THE MODERN CRIMINAL SCIENCE SERIES

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THE AMERICAN INSTITUTE OF CRIMINAL LAW AND CRIMINOLOGY

# Criminology

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# GENERAL INTRODUCTION TO THE MODERN CRIMINAL SCIENCE SERIES.

At the National Conference of Criminal Law and Criminology, held in Chicago, at Northwestern University, in June, 1909, the American Institute of Criminal Law and Criminology was organized; and, as a part of its work, the following resolution was passed:

"*Whereas*, it is exceedingly desirable that important treatises on criminology in foreign languages be made readily accessible in the English language, *Resolved*, that the president appoint a committee of five with power to select such treatises as in their judgment should be translated, and to arrange for their publication."

The Committee appointed under this Resolution has made careful investigation of the literature of the subject, and has consulted by frequent correspondence. It has selected several works from among the mass of material. It has arranged with publisher, with authors, and with translators, for the immediate undertaking and rapid progress of the task. It realizes the necessity of educating the professions and the public by the wide diffusion of information on this subject. It desires here to explain the considerations which have moved it in seeking to select the treatises best adapted to the purpose.

For the community at large, it is important to recognize that criminal science is a larger thing than criminal law. The legal profession in particular has a duty to familiarize itself with the principles of that science, as the sole means for intelligent and systematic improvement of the criminal law.

Two centuries ago, while modern medical science was still young, medical practitioners proceeded upon two general assumptions: one as to the cause of disease, the other as to its treatment. As to the cause of disease, — disease was sent by the inscrutable will of God. No man could fathom that will, nor its arbitrary operation. As to the treatment of disease, there were believed to be a few remedial agents of universal efficacy. Calomel and blood-letting, for example, were two of the principal ones. A larger or smaller dose of calomel, a greater or less quantity of bloodletting, — this blindly indiscriminate mode of treatment was regarded as orthodox for all common varieties of ailment. And so his calomel pill and his bloodletting lancet were carried everywhere with him by the doctor.

Nowadays, all this is past, in medical science. As to the causes of disease, we know that they are facts of nature, — various, but distinguishable by diagnosis and research, and more or less capable of prevention or control or counteraction. As to the treatment, we now know that there are various specific modes of treatment for specific causes or symptoms, and that the treatment must be adapted to the cause. In short, the individualization of disease, in cause and in treatment, is the dominant truth of modern medical science.

The same truth is now known about crime; but the understanding and the application of it are just opening upon us. The old and still dominant thought is, as to cause, that a crime is caused by the inscrutable moral free will of the human being, doing or not doing the crime, just as it pleases; absolutely free in advance, at any moment of time, to choose or not to choose the criminal act, and therefore in itself the sole and ultimate cause of crime. As to treatment, there still are just two traditional measures, used in varying doses for all kinds of crime and all kinds of persons, — jail, or a fine (for death is now employed in rare cases only). But modern science, here as in medicine, recognizes that crime

also (like disease) has natural causes. It need not be asserted for one moment that crime is a disease. But it does have natural causes, — that is, circumstances which work to produce it in a given case. And as to treatment, modern science recognizes that penal or remedial treatment cannot possibly be indiscriminate and machine-like, but must be adapted to the causes, and to the man as affected by those causes. Common sense and logic alike require, inevitably, that the moment we predicate a specific cause for an undesirable effect, the remedial treatment must be specifically adapted to that cause.

Thus the great truth of the present and the future, for criminal science, is the individualization of penal treatment, — for that man, and for the cause of that man's crime.

Now this truth opens up a vast field for re-examination. It means that we must study all the possible data that can be causes of crime, — the man's heredity, the man's physical and moral make-up, his emotional temperament, the surroundings of his youth, his present home, and other conditions, — all the influencing circumstances. And it means that the effect of different methods of treatment, old or new, for different kinds of men and of causes, must be studied, experimented, and compared. Only in this way can accurate knowledge be reached, and new efficient measures be adopted.

All this has been going on in Europe for forty years past, and in limited fields in this country. All the branches of science that can help have been working, — anthropology, medicine, psychology, economics, sociology, philanthropy, penology. The law alone has abstained. The science of law is the one to be served by all this. But the public in general and the legal profession in particular have remained either ignorant of the entire subject or indifferent to the entire scientific movement. And this ignorance or indifference has blocked the way to progress in administration.

The Institute therefore takes upon itself, as one of its aims, to inculcate the study of modern criminal science, as a pressing duty for the legal profession and for the thoughtful community at large. One of its principal modes of stimulating and aiding this study is to make available in the English language the most useful treatises now extant in the Continental languages. Our country has started late. There is much to catch up with, in the results reached elsewhere. We shall, to be sure, profit by the long period of argument and theorizing and experimentation which European thinkers and workers have passed through. But to reap that profit, the results of their experience must be made accessible in the English language.

The effort, in selecting this series of translations, has been to choose those works which best represent the various schools of thought in criminal science, the general results reached, the points of contact or of controversy, and the contrasts of method — having always in view that class of works which have a more than local value and could best be serviceable to criminal science in our country. As the science has various aspects and emphases — the anthropological, psychological, sociological, legal, statistical, economic, pathological — due regard was paid, in the selection, to a representation of all these aspects. And as the several Continental countries have contributed in different ways to these various aspects, — France, Germany, Italy, most abundantly, but the others each its share, — the effort was made also to recognize the different contributions as far as feasible.

The selection made by the Committee, then, represents its judgment of the works that are most useful and most instructive for the purpose of translation. It is its conviction that this Series, when completed, will furnish the American student of criminal science a systematic and sufficient acquaintance with the controlling doctrines and methods that now hold the stage of thought in Continental Europe.

Which of the various principles and methods will prove best adapted to help our problems can only be told after our students and workers have tested them in our own experience. But it is certain that we must first acquaint ourselves with these results of a generation of European thought.

In closing, the Committee thinks it desirable to refer the members of the Institute, for purposes of further investigation of the literature, to the "Preliminary Bibliography of Modern Criminal Law and Criminology" (Bulletin No. 1 of the Gary Library of Law of Northwestern University), already issued to members of the Conference. The Committee believes that some of the Anglo-American works listed therein will be found useful.

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# TRANSLATOR'S PREFACE

NONE of the Continental writers who deal with crime and the criminal seems destined to a larger audience among English-speaking peoples than the author of the work here translated. His teachings, in the main, are characterized by a simplicity and directness that should have a special appeal to the Anglo-Saxon mind. They contain "no anointings for broken bones, no fine theories 'de finibus,' no arguments to persuade men out of their senses." And, indeed, Anglo-Saxon influences have not been without their part in the groundwork of his system. Here Darwin, Spencer, and Bagehot have all contributed to shape his thought and color his ideas. But whatever of indebtedness thus exists on his part has been repaid with usury. Few of us, perhaps, would be willing to accept all the applications of his principles, fewer, perhaps, to regard the system of procedure for which he contends as the last word in the mechanics of the criminal law; but, none the less, he offers much that England and America, without departing from their traditions, may lay hold of to advantage in building for the future.

Baron RAFFAELE GAROFALO, a member of an Italian noble family of Spanish origin, was born in the city of Naples in 1852. He was educated for the law, and at the conclusion of his university studies entered what in Italy, as elsewhere on the Continent, is really a profession by itself, namely, the magistracy. Passing from grade to grade, he attained high place at a comparatively early age. Among the important offices which he has held are those of President of the Civil Tribunal of Pisa, Substitute Procurator-General at the Court of Cassation in Rome, and President of Division ("Sezione") in the Court of Appeal of Naples. At present he is Procurator-

General at the Court of Appeal of Venice. Added to this, he is a Senator of the Kingdom of Italy and Adjunct Professor of Criminal Law and Procedure in the University of Naples, with personal distinctions including membership in the governing body of the Heraldic Council, the rank of Officer in the Order of Saint Maurice and Saint Lazarus, and that of "Commendatore" in the Royal Order of the Crown of Italy.

At the time of his appointment to the Senate, he had already a long record of usefulness in connection with legislation for the betterment of the criminal law. A notable achievement in this field was the preparation, in 1903, at the instance of the Minister of Justice, of the draft of a code for the reformation of criminal procedure in the Italian courts. Political reasons, unfortunately, forced the Government to lay this project aside.

He has been a member of the Royal Academy of Naples, as also of the International Institute of Sociology, which has its headquarters at Paris. As President of the last-mentioned organization, he was Chairman of the Congress held at Berne in 1909, whose subject of discussion was "Solidarity." Some time ago he was elected to the Presidency of the Italian Society of Sociology, which office he still holds. He is the author of many articles on legal, sociologic, and economic topics, and of numerous papers read before societies for the advancement of related studies, in particular that of crime and its treatment. Other writings of his are: "Criminal Attempt by Insufficient Means;"[1] "The True Manner of Trial and Sentence;"[2] "Indemnification of Persons Injured by Crime;"[3] "The Socialist Superstition;"[4] and "International Solidarity in the Repression of Crime."[5]

But it is upon his "Criminology" that Garofalo's title to international renown principally rests. Its doctrines, varying

[1] "Il tentativo criminoso con mezzi inidonei" (Turin, Loescher, 1882).

[2] "Ciò che dovrebbe essere un giudizio penale" (Turin, Loescher, 1882).

[3] "Riparazione alle vittime del delitto" (Turin, Bocca, 1887).

[4] Tr. Dietrich, "La Superstition socialiste" (Paris, F. Alcan, 1895).

[5] "De la solidarité des nations dans la lutte contre la criminalité" (Paris, Giard et Brière, 1909).

markedly from those of Lombroso and Ferri, but attaching the same value to experimental and inductive methods, have ranked him as one of the three protagonists of the Italian positive school, and earned him commanding place among the leaders of criminal science. As explained in his own preface, this book was the outgrowth of a brochure which he published in 1880: "Concerning a Positive Criterion of Punishment." The first Italian edition of the "Criminology" appeared at Naples in 1885, the second at Turin in 1891. To ensure a wider public, a French version was prepared by the author personally. This has gone through five editions, in the last of which, brought out in 1905, he took occasion to effect a complete recasting of the work. Translations have also been made into Spanish and Portuguese, the former by P. Dorado y Montero, the latter by J. De Mattos.

Conformably to the wishes of the author, the present version is taken from the French edition of 1905. The translator, however, has kept the second Italian edition constantly before him, and has found it of much service. Indeed, the interests of the English version have at times seemed to require that the Italian edition be laid under direct contribution. It is thus responsible for verbal deviations, here and there, from the French text, for some amplification of statements of fact in relation to criminal cases referred to by the author (containing, as a rule, a fuller account of such cases), and for slight additions to the foot-notes. So, also, it has considerably influenced the matter of quotations from Italian writers.

In the work of translation, closeness of rendition has not been looked upon as an inflexible canon. The aim has been to say what Garofalo has said, but to say it as an Englishman or American would have said it. Where literalness would have interfered with naturalness, literalness has been freely sacrificed. Pursuant to the ideas of the Editorial Committee, titles have been given to the sections (these, save in a few instances, being without superscription in the original) and

italic side-headings introduced where they appeared of advantage. Some re-arrangement of subdivisions has likewise been found advisable. Except in the case of the material for an international penal code, comprising Part IV, such re-arrangements are indicated by a foot-note at the outset of the chapter wherein they occur. It also seemed more in keeping with our ideas of book-making that the matter contained in the appendices should follow Part IV, instead of preceding it. One or two minor inadvertencies of the author have been corrected without comment.

A certain amount of hesitation was experienced as to the proper rendition of "probité," the term used by the author to designate the second of the elementary altruistic instincts, that is to say, the sentiment of respect for the property of others. It was a question whether it should not be translated as "honesty," in view of the specific meaning which this word usually carries in modern English, unlike its corresponding forms in French and Italian. But for one thing, the wider meaning of "honesty" is not altogether extinct: we still speak of the "honest" man as the opposite of the criminal, without necessarily referring to the thievish or mendacious criminal. Then again, there is little difference in meaning between "probity" on the one hand, and the French "probité" and the Italian "probità" on the other. The objection to the use of "probity" in the present connection is that it implies a high degree of respect, or a superior kind of respect, for what belongs to others — a maximum, rather than otherwise, of the moral quality sought to be denoted. But the same thing unquestionably holds true of the French and Italian words. Speaking of "probità," in his second Italian edition, Garofalo himself owns to its lack of precision, and emphasizes the fact that it has only been adopted in default of an apter term.[1] These considerations, together with the further advantage of preserving the identity of the author's terminology, dictated the employment of "probity" as the nearest equivalent.

[1] P. 32 (Turin, Bocca, 1891).

It is to be sure inexact, but in this it merely reproduces the acknowledged inexactness of its original.

Some notes have been added by the translator, chiefly with reference to the meaning of legal terms. In this regard (as well as for guidance to specific renderings) Sir James Fitzjames Stephen's "History of the Criminal Law of England" has been repeatedly drawn upon. For the general explanation, however, which would have been a desirable pendant of Garofalo's chapter on procedure, the reader is directly referred to the illuminating account of French criminal procedure (with which the Italian substantially accords) contained in Stephen's first volume. On this head, too, the collection of entertaining sketches translated and edited by Gerald P. Moriarty under the title of "The Paris Law Courts" [1] will be found to yield much serious information. The paper by Alfred Le Poittevin, in Barrows' "Penal Codes of France, Germany, Belgium, and Japan," [2] may likewise be consulted with profit. A number of articles in English and American legal periodicals also deal with the subject, of which should be mentioned: "The Trial of Crime in France," by Thomas Barclay, 10 Harvard Law Review, 46–48, "Criminal Procedure in France and England," by Léon de Montluc, 12 Journal of Comparative Legislation (N. S.), 157–174; "The French Judicial System," by C. A. Hereshoff Bartlett, Part II, "Criminal," 38 Law Magazine and Review, 428–446; and (by all means) Judge Lawson's interesting notes on his recent study of the French courts, appearing in the current volume of the American Law Review (Vol. 47, 143–152, 300–312, 458–469).

As a final word, the translator would record his indebtedness to the Chairman of the Editorial Committee, whose counsel has smoothed out numerous difficulties and whose encouragement has lent an added agreeableness to the task.

CHICAGO, October 10, 1913.

[1] New York, Scribner, 1894.

[2] Pp. 43–80 (Washington, Government Printing Office, 1901).

# INTRODUCTION TO THE ENGLISH VERSION

By E. Ray Stevens [1]

Beginning with the days when the accused was without counsel, without witnesses, without even the right to testify in his own behalf, the attention of society was long engrossed with the protection of the accused before conviction. His rights have been made so secure by bills of rights and other constitutional limitations as to protect, often, the guilty as well as the innocent from punishment. We cling so tenaciously to the old methods of protecting the accused that Baron Garofalo justly says that the dominant theory today is to protect the criminal against society rather than to protect society against the criminal.

Were it not for our worship of these old rules that have long since ceased to be applicable to the administration of modern criminal justice, we would compel the defendant to take the stand in criminal as well as in civil actions, because, of all men, he knows most about his guilt or innocence. The object of the trial of a criminal action should be to find the truth, — not to shield a guilty person from a just conviction. Adherence to these archaic rules is one of the chief causes for the existing dissatisfaction with the administration of criminal justice, because the accused is allowed to play his game with loaded dice, while justice travels with leaden heel.[2] This

[1] Judge of the Ninth Judicial Circuit, Madison, Wisconsin; member of the Executive Board of the American Institute of Criminal Law and Criminology.

[2] Chief Justice Winslow, in *Hack* v. *State*, 141 Wis. 346, 352.

condition was tolerated because society considered punishment as a substitute for private vengeance and still looked upon the trial as a kind of warfare in which the end—acquittal—justified the means.

Up to recent times society as a whole felt that it had done its full duty to itself and to the accused when it protected him at every step up to his conviction. Upon his conviction the individual ceased to be of interest to society, at least until, his sentence past, he emerged from prison and was again featured in the newspapers in some new crime. Up to very recent times society has failed to recognize the fact that the great problems connected with the administration of criminal justice begin when the guilt of the accused has been determined.

Happily we have discovered the large part which juvenile courts, indeterminate sentences, probation, and parole can play in the administration of our criminal justice. But we need to have shed on our path of progress such light as is thrown by Baron Garofalo's practical and sane book on Criminology, which gives the conclusions formed in a life spent in the administration of the criminal law as lawyer, prosecuting officer, and judge. As one reads this enlightening work, he is impressed again and again by the fact that the men with whom the author dealt were actuated by the same motives and were in need of the same treatment as those who appear in the criminal courts of our English-speaking countries.

Proceeding upon the theory that punishment at the hands of the public is a substitute for private vengenace, society has attempted to measure punishment by the harm done to society; so that the quantum of punishment inflicted on the offender should weigh as heavily on one side of the scales of justice as the harm done by the accused does upon the other. This theory overlooks entirely the fact that the object of punishment is not to replace private vengeance, but that it should be to protect society from future harm from the offender by

so changing the *motives* that guide his action that he will no longer remain a menace. As the author puts it: "Our efforts . . . are to be directed, not to measuring the quantum of harm to be inflicted on the criminal, but to determining the kind of restraint best fitted to the peculiarities of his nature" (p. 299).

We have given too much consideration to the offense, too little to the offender. We must give more consideration to the individual, less to the chapter and verse of the written law that declares the punishment for each offense. If the offense be burglary, we have been prone to impose the same punishment whether the defendant be a recidivist or a first offender. We have given altogether too little consideration to the personal history and characteristics of the individual in determining what shall be done to protect society against future harm. As the author so ably demonstrates, the only way of protecting society from the recidivist is to eliminate him. At present, we confine him for the prescribed orthodox period and then give him liberty, with no better equipment for becoming a desirable member of society than the reputation of being a convict and the inherent aptitude to commit another crime, which may in fact be his only means of securing even the barest necessities of continued physical existence. Such men are as much in need of treatment and care as if suffering from a physical ailment.

One great obstacle in the way of giving to each offender the individual treatment which Baron Garofalo would have him receive is that the law imposes on the trial judge the impossible task of determining in advance the punishment best suited to the needs of each individual offender. That determination must be made in most cases after the most limited opportunity to observe the defendant. In the great majority of cases he enters a plea of guilty without trial; frequently he is practically unknown in the community. Yet under such circumstances the trial judge is expected to play the part of the wise physician, to determine to the day the length of treatment

that the defendant must undergo for his reform or cure and for the protection of society. No physician, even the most able and experienced, can treat his patients without opportunity to observe them from day to day that he may adapt his treatment to their needs. The trial judge is not wiser than the physician.

Far too many sentences imposed in our criminal courts today are leaps in the dark. The needs of society and of the prisoner can be determined only by an investigation of the personal history of the individual, of his physical condition and his mental characteristics, of his companions and his environment, and above all other things, of the motives that prompted the defendant to commit the crime. Often the trial judge cannot make this investigation. In many cases it must be continued for a considerable period while the defendant is undergoing punishment. As a rule the older the defendant the more skilful he is in concealing these essential facts and in playing the part of a first offender. The writer of this introduction has sentenced more than one defendant believing each to be a first offender, after investigating the case, only to be informed by the prison officials that an investigation of the records in other states showed him to be a confirmed criminal. Yet after completing comparatively short terms these men have gone forth to prey on society, emboldened perhaps by their success in escaping with short terms.

These experiences, as well as the impossibility of determining in advance the punishment that should be given to each offender, lead one to suggest that, at least in all the more serious offenses, the functions of the court should cease with the determination of the guilt or innocence of the accused. The punishment to be imposed should be determined by those especially qualified to judge of the need of the individual and of society, who can investigate the history of the prisoner and observe his progress from day to day as does the physician, with power to change the treatment, within

certain prescribed limits, as the needs of the individual may require.

Among the chief contributions made by the author is the development of the thought that the *motive* that moved the offender to commit the crime is one of the most important elements to be considered in determining what shall be done to protect society from future harm from the same offender. Discover the motive and give such treatment as will tend to change that motive, and the first step has been taken toward so changing the offender that he shall no longer be a menace to society.

The defects of our present method of punishment become apparent as we read the author's discussion of the means of punishment that should be employed with different classes of offenders. If the prisoner has taken the property of another, let a part of his punishment consist of a restoration of the property, voluntarily if he will, at hard penal labor if he will not or cannot restore it otherwise. If he deserts his family, let him be compelled to support them by building roads or performing other labor found by the proper officers, instead of condemning him to a life of idleness in some jail where he may play cards and smoke with other gentlemen of leisure like himself and eat his three meals a day at the expense of the same taxpayers who are compelled to aid in the support of the deserted family.

Society will find much greater protection under our criminal law when we recognize the truth of Baron Garofalo's teachings that punishment should have the single aim of disarming an enemy of society, by adapting the quantum and kind of punishment to the needs of each individual offender, so that none shall suffer more than his individual needs shall warrant in order that he shall cease to offend against society,—which is the end that should be achieved by all punishment. The habitual criminal should be eliminated from society. The offender who can be adapted to an upright life among his fellowmen should be given the aid to that better life which it