

**CIHM  
Microfiche  
Series  
(Monographs)**

**ICMH  
Collection de  
microfiches  
(monographies)**



**Canadian Institute for Historical Microreproductions / Institut canadien de microreproductions historiques**

**© 1997**

## Technical and Bibliographic Notes / Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming are checked below.

- ☐ Coloured covers / Couverture de couleur
- ☐ Covers damaged / Couverture endommagée
- ☐ Covers restored and/or laminated / Couverture restaurée et/ou pelliculée
- ☐ Cover title missing / Le titre de couverture manque
- ☐ Coloured maps / Cartes géographiques en couleur
- ☐ Coloured ink (i.e. other than blue or black) / Encre de couleur (i.e. autre que bleue ou noire)
- ☐ Coloured plates and/or illustrations / Planches et/ou illustrations en couleur
- ☐ Bound with other material / Relié avec d'autres documents
- ☐ Only edition available / Seule édition disponible
- ☐ Tight binding may cause shadows or distortion along interior margin / La reliure serrée peut causer de l'ombre ou de la distorsion le long de la marge intérieure.
- ☐ Blank leaves added during restorations may appear within the text. Whenever possible, these have been omitted from filming / Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.
- ☐ Additional comments / Commentaires supplémentaires:

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- ☐ Coloured pages / Pages de couleur
- ☐ Pages damaged / Pages endommagées
- ☐ Pages restored and/or laminated / Pages restaurées et/ou pelliculées
- ☒ Pages discoloured, stained or foxed / Pages décolorées, tachetées ou piquées
- ☒ Pages detached / Pages détachées
- ☒ Showthrough / Transparence
- ☐ Quality of print varies / Qualité inégale de l'impression
- ☐ Includes supplementary material / Comprend du matériel supplémentaire
- ☐ Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image / Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.
- ☐ Opposing pages with varying colouration or discolourations are filmed twice to ensure the best possible image / Les pages s'opposant ayant des colorations variables ou des décolorations sont filmées deux fois afin d'obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below /  
Ce document est filmé au taux de réduction indiqué ci-dessous.

|                          |                          |                                     |                          |                          |                          |
|--------------------------|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|
| 10x                      | 14x                      | 18x                                 | 22x                      | 26x                      | 30x                      |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 12x                      | 16x                      | 20x                                 | 24x                      | 28x                      | 32x                      |

The copy filmed here has been reproduced thanks to the generosity of:

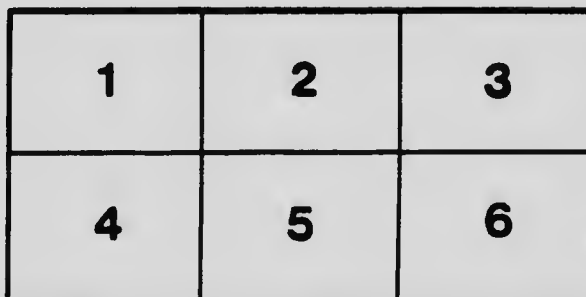
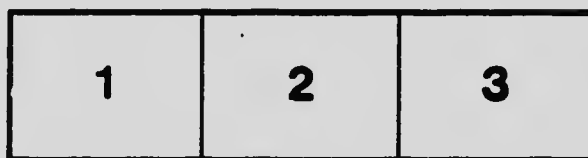
Special Collections Division  
University of British Columbia Library

The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol ➡ (meaning "CONTINUED"), or the symbol ▼ (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:



L'exemplaire filmé fut reproduit grâce à la générosité de:

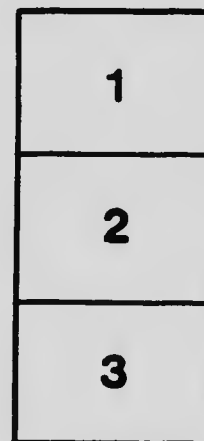
Special Collections Division  
University of British Columbia Library

Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

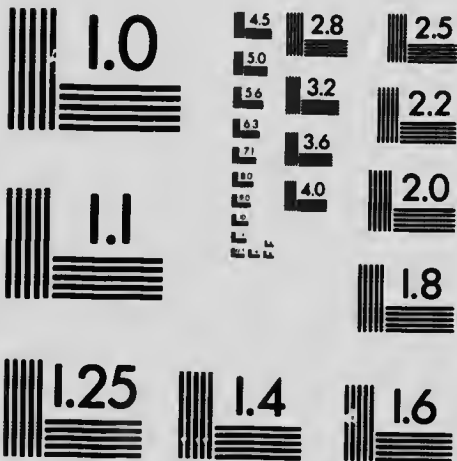
Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole ➡ signifie "A SUIVRE", le symbole ▼ signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.



# MICROCOPY RESOLUTION TEST CHART

(ANSI and ISO TEST CHART No. 2)



**APPLIED IMAGE Inc**

1653 East Main Street  
Rochester, New York  
(716) 482 - 0300 - Phone  
(716) 288 - 5989 - Fax

USA

SPAM  
10646

# The Criminal Court Judge

and

## The Odd Trick

By

ERNEST BELFORT BAX

1920

**SOCIALIST PARTY OF CANADA**

401 Pender Street E.

Vancouver, B. C.

# The Criminal Court Judge

THE occupant of the judicial bench is as we all know, the functionary selected by the governmental "ring" to enforce or put into action the cumbersome machinery of law, which the civilized world has been compelled to invent as a feeble corrective to the results of its civilization. We have spoken of the governmental "ring," but we might more accurately describe a modern state-bureaucracy as a system of "rings" interlacing one within the other. Each "department" has its traditions carefully kept up by its staff of permanent officialdom. The "bosses" of these departments, that is, of the central or ministerial ring (and for that matter the others also), emanate, of course, from "society" as it is termed, that is, from the aristocratic and plutocratic cliques of the West End; but what is more, under our system of party government a particular ministerial post is generally the exclusive appanage of two or three individuals who take it in turns and then begin again. The appointment and regulation of the judicial bench rests respectively with the Lord Chancellor and the Home Secretary. It is true the powers of these worthies are practically limited by the "traditions" of the subordinate judicial "ring" itself (a brotherhood as jealous of its privileges and dignity as the Corporation of London, or any other mutual benefit society), but appointments, revision of sentences, and general supervision rest in the last resort with the dignitaries in question. The Lord Chancellor for the most part,

appoints the judge from a successful barrister with "influential" connections.

Now, our object in thus exposing in a few words the mechanism of our constitutional government in general, and its relation to the judicial system in particular, is the better to grasp the nature of the semi-divinity which with the public at large seems to hedge a judge and all his utterances. The juryman obediently follows his directions as to the verdict he shall return, in fact, in many instances juries would seem to regard it as the sole reason of their being, to please the presiding judge and give glory to him. The public in court, and the public out of court, hang upon the pronouncement from the bench as placing beyond question the enormity of the guilt of the luckless victim (it may be) of judicial rancour. How is this reverence for the judicial fiat to be accounted for? Doubtless, to a large extent, it has its origin like the divine right of kings, and many other things, in a state of society where the judicial authority was also the religious and civil head of the community—in short that it is one of those numerous sentiments which had a meaning once, in bygone stages of human society and intelligence, but which have survived their meaning and lapsed into superstitions. But it is, in fact, only one instance of that respect for law and order in the average mind on which the stability of the **bourgeois** state rests, and which masks the true character of the latter as the prop of economical rottenness.

Let us consider for a moment what judgeship involves. We have every day illustrations of the fact that the judicial "ring" presumes upon the respect

accorded it, so there can be no doubt that if the people could be induced to see the judge in the light merely of an overpaid servant of the modern state, who absorbs an enormous proportion of their earnings, the better would it be for the soul's welfare, of the judicial bench itself, as well as for the cause of fairplay. Paradox as it may seem, it is an undoubted truth that no judge can be strictly an honest man. The judge must necessarily be a man of inferior moral calibre. Though it is a thing one would say of no other man or body of men, yet I say unhesitatingly that a judge by the fact of his being a judge proclaims himself a creature on a lower moral level than us ordinary mortals, and this without any assumption of moral superiority above the average on our part. And why? Because the aspiring member of the bar when he accepts a judgeship knows that in so doing he **deliberately pledges himself** to functions which may at any moment compel him to act against his conscience and wrong another man. He **deliberately pledges himself**, that is, to be false to himself. He may any day have to pass sentence on one whom he believes to be innocent. He lays himself under the obligation of administering a law which he may know to be bad on any occasion when called upon, merely because it is a law. He makes this surrender of humanity and honor for what? For filthy lucre and tawdry notoriety. Now, I ask, can we conceive a more abjectly contemptible character than that which acts thus? If we want further proof of the utter degeneracy of moral tissue in such a being, let us examine the sophistries he uses in his defence, and which he endeavors on occasion to force down



the throat of the recalcitrant jurymen. He does not make the law, he will tell you, he merely administers it. In the same way Bill Sykes does not make his jemmy and other burglarious implements, he merely administers them. This is the sort of oil he pours on his uneasy conscience when he has one. The jurymen disapproving of capital punishment objects to convicting a murderer. He is told he has nothing to do with the sentence, but only with the evidence; in other words, that the fact that the verdict he gives will have for its direct consequence a result he regards with abhorrence, is to count for nothing with him. Men who can willingly **pretend**—I say **pretend**, since it must be remembered we are dealing with men of ability and culture, capable of exposing many a subtler fallacy when it suits them—men who can **pretend** to accept such flimsy trash as cogent argument must surely be dead to all respect for honesty.

But the festering mass of hypocrisy of which benchdom consists is only too evident at every turn. There is, of course, the hypocrisy which is racy of the judicial oil, just as there is the hypocrisy which is racy of the clerical soil. To this belongs the professed deep reverence for the "law of England," when no one knows better than the benchman who has studied it, that well nigh one-half of English law is based on effete superstition, of which it presents in many cases the most grotesque instances—interesting and instructive from a historical point of view, doubtless, but not in themselves calculated to awaken feelings of reverence in the modern mind—and that the other half is founded on

the baldest class interest and prejudice. So that all things considered there is hardly a branch of learning the pursuit of which is more calculated to inspire the average student with a contempt for its subject-matter than English law—hardly even excepting Divinity. But what is more offensive than this is the impudent assumption of moral superiority, which is one of the “properties” of the profession. Quite apart from any of the considerations just adduced, it is perfectly well known that there are among members of the English bench men of a deb—, well, men that enjoy life on its animal side, as is, indeed, only natural, considering the amount of time and money on their hands. Yet who can orate with a richer profusion of impressively delivered platitudes drawn from the current morality than the **puisne** in addressing the prisoner, who has in ninety-nine cases out of a hundred, brought himself within reach of the law by the desire to obtain some of those very pleasures in which the judge himself revels. It is scarcely to be expected but that a man who in a “higher” grade of society so-called is capable of accepting a judgeship (with its conditions as described above) would not in a “lower,” where the temptations were of a different order and much more severe, be capable of doing a little housebreaking, a little larceny, or even bigamy or rape. Such being the case the elimination from judicial proceedings of the “John Jacob Jackson, you have been convicted on the clearest evidence of, etc. . . . To remonstrate with such a man as you would be useless, etc., etc.,” with the epilogue, “I should be failing in my duty if I did not pass a

heavy sentence," etc.—the elimination, I say, then, of this somewhat stale "gag" from judicial proceedings, might possibly have a tendency to keep alive respect for law somewhat longer than bids fair otherwise to be the case.

In France even middle-class public opinion has had to assent to the abolition of the scandal of the judge's summing-up, but respect for law and order is too great in this country to allow of this instalment of justice towards accused persons. But, surely, even in this country, a muzzle might be applied to the judge after the verdict. If Parliament were to employ itself in doing this it would at least prevent unoffending citizens being sickened by the nauseous rant which on the occasion of every important trial now emanates from the whitened sepulchre in wig and gown, whose function it is to administer the law.

That society which is based on property and privilege must have a criminal code as its necessary consequence we are well aware, but we none the less protest against its "administrator," the judge, being regarded in any more honorable light than its other "administrator," the hangman.



# The Odd Trick

WE not infrequently hear a certain school of sentimentalists sneer at Socialism as holding before men a merely low sensuous ideal of existence—of good living, etc. etc. We are accused by such of neglecting the higher ideals of Humanity for the affairs of the stomach and of still more despised organs. The usual and obvious retort to this sort of thing is the **ad hominem** one, that the persons who make the charge are themselves sufficiently well cared for in these lower matters to be able to afford to ignore them and turn their attention to things above. But though the gist of the matter is often contained in the above retort, it is, as it stands, crude, unformulated, and impolite, even if it were always applicable, which it is not. Let us therefore for the nonce treat these people seriously and develop the answer to their objection in formulated fashion. For in truth this objection springs not merely from deliberate hypocrisy or from thoughtlessness, but has its root in the ethical code in which they have been brought up. This ethical code teaches them that all the highest ideals of man's existence are attainable by a voluntary effort on the part of the individual irrespective of his material surroundings, which are matters of small concern. The body is in fact a thing rather to be ashamed of than anything else.

I would not say that all our sentimental friends carry their sentiment to this extent, but that this principle—the principle of Christian Dualism as opposed to Pagan Monism—underlies their moral consciousness there can be no doubt. It is of course true that this view is facilitated by comfortable

bodily conditions. It is easier to think meanly of the "body" when the "body" is all right than when it is not. And this very fact gives us, as we shall know directly, the key to the Socialist position on the subject. There are, however, not a few persons who in all sincerity hold the view that in the overcoming of the body—in the minimization of all bodily satisfaction—is to be found the portal to the higher life of man, and who act up to their professions. Now it should be observed that to all who earnestly and sincerely accept the current ethical basis, the body still remains an end, although they profess to ignore it. It is an end to them as much as to the epicure and the libertine, although in another way.

Now the difference between this orthodox and the Socialist way of viewing human life is, that the Socialist, while not pretending to ignore the body, yet wishes that it should cease to be the main end of human life. At present that satisfaction of personal bodily wants fills the mental horizon of the immense majority of human beings, the only alternative being with those would-be virtuous individuals whose mental horizon is filled, to a large extent at least, with the idea of the suppression of these same bodily wants. That the first of these conditions is unfavorable to the development of a higher life, be it moral, intellectual, or artistic, few would dispute. That the second is scarcely less so is equally obvious on a little reflection. For in the first place the continued struggle against natural wants, to live on next to nothing, to bear the greatest privations, in itself draws off vast stores of moral energy which is wasted on mere suppression. But if the victory is gained, if

the man does not succumb in the process, if his devotion to his higher aim, of whatever nature it may be, is so exceptionally great as to carry him through, what has he gained and what has he not lost? He is purified through suffering, says the Christian. But in how many cases he metaphorically leaves his skin behind in the process, in how many cases he has lost an essential part of himself, those know who have had much intercourse with or have studied the lives of the exceptional men who have successfully struggled with adversity, and who have observed the sour-edness, the one-sidedness, the twistedness, so to say, of character thence resulting. No one can fail to admire and to honor the strength of purpose which enables a man to pursue a high aim in the midst of privations; but no one who looks at the matter without prejudice and in the light of broad human interests, can honestly say that the man is better as man for the privations through which he is come, even though he has accomplished his life-work in spite of them. Instances of this may be found in Chatterton, Beethoven, etc. Of course we leave out of account here the fact that under modern economic conditions it is not a case of being contented with a little which is at least there, but of a desperate and exhausting life struggle to obtain sufficient to sustain life at all. We do so, as we are addressing not so much the avowed opponents of Socialism as those who, while professing to sympathize in a manner with its aims, have lingering prejudices in favor of the ascetic or shall I say the "austere republican" theory of life, and who therefore view with disfavor the stress mod-

ern Socialism lays on the satisfaction of mere material wants.

Even the sentimental moralist in question must admit that at the present time the end-purpose of life is for the majority of men the satisfaction of natural personal wants. There are not a few, it is true, who pursue gain for the sake of gain, but this is generally after they have satisfied their animal wants. Now the apparent ideal of certain sentimental moralists I have heard talk, is an insurance against absolute destitution, and the rigid repression of all further desires over and above this minimum. The Positivists to a great extent hold this view. Such a state of things they think might be attainable (by a kind of state-socialism we suppose) within the framework of present society. The theory, therefore, is not distasteful to those who see that capitalism is unstable and indeed impossible to last as at present constituted, but who would willingly stave off the complete overthrow of the system. The latter are anxious merely to retain their monopoly of the good things of life, but they find a useful ally in the introspective moralist who winces at the idea of removing the causes of moral evil for fear of depriving the individual of the opportunity of "resisting temptation, and who wants to keep him deprived of the comforts and conveniences of life that he may show his strength of mind in being able to do without them, shutting their eyes to the fact that they thereby perpetuate moral evil.

It is the scientific Socialist who alone seriously wishes to lead men to higher aims than merely sensual ones, while caring not one jot for the empty moral

gymnastics which are the end of the introspective moralist. He sees that his ideal, human happiness, and that in the highest sense, is realizable rather in the enjoyment of all than in the restraint of each, even in the matter of mere material wants, and that the corrupting influence of luxury hitherto has mainly resided in the fact that it was not enjoyed by all. And his theory is based on knowledge of the "nature of things."

To the sick man what is the highest ideal? Health. His whole horizon of aspiration is filled in with the notion of health. To him health is synonymous with happiness. He recovers his health and he finds now that there is something beyond that horizon—that over the mountains there are also oxen. Health now becomes a matter of course, which he accepts as such and does not think about; his mental horizon is now occupied with other objects. Had he remained sick he might have been resigned, but health would still have irresistibly presented itself to him as the ideal goal of life. So it is with the completion of health, which consists in the full, the adequate satisfaction of bodily wants. So long as they remain a desideratum for the majority of mankind, the majority of mankind will continue to regard them as the one end of the heroic ascetic, who despises such low concerns. Let the mass of men once have free access to the means of satisfaction, and they will then for the first time feel the need of higher objects in life.

As a matter of fact, it is a trite observation that all the "higher life" of the world has been carried on by those classes who have been free from the



presence of material wants, not by those who have been deprived of them or who have renounced them. What did the really consistent Christian ascetics—the St. Antonies of the fourth century, for example—accomplish beyond seeing visions, performing astounding feats of self-privation, etc.? Were they more than moral mountebanks? Do we not find, on the contrary, that the monks who really were historians, philosophers, etc., sprang from the wealthy Benedictines and other orders whose discipline was “lax,” who kept a well-filled refectory, whose morality was said to be questionable, and who lead the intellectual life of the middle ages. So long as monasticism remained ascetic, intellectual life within the monasteries was impossible. Bodily cravings occupied men’s whole attention. Another and still more striking instance of how the fact of every possible sensual enjoyment being within reach forces the mind to seek satisfaction in something which if it is not intellectual is at least non-sensual, is that of the tyrannos of the ancient city, or the wealthy noble, the provincial governor, the pro-consul or prefect of the Roman Empire. No one can adequately conceive nowadays of the luxury and sensuous pleasure in which such characters as these literally weltered—of the gorgeous marble palaces, of the Persian coverings, of the Babylonian couches, the wines, dishes, and spices from every quarter of the known world, of the most well-favored concubines that could be procured for money from Europe, from Asia and from Africa—yet, strange to say, the possessor and enjoyer of all these things was never happy unless risking them all and his life included

on the barren chance (in the first instance mentioned) of conquering another city, or (in the second) of intriguing for the purple, the attainment of which experience had taught, in nine cases out of ten, meant death within a few months. It was not that the conquest of the city or the ascent of the throne added to his luxury, which would have probably been impossible—this was not his object, but that having already his fill of all sensuous pleasures he looked for something more, and this something more he found, in accordance with the manners of his age, in the notion of glory, the glory of founding a dynasty, or of being saluted absolute master of the world. We see a similar thing nowadays in the tradesmen in possession of all that wealth can purchase, and in absence of all intellectual resources, who, also in accordance with the manners of his age, finds his “something more” in commercial “success,” which he continues to pursue for its own sake.

The introspective moralists, Christian, Positivist, or what not, are therefore right when they insist on the satisfaction of material wants not being regarded as the final end of human life. They are only wrong in not seeing that until obtained they must necessarily seem such to the vast majority of men. The signal failure in history of the doctrine of repression, whether it take the form of the “holiness of the Christian, or the more plausible “ascetic” discipline” of the Positivist, after a reign of two thousand years ought, one would think, to give these good people pause as to whether repression is, after

all, so conducive to the higher life of man as satisfaction.

The true telos of human life, the "rational activity" of Aristotle, "the beautiful, the good, the true" of the young man who is taking to literary composition, may be compared, not to speak it profanely, to the odd trick in whist, which, though it is the object of the hand to win, yet presupposes the winning of six other tricks. Now the amateur of the "goody-goody" morality—the perfectionist of individual character—thinks to make the odd trick without having completed his regulation half-dozen. The Socialist is rather concerned that the human race as a whole should each and all "make" the first six tricks, called respectively, good and sufficient food and drink, good housing, good clothing, fuel, untaxed locomotion, adequate sexual satisfaction, knowing that before these are scored the "odd," which is the final purpose of the "deal," will be impossible. With bad and insufficient food, with small and squalid dwellings, with scanty and shoddy clothing, with insufficient firing in cold weather, and the lack of change, and with inadequate satisfaction of a sexual kind, man may exist: but he (i.e., the average man) will see nothing but these things in front of him. his ideal will still be them and nothing else but them. When once he possesses them they become a part of his ordinary life, and he ceases to think about them. His horizon is then extended. He sees the final purpose of his life in things of which before he had never dreamed.

Once more, I repeat, let us make no mistake, all asceticism, all privation, is in itself an unmitigated

evil. It is doubtless true that there are occasions when it is our duty, living in a period of struggle, to deprive ourselves, to sacrifice ourselves, for a better society. But even this deprivation, this sacrifice, is in itself an evil. It only becomes a good if it is undergone with the purpose of putting an end to the sempiternal privation and sacrifice which civilization imposes on the majority of our fellow-creatures. One can well appreciate the sacrifice of ourselves, the men of this generation, when necessary for the future, in all the respects named; but I confess that did I, like the Christians, the Positivists, and the sentimental Socialists, such as I understand Court Tolstoi to represent, believe privation and sacrifice (even "ascetic discipline") be it in the most groveling of material matters, to be the permanent lot of Humanity, my ardor in the cause of progress would be considerably damped.

One can scarcely conceive the nobler life which will result from generations of satisfied (rather than repressed) animal desires, once they are the lot not of this or that class, but of all. With food, drink, and other creature comforts to be had for the asking, they will cease to occupy the attention of human beings to an extent previously unknown in the world's history. Then for the first time will the higher aspirations and faculties of man have free play, the "something more," the "odd" trick, which is the real goal of human life, will assume a new character and be pursued with an energy rivaling that hitherto devoted to personal gain, ambition or glory, since the path to these things at least in the old sense, will have been closed forever.

