

Spring 1926

Foundations of Criminology

Boris Brasol

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

Boris Brasol, Foundations of Criminology, 17 Am. Inst. Crim. L. & Criminology 13 (1926-1927)

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

FOUNDATIONS OF CRIMINOLOGY

BORIS BRASOL¹

PREFACE

Among the vital problems confronting civilized mankind, the sinister phenomenon of criminality occupies a prominent place and engages ever-increasing attention toward its scientific solution on the part of both the jurists and the general public.

Modern thought is no longer content with the scholastic interpretation of crime based upon abstract legal formulas inscribed in penal codes, but it seeks to explain the complex nature of the criminal deed in the light of the latest discoveries of biology, psychology, anthropology and economics.

Positive criminology had departed—and therein lies its great achievement—from the traditional path of the classical school which dealt with crime quite apart from the realities of every-day life; metaphysical conception which reduced the whole study of criminality to a purely formal analysis of crime from the standpoint of the particular penal legislation, including the system of punishment.

In our day, too, the legal aspect forms an important portion of criminology; only we do not confine ourselves to this technical phase of the study, because the basic fact is now recognized that criminal phenomena are functions *sui generis* of the social structure at large, while on the other hand, they necessarily have an individual background in the physical constitution and the psychic impulses of the criminal. The social nature and the sociologic notion of crime have been discussed at length not only by the prominent scientists of the Italian school with Lombroso and Garofalo its leading spirits and master minds, but also by Anglo-Saxon criminologists like T. D. Eliot, Havelock Ellis, Edwin Sutherland and a number of others.

Thus extending the scope of its inquiry to the realms of social and natural sciences, modern criminology endeavors to find the underlying cause of criminality instead of merely registering its external manifestations.

Experimental psychology and psycho-pathology, perhaps more than other disciplines, are rendering priceless services to the criminologist

¹Formerly of the St. Petersburg District Court. Author of "Methods of Legal Investigation," etc.

of our age, enabling him to examine the inner mechanism of the criminal act in its development and growth. While these clinical observations are of great theoretical importance, oftentimes they equally furnish the jurists with reliable data on the practical problem of the *corpus delicti* and the imputation of the particular criminal deed. Here, then, criminology has to pass on one of the most difficult questions relating to crime, namely its *motive*.

The correct understanding of the criminal motive:

- (a) reveals the object of the punishable deed;
- (b) gives a logical starting point to the judicial investigation, and,
- (c) determines the means of social defense which, in the specific instance should be adopted by the state.

Sometimes the very absence of a clearly defined motive throws an entirely new light upon the criminal act, leading the investigator to look for its logical solution in the domain of pathology. This, in turn, might result in the acquittal of the defendant and his confinement in an asylum.

Criminology, however, must be guarded against the unfortunate tendency—so pronounced in Italy and the United States—of exaggerating the part of mental disorders in the perpetration of crimes. In point of fact, modern society is facing a serious condition which may be described as “the rising tide of professional criminality.” Both in Italy and the United States, the number of most atrocious crimes is steadily increasing. Efficiently organized banditry has declared war on the peaceful population, murder having become a common happening in the daily records.

It often can be noticed that the attorneys for the defense assisted by hired alienists, exert their efforts to convert typical criminal cases into cases of dementia, or amnesia for the sake of insuring impunity of the criminal. As Baron Raffaele Garofalo justly remarked, “in the popular view, the substantive law, procedure, and the judicial power itself, too often seem to work in combination for the protection of the criminal against society rather than society against the criminal.”²

Naturally the safeguard of society against criminality is the foremost duty of the state. In addition crime must be repressed and the criminal punished not solely as a measure of self-defense but as a means of upholding the authority of the state itself. In this connection it should be borne in mind that the act of punishment is the concluding

²Baron Raffaele Garofalo, “Criminology,” author’s preface to the American edition, page XXIX, Boston, 1914.

stage of criminal procedure, while its first task is the investigation of crime and the detection of the criminal.

It may seem a paradox, and yet it is true, that no line of human "endeavor" is progressing as rapidly as criminality. The modern criminal, especially of the habitual class, is fully equipped with all the latest devices of technique, and consequently criminal activities have assumed a highly proficient and, at times, a strictly scientific character. In days gone by, murders, for instance, were usually performed in a rather simple and crude fashion, by the use of a hatchet or some firearms. Not so at present: Homicide is often accomplished by the adoption of scientific methods, requiring profound knowledge of chemistry, biology and bacteriology. Such are the murders committed by means of introduction of deadly bacteria into the body of the victim. Likewise, the latest forgeries reveal the fact that the falsifiers are resorting to the most "progressive" photo-mechanical and graphic appliances, with the result that bills and bonds are being counterfeited in an almost perfect manner.

It is to be regretted that the methods of investigating crimes have not kept pace with the methods of their execution. As a rule, government authorities are still dwelling in the fantastic atmosphere of the super-detective of the Sherlock Holmes type who is supposed to know everything even before it happened, and whose principal investigative asset seems to be that rather mysterious faculty of "intuition" which, like an X-ray, penetrates under the thief's skin. Bernard De Quiros calls this *the empirical* phase of investigation, as distinguished from and opposed to the *scientific* method.³

However erroneous the belief in the "super-detective panacea" may be, it has captured the imagination of the dilettantes of criminology and has helped to entrench inefficacy in the field of criminal research.

Of course, it can not be denied that during the last twenty-five years in several European countries constructive endeavors have been made to build up a new system of investigation founded on the discoveries of natural sciences. In this connection the names of Bertillon, Hans Gross, Bourinsky, Minovici, Niceforo, Reiss and Tregouboff will be recalled by those who have made a study of this particular department of criminology. The Bertillon Cabinet (Service D'Identité Judiciaire) in Paris, the Police Laboratory in Lyon, the Bureau of Criminal Research in Lausanne, the Identification Office in Belgrade as well as the Institute of Experimental Judicial Research in Petro-

³Compare Bernard De Quiros "Modern Theories of Criminality," page 208, Boston, 1912.

grad, have laid the corner stone to the work which Prof. Reiss calls "Police Scientifique."

The center of gravity of this scientific movement rests in the theory, now almost universally accepted, that detection of crime, in the first place, should be as far as possible made dependent upon *material evidence*, and secondly that the things which go to make up material evidence in a case, be inspected, preserved and examined by enlightened *experts*, thoroughly equipped with all photo-mechanical and chemical apparatus required for the different technical tests.

Modern criminology justly points out to the danger of basing the administration of justice on the witness testimony, which, *as a rule*, is neither reliable nor correct. Even confession, which Enrico Ferri ironically calls "the queen of proofs," is often deliberately false and consequently misleading. These facts are acknowledged by those possessing court experience and are fully corroborated by experimental psychology.

The need for a more perfect system of detection of crime is felt everywhere, more strongly perhaps in the United States, since in this country the criminal offensive is daily gaining in strength and scope.

The laws of imitation established by Tarde are equally applicable to the criminal world. Certain categories of crimes manifest a peculiar contagious tendency and are bound to be repeated, especially when their perpetration remains undiscovered. In this sense an undetected crime means more than the mere impunity for the one who performed it. The professional criminal, cognizant of the fact that there are no adequate means at the disposal of the state for curbing the criminal assault, grows arrogant and feels encouraged to undertake analogous attempts to violate the law. One must be familiar with the psychology of the underworld in order to realize what effect an undetected crime bears upon those who belong to the "Lower Depths."

Contrary to the views expressed by certain Italian writers, we think that not the weakening of social defense, but its scientific consolidation is the great problem of our time. "Social Hygiene," as advocated by Ferri and Turati, may be quite in conformity with their theory, according to which criminality is simply the result of economic inequality, and consequently the abolition of the capitalistic regime, will eliminate crime as by magic. But, from the practical standpoint of government, the socialistic thesis is obviously unacceptable. Society can not afford to wait until the problematic blessings of a socialist El Dorado will have done away with the numerous manifestations of the criminal will. Statistical data gathered in Soviet Russia, a country

in which capitalism has been abolished, prove the fact that criminality in general, and juvenile delinquency in particular, instead of disappearing from the social stage, have penetrated all the pores and fibers of the nation.

Criminology must serve a practical purpose. It should not dwell on the heights of doctrinal abstractions which are of little help to those in whose hands the fate of the administration of criminal justice is placed. Thus, it would seem that a course on criminology should contain, aside from the theoretical deliberations on the nature of crime, its relation to social environment, the anthropological constitution of the criminal, etc., a survey—even if it be brief—of such practical methods as are being successfully used in the difficult work devoted to the scientific investigation of crime.

Accordingly, this volume seeks to convey to the reader a general idea of the theoretical foundations of modern criminology (Part I), and furnish him with a series of practical suggestions regarding the methodology of criminal research and the investigative work in particular (Part II).

In this way, perhaps, some benefit might be derived by those who will read the book which, of course, does not purport to present an all-embracing study of the subject. The author will consider his task fulfilled, if at least some of his observations will be found helpful in the momentous struggle which civilized society is compelled to wage against the rising tide of criminality.

PART I

Foundations of Criminology

CHAPTER I

Criminology belongs to that group of social sciences which deals with crime in general, as a social phenomenon. Its subject embraces the following principal elements:

- (a) Crime
- (b) Criminals
- (c) Criminality
- (d) Scientific investigation of crime
- (e) Criminal procedure
- (f) Punishment

The first, and possibly the main difficulty, which the student meets when approaching the field of criminology, is the absence of any commonly accepted definition of the term crime.

Most of the authors give some classification of criminal deeds or study their causes without determining the concept of crime by its precise properties. Thus, Lombroso in his classical book, *"Crime, Its Causes and Remedies,"* while analyzing the climatic, physical and social factors which produce the complex phenomenon of criminality, refrains from setting forth his definition of crime.

Dr. Edmond Locard, Chief of the Lyon Police Laboratory, in his latest volume, *"Le Crime et les Criminels,"* merely enumerates the various kinds of criminality, describing their "professional" characteristics.

Again, Havelock Ellis, the distinguished English criminologist, following the principles of the anthropological school, presents a very brilliant survey of the physical and psychical anomalies observed in the criminal type, but also does not attempt to define the meaning of the word crime.

Russian criminalists, especially Tagantzev, Foyntitzky and Sergievsky, have dealt with crime, mainly in its formal or judicial aspect, and consequently, their definitions do not reveal the essential traits of that phenomenon in the broader sociological sense.

Next we find those scientists who restrict their inquiry to the analysis of the practical methods used in the detection of crime. Their combined labors form a new and rather important branch of modern criminology which Professor Reiss calls *"Police Technique"* or *"Police Scientifique."* Bertillon, Hans Gross, Tregouboff and other eminent representatives of this school, naturally, do not seek to dwell upon the theory of crime.

On the other hand, the socialist writers, like Ferri and Turati, whose sociological conceptions are derived from the Marxian thesis of materialistic determinism, have no scientific definition of crime to offer, because of their belief that crime is but a form of protest against social inequality, or a manifestation of class-rebellion. In fact, what notion of crime can be expected from a writer who maintains that "the rich must be placed under the ban of the '*jus gentium.*' . . . Any manner of attack upon them is justifiable, not excluding fire or sword or even false witness."⁴

Much in the same way Tolstoy, who proclaimed the principle of non-resistance to evil, was unable to denote crime otherwise than by referring to an ethical paradox, *"Crime is punishment, Punishment is crime."*

⁴Program of the "Black Hand" in Laveleye's *Le Socialisme Contemporain*, p. 275 in Garofalo's *"Criminology,"* p. 143, Boston, 1914.

Baron Raffaele Garofalo, realizing the basic fact that science, so far, has failed to evolve a sociologic notion of crime, elaborated his remarkable theory on "Natural Crime" with its deviation from, or violation of the constituent instincts of the moral sense, which, he believes, is characteristic of a criminal act. To put the formula in his own words: "The element of immorality, requisite before a harmful act, can be regarded as criminal by public opinion, is the injury to so much of the moral sense as is represented by one or the other elementary altruistic sentiments of *pity* and *probity*. Moreover, the injury must wound these sentiments not in their superior and finer degrees, but in the average measure in which they are possessed by a community—a measure which is indispensable for the adaptation of the individual to society. Given such a violation of either of these sentiments, and we have what may properly be called *natural crime*."⁵

As can be easily seen, Garofalo tends to explain only the sociologic phase of crime, leaving out its other aspects, like the legal, psychological and psycho-pathological. But even within the set limits, this definition raises a number of serious questions and objections.

In the first place, we note that the task of determining whether an act should or should not be considered a crime, is entrusted to "Public Opinion," which is obviously an uncertain and indefinite agency. It is a well-known fact that virtually on every matter of importance, public opinion is divided, and in our day, among civilized nations, we can hardly imagine a condition of unanimity on any problem entailing ethics and similar transcendental apperceptions.

But aside from this practical difficulty, it is proper to ask the general question: What is Public Opinion? The plain statement that public opinion is equal to public sentiment, just as the equation $x = x$, explains nothing. Public sentiment is in no way a precise conception. In order that it be made part of a definition, it would be necessary to agree, at least, on the mode of its expression. Indeed, what apparatus does actually express or interpret Public Opinion? Is it the press? Or is it more correctly exhibited by literature? Or shall we accept the parliamentary vote as the gauge of public sentiment? Or, perhaps, the more perfect method of revealing public opinion is to be found in a popular referendum, and if so, how should it be constituted?

If, however, none of these modes represents the accurate measure of public sentiment, then should we not try to disclose in legislation and the opinions of the jurists the genuine utterance of the popular view

⁵Baron Raffaele Garofalo's "Criminology," pp. 33, 34, Boston, 1914. Author's italics.

on crime? But Garofalo explicitly states that "natural crime" does not or may not coincide with its legal conception. In the opening lines of his chapter on this subject he says: "By no means every person who is an offender according to legal standards answers the description of the naturalists' 'Criminal Man.'" . . .⁶

Still less can we accept that part of Garofalo's theory in which he stipulates that the injury to the moral sense be recognized as such not by the sentiments, "in their superior and finer degrees," but in the average measure possessed by a community. Were we to adopt this view, we would be compelled to admit that, for instance, incest is not criminal in certain regions of Russia, where even now it is widely practiced among the peasants, constituting probably a peculiar survival of the ancient *jus primae noctis*. From this standpoint, too, blood feud, accompanied by acts of violence and premeditated murder which is still flourishing among the various Caucasian tribes, can hardly be called criminal.

There are further many repulsive customs which the average person, in almost every community, simply ignores; consequently, they do not injure the moral sense at all. Nevertheless they are justly listed as crimes in the respective penal codes. Thus, petty graft in some of the Latin countries, or the "bakshish" habits in Turkey are considered the most natural and innocent things; still, both sociology and law recognize the fact that graft, like any other form of extortion, bears all the characteristic traits of crime.

Nor can we, despite Garofalo's assertion, regard the sentiment of social altruism as some sort of sociologic dogma. Of course, sporadic instances can be cited which would tend to corroborate the presumption of the existence of an altruistic instinct possessed by a large community. Indications of a social sentiment of this kind can be revealed in the universal practice of caring for the wounded, charitable undertakings in general, protection of the young and so forth. More conspicuous manifestations of the same nature are traced in the gallant work of the firemen, risking their lives for saving those trapped in burning tenements, the heroic behavior of Russian sailors during the Messina earthquake, the splendid achievement of Captain Fried and the crew of the "President Roosevelt," who, during a terrific storm in the North Atlantic, rescued the crew of the "Antinoe," and similar courageous acts. Still these altruistic symptoms are offset and contradicted

⁶Idem p. 3. On the question of public opinion many prominent writers have given their views. Most of them, however, seem to adhere to the belief expressed by Dr. John M. Mecklin in his volume "An Interpretation of Social Ethics" (N. Y., 1920) that "the term public opinion is notoriously vague."

by polar sentiments of the most brutal nature, leading to wholesale massacres of the Armenians in Turkey, lynching outrages in the United States, systematic terrorism in Soviet Russia and other forms of mob action. It should be also remembered that social progress does not eliminate cruel instincts of the latter kind, so that from a strictly scientific standpoint, it is an error to couple the basic idea of "Natural Crime" with an arbitrary conception like "the elementary altruistic sentiments of pity and probity."

The definition of a name, according to John Stuart Mill, "is the sum total of all the *essential propositions* which can be framed with that name for their subject."⁷ Logic draws a distinction between the definition of a name and, what is erroneously called, the definition of a thing. For our purpose, however, it suffices to state that Garofalo's description of the term "Natural Crime" (which is rather a postulate than a name in the sense used in logic) is both arbitrary and incorrect: It is founded on an abstract presumption and not on a sociologic fact (altruistic sentiment of pity and probity), and is made dependent upon the existence of a fictitious agency (public opinion), whose very modes of functioning remain undetermined. It, therefore, becomes impossible to draw the sum total of the *essential propositions* which can be attributed to the name "Natural Crime" as set forth by Garofalo, which, in turn, means that we are confronted with the absence of any definition of that term.

Nevertheless Garofalo and other modern criminologists are quite justified in their endeavors to establish the *sociologic* notion of crime, as distinguished from the scholastic theory which dealt with this phenomenon as a mere legal abstraction.

Crime, being a permanent social phenomenon, naturally, should be treated by science as such. It seems only that the reaction of modern criminology against legal scholasticism has led to another extreme—the tendency to abstract from crime that which in civilized society denotes its very existence, namely, its legal film.

This trend of thought, especially noticeable among the writers belonging to the positive school, may perhaps be explained by the desire to draw criminology nearer to sociology, making the former independent of the science of criminal law. However, if it was a mistake to study crime regardless of its social background, it equally is a fallacy to examine crime as a social phenomenon apart from its legal construction. Not only is this method incorrect, from the stand-

⁷John Stuart Mill, "System of Logic," p. 87, London, 1911. Author's italics.

point of criminology, but it hardly adds anything to the prestige of sociology itself.

It is true, of course, that social conditions either produce or bear a strong influence upon criminality; but the fact should not be overlooked—and its significance underestimated—that the legal systems, themselves, are the outgrowth of social conditions, while legislation (including the penal laws), like a mirror, reflects the whole range of the prevailing economic relations and cultural forms. Every significant change in the social structure inevitably finds its formal expression in the corresponding legislative acts; on the other hand, the enactment of new laws causes profound permutations in the organization of society, its modes and habits of living. Thus, to cite but two examples, the Imperial Manifesto of the 19th February, 1861, by virtue of which the peasants in Russia were liberated, had a gigantic effect on Russian national life as a whole, paving the way for a series of social innovations, including universal military conscription, which did away with the recruiting system, the institution of the *Zemstvos* (local self-government), the fundamental court reform of 1864, the abolition of censorship and many other measures which, combined, constitute what is known in the history of Russia, "The Epoch of the Great Reforms."

On the Thirteenth Amendment of the Constitution of the United States, adopted on December 18th, 1865, a Federal Court said: "It trenches directly upon the power of the States and of the people of the States. It is the first and only instance of a change of this character in the organic law. It destroyed the most important relation between capital and labor in all the states where slavery existed. It affected deeply the fortunes of a large portion of their people. It struck out of existence millions of property. The measure was the consequence of a strife of opinions, and a conflict of interests, real or imaginary, as old as the Constitution itself. These elements of discord grew in intensity. Their violence was increased by the throes and convulsions of a civil war. The impetuous vortex finally swallowed up the evil, and with it forever the power to restore it."⁸

The Thirteenth Amendment having been adopted, Congress was given power to enforce it by appropriate legislation. Accordingly, under this constitutional authority, Congress enacted a number of statutes prohibiting the employment of peon labor, etc.

It may be truly said that the connection between social condi-

⁸Quoted in Thomas James Norton's "The Constitution of the United States, Its Sources and Applications," p. 233, Boston, 1925.

tions and the particular legislation is a fact which can neither be denied by sociology nor ignored by jurisprudence.

The affiliation between law and social conditions is engaging ever-increasing interest on the part of the modern jurists themselves. Thus, Prof. Roscoe Pound of Harvard, in his volume "The Spirit of the Common Law," referring to the factors which shaped American Common Law, mentions the following: "(1) An original substratum of Germanic legal institutions and jural ideas; (2) the feudal law; (3) Puritanism; (4) the contest between the courts and the crown in the seventeenth century; (5) *eighteenth century Political Ideas*; (6) *the conditions of pioneer or agricultural communities in America in the first half of the nineteenth century*; and (7) *the philosophical ideas with respect to justice, law and the state that prevailed in the formative period in which the English Common Law was made over for us by American courts.*"⁹

Whether this be an exhaustive summary of the historic elements which evolved the system of American Common Law in its present status, is a matter that does not need to be discussed here.¹⁰

The essential point is that Prof. Pound recognizes the fact that the legal system prevailing in the United States is not an arbitrary scheme invented or devised by a group of lawyers and thereupon tacitly adopted by the community, but a complex social phenomenon, the roots of which are deeply planted in the historic subsoil of the nation, its philosophy, politics and economics.

What is true of Common Law is equally applicable to statutory law. For instance, the *Code Napoléon*, although founded upon the eternal principles of Roman Law, strongly reflects the mass of philosophical ideas, political tendencies and social changes originated by and evolved as the result of the French Revolution. This code, further, is a compromise between Roman Law and the Germanic legal concepts, a fact which is due to the conquest of purely German territories by Napoleon.

Roman Law itself, in both its principal ramifications—the *jus civile* and the *jus pontificum*—was the compound function of the whole history of Rome, the flexible praetorian edicts having served as means of adaptation of the statutes to the continuous changes in the social structure of the empire.

⁹Op. Cit. pp. 14 and 15, Boston, 1921. Italics ours.

¹⁰We feel personally that to the factors mentioned by Prof. Pound, the racial aspect should be added, inasmuch as the early settlers, most of whom belonged to the Nordic races, brought with them strong individualistic tendencies which are so typical of the Common Law tradition.

In other words, it is an error, at least from an historical standpoint, to dissociate a legal system, including its penal laws, from the whole gamut of social factors and relations. Law, being an organic part of the latter, has also a retroactive effect upon the organization of society, and in this sense it is both a *sociologic* and *socionomic* actuality.

With reference to criminology there is a further consideration to be taken into account.

Whatever our general conception of crime may be, the fact will not be denied that, being a social phenomenon, crime becomes a reality only when society has reached a certain measure of political organization which makes it possible to establish a commonwealth, irrespective of any particular form of government. Until that stage has been achieved, crime, either as a sociologic notion or as a legal experience, is inconceivable.

So long as the state is nonexistent—there can be no organized social life nor public authority, there can be no legislation, whether civil or criminal, there can be no social ethics, and, consequently, there can be no crime in the sociological sense of the term.¹¹

Even if we should accept as an axiom Prof. Sutherland's theory of crime as a "social situation" resulting from the non-appreciation by one social group of those values which are appreciated by another social group "politically important" and possessing the power to resort to coercion "decently applied" to those who disregard the value,¹² even then we will find in this vague formula a carefully veiled presumption of the existence of a state; for it is only in its presence that we encounter:

- (a) organized political groups,
- (b) the power of organized coercion, and
- (c) the "decent application of coercion,"

which, using clearer language, is nothing else than the administration of criminal justice. This being so, we are again confronted with a

¹¹Among the primitive tribes which have not succeeded in evolving any state organization, social friction can also be witnessed; however, it is largely confined to individual strife, so that the violation of some personal interest results in a personal reaction against the transgressor by that member of the tribe on whom an offense was wrought. The tribe as a whole, usually takes no part in the repression of the offense, since at these low stages of civilization the idea of the community of interests is dormant. Even when the chieftain of the tribe is attacked by some rival member, the attack is considered a personal feud between the two individuals involved, and, as a rule does not lead to any common action on behalf of the tribe itself. Therefore the concept of crime in a sociological sense is nonexistent.

¹²See Edwin H. Sutherland's "Criminology," p. 21, Philadelphia, 1924.

broad legal construction, which, as we sought to explain, is not in contradiction to but quite in conformity with the sociologic notion of crime.

In the way of comparison, human society may be viewed either as an *organism* or as a *mechanism*. Both analogies—the organic and the mechanic—presuppose a unit functioning in a manner making the life or the motion of the unit dependent upon the proper functioning of its parts. It is evident that society is neither an organism nor a mechanism; nevertheless, for practical purposes it is legitimate to carry the analogy one step farther by pointing out to the fact that within an organized social group, like in a mechanism, useful motion corresponding to organic development in an organism, is to a certain degree hampered by opposing forces, such as friction in the world of mechanical phenomena or pathological disturbances in the physical condition of a human being. Friction and disease are natural things, motion, being inconceivable without friction and organic life, without certain interruptions of and deviation from normal evolution.

Likewise in the being of society, constructive labors, tendencies and efforts are constantly counteracted by destructive forces trying to interrupt, pervert or destroy some vital function, thus imperiling the integrity of the social constitution itself. Sometimes, such a destructive energy is of a physical nature (earthquake, plague, fire, etc.), while in other instances the destructive activities are marshalled by and directed against men themselves—members of the particular social group, state or nation—and then, they come within the province of sociologic investigation.

Crime, as a social phenomenon, is a destructive anti-social force, harmfully affecting the individual, society or the state, or all these elements combined.

The growth and perfection of a social organization is accompanied by a corresponding tendency on the part of the state to bring every social function within the limits of a specific legal expression. On the other hand, the molecular activities of an individual become more and more part of the general social development, with the result that the state deems it its duty to protect the individual to the same degree that protection is accorded to society as a whole. For this reason the violation of individual rights in organized society is followed by some form of legal reaction emanating from the state.

The interrelation between the social order and law has been thus interpreted by the late Prof. N. Korkunov: “. . . The life and development of the combination depends upon the preservation and due

development of the separate factors which make up society. An exclusive development of one factor may easily take place in a way to be injurious to the activity of other factors and interfere with the regular functions of the society as a whole. So far as concerns a mechanical aggregate, the bond connecting its parts, is a material one. It is a mechanical arrangement which co-ordinates the functions of several parts. But as regards society, whose principle of unity is psychic, the activity of its different elements must be co-ordinated by some different process. *The factor which institutes and controls this co-ordination in society is no other than law.*¹³

These brief remarks probably will be sufficient to demonstrate the fact that the legal aspect of social life is not alien to, but forms part of, the science of sociology. Therefore, it is legitimate to examine criminal phenomena taking into account their legal phase.

Of course, in our day Beccaria's definition of crime as of "some act injurious to public welfare" can no longer stand the test of either sociologic or legal criticism, his formula being obviously too vague and too general. In this respect we are in full agreement with Garofalo and the anthropologists who claim that the narrow legalism of the classical and judicial schools has been thoroughly discredited mainly owing to two facts: First, that they failed to disclose the connection between the nature of crime and the nature of the criminal, and, secondly, because their criminological theories left the social aspect of criminality entirely out of consideration.

So far back as in 1889, Liszt, Prins and the other scientists, on whose initiative "The International Union of Criminal Law" was founded, recognized the necessity of examining criminal phenomena both from the judicial and social viewpoints. They also made a material concession to the positive school by sanctioning the distinction, emphasized by the latter, between habitual and occasional criminals. In point of fact, the difference between these two classes is of paramount practical importance, not only to sociology but to legal science as well.

From the technical angle of the penal code, any person who happens to commit a prohibited and punishable act is considered a criminal; but both sociology and criminology agree that while the habitual or instinctive criminal deliberately attempts to injure the existing social order, in the occasional transgressor, the psychic element of antisocial intention is scarcely noticeable or nonexistent. The measure of harm—individual and social—resulting from either the habitual or the oc-

¹³N. M. Korkunov, "General Theory of Law," second edition, p. 323, New York, 1922, italics ours.

casual crime might be equal, and accordingly, the punishment therefor might be the same in either case; nevertheless the sociologic meaning of the two transgressions is quite different: The elements which go to make up the occasional crime are mostly external and their conjuncture, like a heavy burden, drags a person down to the level of moral despair. When this psychic state is reached, the ground for the criminal violation is prepared. A slightest shock from the outside, a minor failure, a trifling disappointment are sufficient to prompt an honest man to perpetrate a crime which indeed, in this particular instance, will cause the greatest moral suffering to the perpetrator himself, and thus, to quote Tolstoy's words again, crime will become a punishment, perhaps of the worst kind.

In this connection the classical analysis of Dostoevsky in his "Crime and Punishment" will be recalled by the reader. Essentially honest and kind-hearted, but stricken by poverty and neurasthenia, discouraged by misfortunes and mental worry, Raskolnikov, a student in one of the St. Petersburg colleges, happens to overhear a conversation about a contemptible old woman keeping a small pawnshop somewhere in the vicinity of his apartment. The woman is a cruel creature. She has no pity for her "clients" who all belong to the poorest and down-trodden class of the city population. Everyone who has the bad luck of being in her clutches is doomed and inevitably sinks to the depths of abject misery. She has a sister, a timid girl, whom she mistreats all the time. The very existence of the wretched usurer is not only meaningless but perhaps harmful. *Why should she continue to live?* This is but a casual thought that flashes through the tired brain of Raskolnikov. In different circumstances the suggestion would have been instantly forgotten and drowned in the stream of normal ideas and mental impressions. But in Raskolnikov's case it is not his personal misery only that leads to the final moral collapse—his beloved sister's honor is at stake, and something must be done in order that the critical financial situation of the whole family might be relieved.

But what *can* be done?

By mere accident Raskolnikov learns that the old woman is usually home alone around seven o'clock in the evenings. This bit of information, in itself, is insignificant; he almost forgets it.

The idea of murder is still nothing but a distant mirage, no more than a theoretical scheme; its practical realization seems *impossible*. The very supposition that the abstract thought will or may ever be converted into action evokes in Raskolnikov a feeling of revulsion: "Oh, God—he exclaims—how disgusting this all is! And is it really possible

that I? . . . No, it's trash, nonsense! . . . Is it conceivable that such an horror can dwell in my head? To think only that my heart is capable of harboring such dirt! . . ."

Weary days bring no relief, mortal fatigue, physical and mental, assumes in Raskolnikov a dangerous form of hysteria. He spends hours lying on the dirty couch in a dark corner of his unattractive room. Disconnected thoughts in a whirl invade his intellect. Time and again, some reflective impulse brings back to him the image of the old woman in the pawnshop; it gradually grows more and more persistent, until it becomes an *idée fixe*. *Why should she live?* She, in whose heart not a single noble feeling has ever entered?

Then the last warning comes—that terrible "dream of Raskolnikov" about the horse tortured and beaten to death by a mob of drunken peasants. In a state of delirium the bloody vision of the approaching murder, despite its abomination, overwhelms Raskolnikov. Henceforth it will hold him in its iron grip. Cunning reason will seek to deceive the troubled conscience and justify the egoistic nature of the contemplated crime by attributing to it a fictitious motive of social justice. The Napoleonic idea, "everything is permitted," will challenge the basic principles of Christian morality, and thus the antisocial element of premeditated murder will find its place in the range of other psychic ingredients in Raskolnikov's deed. Step by step the criminal idea undergoes a process of crystallization. Now it is no longer an abstract proposition; it is a concrete and categorical imperative of future action. Therefore, when Raskolnikov hears somebody in the courtyard shouting: "It's soon seven o'clock," he suddenly recalls the fact that at this particular hour the old woman must be home, all alone; like lightning, the thought flashes that this is the opportune moment for immediate action; his will, weakened as the result of the protracted psycho-pathological condition, is instantly galvanized, in great haste he leaves his house, and one hour later the double-murder is already a dreadful reality.¹⁴

The egocentric antisocial tendency is the psychological foundation of the habitual crime; external circumstances of course, must be favorable, facilitating its perpetration. But here their part is of secondary importance, the propelling factor in the realization of the criminal idea being the antisocial instinct itself, whether of atavistic

¹⁴On the juridical significance of Dostoevsky's "Crime and Punishment," see A. F. Koni's speech delivered on February 2, 1881, before the Law Society of the St. Petersburg University. The full text of the speech is published in Vol. IV, pp. 238-258 of Koni's memoirs in "Na Jiznennom Puti" ("Along the Path of Life"), Berlin, 1923.

or acquired origin. This instinct is of a complex nature, and its manifestations are manifold. However, at least three mental principles seem to be invariably associated with it:

- (a) defiance of the existing social order,
- (b) following the line of least moral resistance,
- (c) absence of any remorse which, indeed, is rather a negative symptom than a firmly established concept.

It should be clearly understood that habitual crimes show many varieties; every variety bears its own professional traits. Within the specific "profession" we find certain customs which tend to evolve peculiar "ethics," sometimes quite different from those encountered among instinctive criminals belonging to other "professions." Thus the psychology of a forger has very little in common with that of the sexual murderer or the burglar. Equally, the disregard of the social order among the different classes of habitual criminals does not always express itself in one and the same form. It often happens that the antisocial instinct is directed against some particular phase of the social order without coming in conflict with its other ramifications. For instance, a pickpocket might strongly resent crimes committed by means of violence. On the contrary, a habitual murderer often speaks with contempt about the pickpocket practice. Nevertheless, in every category of habitual crimes the antisocial impulse, in one form or another, can be detected.

The habitual criminal hates government authority, and more particularly the judge and the police officer because in them he finds the personification of the state with its enforcement of the existing social order. On the other hand, his dislike of the prison is limited to the measure of personal discomfort inevitably connected with compulsory detention. Personal experience teaches the habitual criminal that much can be learned in prison which might be of great use in his future criminal work; this he renews automatically after the term has been served. For it is in prison, where the delinquent population is artificially kept together, the "beginners" receive their final training. Every inmate comes to the penitentiary with a vast experience of his own which he conveys to his comrades, increasing in this manner the individual knowledge of criminal technique possessed by every member of the underworld.

While the occasional crime, as a rule, is largely the result of external circumstances, the habitual crime is the outcome of a pre-conceived plan in which external obstacles are being carefully removed by the criminal in order to bring the undertaking to a successful end.

The habitual criminal diligently seeks the opportunity to commit a crime just as an honest person diligently tries to find employment. The particular activities in which an habitual criminal is engaged, therefore, do not cause any remorse in him; quite the reverse: the better he succeeds in his work, the more he is satisfied.

Moral degeneracy signifies the full development of the antisocial instinct which, however, should not be mistaken for any form of mental disorder. Occasionally, of course, we will find that an habitual criminal suffers from some kind of mental disease, but it is an error to think that psychic anomalies are invariably at the bottom of criminal phenomena.

Social injury being the result of both the occasional and the habitual crimes, the state cannot but punish both, especially in view of the fact that government authority must be upheld and the public mind constantly made cognizant of the fact that the state cannot and will not tolerate any violation of the existing social order as expressed in the criminal statutes.

The practical significance of the unflinching reaction of the state to crime in the form of punishment, is increased by the consideration that society is not in a position to discriminate between the casual violation of law and the professional crime. Very often this distinction can be properly ascertained only after criminal proceedings against the particular offender have been instituted.

The anthropological school endeavored to prove the existence of a distinct criminal type, possessing certain physical and psychical characteristics. For this purpose a vast quantity of clinical data has been accumulated, especially with regard to cranial, cerebral and psychopathological traits of prison inmates.¹⁵ While all this research work is of intense interest, nevertheless, modern science is inclined to doubt the existence of any permanent anomalies, whether anatomical or psycho-pathological, in the habitual criminal. Cranial measurements as well as the data on the weight of the brains of recidivists certainly do not furnish conclusive proofs to the effect that constituent irregularities of any definite nature can be safely appropriated to this class of criminals. As Havelock Ellis, an experienced anthropologist himself, stated: "considerably greater importance was formerly attributed to the shape and

¹⁵On these subjects, as stated, there are many brilliant studies. Among the more valuable we may mention the following: Laurent, "Les Habitués des Prisons," Kurella, "Naturgeschichte des Verbrechers," Havelock Ellis, "The Criminal," Lombroso's writings on criminal anthropology enumerated in the appendix to his volume "Crime, Its Causes and Remedies," W. A. White, "Insanity and the Criminal Law," Sheldon Glueck, "Mental Disorder and the Criminal Law."

measurements of the head than we can now accord to them, although the subject still retains much interest."¹⁶

It must be remembered that Lombroso's theory according to which murderers, as a rule, are brachycephalous was contradicted by the subsequent studies of Luigi Monti, although he has followed the methods of cranial measurements used by Lombroso himself. For this reason cautious scientists, like Ranke and Baer, reached the conclusion that no definite relation between the encephalic cavity and the criminal tendency can be established.

Much in the same way Dr. Ch. Perrier, having measured and otherwise examined 859 craniums of inmates in the Central Prison at Nîmes (among whom there were 607 recidivists) stated:

"Altogether, the cephalic symptom is one of a racial character, conspicuously non-evolutive, whose average greatly varies according to the different provinces, regions and, sometimes, within the same region. This symptom does not justify the drawing of any distinction between criminals and other persons."¹⁷

The dependancy of the shape of the cranium from racial factors, is a fact which has been also fully corroborated by the research work of German biologists Virchow and Weissback,^{17a} with the result that modern criminology emphatically rejects the idea of tracing the origin of the morbid instinct to the anatomical characteristics of the skull. Nor is it possible to derive any lasting benefit from the pseudo-scientific premises of phrenology which seeks to explain every human emotion by cerebral localization. Even if it could be proved that certain mental faculties are focused in some specific part of the brain—and Gall actually did localize the speech and optic centers—nevertheless such a discovery would add hardly anything to the sociologic notion of crime.

Equally, anomalies pertaining to the hair, the shape of the ears and different other organs are in no way characteristics possessed exclusively by habitual criminals.

It seems that no practical conclusions can be drawn from the statistical survey which, for instance, establishes the fact that among 900 normal persons examined on some occasion, 90.78% had chestnut hair and 9.22% fair hair, while among 100 sexual offenders inspected on another occasion, the respective percentage was 81.85% and 16.67%. In the same way little can be gained by the practical criminologist from

¹⁶Havelock Ellis, *Op. Cit.* p. 44.

¹⁷Dr. Charles Perrier "*Le Crâne et ses rapports avec La Taille, La Grande Envergure, Le Buste, Le Pied Chez Les Criminels,*" p. 160, Lyon, 1920.

^{17a}On this subject A. Baer has made profound observations in his work, "The Criminal from the Anthropologic Standpoint."

the study of the color of the hair as was conducted by Dr. J. Beddoe, among the British population with reference to prison inmates. These and similar observations may be of some general interest to criminology but they, by no means, justify any specific deductions regarding the nature of crime and the constituent characteristics of the criminal.

On the other hand, some of the anthropological experimentations are conspicuously inconclusive, for instance, such are the tests made by Dr. Tarnovsky relating to physical sensibility. In point of fact they failed to establish any definite distinction between the habitual criminals and the non-delinquent population.

Still less should we attach importance to tattooing, the use of thieves' slang¹⁸ and similar habits which in days gone by, were regarded by anthropologists as something undividedly belonging to the criminal class.

Lombroso and his disciples laid great stress upon unfavorable heredity as a factor producing the criminal type. In this connection a great number of family records were examined and the various characteristics analyzed. Thus, in one of his books, Lombroso gives the following table regarding 104 criminals whose heredity he examined:

- 71 showed some hereditary influence,
- 20 had alcoholic fathers,
- 11 had alcoholic mothers,
- 8 had criminal fathers,
- 2 had criminal mothers,
- 5 had fathers who were insane or had had meningitis,
- 5 had insane or epileptic mothers,
- 3 had mothers who were prostitutes,
- 6 had insane brothers and sisters,
- 14 had criminal brothers and sisters,
- 4 had epileptic brothers and sisters,
- 2 had brothers and sisters who were suicides,
- 10 had sisters who were prostitutes.^{18a}

These observations seem to indicate that criminal instincts, to a certain degree, can be conveyed from generation to generation. In order, however, to demonstrate the unreliable character of such and similar anthropological data, we may refer to another table classifying

¹⁸An extensive vocabulary of thieves' slang partly of Bohemian and partly of Hungarian origin used in Austria and Germany, will be found in H. Gross's "Manual for Prosecuting Attorneys."

^{18a}Lombroso "Crime, Its Causes and Remedies," p. 151, Boston, 1912.

Marro's survey relating to the causes of death of 230 parents of criminals, and 100 parents of honest men:

	FATHER		MOTHER	
	Criminal	Honest	Criminal	Honest
Alcoholism	7.2	2.4	2.1	...
Suicide	1.4	3.7
Insanity	6.5	2.4	5.3	...
Cerebro-spinal disease	21.1	14.6	18.2	7.4
Heart disease	6.5	14.6	3.2	18.5
Dropsy	4.3	2.4	6.4	3.7
Phthisis	5.1	2.4	10.7	...
Nervous shock, worry, etc.....	2.1	2.4	4.3	... ¹⁹

A careful analysis of these two tables discloses the fact that alcoholism has something to do with the formation of the criminal instinct, but here again, we would be far from justified in asserting that the inclination towards alcoholism in the father is bound to promote a criminal instinct in the son.²⁰

It may be further of interest to note that professional criminals, as a rule, rarely lead a regular family life; they rarely marry; they rarely have children. Referring to the typical criminal type known in Paris as the *apache*, Dr. Locard states:

"The apache does not marry and his casual intercourse never results in repopulation. . . . He dies at a young age, since tuberculosis, syphilis, alcoholism and prison-life combine to abbreviate the time during which his destiny is to cause harm."²¹

This observation is equally true regarding the habitual criminals in other big cities, such as Moscow, London and New York. Wherever a dense urban population is found, we see a stable criminal stratum made up by recidivists and conscientious law-breakers. From year to year this degenerate population increases in numbers evolving new methods of organization, the aims of which are distinctly *anti-social*.

In other words, it may be said that neither the physical anomalies nor heredity, *an und für sich*, constitute the underlying cause of crime. Both these factors, of course, do contribute to a certain extent towards the perpetuation of criminality, but neither can be regarded as its immediate cause.²²

¹⁹Quoted by Lombroso, Op. Cit. p. 152.

²⁰As a matter of fact it has been observed that alcoholism enters into the aetiology of crime only in a limited sense, encouraging sexual offenses and those committed in revenge. But this factor has but a remote bearing upon other crimes, especially forgeries, fraudulent bankruptcy, etc. Therefore, alcoholism is but a contributing factor to a specific class of crimes, and in no way the underlying cause of same.

²¹"Le Crime et les Criminels," p. 10.

²²Speaking of heredity it might be mentioned that some of the noted criminals belonging to the instinctive or habitual classes, descended from perfectly honest and even enlightened parents. On this point it might be interesting to

Moral degeneracy is a permanent symptom of professional criminality, a feature, which Garofalo calls "moral anomaly from the civilized type." But Garofalo's conception is based upon the theory that moral insensibility does not signify anomaly in relation to the "*genus homo*" but only in relation to "the perfected type represented by civilized peoples."²³

The existence of such a perfected type common to all civilized peoples is, however, something we cannot consider real.

What are the civilized peoples? What characteristics, indeed, should determine whether a people is to be considered a civilized nation, as distinguished from the barbaric tribe or the primitive ethnological group? Even though we should succeed in discovering some generic elements which would enable us to arrive at the proper definition of the term "*civilization*" and "*civilized*," the conception of "the perfected type represented by civilized peoples," still would remain without a scientific basis.

Ethics is a phenomenon organically tied to and derived from the particular race and nationality. Every nation, whether it be classed as civilized or barbaric, has its own system of ethics resulting from a complex combination of racial, economic, religious and climatic factors. The philosophical ideas of Confucius and Lao-Tze, which are at the bottom of Chinese ethics, or Buddhism, which is the foundation of the Hindoo moral philosophy, have very little in common with either the morality of Roman Catholicism or the ethics of the Talmud, or the rationalistic and utilitarian tendencies of Protestantism.

The perfected type, as conceived by Garofalo, presupposes if not the equality of races then at least a tendency of achieving same. This is precisely the thing which is denied by the great scientists of the nineteenth century. The mutual repulsion of civilizations is a firmly

recall that one of the most dangerous habitual murderers of the nineteenth century, namely Thomas Griffiths Wainwright, the secret poisoner almost without rival in this or any age, as Oscar Wilde called him, was born at Chiswick, in 1794. "His father was the son of a distinguished solicitor of Gray's Inn and Hatton Garden. His mother was the daughter of the celebrated Dr. Griffiths, the editor and founder of the "*Monthly Review*," the partner in another literary speculation of Thomas Davis, that famous bookseller of whom Johnson said that he was not a bookseller, but "a gentleman who dealt in books," the friend of Goldsmith and Wedgwood, and one of the most well known men of his day. Mrs. Wainwright died giving him birth, at the early age of twenty-one, and an obituary notice in the "*Gentleman's Magazine*" tells us of her 'amiable disposition and numerous accomplishments,' and adds somewhat quaintly that 'she is supposed to have understood the writings of Mr. Locke as well as perhaps any person of either sex now living.' See Oscar Wilde, his essay "Pen, Pencil and Poison." Examples of this kind, much to the disappointment of the supporters of the heredity theory, could be multiplied almost indefinitely.

²³Op. Cit. p. 100.

established fact acknowledged by such master minds as Gobineau and Houston Stewart Chamberlain.

It will be recalled that Gobineau in his classical volume, "The Inequality of Human Races," establishes the following four fundamental laws which are generally accepted by modern ethnology:

"I. The tribes which are savage at the present day have always been so, and always will be, however high the civilization with which they are brought into contact.

"II. For a savage people, even to go on living in the midst of civilization, the nation which created the civilization must be a nobler branch of the same race.

"III. This is also necessary if two distinct civilizations are to affect each other to any extent, by an exchange of qualities, and give birth to other civilizations compounded from their elements. That they should ever be fused together is of course out of the question.

"IV. The civilizations that proceed from two completely foreign races can only touch on the surface. They never coalesce, and the one will always exclude the other."²⁴

These laws preclude the very possibility of the existence of the so-called perfected type represented by civilized peoples.

Racial differences, which are generic, produce ethical differences so deeply rooted that standardized morality is nothing but a dream. Consequently, sociology and criminology cannot build their conceptions of crime on the presumption that a certain number of individuals described as criminals deviate from some ephemeral perfected type of civilized mankind.

On this ground, speaking of moral degeneracy or insensibility, we should transfer our inquiry into other fields which will be found common to all social groups, regardless of their racial or national constitution, so long as they have reached a certain degree of organization enabling them to form a state.

Crime being a social phenomenon, it can not be studied and its nature revealed without taking into consideration the nature of society itself.

Organized society is not a mere mechanical aggregate composed of separate individuals $a + b + c + d . . .$ Just like in the physical world, quantity translates itself into quality, so in social life,

²⁴Count Arthur De Gobineau, "Inequality of Human Races." English translation of Adrian Collins, p. 174, New York, 1915. On this subject Gustave Le Bon in his brilliant sociological studies has fully corroborated the views of Gobineau. See his "The Psychological Laws of the Evolution of Peoples" and "The Crowd." In the latter volume he states explicitly ". . . the power of the race is such that no element can pass from one people to another without undergoing the most profound transformations."

the conglomeration of individuals $a + b + c + d . . .$ acquires new faculties of organization and development, giving birth to a united social phenomenon which we call society.

When human beings and originally disconnected ethnical units reach the level of a social organization, primitive as it may be, within its midst there appear social tissues which begin to crystallize, attaining with the time ever-increasing vitality and precision of form.

It will be easily understood that this process of social integration is being achieved as a result of countless efforts and mutual adaptation among those taking part in the building of the social order.

From the embryonic moments of this struggle for social existence, we can observe that phenomenon which can be described as *social friction*, meaning that while the larger portion of the particular social group is engaged in the erection of a social order, the smaller portion of the same group opposes and hampers these constructive activities.

In the life of human societies friction is a fundamental law. Nature herself having made men unequal, it becomes inevitable that human beings should differently react to the efforts aiming at social construction. Just as there dwells in man the social instinct leading him to associate with other human beings, so there exists in him an anti-social instinct or egocentric tendency which in its extreme manifestations assumes the form of criminal anarchy with its renunciation of the very principles of state and all government authority. Such indeed is the case of Lucheni, the Italian anarchist, who on September 10, 1898, murdered in Geneva, Empress Elizabeth of Austria. This murder reveals the morbid egocentric instinct, so to say, in its ugly nakedness. In the stenographic records of the trial we find a number of shocking and utterly cynical statements made by Lucheni, and among other things, a very important point is brought out: Lucheni arrived in Switzerland with the intention of assassinating the Prince of Orleans who was sojourning at Evian-les-Bains. Not having found him at Evian, Lucheni happened to read in one of the newspapers that the Empress of Austria had arrived in Geneva to spend there several days. He then proceeded to Geneva and murdered Empress Elizabeth in cold blood for the sole purpose of satisfying his morbid antisocial instinct. The Italian anarchist frankly confessed that he hated government authority as such and committed his crime because the royal victim personified the principle of the state. He also added that if he had been set free he would renew his attempts to murder those who represent the principles of social order.²⁵

²⁵See P. Ladame and E. Regis "Le Regicide Lucheni," pp. 3-13, Paris, 1907.

The explanation of such a psychic condition is simple: All people are principally concerned about their personal good and their egoistic interests which, however, may and often do, stand in opposition to the interests of society as a whole. Social progress gradually teaches the individual to harmonize his selfish aims with the requirements of the unit to which he belongs. In this way the individual abdicates from a fraction of his personal welfare, real or imaginary, in favor of the social group of which he is but one of the members. Nevertheless within any society or state, at any stage of civilization, under any form of government, we will find such individuals who decline to subordinate their egotistic aims to the good of the social entity.

This law is the social cause of crime. As Lester F. Ward justly remarked in his "Dynamic Sociology":

" . . . Men are compelled to conduct themselves according to the established standards of propriety. This is the condition upon which society has been enabled to develop. The few who attempt to break over these restrictions, quickly come to grief. They drop into the criminal classes, and find their way into the penitentiaries; or they are stamped as mono-maniacs, fanatics, 'cranks,' and are rigidly guarded."²⁶

The particular ground on which an individual opposes the existing social order, at this stage of our study, is a secondary consideration. The important point elucidating the social cause of crime is that between society as a whole and the individual member, there develops friction prompting the latter to violate certain traditions which have been produced and sanctioned by the community.

Crime, being originated by the egocentric instinct, it usually reveals the centrifugal nature of the deed.

The fact that social friction is as old as society itself, and that this phenomenon lies in the nature of social things explains why crime has always been in existence and always will be existent, regardless of the political modes and ethical doctrines prevailing at any given moment.

Moral conceptions, religious beliefs, legal traditions, economic conditions and political forms are essentially provisional phenomena. Their sum total, however, is the existing social order which is protected by that portion of society which actually controls the functions of the social unit. But, whatever the existing social order may be, the act of the individual aiming at its willful transgression, is a crime from the standpoint of sociology. Whether this act is equally a crime in a legal sense is a matter of fact and not of principle. It may safely be

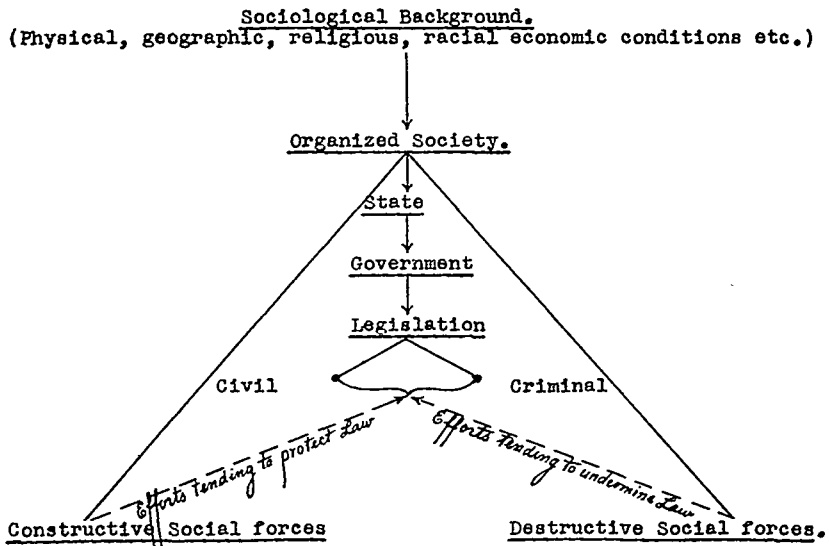
²⁶Op. Cit. vol. 2, pp. 272-373.

asserted that the tendency is to have every important violation of the social order translated into the terms of penal legislation. The more menacing from the viewpoint of the existing social order a transgression is, the more sure we are to find a provision therefor in the particular penal laws. On the contrary, if a violation is negligible, while it still remains in the same order of social phenomena, it might be intentionally excluded from the class of punishable deeds. In this case, it will be found among civil transgressions to which society does not apply any punitive measures in the technical sense.

This comment answers the question, frequently asked, whether crime is an immoral act? It usually is from the standpoint of the existing social order. But morality itself being a relative conception, it is incorrect to entertain the idea that crime at all times and everywhere is a manifestation of intrinsic moral degeneracy. On the other hand, we may very well imagine a number of deeds which being not immoral in themselves, are regarded as menacing to the existing social order, and, therefore, punishable.

Generally speaking, inadequate legislation and chaotic social conditions are liable to intensify social friction and consequently they have the effect of increasing the number of crimes committed during a given period.

Graphically, the range of relationship between the social order and crime may be expressed thus:



The cause of crime being rooted in the nature of society itself, the contents of crime, may vary substantially as a result of changes taking place in the social structure. The anatomical anomalies and moral insensibility may be, and usually are, factors encouraging the individual to engage himself in the perpetration of crime. But neither physical nor moral degeneracy is the cause of crime from the standpoint of sociology. This does not mean that the different pathological and psycho-pathological symptoms have no bearing upon criminology. From a methodological standpoint, however, it is proper to proceed from the generic to the individual features of crime. Therefore, it was necessary, first, to establish the general cause of crime which we found in social friction and in the permanent condition of certain centrifugal tendencies existing in every organized society.

With this premise in mind it can be said that, from the standpoint of sociology, *crime is a deed, prohibited and punishable under the laws of a particular state constituting a willful attempt on the part of the individual against the existing social order and that factor which controls the co-ordination of the different elements of which society is the synthesis.*

To overcome the destructive effect of crime the state is compelled to resort to some system of repression which usually assumes the legal shape of a penal code and physically results in coercion.