THE GROWTH OF CRIMINAL LAW.

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Man is, undoubtedly, a dual creature. Placed as he is, the very center-piece of creation, and distinguished by remarkable endowments, no other creature presents such anomalous appearances as he. Viewed from an optimistic standpoint, we see charitable works, pure ethical codes, as a result of the good in him; looked at in another light, we see nothing but evil passions, brutish actions, crimes, and bloody wars. On the one hand, like a demon incarnate, on the other, an archangel. In this paper, I aim to deal with what is generally supposed to be the grosser part of man's nature, the purely animal part. But in the treatment of crimes, their appreciation, and the codes of law restraining and punishsing them, we are dealing entirely with the moral-lacking part of
The very signification attached to the words "crime" and "criminal" gives us an idea of morality, or pure ethics. Such a word could never have been invented without an appreciation of the value of well-being. So, in the punishment of crime, the same thing is apparent; just so soon as a people or nation place a penalty upon him who does a certain thing, just so soon that people have discovered a moral principle, and the resulting law is but an official recognition of this principle. Although crimes are the outcroppings, so to speak, of the debased in man, we shall find, in the study of criminal law, that we are tracing the ethical growth of mankind.

It will be necessary to define here what is meant by the terms "crime" and "criminal law." Crime, as we shall consider it, is a violation of certain rights which a community respects and the doing of something which is not
sanctioned by the common consent of the social organization in which this act is done. Crime might be defined as a violation of spiritual or natural laws, but I will not attempt to consider it in this light.

Criminal law, then, would necessarily be certain rules and precepts for the regulation and punishment of these violations of a community's rights. These need not be a codified list of regulations which lawyers debate over and judges decide upon, to make criminal law; if a man builds a fire and is punished by his neighbors for it (this particular act being regarded as wrong) the man has come under the pale of true criminal law—the common consent of the community makes him a criminal. He cannot say that such a law is wrong, contrary to justice, for the ideas of justice of that community may be in exact opposition to ours—what is apparently morally right to them may be apparently
morally wrong to us. As the ethical nature of a people is, so is its criminal law.

What shall we say is the origin of crime? I believe we can divide the answer into three parts: I. some peculiar temptation; II. environment; III. Natural wants. The first of these comprises two divisions: a. An absence of law and order; b. A disturbed condition of society. These are imbedded in the nature of man: certain tendencies toward the violation of the established order of things; it is true these tendencies assert themselves only at exceptional times and places; if this were not so, such a thing as law and order would not exist — man would not be man. But, conditions favoring a law-breaking instinct rise in the breast of the most cultured.

Such an occasion is found where there is no governmental head to a community, or where there are no tribunals of justice or officials for the punishment of crime; at such
a time crimes are usually frequent, and the passions of men are unchecked. Then again, when society is in a temporarily disturbed condition, a peculiar temptation is given, and crime results. When the Mohammedan overspread Europe, sacking town after town, men had no fear of punishment. When the Normans landed upon the shores of Britain, the execution of justice was stifled for a time, and a mighty temptation to commit crime was presented. There was at that time in Britain as much law as there had been before, but the disturbed condition of society prevented the utilization of it and the punishment of crime.

Then again, we have said that environment will produce crime. This, I believe, has been the cause of most of the crimes which have perplexed and troubled society from the time of the earliest social organization up to the present. The effects of climate, education, locality, religion, and so—
sociation, all come under this head. There are communities in every society that are especially noticeable for the prevalence of crime among their members; this is not infrequently caused directly by the effects of their geographical locality. It is also known that certain religious ideas so work upon certain individuals as to cause them to become criminals, although they have no criminal intent. Association with social outlaws, or ones who are morally barren, will produce, alas, criminal tendencies by sympathy. Lastly, natural wants are sometimes direct producers. Certain natural animal desires, as hunger or lust, may be the means of bringing about criminal actions; these desires may be innocent enough in themselves, but society has been compelled to regulate their action. A lack of the necessities of life is frequently a source of individual wrongdoing, and, although from a purely sentimental standpoint the
evil in such actions is not apparent, yet nevertheless men have been in the past, and will be in the future, compelled to regard them as crimes.

Having discussed thus briefly the causes leading to the origin of crime in a community, let us proceed to our study of laws which existed in primitive, or, at least, ancient communities, restricting and punishing crime. We shall find by such a study that the conception of a crime varied greatly with different peoples; one community frequently recognized the right of a man to take another's life in revenge, while other communities would class such an action as a crime. We shall find, in primitive criminal law, no high-minded theories of right and wrong, proceeding from the minds, or conscience of its makers. Laws were originated to supply needs; peculiar conditions surrounding and permeating a society, gave rise to peculiar criminal laws, and these peculiarities
we shall notice as we progress. But one noticeable feature early appears: Trace any community back as far as you may, you will find certain laws, laws by common consent, prevalent and in force; these are the laws concerning the taking of life or liberty. Man's instinct for self-preservation caused him to thus defend himself. It is true, we find no laws such as would restrain or punish the criminal for crimes committed, for the primitive social community is hardly ever strong enough for this; but laws we shall certainly find, if we consider crime as something done in opposition to the will of the community in which the act is done. Then again, we shall find certain steps in laws and law-making which every community takes, as it rises in civilizations. However differing in details, we see that the criminal law of every nation of which we have any knowledge, went through successive eras of development as outlined below:
I. Private Vengeance.
II. Arbitration between interested ones by third person.
III. Fines for crimes.
IV. Wrong acts made crimes against the State.

In my description of the various codes of primitive laws, I shall touch upon the laws of ancient Persia, Egypt, and Rome; also the old Teuton and Irish laws. In my work, I have had frequent recourse to the Zend-Avesta, the Bible, and the works of Homer, Herodotus, Tacitus, Justinian, Caesar, and the Domesday Book; among more modern works, Mr. Justice Stephen's History of Criminal Law, Cherry's Criminal Law in Ancient Communities, Blake's Chronicles, Holinshed's History, Blackstone's Commentaries, and other works have been consulted.

Earliest of all the ancient criminal laws of which
we have any well-founded knowledge, are those of the ancestral Persian race, the accadians. What we know of them has been mostly gathered by slow and laborious effort from the cuneiform inscriptions. We find in the laws of these primitive agricultural people the guiding principle which caused the formulation of all the criminal laws ever in force among the Iranians, Persian, Babylonians, or Assyrian peoples; this principle was the influence of their religious ideas. The divinity whom this people worshipped was supposed to transmit all laws to the people through the king, and for ages we see subjects at the will of one great law-giving, law-enforcing head, the king. But were this old accadian people, living at least 3000 years before Christ, had laws remarkable for the principles involved in them. They inflicted fines for the breaking of laws concerning cruelty to slaves, guarded the right
of "private sanctuary", and levied fines for the breaking of one's oath. As to their other criminal laws, they were
very much like those of the later Teutonic tribes. As regards the sway which regal law had over these people,
the following judgment of an old Babylonian text in part explains: (If the king in his punishments violates the
laws and statutes of the land, the people punish; ) If the judges, take bribes, or officers exact tribute, the land
shall go to its enemies. ) Whoever is guardian of the temple, shall sever the shrine of the great gods.
We see by this that the king gave justice as the special agent of the immortal gods; the people being very pious
and strong in their belief, the reign of law became easy. Religion was so far law, that the offering of any
one as a burnt offering to the gods, was considered no
crime. An unbeliever was a criminal, an outlaw at any
one's mercy. The father of a family had unlimited chu-
troll over his children, even to life and death. At
a later time, the laws of this people had not materially
changed; the same religious thoughts were strongly felt.
The teachings of Zarathustra might well be studied as a
codification of the old Persian law, introduced by this
saying of his, "Listen not to the teachings of the wicked,
for he gives to destruction house, village, district, province;
but kill them with the sword." The high moral code
inculcated by Zarathustra introduced many excellent prin-
ciples, and their final embodiment in law. Life
was worshipped at the time of this prophet; this is
well evidenced by the law making suicide the dead-
lest of sins. The liar was despised and probably
severely punished. Killing a dog was a high criminal
offence, and 100 blows with a whip were administered
for giving hurtful food to a pup. Scourging was the
common punishment. The law regulating marriage
were strict; lack of chastity was a criminal offence, and infanticide was punishable by death. These were laws for compelling one to speak the truth, and for the protection of useful animals.

Many more interesting and entertaining facts might be discovered by a study of the old Accadian and Sumerian criminal laws, but lack of space forbids me to further consider them. We find one marked characteristic of them— that 3,000 or more years before the Christian era, this people had a comparatively excellent legal system; they had regular courts, judges, and law dealing with crimes, which we, of the 19th century, would not suppose were considered as criminal at such an early point in man's history. How long these laws had been developing, we have no means of knowing, but a good system of criminal laws were not made in a day; it required ages in the making. But without
Further discussion, let us take up briefly, the law of

Ancient Egypt.

Earlier than the time of the 4th dynasty, we know but little. At this time, the land was divided into 40 nomes, or districts, each of which had a judge appointed by the king, for life. These judges had charge of all legal proceedings, either criminal or civil. All the laws were made by the king as the mouth-piece of the gods, in this very much resembling the Persian kings. Records of the courts of the nomes were kept, and testimony was taken on oath. But what appears as a good system of law administration at first glance was in reality a mere force, the king using his imagined divine power in the making of laws, oftentimes contemptible; but the multitude of people was semi-barbarous, and law was regarded only as
something to be feared as the words of a tyrant king. The people neither comprehended the precepts nor appreciated the aims of criminal law; they knew but the stern reality. Some of these early laws were as follows: Murder, but not manslaughter, was punishable by death; sacrilege, theft, the killing of a cow, cat, dog, ibis, or any sacred animal, and several other crimes, were capital offences; this punishment was usually administered with the sword. Adultery and all kinds of theft were severely punished, but under later kings, we find that incest, indigency, and immorality were not considered as crimes. Let us remember that these laws were in force only between the common people; as regards the relations of the lower classes to the upper, they did not hold good. If a contractor beat to death one of his laborers, there was no redress; if a king wished to kill thousands of unfortunate in the service of architectural wonders,
who could defy him? Law was simply a means of restraining the populace. A regular police system was maintained, and all complaints were made to the authorities, who punished the offenders much as they saw fit. If a man was found guilty, he could be punished by confiscation of property, imprisonment, or death, the punishment being inflicted by the priestly class; if found innocent, he who afterwards accused the innocent one of crime was punished. The bastinado, we learn, was a favorite punishment.

If we examine the Egyptian system of criminal laws and their application, we see little in them to praise. True, no other nation, either civilized or barbarous, had ever had such a system of enforcement of laws among the common people. There were some good laws, but I prefer to attribute their making to an accident, rather than to any premeditated good to humanity. Freedom was unknown...
justice was a by-word and reproach. Much stronger was the reign of true criminal law among the Venetians in the forest homes, 3000 years afterward, than in the palmiest days of old Egypt.

Let us next take up those laws which have so long been classics to lawyers, the best known of all the laws of antiquity, the

Roman Laws.

In the beginning it was stated that the growth of criminal law would be seen to ascend in certain fixed steps. In the study of the Persian and Egyptian laws, we have not marked this—the trouble lies in our lack of knowledge of existing conditions at that time. But in the Roman laws, we can plainly trace these steps. From the time of Romulus and Remus up to the last emperor, we see a gradual rise from the principle of private vengeance
to a code of written laws protecting the sovereignty of the State, or social body.

I. Regal Period.

In this period, society was comparatively unorganized. The whole people were under a feudal organization, the gentry being the governmental unit. These gentry, again, were bound together loosely into centuries and enuities. There was no clear distinction between criminal offenses and civil actions. He who was injured in any way, at the earliest times, must obtain redress as best he could; the principle of private vengeance must of necessity in such a case the pre-eminent. The gentry were members of a family and their dependents, and in their laws the patriarch was the judge supreme of all offenses; he inflicted such punishment as he chose—death, slavery, banishment, expulsion, imprisonment, chain, and stripes were but to use. We can see plainly, in such a community, how
it would be comparatively easy for one strong individual
to resist the commands of the [father]s; in such a
case, the community must, to protect itself, unite against
the offender. So we find, in the early regal period, that
he who recognized no head of a family as his patriarch,
was considered an outcast and outlawed by all the people;
such a person had no rights which any one would re-
spect, and might be killed at any time with impunity.
In this way, imperfectly-formed society forced upon in-
dividuals the necessity of uniting themselves with an or-
ganized family, or living in constant fear of their lives.
This was man's first struggle to regulate his actions—
and this struggle was not as a result of any law-
loving impulse in his nature, but as a direct conse-
quence of the necessities of the case; on one side was or-
ganization and progress, on the other a brute violence or
death. Criminal law, then, in the primitive Roman cou-
enforcing good conduct between men where their law could not. If as householder might wish to kill a servant, law could not prevent it, but the fear of violating bond mores could.

In this period, vindicta privata was in universal use. If anyone was injured, it was supposed that the criminal had criminal intent only against the injured, and was responsible only to him. In this case, the only way of redress was by private vengeance. It was not only a right but a religious duty, for the injured to take the offender's life. Theft and robbery were private wrongs.

But this system early changed. The law of private vengeance proved unsatisfactory in all cases where any other means is at one's command. In private crimes, there soon became a mixture of private vengeance, social atonement, and preliminary compensation. Here was the transition period—when society was midway between absolute lack of law and
order and the higher comprehension of the sovereignty of the state and government. A few steps, and the evolution completes itself. Just so soon as man begins to offer others payment for injuries done, some arbitrator will be chosen to settle the amount of compensation to be given. The third party is most likely to be the king, and thus, the king gradually takes on a new power that of judge. From the king it is but a step to the state, and finally crimes and injuries not only to the injured, but to the whole community. The history of no other nation will show this so well as the Romans.

Just when this change from private vengeance to compensation by fine began is hard to tell. Up to the time of Servius Tullius, there was no fixed method of punishment, which would seem to show that vindictive private was still in force. In the time of Numa,
Private vengeance was allowed, but the offer of a new rod would stay the avenging hand. But it probably took the old principle some time to die out, for in the code of 303 B.C., private vengeance appeared. Compensation soon came to be used as a means of settling difficulties, even to the taking of life. This was true, also, in primitive Greek communities, as we learn from the Iliad, 9th Book, where Ajax speaks to Achilles:

"Even for a brother's death, a price is paid. As when a son is slain, the slayer dwelleth at home among his people, having made the appointed expiation. He to whom the fine is offered, take it, and his third of vengeance is appeased. * * *" (Bryant.)

And about this time, also, certain crimes were accepted as against the state. Treason (perduellio) and murder were the most important ones—the whole community soon took
them in charge. Among the common crimes in the patriarchal family were breach of duty between patron and client, maltreatment of the father by the child, exposure or killing of a child at certain times, removal of border stones, slaughter of a plow-ox, all of which were capital offenses, and the offender was at the mercy of each one whom he met. The penalties used were generally death, forfeiture of estate, slavery, or pecuniary penalties.

Period of the Republic.

During the whole of this period, there was a gradual cementing of society, and an evolution from primitive, weak slave to a codified system, the most thorough system slaves either of antiquity or of modern times. An important change in law-making and law-enforcing power as we notice was in 260 B.C., when the plebe obtained national representation. Thus quickly sprang up the comitia of centuries,
concilium plebes, and council of tribes, all assemblies with law-making authority. It was just beginning to dawn upon the Roman mind that individuals must restrain themselves for the benefit of the whole body, that an injury to one was an injury to the whole body politic. In those times, the proposed law was advertised for a fortnight, then voted upon by the centuries, after which it might be accepted or rejected by the Senate; this was concilium plebes, or the law of the people. In 303 B.C., as we have before noted, the laws of the land were first codified, and this marks the first true criminal law.

The methods of procedure in criminal cases appear to us of the nineteenth century very crude. The two contesting parties appeared before the court, each staked a sum; then the court decided, the party in the right taking back his stake, the other forfeiting his to the injured party and the state. The decision made was from that time law
in similar cases. But not until the latter half of
the Republic were criminal acts made state offenses.
In these later times, the edicts of the praetors, at first
temporary law, were made permanent, and to these
edicts may the voluminous law of this period be attributed.

Let us now take up those criminal laws of Rome,
which, as a direct result of the principles of the Twelve
Tables, were in use through the latter part of the
period of the Republic and the early imperial times.

In the first named period, the laws were made in
four ways, viz:

1. By the praetors. (The great equity judges and common law magistrates)
2. Proposed by consuls, passed by centuries. (Leges populi)
3. Proposed by tribunes, passed by tribes. (Plebeici)
4. Severaled consulta.

By one of these ways were laws made in the Roman rep-
public as occasion demanded them. In the later imperial
period, laws were the edicts of the emperor and the decisions of the public courts. In the early republic, the sole body having the power of life and death was the comitia centuriata; but under the emperor, the Senate gradually acquired this power, and as the Senate was the tool of the emperor, he soon acquired absolute authority. But it early became apparent in the Roman republic that regular courts were necessary, and accordingly officers called quaestores were delegated to sit at certain courts, which courts were permanent and regular. After this system became established, trials by means of judge and jury, a great deal as to day, were held.

The laws of the XII Tables or those directly resulting from them, were divided into two great classes as regards the crimes which they dealt with. There were public and private. Private crimes were all those which were prosecuted by the injured party and punished by fines. Private
retaliation, as we have said, was upheld in the table, but was seldom used, so that private crimes gradually merged into public crimes. Public crimes were crimes against the community. Justinian, Tit. I., Lib. 1, gives us the later Roman idea of these two branches of law: "Publicum pre est, quod ad statum rei Romanae specialis privatum, quod ad singulorum utilitatem pertinet." (The public law is that which refers to the Roman state, the private, that which pertains to the good of individuals.) A few of the public crimes and their punishment are given below:

Treason was punishable with death and the confiscation of goods; each of us will remember the incident of Manlius and the Tuscanian rock. The memory of the traitor was forever infamous, a thing in itself tending to discourage this kind of crimes. So much was this making of one's memory infamous practised, that frequent cases are on record where persons already dead were tried to make
Treason might be one of several things, conspiracy against the government, assisting the enemies of Rome, misconduct while in command of armies, attempt upon the life of the emperor, disrespectful words or acts to one in authority, all came in this category.

Again, in minor crimes, breach of the peace, extortion on the part of provincial governors, embezzlement of public property, stealing sacred things, and bribery were classed, most of these being punished by fines. Wilful murder, poisoning, and suicide were capital crimes. Adultery, which was in its meaning restricted to intercourse with a married woman, was at first punished by warmishment, but under Constantine, by death. Rape was also a capital crime. For forgery, counterfeiting, and perjury, the punishments varied. Capital punishments were inflicted for military crimes. All who came under the ban of the government, could be compelled to work on the public
waked or in mines, or might be ostracized or banished.

Death was usually by hanging, scourging, beheading, or strangling in prison; but this varied, for we hear of the emperor having criminals alive or feeding them to beasts.

But most curious in this punishment of public crimes was the appreciation of different classes in the way in which a man should be legally killed; he who was of a high class of society would be probably hanged, but the meaner plebeian must come to his death in the most revolting way. Thus, even me the administration of the death pen-
alty, certain privileges were granted to more favored ones.

As representative of minor crimes, the following might be mentioned: Robbery, theft, patrimonial damage, injury to person, and injury to property were private to-
passed, and must be settled by the parties interested, or not at all—the state took no cognizance of such offenses.

We have said that the Twelve Tables authorized retaliation. While
this is true, this principle had almost died out at the
time of which we speak. Questions of personal grievance
were settled by financial compensation. If the injured person
could not prosecute, there was no redress, and in twenty
years the crime was outlawed, and the criminal freed from
responsibility. We see plainly here the transformation from
vindicate privata to a public appreciation of crime. But
many years must yet elapse before Rome can show a
code of true criminal law.

Of the later laws of the Roman people, as codified
by Justinian, I shall say nothing, trusting that my
readers are tolerably well familiar with them. It needs
only to be stated that in this later law, the distinction
between civil and criminal law was first felt. Yet one
other point is brought to light in this code of Justinian
which might well be pondered over by the student, for this
has incensed the prohibition of being called the cause o
Rome’s downfall. I refer to the total disregard of women as creatures worthy of recognition, as deserving the ordinary rights of members of the community. Contubernial marriage was permitted; chastity was sold for a song, the marriage bonds were made of weak material. Here was one fault of all Roman law, and an unfailing source of national decay. Divorce was to be had for the asking. Then, again, the Roman law gave almost unlimited power to heads of families. From the earliest times, a father could chastise his child with stripes, imprisonment, exile, or chains, and by the law of the Twelve Tables, could sell his child as a slave. Not until the time of Constantine was it considered murder to kill one’s child. These points, with the curse of slavery, which permeated every pore of the Roman national being, were three great stains which spread across the pages of Roman law, marred their otherwise white surfaces. But without further commentaries on this line, let us proceed to
Laws of the Teutonic.

Most interesting as regards their laws and customs were the primitive Germans. This is perhaps true as a result of our extensive knowledge of them, and that this people were, to a great degree, the ancestral stock of the great English-speaking nations of to-day. In the study of no other people can we remark so plainly the different stages of development of which we spoke in the beginning.

The first definite knowledge we have of the Teutonic tribes dates at about 100 years before the Christian era. At this time they first became known to the rest of the world as a number of wild, restless hordes, knowing no law but that of conquest, respecting no one's rights but their own. Not very much advanced from a state of absolute savagery, but nevertheless destined to bring forth such principles and laws of right-living as should become proud Rome, glovelling
and reveling in the licentiousness of her higher civilization.

An interesting ethnological question arises here: what peculiarity of these barbarous Teutonic tribes made it possible for the most highly organized and best founded civilization to spring from them and their primitive institutions? Whatever nation can trace its lineage to Teutonic stock, can pose as a model of the purest and strongest as regards its sociological institutions; whereas Teuton blood has found its way, governments are stable, laws respected, the masses are free, scholars are assiduous and learned. Whether on account of some peculiar virtue of blood, climate, or situation or environment, I am not prepared to say, nor is there space or time for the extended discussion which such a question would naturally bring forth. But, be that as it may, the laws and institutions coming from the Teutonic peoples show the stamp of the same originality that Hannibal saw in the great, yellow-haired barbarians when he crossed the Alps.
The first administration of law in the Trenton community, if we may call it such, was the law of the family, which is, in fact, the first law that ever existed. Living as they did, by plunder, no organization other than this could exist. When these old Trentons lacked the means of subsistence, they robbed others and divided the spoils. War and murder were the results of a struggle to supply the necessities of life. The night of private warfare was unquestioned, "might make might." A title to any property came with possible entry, and was lost in the same way. Yet, even in this state of society, patriarchal rule was conscientiously observed. The family must be united, must observe common laws, or suffer from others. The family organization was a matter of necessity, not choice. Each family had its laws, governing freemen and slaves. Especially was the institution of marriage honored, those who proved false to its vows being killed. The administration of punishment was in the hands of the patriarch, and the punishment was administered...
by the whole family. While speaking of the institution of marriage, some interesting facts concerning it came to light when we examined the customs of the Nordic tribe in the Scandinavian peninsula before the time of Christ. Here, plurality of wives was allowed. The husband was accountable for his wife’s actions, and must resent injuries to her. Divorces were granted by common consent, and we read of a case where husband and wife were separated as a result of cruel treatment by the husband. The husband could kill his wife if she sought to encompase his life, or proved unfaithful. If she killed him, she was handed over to his relatives for punishment. In very early times, children could be exposed at will; this was true up to the time of the introduction of Christianity, when the Thing passed a law making him who did this an outlaw. But, if a child was deserted, it was considered good practice to expose it. In Iceland, the father must formally acknowledge his child, if he cared to
bring it up, or to be accountable for it. These and many
other curious customs cluster about the Tontonic observance
of this oldest of human institutions, marriage.

But these early more tribal organizations and the patriarchal
form of government, although it did not lose all its power,
was gradually absorbed by the general people. Families, band-
ing themselves together, would naturally come to make their
laws by the common consent of all, assembled in a general
folk-moot; and this was exactly what occurred. Speaking
of these primitive assemblies, Gomme, in his Primitive Folk-
Moots, page 8, says: "Indeed it represents all that primitive
man had to fall back upon in his struggle for right and
justice, in his connection with men of his own tribe or village,
and perhaps with those of foreign tribes or villages. It figures
out the solidity of the foundation upon which it was based,
namely, the patriarchal community; and it adds one more
to those common features in the sociology of the human race."
which modern science has succeeded in establishing. Concerning the method of holding these assemblies, Tacitus, in his "Germania", gives us quite a description. The following translation is my own, and consequently not marked by its excellence. "Concerning the minor things, the leaders consult, concerning the things of more importance, all. * * * The meet, unless change, or sudden necessity demands otherwise, is held on certain days, when the moon is either new or full, for they consider this an auspicious omen for conducting business affairs. * * * There is one obstacle to this, that they do not meet at the same time nor in accordance with order, but they frequently linger for days, at least. That the populace may remain quiet, they come armed. Silence is commanded by the priests, whose law is coercion. Soon the king or leader, whether selected by age, nobility, the spoils of war, or ability in speaking, is heard, having influence more by his power of persuading than by his right of commanding. If his
sentiments do not please the populace, they are banned; but if they are pleasing, they strike their weapons together. The most honorable consent is to applaud one into arms. It is permitted among the council to accuse, and also to con- demn to capital punishment. There is a distinction of punishment, according to circumstances. Thieves and highwaymen drew they hang from trees. Indolent, cowardly, and dis- reputable persons they throw into a marsh, with a hurdle turned over them. A divinity of rights belongs to this body. But for the minor crimes, the punishment is ac- cording to custom. Horses and cattle are requisited according to the number which the convicted had. A large part of these goes to the king or the State, part to him who is being repaid or to the relatives of him who is exiled. The kings, or leaders, of whom the learned historian speaks, were men ex- tected in times of war, individuals who were prominent for good generalship or brave fighting. In war he was supreme.
having unlimited power, but in peace was rather a chief magistrat, having more of a counselling power than regal authority. Other magistrates were also elected by the tribe, presiding over the various courts. The power of life and death was in the hands of these magistrates, and the punishment was administered by priests. But, as I have before stated, this magistral power was only observed in war, at other times the tribal meeting was the executive power. This system reminds us strongly of that of the American Indians before brought under foreign influence. Disputes might be settled by priests by means of arguments, but generally accusations were made before the council and prosecuted made by it. But in later times, regular courts were established, as follows:

1. Court of hundred, presided over by a cullinary chosen from the people. In this time, laws, change to say, were rigid and well enforced, but some of these regulations appear to us crude and barbarous. Indeed, many of them were, but their
enforcement would put to rout that of any a proud nation of to day. 2. Court of public justice presided over by the chief. Death, banishment, imprisonment, torture, and stripes, are common penalties. A fine of 600 denaries was imposed upon him who should wrongfully accuse another of throwing down his shield in battle. Life was comparatively disregarded—human sacrifices were common and the life of a slave was at the mercy of his master. After the establishment of primitive courts, homicide was classed with theft as a minor offense. The suffocation in mind of criminals reminds us strongly of the law of the old Scots, which condemned vicious people to be buried alive in hope. To unjustly call one guilty of infancy was punished by a heavy fine. "Mutili," or fines, were taken from all lesser criminals, at first the injured person taking all the fine, at a later time the state receiving a part. The usual punishment in early times was: 1. A sheep of twelve months or a sheep with its
land. 2. A brief of sixteen months, all convicts were tried in these units. The adulteress was punished by the relatives of the woman, and was frequently burned at the stake. The adulteress was an outcast and was at the power of her husband or father; she was frequently hung over the ashes of her lover. So close was this relation between husband and wife, that among the Sumerians, the wife was considered infamous if she did not hang herself at the grave of her husband. To limit the increase of children, to put to death any progeny, infanticide, and abortion, were infamous and severely punished. The fines for homicides were regular, and in later times were codified according to the person killed, the higher the official, the greater the recompense. Although we have no definite knowledge of the fines used by the Teutonic tribes in central Europe, still there has come down to us from the Sumerian laws many interesting facts on this subject, and it probable that the general method of
Firing was a great deal the same with the French as with the Belgae and Netuli. In the Baltic law, we find the following wergelds:

| Freedom, person | 200 solidi       | Chief of Slaves (e.g.,) | 600 solidi   |
| Soldier         | 600 "            | Chief of Hundred        | 6:00 "       |
| Officer or king | 1800 "           | Puer regis              | 600 "        |
| Servile person   | 100 "            | Tributarii and coloni   | 62½ "        |

<table>
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<th>Servi, belonging to kings</th>
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Servile, in brief, was the condition of the old Teutone tribes in their forest homes before they had come under outside influence. But gradually Roman manners and customs were transmitted to them and society becoming more organized, the state and the criminal became more and more antagonistic.

At about the same time which we have just been noticing, almost similar conditions existed just across the channel in what are now the British Isles. Let us take...
Early Irish Law.

Very interesting facts are shown by a study of early Irish law. In Ireland, more fertile than England or Scotland, extensive settlements were probably made first, but, in the earliest times, strong clanistic organizations were established, and law, consequently, sooner was formulated and codified here. The law which has come down to us is called the Brehon law, probably from belief, a judgment, this word being very like the Latin avgobatus. These laws were in force in Ireland previous to the Conquest and even up to the 17th century in some parts of the island. The whole system is unmodified by Anglo-Saxon, Danish, or Norman; in fact, only one outside influence, the Roman, was brought to bear upon it, and that only in ecclesiastical matters. Some of the features in these laws and their progress are peculiar and not met with elsewhere. A few of the most striking points will now be considered.
When these laws were compiled, we have no knowledge.

One thing is certain, that they extend back to the earliest times
of the aboriginal inhabitants of the land. As we have there, there
are two divisions in the Birchow law—Scenius Mor and
the Book of Aicill. The first of these treats rather with what
we would call civil law, while the latter has to do with criminal
law. But if we to-day feel this distinction between civil and
criminal law, it certainly was not felt then. The antiquity
of parts of the Birchow laws is very great. No coined money is
mentioned, but the measure of value was a female slave. Land
was owned in common. Of course, in parts of the work, written in
later times, a different status of society is found. It is almost
surely known that these laws are all the laws made at various
times up to the conquest. So we may expect to find in them
a gradual development of law; and this is the case. In the very earliest
times of which these laws treat, we find that personal revenge or
the acceptance of a fine was optimal. This may be proved by a pe-
meal of the Book of Leinster. At this time, affairs were in much the same condition as we have seen in other primitive, unorganized communities. But, as it was said, there early sprang up powerful kingdoms in Ireland. In each of these early regal courts, there was a poet, or “Bishow,” who gave decisions to the king on all questions of law and justice; this we learn from ancient records. It is no more than natural that after the general people had become accustomed to settle difficulties with fines, that this court-poet would frequently be called upon to adjust difficulties and gradually custom and long usage fixed certain fines for certain crimes. At such a time, the individual must depend on his own resources for compensation for injuries. There was no legislative or judicial power and all law was custom. If a fine was not paid, the injured might levy a “distress” upon the offender’s goods or property, or obtain satisfaction in any way. The family were supposed to be responsible for
the acts of a member, and fines could be levied on them after default by the criminal. If the fine was not paid at all, the criminal lost his status, and fell into the serf class, and was at the mercy of his avenger.

Some traces of a law-making authority soon appear in the meetings of the freemen of the chief, which have been subject to revision by higher authority. The system of fines at last became fixed, and they were rated by and for personal injuries, wounds, and so forth, also making allowances for intentions, exculpatory circumstances, etc. There were two classes of fines, one being used as a punishment, the other more as a warning; this latter was the Eric fine. For instance, if a man intentionally committed homicide, a double fine was expected; if unintentional, an Eric fine. Higher fines were assessed for the killing of a rich man than of a poor. Feuds between families, which frequently occurred, in which several of each side were killed, must have been very
...much like a modern suit in equity—a balancing up of finances, and if our family happened to be losers by the transaction, the taking of another life would settle accounts.

Not a thought of the moral right of such a system was entertained. That time was still in the future.

But the question of who should pay these fines in certain cases, and who should receive them, gave rise to another complication. Fines, after default by the criminal, were necessarily levied on members of the family, and finally upon the king, if no relatives were to be found. If the family expelled the criminal from them, they were not liable. But the king, being all responsible, naturally came to claim part of the fines paid; others in the community who felt themselves especially aggrieved, demanded the same. So, crime began to be considered crime against the community and the king, or government. At about this time, there was a curious institution called the simulacrum, or honor price. Each...
man had originally the label crown, but if he lost it, he was an outlaw and at the mercy of anyone. False-judgment, false-witness, false-testimony, fraudulent pleading, false-proof, false-information, false-character-giving, bad word, bad story, lying, took away part of a man’s crown. Theft, treachery, parricide, and murder took the whole crown.

This was an institution which did much to regular society.

It soon became possible for the king to declare laws, but when made, they could be repealed by no act of his. One of the institutions of the earliest kings was what is called the “King’s Peace.” The sanctity of a man’s dwelling was not to be violated. The owner of property could stop acts of violence in his “precinct.” The king’s precinct was naturally very large, as large as the kingdom itself, and thus, by the “King’s Peace,” the era of criminal law was inaugurated. Many other interesting facts concerning the administration
I. Simple Retaliation.

II. Pecuniary Payment { Optional to avenger.

Must be taken by avenger.

III. Arbitration by means of poet, or "Brehon."

IV. Intervention of tribe, by its chief.

V. National appreciation of the crime.

The foregoing exposition is necessarily imperfect—it could not be otherwise, with the short time and space at my disposal. But perhaps enough has been given to prove the thesis first given: That criminal law has grown up in certain fixed lines, through the same stages. It matters...
not what people we examine, what were the external influences brought to bear, the steps are always the same. The growth of law, as any other human institution, is circumscribed and limited just as truly as the formation of worlds under the all-guiding hand of the Creator.

W. J. Graham.