The Balance of Justice

The European Court of Justice is a curious and instructive institution. Europe, even while vaunting a monopoly of civilisation, cherishes and preens herself in some remarkable relics of barbarism. In mediaeval times, with the scientific thoroughness and efficiency which she shares with the Mongolian, she organised torture as the most reliable source of evidence and the ordeal of battle as the surest guide to judicial truth. Both ideas were characteristically European. A later age may seem to have got rid of these luminous methods, but it is not so in reality. In place of the rack the French have invented the investigating judge and the Americans some remarkable processes, which I think they call questioning (the old name for torture) in the first, second and up to the fifth degree if not to higher stages of excellence. The torture is sometimes of the mind not of the body; it is less intense, more lingering, but it leads to the same result in the end. When the tortured wretch, after protecting with lies for as long as may be his guilt or his innocence, escapes from his furious and pitiless persecutor by a true or false confession, preferring jail or the gallows to this prolongation of tense misery, the French call it delicately “entering into the way of avowals”. The Holy Office in Seville could not have invented a more Christian and gentlemanly euphemism. The American system, is in the fifth degree, I think, to keep the miserable accused fasting and sleepless and ply him with a ceaseless assault of torturing questions and suggestions until the brain reels, the body sinks, the heart is sick and hopeless and the man is ready to say anything his torturers believe or want to be the truth. It is a true Inquisition; the mediaeval name fits these modern refinements.

The English people have often been accused as a brutal or a stupid nation; but they have a rugged humanity when their
interests are not touched and enjoy glimpses of a rough common sense. They have besides an honourable love of publicity and do not like, for themselves at least, secret police methods. They have rejected the investigating judge and torture in the fifth degree. But their courts resemble the European. Under a civilised disguise these Courts are really the mediaeval ordeal by battle; only in place of the swords and lances of military combatants we have the tongues and technicalities of lawyers and the mutually tilting imaginations of witnesses. The victory is to the skilfullest liar and the most plausible workman in falsehoods and insincerities. It is largely an elaborate pitch and toss, an exhilarating gamble, a very Monte Carlo of surprising chances. But there is skill in it, too; it satisfies the intellect as well as the sensations. One should rather call it a game of human Bridge which admirably combines luck and skill, or consider it as an intellectual gladiatorial show. In big cases the stake is worthy of the play and the excitement, a man’s property or his life. But woe to the beaten! In a criminal case, the tortures of the jail or the terrifying drop from the gallows are in prospect, and it is rather the hardihood of guilt than the trembling consciousness of innocence that shall best help him. Woe to him if he is innocent! As he stands there,—for to add to the pleasurableness of his condition, the physical ache of hours of standing is considerately added to the cruel strain on his emotions,—he looks eagerly not to the truth or falsehood of the evidence for or against him, but to the skill with which this or that counsel handles the web of skilfully mixed truth and lies and the impression he is making on the judge or the jury. A true witness breaking down under a confusing cross-examination or a false witness mended by a judicious reexamination may be of much better service to him than the Truth, which, our Scriptures tell us, shall prevail and not falsehood,—eventually perhaps and in the things of the truth, but not in the things of falsehood, not in a court of Justice, not in the witness box. There the last thing the innocent man against whom circumstances have turned, dare tell is the truth; it would either damn him completely by fatally helping the prosecution or it is so simple and innocent as to convince the infallible human
reason of its pitiful falsity. The truth! Has not the Law expressly built up a hedge of technicalities to keep out the truth?

As one looks on, one begins to understand the passion of the Roman poet’s eulogy of the defence counsel, *praesidium maestis reis*, the bulwark of the sorrowful accused. For in this strange civilised gambling with human dice where it is so often impossible to be certain about guilt or innocence, one’s sympathies naturally go to the sufferer, the scapegoat of a callous society, who may be moving to a long period of torturing and unmerited slavery or an undeserved death on the gallows. But if one could eliminate this element of human pity, it would be a real intellectual pleasure to watch the queer barbarous battle, appraise the methods of the chief players, admire, in whatever climes, the elusiveness and fine casualness of Indian perjury or the robust manly cheery downrightness of Saxon cross-swear. If the Courts convince us of our common humanity by making all men liars, they yet preserve a relishable unlikeness in likeness. And I think that even theology or metaphysics does not give such admirable chances for subtlety as the Law, nor even Asiatic Research or ethnology favour so much the growth of that admirable scientific faculty which deduces a whole animal out of some other animal’s bone. If the thing proved is generally wrong, it is always ingenious; and after all in all these five sciences, or are they not rather arts? — it is not the thing that is true but the thing that is desired which must be established. This is perhaps why the Europeans think the system civilised, but as a semi-civilised Oriental, one would prefer less room for subtlety and more for truth.

On the whole, if anyone were to complain that modern civilisation eliminates danger and excitement out of human life, we could well answer the morbid grumbler, “Come into our Courts and see!” Still, praise must be given where praise is due, and let the English system once more be lauded for not normally exposing the accused to the torture of savage pursuit by a prosecuting judge or the singular revival in modern dress of the ancient “question” by the American police. Where political or other passions are not roused and bribery does not enter, the
poor muddled magistrate does his honest best, and where there is a system of trial by jury, the blunders, whims and passions of twelve men may decide your fate less insanely than the caprices of a Kazi, — though even that is hardly certain. At any rate, if the dice are apt to be loaded, it is, with the exceptions noted, not on one but on both sides of the gamble.