of insanity and had been sent to the Ionia Asylum until restored to reason.<sup>70</sup> Without clear diagnoses of all the thieves sent to Ionia, it is difficult to definitely classify them as habitual criminals. The records from the prison itself, which record past convictions, do not clearly match up with the new patients. However, the large number of thieves and the melancholic patient demonstrate that mental illness and criminal behavior often went together.

Within this same period, thirty-eight patients were discharged. Three treatment results were possible: cured, improved, and unimproved. Seventeen patients were unimproved and

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<sup>67</sup> Authority, *Reports of Trustees and Medical Superintendent of the State Asylum at Ionia, Michigan for the Biennial Period Ending June 30, 1900-1916* (Lansing, Michigan: Robert Smith Printing Company, 1901-1919)

<sup>68</sup> Authority, *Report of Trustees... 1900*, 12-13.

<sup>69</sup> Walter Berry, “Considerations Regarding the Etiology, Symptoms and Treatment of Melancholia,” *Vermont Medical Monthly* 14-15, 1 (1908), 111.

<sup>70</sup> Authority, *Report of Trustees... 1900*, 16.

sixteen of the group either died or escaped.<sup>71</sup> Only one unimproved patient was discharged. Two patients improved and one was discharged while the other eloped. Finally, eighteen patients were cured. They were either discharged or returned to the Michigan State Prison.<sup>72</sup> One of the cured and discharged patients had suffered from moral insanity, a disorder closely related to various forms of habitual criminality. Again, the chart provides interesting insight but fails to link treatment outcome and disease with the crime the patient committed. Therefore, we don't know how many of the thirty-eight discharged patients were thieves.

In 1908, eleven patients were unable to stand trial due to their mental illnesses. Only one had been convicted of larcenous activity. His diagnosis was moral imbecility, a disorder that implies the patient was unable to make reasoned moral decisions and was too unintelligent to develop those skills due to hereditary degeneration.<sup>73</sup> Seventy-five patients were admitted between 1906 and 1908 from prisons and reformatories; twenty-one were thieves. Fourteen were transferred from the Michigan State Prison.<sup>74</sup> This data again only provides a partial picture of the relationship between larceny and mental illness. What's telling is diagnoses that match up with academic discussions of free will, irresistible impulses, and criminal responsibility.

The medical superintendent, Oscar Long, died suddenly in the beginning of 1914. After his passing, the annual reports began categorizing information in new ways. During the biennial period of 1912 and 1914, a new category of insanity emerges in the tables.

Psychopathic personality disorders were broken down into two categories: habitual criminal

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<sup>71</sup> Authority, *Report of Trustees... 1900*, 30.

<sup>72</sup> Authority, *Report of Trustees... 1900*, 28.

<sup>73</sup> Charles Mills, "Some Forms of Insanity and Quasi-Insanity in Children," *The Medical and Surgical Reporter* 69, (1893), 325.

<sup>74</sup> Authority, *Report of Trustees... 1908*, 12-13.



and moral insanity. Seven male habitual criminals were admitted during this period and eight were discharged.<sup>75</sup> Two morally insane men and one morally insane woman were admitted and three morally insane men discharged in the same period.<sup>76</sup> Of the eight discharged habitual criminals, five had fully recovered, one improved, and two were unimproved. Of the three discharged morally insane patients, two recovered while the third died.<sup>77</sup> These records are indicative of a change in medical rhetoric within the Ionia State Asylum. Changing the categorization of inmates implies a change in diagnoses and treatment options. It is also telling that the majority of habitual criminals and morally insane patients had fully recovered, especially since this is opposition to much of the literature previously discussed. Data shows that most patients who improved or recovered were between the ages of 20 and 29 and had been treated in the asylum for at least two years.<sup>78</sup>

Between the Michigan State Prison and the Ionia State Hospital, eugenic policies greatly influenced the lives of Michigan's mentally ill criminals. Though neither institution sterilized any patients until 1929, the medical superintendents and physicians at both believed strongly in the effectiveness of sterilization as a preventative measure. It is unclear whether the sterilizations were a condition of release or if they were thought to be therapeutic to patients and prisoners still institutionalized.

Criminal behavior based on biological influences was a major concern for many middle-class Americans. Treatment options were slim, of questionable effectiveness, and relatively unpopular. Habitual criminality, many realized, was difficult to define. It could be

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<sup>75</sup> Authority, *Report of Trustees...* 1914, 9.

<sup>76</sup> Authority, *Report of Trustees...* 1914, 9.

<sup>77</sup> Authority, *Report of Trustees...* 1914, 15.

<sup>78</sup> Authority, *Report of Trustees...* 1914, 16.

caused by inborn defects or by external stimulus. It manifested itself as irrational behavior or as survival instincts. Kleptomania, thought to be distinctly different from habitual criminality, was in fact a subset of the larger whole. Even as perceptions about habitual criminality and moral insanity changed over time, there were still marked differences between academic discussions and public discourse. Who was diagnosed with what was determined by status, gender, and the legal system.



### **CHAPTER THREE: A Comparison of Two Disorders**

Kleptomania and habitual criminality were more similar than different. Both described medical or biological explanations for criminal behavior. Both were defined by the absence of free will and the inability to deny negative impulses. However, criminal acts driven by kleptomania rarely produced punitive legal consequences. If and when court decisions were handed down, kleptomaniacs never went to prison. Instead, they were institutionalized, treated, and then released. Habitual criminality, though thought by some to be rooted in biology, was not considered a disease, but nonetheless often resulted in medical or surgical intervention.

Habitual criminals were ultimately defined by the number of crimes they were convicted of. For instance, the Indiana legislature in 1908 arbitrarily decided that three felony convictions made someone a habitual criminal and sentenced them to life in prison. The debate regarding biology, heredity, and the irresistible impulse to commit crime didn't affect the law. Kleptomania, on the other hand, was characterized by the fact that the disorder did not lead to a criminal conviction. Instead, kleptomaniacs were often found guilty, not of the theft in particular but of being a victim of the disease. Kleptomaniacs were then institutionalized but the guilty verdicts did not count as convictions and did not count as a strike towards a classification as a habitual criminal. Therefore, the only difference between kleptomania and criminal heredity was based on legal consequences.

Judges, lawyers, and legal professionals had a tremendous amount of discretion when it came to classifying kleptomaniacs and habitual criminals. These men could judge whether the crime was conventional and understandable or if it was the product of mental instability. Debates about biological crime or inherited deviousness were interesting but not relevant,

while irresponsibility and mental defectiveness were. Legal and medical professionals assigned labels to patients based on their social standing and the conventionality of their crimes. Diagnoses of kleptomania depended on strange behavior by upper class people without resulting in a criminal conviction.

### **Section One: Kleptomania**

It was rare for kleptomaniacs to go to trial. Fathers, husbands, or other family members tended to pay off shopkeepers who had been robbed of expensive wares. In other cases, families sent their larcenous loved ones to asylums and hospitals. In the rare event that a kleptomaniac was brought to trial, convictions were unheard of. Instead, the defendant was either found not guilty by reason of insanity, or found guilty of being a kleptomaniac. While both outcomes resulted in institutionalization, kleptomaniacs were not found guilty of the crime in question. Perhaps guilt can be assumed, but legally, the nature of the disease removed personal responsibility from the equation entirely. Kleptomania was a psychological condition that produced crime without producing conviction.

While kleptomania was not limited to upper class women, as many stereotypes of the time insist, those who were successful in claiming kleptomania were often either women or upper class men, those above suspicion. These defendants proved their innocence by linking irrational behavior irresistible impulses, and irrationality often hinged on social status. If Mrs. Castle could afford to buy the furs, why would she steal them? If convictions determined habitual criminals, then institutionalizations marked kleptomaniacs while reaffirming their place in the social hierarchy. The very nature of kleptomania blended the lines between disease and criminality, with legal definitions tied intimately to physical and psychological causes and medical definitions rooted in legal codes. This confusion made it

possible for eccentric behaviors to become medical oddities and for kleptomaniacs to get away with criminal behavior.

As has been previously established, a diagnosis of kleptomania typically went hand in hand with moral insanity and problems controlling irresistible impulses. However, medical experts were conflicted about the relationship between these different factors. In an 1887 report by the Association of Medical Superintendents of American Institutions for the Insane, the medical superintendents debated the question “Are Dipsomania, Kleptomania, Pyromania, etc., valid forms of mental disease?”<sup>1</sup> Some doctors held that manias were indeed forms of insanity, because they were types of uncontrollable desires. Dr. Evarts from Cincinnati, who worked extensively with dipsomaniacs (alcoholics), “had never seen such a person who did not have other mental weaknesses.” Other doctors didn’t believe kleptomaniacs to be insane. Instead, “they were imperfectly developed morally, and that they do not steal, but simply reach for what they see, not because they want it, but from an uncontrollable disposition to acquire property.”<sup>2</sup> For some, kleptomaniacs were insane *because* they were victims of irresistible impulses. For others, they were not insane *despite* their uncontrollable impulses.

Uncontrollable impulses and an underdeveloped sense of morality were particularly difficult to prove in courts of law. How could a defendant demonstrate to a judge or jury that her actions were beyond her control? How could a lawyer prove that his client was suffering from a moral perversion? The standard way to do this was to demonstrate a history of eccentricity or unconventionality. No rational person would steal a single shoe or teaspoons.

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<sup>1</sup> “Association of Medical Superintendents of American Institutions for the Insane,” *Medical and Surgical Reporter*, (Philadelphia, PA), Jul. 9, 1887.

<sup>2</sup> “Association of Medical Superintendents,” Jul. 9, 1887

These actions that made no sense and therefore had to be the result of uncontrollable desire. Likewise, a history of mental imbalance and strange behavior could be used to explain irrational theft.

Newspapers provide the best glimpse into the experiences of kleptomaniacs and the audience witnessing their escapades. Reporters wrote about sensational stories and kleptomania-induced crimes that seemed nothing short of scandalous to readers.<sup>3</sup> Crimes driven by compulsion were fascinating for a multitude of reasons. President Andrew Garfield was assassinated by Charles Guiteau in 1881. Guiteau's insanity defense called to attention issues of mental illness and the law. Following Guiteau's execution, issues involving knowing right from wrong became widely discussed and debated in the legal and medical fields. Another explanation could be criticisms against wealthy Americans during the Gilded Age.<sup>4</sup> As the rich grew wealthier off the backs of the poor, class resentment bubbled to the surface. Kleptomania appeared to many to be a convenient excuse for the wealthy to avoid a prison sentence. But perhaps the most immediate reason was that kleptomania was a strange phenomenon that defied conventional logic.

Scandalous stories about kleptomaniacs often featured young, recently engaged women. Nellie Moore, engaged to seven different men in a span of six years, was declared a kleptomaniac after stealing wedding clothes in Wichita, Kansas. Her disorder would only influence her behavior a few weeks before each wedding date, during which she would steal parts of her trousseau and keep the money designated for that purpose. "This sad form of kleptomania" not only led her fiancés to abandon her days before each ceremony, but also

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<sup>3</sup> "Is Crime A Disease?" *The Tombstone Weekly Epitaph*, (Tombstone, AZ) March 15, 1890.

<sup>4</sup> For examples of the rhetoric about kleptomania as a rich man's excuse, see "Kleptomania Increasing," *The Oregonian* (Portland, OR), March 28, 1895 or "Kleptomania Does Not Exist," *New York Sun*, (New York, NY), June 20, 1888.

“drove her mother to the grave and caused her father to spend all his fortune getting her out of scrapes.”<sup>5</sup> Eventually, her father had enough and had her institutionalized. Four of her fiancés left her once her compulsion came to light, one man died of grief after hearing what she did, and the last one “assisted in her prosecution and testified that she was insane.”<sup>6</sup> Nellie Moore was committed to an asylum without being sentenced to do so by a judge. She was tried in a court of law but the article does not say what the trial uncovered or decided, but it can be assumed that Miss Moore’s disorder led to her being declared not guilty by reason of insanity.

Bertie White of Dallas, Texas was also accused of kleptomania after ordering but failing to pay for her trousseau. A recently engaged society belle and member of a prominent Dallas family, Miss White had a “remarkable case of kleptomania.” Her mania “to be possessed of riches... led her into numerous scrapes, but the prominence of her relatives and prompt payment for all goods... always kept her depredations from the public.”<sup>7</sup> While visiting an uncle in Rockwall county, she stole \$2,100 from a trunk, set it on fire, and escaped in a buggy. Her family discovered the burning trunk and her disappearance and set out after her. When she realized she would be caught, she tried to hide all the money in a nearby springhouse, but was caught and the money returned to her uncle. After this incident, “the girl’s parents then decided to sent her to the asylum for treatment.” It seems she was never taken to trial.

Wayward girls, especially those raised to be good wives and mothers, posed a threat

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<sup>5</sup> “Stole Six Trousseaus: Kansas Girl’s Kleptomania Took Queer Form,” *St. Louis Post-Dispatch* (St. Louis, MO), May 7, 1899.

<sup>6</sup> Stole Six Trousseaus,” May 7, 1899.

<sup>7</sup> “A Victim of Kleptomania” *The Atlanta Constitution* (Atlanta, GA), Nov. 29, 1891.



to well-ordered society. Eugenic marriage laws, introduced in Connecticut in 1895, served to limit who could participate in the institution of marriage. By 1929, imbeciles, idiots, lunatics, the feeble minded, the mentally unsound, and those with venereal diseases were prevented from marrying in nineteen states.<sup>8</sup> Indeed, eugenicists like Charles Davenport actively campaigned for State Eugenics Boards to certify that all marriages fulfilled their eugenic purpose to prevent the propagation of bad blood while encouraging the spread of favorable traits.<sup>9</sup> Compulsive stealing was a strange behavior, but whether or not it should prohibit marriage was a more complicated issue. At least two state supreme courts heard cases involving kleptomania as grounds for divorce. A Minnesota man argued that his wife had “a morbid propensity to steal, . . . that she had this condition since the time of the marriage, and that her condition was unknown to him at the time” and the marriage should be annulled.<sup>10</sup> The Supreme Court of Minnesota disagreed, saying that

concealment or deception by one of the parties in respect to traits or defects of character, habits, temper, reputation, bodily health, and the like, was not sufficient ground for avoiding a marriage and that the parties were required to take the burden of informing themselves of these things, by acquaintance and satisfactory inquiry, before entering into a contract of the first importance to themselves and to society in general.<sup>11</sup>

A similar case plead before the Wisconsin Supreme Court came to the opposite conclusion. Again, a husband claimed that his wife had concealed her kleptomania from him, was mentally incompetent at the time of their marriage and he asked for an annulment. A lower court found that the wife’s disease rendered her incapable of understanding her vows

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<sup>8</sup> Matthew J. Lindsay, “Reproducing a Fit Citizenry: Dependency, Eugenics, and the Law of Marriage in the United States, 1860-1920” *Law and Social Inquiry* 23, no. 3, (1998), 541-585.

<sup>9</sup> Charles Davenport, “Medico-Legal Aspects of Eugenics” read before the Society of Medical Jurisprudence, April 13, 1914.

<sup>10</sup> 44 Minn. 124, 46 N.W. 323; 1890 Minn. LEXIS 306

<sup>11</sup> 44 Minn. 124, 46 N.W. 323; 1890 Minn. LEXIS 306

and granted an annulment. She appealed the decision. Supreme Court Justice Owen reversed and remanded the lower court's decision, essentially preventing divorce. In his opinion and citing Minnesota's *Lewis v. Lewis*, he wrote that the plaintiff (the husband) failed to adequately prove that his wife's disorder truly rendered her unable to make decisions for herself. Though he agreed that kleptomania was a serious illness, he thought "it would be dangerous, perhaps, as well as difficult, to prescribe the precise degree of mental vigor, soundness, and capacity" a person must exhibit to make clear decisions.

Not all kleptomaniacs were young wealthy women. Men accused of kleptomania were more likely to be taken to court, though not likely to be convicted. These men were also well connected and well established. Dr. F. C. Clark, a doctor in Atlanta, was brought before a judge in 1901 for compulsively stealing medical instruments. The first in his class at a medical school in Louisville, Kentucky, he had an irresistible impulse to steal that led him to be institutionalized in an Ohio asylum. He was judged to be a kleptomaniac and therefore insane and was institutionalized in the Midgeville Asylum.<sup>12</sup> Dr. Clark was charged with larceny and freely admitted his guilt. He said his actions were the result of a mania "because he did not need the stolen surgical instruments... he did not secrete the instruments when he stole them and would sell them almost anywhere and to anybody."<sup>13</sup> Though his status is not made explicitly clear in the article, it can be assumed that as first in his class, Dr. Clark was a relatively successful professional in Atlanta.

Another young man in Washington state had a similar story. Clyde B. Clancy, an interior decorator and nephew of a former United States Senator, was brought before a judge

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<sup>12</sup> "Dr. F. C. Clark Adjudged Insane: Victim of Kleptomania Tried Before Ordinary Wilkinson Yesterday: Case is Very Pathetic One," *Atlanta Constitution* (Atlanta, GA), Feb. 27, 1901.

<sup>13</sup> "Dr. F. C. Clark Adjudged Insane," *Atlanta Constitution*, Feb. 27, 1901.

in Tacoma for “carrying out a systematic robbery” of rooms at the Hotel Lincoln.<sup>14</sup> He was “declared insane, a victim of kleptomania” and for the first time in the history of the state, “kleptomania [had] been declared sufficient ground for commitment to an insane asylum.”<sup>15</sup>

Since the only information about this case comes from a relatively short newspaper article, it’s difficult to determine the particulars of this case. Why was Mr. Clancy charged with kleptomania instead of breaking and entering or theft? What specifically marks his actions as kleptomaniac behavior? Perhaps the only reason is his social status and relationship to a prominent family. Indeed, neither the items he stole or the way in which he stole them were strange, irrational, or linked to mental illness. The only puzzling aspect to the crime is that Mr. Clancy was well-off and well-connected. A successful legal defense hinged upon proving that the defendant was acting under the influence of an irresistible impulse, but these articles conflate irrational behavior with irresistible impulses. A lack of need on the part of the defendant indicated an irrational choice and a lack of rational choice meant that the acts in question weren’t criminal. This was enough for kleptomania to stick.

Trustworthiness was a major factor in kleptomania diagnoses. While wealth frequently corresponded with credibility, so too did faithfully serving upper classes. In 1886, the *Cincinnati Enquirer* published a story about “the strange case of Eliza Armstrong Huddleson, who died recently in the Insane Hospital.”<sup>16</sup> For many years, she worked in Indianapolis as a maid for a local reverend. Throughout her service, the family found her “mild and amiable, and no one who knew her had ever suspected her of dishonesty,”<sup>17</sup> even

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<sup>14</sup> “Society Thief Declared Insane” *San Francisco Chronicle* (San Francisco, CA), Sept. 17, 1905.

<sup>15</sup> “Society Thief Declared Insane,” *San Francisco Chronicle*, Sept. 17, 1905.

<sup>16</sup> “Kleptomania: A Chance for Good Detective Work,” *Cincinnati Enquirer* (Cincinnati, OH), July 15, 1886.

<sup>17</sup> “Kleptomania: A Chance for Good Detective Work,” *Cincinnati Enquirer*, July 15, 1886.

as valuable items began to go missing. At one point, a check for \$17,000 disappeared much to the consternation of the family and still, Eliza was not a suspect.

Eliza eventually married and moved to Kansas. On a visit back to Indianapolis, Mr. Huddleson pulled aside the reverend and expressed some concern. He said that Eliza had begun acting strangely, “moody and melancholy, ... [exhibiting] signs of deep mental distress, bordering on insanity.”<sup>18</sup> The reverend’s wife gently asked Eliza what was troubling her and Eliza “then burst out crying, and amid hysterical sobs and wild professions of repentance, confessed that she had stole scores of articles from the wardrobe and pantry of her mistress, amounting in value to hundreds of dollars.”<sup>19</sup> Her former employer asked if Eliza had stolen the \$17,000. The reported then stated “from that moment the poor creature was hopelessly insane. She was immediately removed to the asylum at Indianapolis, where she died a year or two later.”<sup>20</sup>

Eliza Armstrong Huddleson was not convicted of any crime and was not sentenced by order of a judge to live the rest of her life in a state insane asylum. She was a working-class woman, not a wealthy society lady, which is in opposition to stereotypes at the time about kleptomaniacs. The story was compelling both because of the tremendous amount of missing money, but also because of Mrs. Huddleson’s status. Here was a kleptomaniac who was neither wealthy nor well-connected but still compulsively stealing. She was a trusted member of their domestic circle, indeed, beyond suspicion. A diagnosis of kleptomania implied that the victim was well-established and well-respected. While Eliza Huddleson was not established, she was a well-treated and well respected member of the household which made

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18 “Kleptomania: A Chance for Good Detective Work,” *Cincinnati Enquirer*, July 15, 1886.

19 “Kleptomania: A Chance for Good Detective Work,” *Cincinnati Enquirer*, July 15, 1886.

20 “Kleptomania: A Chance for Good Detective Work,” *Cincinnati Enquirer*, July 15, 1886.

her actions seem more irrational and therefore uncontrollable.

Finally, the case of Mrs. Barrett is more in line with traditional stories of kleptomania. There is no strange and scandalous crime spree, no deception or misdirection. There is only an older mentally ill woman in a courtroom. Mrs. Mary Barrett was charged with shoplifting in Toronto. After refusing to be tried by a jury, Mrs. Barrett was deemed not guilty by Judge McDougall. Testimony by her husband and adult daughters stated that Mrs. Barrett “was suffering mentally, was melancholy and despondent, and her mind had no appreciation of the future.”<sup>21</sup> Doctors also provided “important medical evidence.” They said that Mrs. Barrett was “mentally imbalanced and on the line between sanity and insanity.”<sup>22</sup> The judge found her not guilty by reason of temporary insanity and sent to the Toronto Asylum. This case is an interesting counterpoint to the ones discussed above. The article does not disclose any eccentric or dangerous behavior, doesn’t expose a strange compulsion to possess a common good. Mrs. Barrett was simply a mentally ill woman and in this case, her actions coupled with the testimony of her family and doctors were enough to result in institutionalization.

Ultimately, these various cases show two important things. The first is that medical professionals and legal experts were struggling to define and apply concepts of disease and mental illness to kleptomaniacs. As doctors debated whether or not kleptomania even counted as a form of insanity, judges and lawyers across the country were either equating kleptomania with criminal insanity and lack of responsibility or doing exactly the opposite. The second results from the trials, or lack thereof. People who were diagnosed with kleptomania and went to trial were more likely than not to be found crazy but not guilty.

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<sup>21</sup> “Mentally Unbalanced,” *The Globe* (Toronto, Canada), Mar. 3, 1898.

<sup>22</sup> “Mentally Unbalanced” *The Globe*, Mar. 3, 1898.

Most, though not all, of the patients were from well-connected families who could easily afford to either pay off store owners to avoid charges or to house their loved one in an asylum without a court injunction. Habitual criminals, on the other hand, defined by their conviction record, were not as lucky.

## **Section Two: Habitual Criminals**

Social scientists at the turn of the century were beginning to study the formation of habits: actions that by voluntary repetition soon became involuntary. Ivan Pavlov's experiments with the salivary glands of dogs demonstrated that behavior could be conditioned to produce an unconscious action. Philosopher and psychologist John Dewey wrote about the formation of habits in humans.

Habits may be profitably compared to physiological functions, like breathing, digesting. The latter are, to be sure, involuntary, while habits acquired. But important as is this difference for many purposes it should not conceal the fact that habits are like functions in many respects... The social environment acts through native impulses and speech and moral habitudes manifest themselves... All virtues and vices are habits which incorporate object forces.<sup>23</sup>

Dewey, an educator who focused on producing virtuous habits in children, thought habits formed by repeating behaviors until they became ingrained in the mind. Encouraging a student to be honest and dutiful would, after a time, become automatic. In the same vein, habitual criminals were individuals whose criminal tendencies were reinforced so often that they became internalized and involuntary. By this logic, habitual criminals were not in control of their actions in the same way as kleptomaniacs.

But instead of being treated in asylums and institutions with kleptomaniacs, habitual criminals were going to prison. According to legal scholar Charles Sorenson Jr., habitual

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<sup>23</sup> John Dewey, *Human Nature and Conduct: An Introduction to Social Psychology*, (New York: H. Holt and Company, 1922), 14-6.

criminals laws “are manifestations of society’s attempts to deal with the problems of criminal recidivism.”<sup>24</sup> The laws, which emerged at the same time as discussions about mental illness and biological criminality, exemplify the conflict between legal and medical discussions of habitual criminality. While medical experts explored the nuances of involuntary crime and hereditary degeneracy, working to create very specific categorizations of criminals, legal professionals in some cases did the opposite by lumping types of criminals together. Habitual criminal laws applied not only to biologically determined criminals, but to repeat offenders, chronic offenders, habitual offenders, and recidivists. All terms were used to describe men and women who were repeatedly convicted of felonies.

The variety of terminology to refer to the same phenomenon is distinctly different between kleptomania and habitual criminality. Both doctors and lawyers agreed on the definition of kleptomaniacs. There was no distinction between different types of compulsive thieves in the eyes of the law and the hospital. The same cannot be said for hereditary criminals. While doctors attempted to organize criminals and in that way, medicalize their behavior, lawyers were attempting to break down the medicalization of crime. Using different words to describe the same thing created instability and uncertainty in the mind of the public. According to doctors, habitual criminals were victims of uncontrollable criminal impulses, but what about recidivists or chronic offenders? The variability of language destabilized the medicalization of criminal behavior and encouraged legal, not medical, intervention.

The term ‘habitual offender’ has the longest history, with newspaper articles going back to 1710. Interestingly, most of the articles are from English-language newspapers from

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<sup>24</sup> Charles Sorenson Jr, “The Habitual Criminal Act: Quantity of Convictions Only?” *Nebraska Law Review* 59, no 2 (1979), 507.

English colonies.<sup>25</sup> Articles from the United States regarding habitual offenders are typically about legal cases that challenged the constitutionality of habitual offender acts. Laws like New York's 1926 Baumes law, which sentenced habitual offenders convicted of four felonies to life imprisonment without parole, were always held up by state supreme courts, even as defendants brought up issues of double jeopardy and equal protection.<sup>26</sup>

'Chronic offenders', a term with a special medical ring about it, was popular in the 1880s. Typically used to refer to alcoholics or people of color, chronic offenders met the same criteria as habitual criminals (most had been convicted repeatedly of felonies). Most newspaper reports on chronic offenders appear in the police blotter section, simply listing recent arrests.<sup>27</sup> In all mentions of chronic offenders, the treatment is jail time, though never with any mention to habitual criminal laws and their resulting life sentence. In the case of Ann Scott, a black woman who "spent two-thirds if not three-fourths of the past ten years in that place where the wicked cease, for a limited period, from troubling their neighbors,"<sup>28</sup> the judge spoke as a doctor, disappointed with a noncompliant patient. "I will do my best by you and send you up for at least the remainder of my term... I will continue to send you up to the extent of the law."<sup>29</sup>

Language about 'recidivists' exploded between 1900 and 1920 as social reformers began discussing the inadequate treatment and rehabilitation of American felons. Most concerning was the fact that so many incarcerated prisoners in various state institutions had been previously imprisoned. An article about the problem of recidivism in Massachusetts

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25 For example, see "Habitual Offender" *The Times of India* (New Delhi, India), Jan. 23, 1928

26 "Baumes Act Upheld by Higher Court" *New York Times* (New York, NY) Dec. 2, 1926

27 See "San Bernardino and Riverside Counties" *Los Angeles Times* (Los Angeles, CA), June 20, 1902 for an example.

28 "A Chronic Offender" *The Atlanta Constitution* (Atlanta, GA), June 22, 1887.

29 "A Chronic Offender," *The Atlanta Constitution*, June 22, 1887.



concluded with this statement: “Every city knows these recidivists, as they are termed in criminology, the chronic jailbirds who inevitably come back. No good purpose is served by the repeated sentences, and there should be some more sensible and effective method of handling such cases.”<sup>30</sup> For many, the problem was felons returning home after serving their sentence. A “more sensible and effective method” would include mandatory life sentences without possibility of parole, or new and expanded legislation regarding habitual criminals. A grand jury in Fulton County, Georgia, partnered with the state’s governor to ensure habitual criminals were neither pardoned nor paroled.<sup>31</sup> The language of recidivism made it clear that criminal behavior was a societal ill that required immediate attention to prevent the further spread of crime.

Newspaper articles with the phrase ‘habitual criminal’ rarely discuss specific individuals, but instead examine new laws or court cases. As more and more habitual criminal statutes became law, legal challenges became more and more frequent. State supreme courts tended to reaffirm the laws, as did the United States Supreme Court. In the case of *McDonald vs. Massachusetts*, the defendant sued out of a writ of error, claiming that habitual criminal law punished him for crimes he had already been convicted of and sentenced for. In his decision, Justice Gray wrote that habitual criminal statutes do “not impair the right of trial by jury, or put the accused twice in jeopardy for the offense, or impose a cruel or unusual punishment.”<sup>32</sup>

The linguistic nuances of criminal classifications are useful when examining early twentieth century ideas about criminal behavior. Rarely, if ever, did newspapers connect

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<sup>30</sup> “The Troublesome Recidivists,” *The Louisville Courier-Journal*, (Louisville, KY), Oct. 10, 1914

<sup>31</sup> “Rivers Pledges Aid to Check Pardons,” *The Atlanta Constitution* (Atlanta, GA), Aug. 26, 1929

<sup>32</sup> 180 U.S. 311; 21 S. Ct. 389; 45 L. Ed. 542; 1901 U.S. LEXIS 1306.

academic discussions about biological or hereditary causes of criminality to the articles about criminal activities in their own communities. The same term – habitual criminal—was used both esoterically by criminologists determined to distinguish between types of deviants and exoterically by newspaper writers and politicians, attempting to create definitions that were both easily understood and consistently applied. Different terms applied to the same concept undid the work of criminologists eager to create distinctions that would result in medical intervention.

Rarely, if ever, did parallel stories exist that allow us to compare kleptomania and habitual criminality. The cases of habitual criminal Dick Nerney and of Clyde Clancy, both hotel thieves, both arrested, serve as an opportunity to examine how kleptomania and habitual criminality were used in legal settings during the turn of the century. Dick Nerney, the notorious hotel thief from Michigan City, Indiana, was arrested in 1898 after stealing from two beach-front hotels. At sixty-five years old, he was “said to be the smoothest and nerviest crook in this section of the country. He has served time in almost every prison in the Middle States and is known to the police authorities all over the country.”<sup>33</sup> Due to Indiana’s habitual criminal law, detectives hypothesized that he would spend the rest of his life behind bars. Like Clyde Clancy, the hotel robber in Washington State, Nerney had a history of systematically stealing items of value from hotel rooms. Unlike Clancy, Nerney was a repeat offender with convictions dating back forty years.<sup>34</sup> The very idea of kleptomania does not appear in this article: no one, not even Nerney himself, believed mental illness was involved in his actions.

This example demonstrates the importance of labels in determining legal outcomes.

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<sup>33</sup> “Habitual Criminal,” *Louisville Courier-Journal* (Louisville, KY), Feb. 25, 1898.

<sup>34</sup> “Habitual Criminal,” *Louisville Courier-Journal*, Feb. 25, 1898.

Clancy and Nerney were both guilty of robbing hotels, but while one man was sent to an asylum, the other was imprisoned for life. Clancy was defined by a single descriptor that resulted in medical intervention. Nerney could have been described by any number of phrases and was as a result, not able to claim psychological distress.

### **Section Three: Comparison**

The difference between kleptomania and habitual criminality, as slight as the difference may be medically and legally, ties directly into notions of appropriate and conventional behavior. Regardless of whether habitual criminals were biologically driven to commit crimes, their actions were easy to recognize and understand. Newspaper stories of the day linked habitual criminals to standard misdeeds, types of behavior that, however undesirable, were to be expected in society. These offenders were muggers and burglars and people who got something tangible from their crimes. Kleptomaniacs did not fit this mold. Their behavior was inscrutable. Kleptomaniacs stole someone's right shoe, or more napkins than any one person could ever use, or toast racks from fancy British hotels. In cases like these, for crimes without logic or motive or reason, juries could well believe that some strange compulsion was driving the behavior of the accused.

Interestingly, the medical nature of habitual criminality was never discussed in criminal cases involving that particular type of offender while medical doctors regularly testified in cases involving kleptomania.<sup>35</sup> Indeed, kleptomania and habitual criminality were never discussed together. Neither medico-legal treatises nor eugenic works compare the two.

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<sup>35</sup> For the only case involving a habitual criminal and doctor, see "Stole \$10,000 in One Year, Yet Finds No Profit in Crime: Life Story of a Man Who, the Doctors Say, Is Sentenced to an Early Death" *St. Louis Post-Dispatch* (St. Louis, MO), Jan. 16, 1898. The only hint of medical intervention is the title; the article does not mention doctors at all.

It's difficult to know exactly why this was. Habitual criminality was considered hereditary and communicable. Kleptomania, on the other hand, was a psychiatric disorder and couldn't be transmitted. Perhaps it was due to psychological discoveries involving the nature of conditioned responses. Ultimately, habitual criminality, produced by bad environments, was a social problem while kleptomania remained an individualized disease. Treatments for kleptomania, whether brain surgery or psychotherapy, could cure the individual patient. Doctors could not ascribe a single cure for the problem of habitual criminality and therefore did not engage with individual criminals. Instead, they focused on large-scale solutions like sterilization and other eugenic policies.

On the legal side, things were slightly different. Lawyers and politicians had to be able to convince others, whether juries or constituents, of the diagnosis. Kleptomaniacs behaved unconventionally, habitual criminals within standard understandings of crime. The trouble arose when the criminal was unconventional but the crime was not. Mrs. Castle stole a lot of strange things, but she also stole a number of valuables, secreted away in her trunk. Bertie White, the Texas society girl, stole money from her uncle. Clyde Clancy, the nephew of a well respected United States Senator, robbed hotel rooms. Eliza Huddleston, the maid, definitely stole home goods and maybe \$17,000. The crimes themselves are not strange: they seem fairly commonplace, fairly similar to the habitual criminal stealing an expensive watch. However, the criminals themselves are out of place. They are wealthy and well connected, or if not well connected then above suspicion. These are people who should have known better and therefore must have been sick. They weren't thieves, they were kleptomaniacs.

Therefore, power plays an important role in the distinction between habitual criminality and kleptomania. Kleptomaniacs were people in positions of power who could

negotiate both legal and medical spheres. The very fact that their identity made insanity a more likely cause of criminal behavior than sinfulness or greed demonstrates their power in turn of the century America. Beyond courtroom dramas, well-connected kleptomaniacs were often able to prevent criminal proceedings by preemptively committing family members to insane asylums. Even if convicted, kleptomaniacs rarely went to prison. Instead of being convicted of theft, they were essentially found guilty of kleptomania and sentenced to treatment in an asylum.

Habitual criminals, more likely to be imprisoned than institutionalized, were also victims of convention. At the turn of the century, America was changing and few of those in power thought it was changing for the better. Those in power, seeking an explanation for the rise in crime and illness in the nation's cities, turned to explanations of biological superiority and control, convinced that they could shape humanity into something more pristine. Eugenicists, trying to shape new social conventions, were determined to root out the criminals, the feeble-minded, the deviant, all in the hope of making American great again. For habitual criminals, blamed for changing America and disrupting the status quo, life sentences were the best way to remove them from public view.

## CONCLUSION

Turn of the century legal and health professionals did not connect kleptomania to ideas about born, instinctive, or habitual criminals. Perhaps this was because they believed the two disorders affected different kinds of people in different ways for different reasons. Kleptomania affected rich people who could demonstrate an understanding of morality along with the inability to control their behavior. It was an uncontrollable compulsion that forced men and women to pocket items they did not own. The crimes were not always crimes of opportunity, but repeated behavior that resulted in patterns of deception and despair. Perhaps hormonal changes drove the compulsion, or repressed sexual desires, or head injuries. The cause of kleptomania, independent of the specifics, was always individual in nature. Kleptomaniacs were individual people acting strangely. Habitual criminals, on the other hand, were both born and made. Criminals produced criminals, either biologically or environmentally. These criminals were often poor, often foreign, and therefore a threat to turn of the century culture and society. To many, these two conditions, though they both manifested themselves in criminal acts, were opposites.

The men deciding what diagnosis applied to which patient or prisoner had a lot at stake. These academics, doctors, lawyers, and judges were white, native-born, well-educated men who felt threatened by the changes they witnessed in their communities. Women, so long kept indoors with children and housework, were suddenly primary consumers. Immigrants and rural Americans were flocking to the cities, bringing with them different customs and an increase in crime. The diagnoses and academic debates allowed the threats to be categorized and treated as problems with an exact solution. Legal experts and medical professionals had different responses to these threats.

Though doctors and lawyers both engaged with kleptomania in the courtroom, it was doctors who had the greater influence. Because the compulsion was psychological in nature, medical professionals were essential to its acceptance in popular culture and courts of law. Indeed, increased debate regarding mental illnesses gave legitimacy to new disciplines like psychiatry.<sup>1</sup> Medical experts regularly testified in kleptomania cases, often to support the diagnosis and advocate for lenient sentences or institutionalization. By focusing on a disease, the blame was shifted from the criminal to the patient. On the other hand, very few medically trained experts weighed in on issues of hereditary criminality. Indeed, those who advocated for stricter punishments for habitual criminals were sociologists, criminologists, eugenicists, and religious scholars.

Though rhetoric surrounding habitual criminality was rooted in medicine, practical applications were almost entirely legal. Not only were men and women tried under habitual criminal laws across the country, but they often underwent invasive medical procedures as a result. Habitual criminals may have been produced (in some cases and according to some experts) by biology and treated with surgery, but they were defined by the law. The focus on legal definitions placed blame firmly on the criminal instead of the genes or environment that may have produced the behavior. In this way, habitual criminals remained unsympathetic and perhaps even dangerous.

The medicalization of crime at the turn of the twentieth century reflects the ways in which power structures our society. Change, whether economic or demographic, prompted quick and often dramatic responses. Power didn't only influence large social patterns. Professional power was also at stake. The diagnoses of kleptomania and habitual criminality

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<sup>1</sup> Charles Rosenberg, *The Trial of the Assassin Guiteau: Psychiatry and the Law in the Gilded Age*. (Chicago: University of Chicago Press, 1968), 149.

helped give credence to new academic disciplines and new applications of knowledge. Habitual criminality gave influence to criminology, penology, and eugenics. Kleptomania helped give doctors professional authority in courtrooms. These disorders didn't only affect the lives of patients but the trajectory of new ideas and disciplines. In this way, these disorders influenced the professionalization of academia and medicine while remaining a strange phenomenon.

Ultimately, the process by which crime became medicalized is important because it created precedents that remain with us one hundred years later. Treating crime like a disease implies that crime should not exist in a healthy society, that it is unnatural or abnormal, and that it can be easily cured with the right intervention. Sociologists like Emile Durkheim and Peter Berger have argued that deviant behavior reinforces social norms and is critical to a functioning society.<sup>2</sup> Whether or not disease is an important part of a functioning society, the medicalization of criminal behavior turns real people into symptoms that require excision.<sup>3</sup>

Though the language surrounding hereditary and habitual criminals has changed, the legacies remain with us. Habitual criminal laws have shifted into three strike laws and mandatory minimums, which politicians have only recently realized don't prevent crime.<sup>4</sup> These laws tend to unfairly target people of color much in the same way that eugenics legislation tended to focus on recent immigrants. Though the language used now is less medical than it once was, the purpose of the laws is the same- to punish, isolate, and

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<sup>2</sup> Charles Tittle, "Deviance," *Encyclopedia of Crime and Justice* ed. Joshua Dressler. Vol. 2. 2<sup>nd</sup> ed. (New York: Macmillan Reference USA, 2002), 519-528.

<sup>3</sup> Susan Sontag, *Illness as Metaphor* (New York: Farrar, Straus, and Giroux, 1977).

<sup>4</sup> "Bill Clinton Regrets 'Three Strikes' Bill," *BBC News* (London, UK) July 16, 2015.



segregate repeat offenders with limited efforts to treat and rehabilitate them.<sup>5</sup> Three-strike laws represent a new manifestation of habitual criminal laws that attempt to cure a serious social problem without addressing underlying causes.

If habitual criminality hasn't gone away, neither has kleptomania. Though the diagnosis lost some of its popularity since 1900, an incident in 2001 brought the disorder back to the headlines. Actress Winona Ryder was caught on surveillance tape stealing \$5,560 worth of merchandise from a California Saks Fifth Avenue.<sup>6</sup> Though she pleaded innocent, she was found guilty of grand theft and vandalism. Like kleptomaniacs of the Progressive Era, Winona Ryder did not serve any jail time. The rhetoric of the tabloids is almost indistinguishable from newspaper articles written a hundred years before Ms. Ryder's arrest and conviction. They ask why a wealthy, successful woman would steal items she could easily afford. They mention psychoanalytic causes for Ryder's actions and link the disorder to her femininity. They also imply that therapy, medication, and rehabilitation, not imprisonment, will cure her. This incident demonstrates that criminal behavior continues to be medicalized in the twenty first century and continues to tie closely with privilege.

In 1883, H. H. Harris stole a horse. This relatively simple act created waves that affected the ways in which mental illness, criminal behavior, and professional culture is understood today. Comparing disorders with different names but similar manifestations is an opportunity to look at the social construction of both disease and crime. H. H. Harris got sick, stole a horse, went to jail, and codified the role of mental health medicine in the law.

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<sup>5</sup> Heather Ann Thompson "Why Mass Incarceration Matters: Rethinking Crisis, Decline and Transformation in Postwar American History" Dec. 2010, *The Journal of American History*, pg. 710

<sup>6</sup> Nadya Labi, "Why Did She Do It?" *Time Magazine* (New York, NY), Nov. 12, 2002

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