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## Historical and Clinical Study of Criminality with Special Reference to Theft, An

Fred Brown

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AN HISTORICAL AND CLINICAL STUDY OF  
CRIMINALITY WITH SPECIAL  
REFERENCE TO THEFT<sup>1</sup>

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FRED BROWN

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AN HISTORICAL AND CLINICAL STUDY OF CRIMINALITY  
WITH SPECIAL REFERENCE TO THEFT

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“Enemy” shall ye say but not “Villain,”  
“Invalid” shall ye say but not “Wretch,”  
“Fool” shall ye say but not “Sinner.”

“Hearken, ye judges! There is another  
madness besides, and it is before the deed.  
Ah! ye have not gone deep enough into this  
soul.”

—Thus Spake Zarathustra. VI.

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<sup>1</sup>A thesis presented for the Degree of Master of Arts in Ohio State University, Columbus, Ohio. Contributed by Dr. Henry H. Goddard.

## CHAPTER I.

*Introduction*

Organized society as it stands today is the product of an evolutionary process which has been active for many ages. The present stage of this process reveals an integrated group wherein each unit derives its significance and importance through the position it occupies in the social configuration.<sup>2</sup> Each element in this configuration must subordinate its own impulses to the welfare of the whole; otherwise the social pattern is threatened with disruption and chaos. In order to guard against disorganization and dissolution, a body of rules, based upon historical experience, has been formulated which provides for the fixation or extermination of the subversive elements which at any moment may be endangering the weal or security of the group.<sup>3</sup> This body of rules constitutes the law. Any act which conflicts with the law is designated as crime while the individual who perpetrates such an act is called a criminal. We must therefore set aside all metaphysical and philosophical considerations in studying the problem of anti-social behavior and understand that the questions of good and evil, libertarianism and determinism, and others of like nature, while interesting in themselves, are useless in the realm of action and lead to barren results. In the problem of crime we are dealing with a palpable phenomenon; with a situation so desperate and concrete as to arouse the apprehensions of thinkers and leaders in all fields of human activity. The era of abstract theorizing and fruitless controversy is slowly ending. Science is beginning to apply its methods to this social disease.

Modern society is afflicted with a festering sore. Up to the present time therapeutic measures have been on a par with the incantations of medicine men, who, while realizing the causal nature of occurrences, err in their estimation of the proximate cause. Treatment is consequently as far-fetched as the theory giving rise to it. Our modern jails and prisons are grim and persistent relics of mediaeval theory, with its emphasis on free-will and an abstract morality. Modern society bandages its wound without applying a healing agent, thus permitting the sore to fester and suppurate and thereby imperil the whole system. Our prison walls constitute these bandages. The individuals

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<sup>2</sup>See also Wheeler R. H., "The Science of Psychology." New York, 1929, pp. 84 ff.

<sup>3</sup>See in this connection Rousseau's "Social Contract" and Hobbes' "Leviathan." Incidentally, the social contract theory was not original with the great French thinker but is clearly expressed by Epicurus.

within compose the disease. The process is a thoroughly irrational one, as is evident by the alarming increase of crime, the high percentage of recidivism and absolute lack of progress in every phase of crime except that of prison building. Here there has been, ironically enough, an improvement. Our present policy calls for larger and more numerous prisons wherein to house those who have opposed the group dictates. Our present system, both in its juridical aspects and penal theory, is, except for a few isolated cases, deplorably outdistanced by advances in the science of human behavior. Our legal system still rests upon a mediaeval foundation. We are witnessing the tragic spectacle of an unscientific and outmoded theory serving as the basis for a therapeutics which has been proven valueless but in which we still persist from force of habit and veneration for tradition. We still find an adherence to the wholesale application of punishment for crime irrespective of individual cases; we still hear of responsibility, a term which more properly belongs in the realm of theology than in science or law. The application of recent studies and discoveries must ultimately bring about a profound change in the theory and methods of dealing with the criminal. Otherwise, security, the foundation upon which social unity rests, is in grave danger.

Science advanced from theorizing to fact when it relinquished everything which could not be subjected to measurement and verification. Scientific method is based upon the assumption that every effect presupposes a cause, and control of that cause either permits the increase or total cessation of the effect.<sup>4</sup> Until this principle was recognized and applied, so-called, science was a blundering mixture of magic, superstition and trial-and-error. In the natural sciences demonology occupied the position which astronomy, physics, and chemistry, employing precise and verifiable measurement, hold today.

Only in the human sphere has progress been painfully slow. Man was regarded as the unique creation of an anthropomorphic God and was therefore exempt from the laws which described the behavior of all else in the universe. Attempts to study his anatomy were vigorously combated. Theories which inferred that his behavior resulted from other than free choice were denounced. A strict determinism of human behavior was unheard of until very recent times. At present there is a growing tendency to interpret human behavior from the standpoint of causality, a causality which includes only verifiable antecedents. We are realizing the fact that man is what he is because

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<sup>4</sup>For an excellent account of the transition from superstition and scholasticism to scientific method, see Randall's "Making of the Modern Mind."

of his past and present environment, coupled with an inherited structure. His behavior is an interaction with his environment and all that it includes. Psychic elements, even if they are present, have no place in the present concept insofar as they are unobservable and unnecessary in a description of behavior.

Crime, as we have previously observed, is not the result of demonic impulses nor the deliberate choice of a free will. It is rather a type of behavior which is at variance with group standards. The question now arises, "Why is this individual anti-social? Why is his behavior antagonistic to that of the group?" Proceeding from a scientific point of view rather than from a mystic or theological one we conclude that the antecedents of "A," who is accused of anti-social behavior differs in many important respects from "B" who is "law-abiding." Modern scientific criminal psychology and sociology then attempts to discover these adverse antecedents and tries to halt the continuation of their effects, which have since become further causes.

We are only now realizing that crime as a social and individual problem is amenable to scientific and objective treatment. At this stage of development we are still primarily concerned with etiology. Remedies and their efficacy depend upon the accuracy of diagnosis. We are certain of one point of view; that crime is anti-social behavior committed by an individual whose environmental background may have been detrimental to social adaptation, whose structural composition may have rendered the acquisition of social technique impossible or incomplete. The study of maladjusted behavior lies not only in the field of psychology but in sociology, medicine, and physiology, as well. We cannot point to an outstanding antecedent in wayward behavior and feel that the problem has been solved. Man and his environment is too complex for such a procedure. It is only through a careful study of home, school, industrial, and economic history, together with a detailed examination of physical, organic, and psychological factors that we shall ultimately derive the requisite knowledge whereby to cure the condition which now harasses the group. Jails and prisons merely serve as culture media for the breeding of further crime, oftentimes supplying in concentrated form the virus which poor education, faulty structure, and detrimental environment require many years to cultivate. Modern science seeks the causes of maladjustment. The sources, the breeding grounds of crime, must be extirpated rather than those who carry the bacillus. In medicine we search for the organism which produces a disease. In psychology

we must do likewise, recognizing that criminality is a diseased state of the social organism and is amenable to scientific treatment.

## CHAPTER II.

### *Theft and the Offender in Primitive Society*

"The first men, like the men of today," says Parmelee,<sup>5</sup> "belonged to the order of primates and the class of mammals . . . these first men experienced anger, sympathy, sexual passion, parental love and all other instinctive impulses and feelings which play an important part in determining human conduct . . . as social groups they evolved customs, and the violation of these customs undoubtedly aroused the characteristic reactions from the group which among animals I have called the equivalents or analogues of crime."

He continues, "These impulses and desires arise out of the instincts and emotions, which are the principal factors in the determination of human behavior. These instincts and emotions lead sometimes to social and sometimes to anti-social behavior."<sup>6</sup>

Parmelee thus explains anti-social behavior as having its roots in the instincts and emotions, which propel the organism against its environment, leading it to such acts as will be criminal when viewed from the standpoint of the group. While this explanation appears to be adequate it breaks down in many respects. In the first place, anger, sympathy, sexual passion and parental love must be considered as social products rather than primary instincts. It is in the group that these forms of behavior are evolved. Secondly, the organism is not driven by some internal force but interacts with its environment. To stress instincts and emotions is to lay the onus upon two variables in a configuration which includes thousands upon thousands.

It would be more proper to ascribe the origins of crime to individual differences in mentality (where the individual is incapable of recognizing property rights); physico-chemical constitution, which would seriously interfere with the thought processes and disintegrate habituated forms of reaction; poor example in the family group or in the tribe; and physical degenerations, which would include changes in cerebral tissue, glands and nerves. There is every reason to believe in the existence of these anomalies among primitive peoples, anomalies which would tend to destroy inhibitions accumulated through many years.

<sup>5</sup>Parmelee, Maurice, *Criminology*, Macmillan Co., New York, 1929, pp. 492, p. 13 f.

<sup>6</sup>*Ibid.*, p. 25 f.

In primitive societies the same aim actuates the group as in modern society, i. e., the preservation of social organization. If a certain act is not regarded as threatening the coherence of the group it is not regarded as criminal. Any act which is directed against the king, who embodies the group is the height of criminality and is severely punished. The same is true of those who offend the gods in any fashion, for by such an offence they may incur the wrath of the tribal gods and cause the annihilation of the tribe.

In primitive society, therefore, penal law is purely objective. It considers only the deed done and not the doer.<sup>7</sup> The conception of moral fault does not enter and is not made a factor in the criminal act. There is no conception of moral sin nor does the concept of responsibility in the modern sense exist.<sup>8</sup> Von Bar<sup>9</sup> commenting upon the fact that no consideration is given intention or responsibility in early societies says, "When legal development is in its infancy, the need for fixed rules, easy to handle, is greater than the need for a complete substantive justice which leaves more time for the exercise of discretion (and also at the same time more room for arbitrary action). Attempting to deal with individual cases at too early a stage of legal development is dangerous to freedom; for it would require a very extensive judicial power."

The crime of theft is of very early origin, probably concomitant with the possession of property. Although there seems to be no direct evidence, certain primitive practices seem to indicate that the concept of ownership was originally identified with the self.<sup>10,11</sup> Surreptitious removal of property was strongly discouraged through fear that the stolen object might be used as a medium whereby to inflict injury through magical means.

Sumner comments upon this by saying, "Impious acts or breaches only are treated as crimes. There is no such crime as theft but a man can save his property by placing it under a taboo, when it becomes an

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<sup>7</sup>C. F. Weaver vs. Ward. Hobart, 134 (1616). As expository of a somewhat similar doctrine (Doctrine of Harm Done) in civil cases.

<sup>8</sup>Saleilles, Raymond. *The Individualization of Punishment*. Boston, 1911.

<sup>9</sup>Von Bar, Ludwig. *A History of Continental Criminal Law*. London, 1916. Pp. 68-69.

<sup>10</sup>As interesting sidelights on this concept see Regina vs. Day, 1 Cox Crim. Cas. 207 (Cox, 1845). Where an injury to clothes on back of prosecuting witness was considered an assault on the person (intent to injure not present). See also State vs. Davis where defendant cut a rope connecting prosecuting witness with his slave. Held: an assault.

<sup>11</sup>Frazer, J. G., *The Golden Bough*, Macmillan Company, New York, 1900, pp. 59-60.

act of impiety to touch it."<sup>12</sup> In this case fear of magical retribution is cast upon the thief, who has broken a taboo. The taboo is generally imposed with magic utterances which are in the nature of a curse. Another and a more obvious reason is the inconvenience occasioned the victim of theft. These considerations may have been operative in the act of retaliation.

In the majority of cases crime and punishment of the offender is a personal matter between the offender and the offended.<sup>13</sup> Thus, in the Marquesas, "In case of theft the injured man has the right to go to the house of the thief, if the latter were known, and to take back the article stolen, or, if it had disappeared, something amounting to twice or three times the value, this being done without a word; but in the case of theft from a chief, the chief might kill the thief."<sup>14</sup> The act of the chief is dictated by many considerations, principally the necessity of destroying that individual who had dared to anger the guiding spirits of the tribe through the chief. Punishment in this case is expiatory in nature.

In the East Indies a person caught in theft may be killed. If not caught, there is only a fine.<sup>15</sup> This is also true of the Dobuans of Papua,<sup>16</sup> one of whose deities is called the God of the thief, whom he watches but does not protect, as anyone caught stealing food or property from other than a stranger or an enemy may be killed by the owner of the food or property without fear of vengeance being taken.

Among the Masarwa, a South African tribe, theft is punished either by fine or expulsion.<sup>17</sup> In some parts of Africa the punishment for theft is mutilation, especially of the fingers.<sup>18</sup> In West Africa punishment for theft follows the following order: first offence, flogging and fine; second, mutilation; third, death. In Uganda, if the thief cannot meet payment he is clubbed to death.<sup>19</sup>

Theft plays an insignificant part in the life of the Trobriand

<sup>12</sup>Sumner and Keller, *The Science of Society*. P. 1105, Vol. 2. See also Sumner, *The Folkways*, on Taboo and Property; Westermarck, *The Origin and Development of the Moral Ideas*, 2: 1-9; Thomas, W. L., *Source book for Social Origins*, p. 201.

<sup>13</sup>Sutherland, Edwin H., *Criminology*, J. B. Lippincott and Co., 1924, p. 26.

<sup>14</sup>Sumner and Keller, *The Science of Society*, Vol. 4, Yale University Press, 1928, p. 274.

<sup>15</sup>Sumner and Keller, *The Science of Society*, 4 Vols., Vol. 4, Yale University Press, 1928, p. 274.

<sup>16</sup>*Ibid.*, p. 438.

<sup>17</sup>*Op. Cit.*, p. 273.

<sup>18</sup>*Ibid.*, p. 288.

<sup>19</sup>Sumner and Keller, *The Science of Society*, 4 Vols., Vol. 4, Yale University Press, 1928, p. 289.



natives,<sup>20</sup> where it is classified under two concepts, that of "Kwapatu" (to catch hold) which includes the theft of objects of personal use, implements and valuables; and "Vayla'u," a special word applied to theft of vegetable food from yam house or garden. Stealing of valuables is considered a nuisance since their theft cannot inflict a serious loss on the rightful owner, all such valuables bearing the earmarks of the owner.

Malinkowski observes that, "While the thieving of valuables is felt to be a greater nuisance, stealing of food is more despicable. There is no greater disgrace to a Trobriander than to be without food, in need of it, to beg for it, and an admission that one has been in such straits as to steal entails the greatest humiliation possible." Penalties for theft in both cases consist in the shame and ridicule which covers the culprit.

Stealing from other tribes, strangers or enemies is not regarded as an offence. In some cases the act may even be viewed with admiration. Thus among the Balantes who dwell in Caramanza (Portuguese Guinea) in Africa, side by side with the peaceful rice-cultivating Bagnous, the individual who presumes to steal in his native village is killed although the tribe as a whole subsist upon the chase and the spoils of their raids. The cleverest thieves are highly esteemed, are paid for instructing boys in their profession, and are chosen to lead the expedition.<sup>21</sup> Malinkowski mentions that among the Trobrianders stealing from the white man was not considered as a breach of law.

"Among the Comanches no man was considered worthy of being numbered among the warriors of the tribe unless he had taken part in a successful pillaging expedition."<sup>22</sup> The cleverest thieves were the most respected members of the tribe.

A Patagonian, in order to be deemed worthy of a wife must first graduate in the art of despoiling a stranger.<sup>23</sup>

Among the Kukis of Bengal, skill in stealing is the most esteemed talent.<sup>24</sup> In Mongolia thieves are regarded as respectable members of the community, provided they steal cleverly and escape detection.<sup>25</sup>

<sup>20</sup>Malinkowski, Bronislaw, *Crime and Custom in Savage Society*, Harcourt, Brace, and Company, 1926, p. 177.

<sup>21</sup>Quoted from *Revue d'Anthropologie*, 1874, by Gina Lombroso Ferrero in her summarization of Lombroso's "Criminal Man." New York, 1911, p. 128.

<sup>22</sup>From *Revue d'Anthropologie*, 1874, by Gina Lombroso Ferrero in her summarization of Lombroso's "Criminal Man," New York, 1911, p. 129, quoted from Mulhausen, *Diary of a Journey from the Mississippi to the Pacific*.

<sup>23</sup>*Ibid.*, p. 129, quoted from Snow, *Two Years Cruise round Tierra del Fuego*.

<sup>24</sup>Quoted from Dalton, *Descriptive Ethnology of Bengal*. *Ibid.*, p. 129.

<sup>25</sup>*Ibid.*, p. 130, quoted from Gilmour, *Among the Mongols*.

In those cases where stealing is esteemed and respected we may understand the attitude more readily if we view the matter from the point-of-view of social organization. In these instances the members of a group may lack an adequate means of subsistence and will ultimately depend upon their depredations for continued existence. The person who will receive adulation and honor will be he who makes possible existence as an integrated unit. In other instances the attitude toward theft may be rooted in religious concepts.

### CHAPTER III.

#### *Crime and the Offender in Ancient Times*

The oldest civilization of which we possess documentary evidence is that of Egypt. Prior to the first dynasty our knowledge is vague and extremely meager.<sup>26</sup> Later we find records, both in papyri and inscriptions, which shed light upon Egyptian concepts of ethics, laws, and legal administration.

Ethics, in ancient Egypt, was (as a theoretical science or concept) indistinguishable from metaphysics and aesthetics.<sup>27</sup> It appears that the criterion of "good" and "bad" in actual practice was a purely utilitarian one. Virtuous activity was justified because it "paid." A common inscription found in tombs is, "I did that of which all men approved." Nothing is said regarding the approval of the Gods. The obvious inference is that the social standards determined whether conduct was good or bad. Virtue brought its own benefit, so also did vice bring its own disadvantage.

Free-will is tacitly implied. Destiny controls only the external events and not man's reaction to them. The person who sinned carried the traces of his sin within him and had to be cleansed. Thus, magic formulae were employed to prevent and wash away sin. Two points, however, must be borne in mind with reference to the notion of sin in Egypt. First, that this notion differed from the much later idea in the middle ages in that it referred to social misdemeanors only (this included theft), and second, evil was not the result of inherent wickedness or evidence of an alliance with evil spirits but resulted

<sup>26</sup>Breasted, James H., *Ancient Records of Egypt*. University of Chicago Press, 1927, Vol. I. Gives the number and content of these very early documents.

<sup>27</sup>*Cambridge Ancient History*. Ed. Bury, Cook, and Adcock. Vol. I. *Egypt and Babylon*, Chap. IX, III, p. 347. By T. E. Peet. The word "Maat" means "Truth" and "Right;" also "Nefer" means "Good" (Morally), and the aesthetically beautiful.

from ignorance of good and evil.<sup>28</sup> Sin, used in this sense, was likely to bring disaster upon the sinner in this world and would bring about his complete annihilation in the other world.

Theft in Egypt, says Lombroso,<sup>29</sup> was a recognized business. "Those who wished to exercise this calling inscribed their names on a public tablet, collected all the stolen goods in one spot and restored them to their owners in exchange for a certain coin."

Theft from royal tombs was a serious offence, however, generally being punished with mutilation.

The legal activities in Babylonia were probably well organized before the age of Hammurabi, who produced the first written code in history. (Circa, 1927, B. C.) The origin of the law is illustrated on the obverse of the inscription of the code. The Sun-God tenders the books of the law to Hammurabi, the ruler.<sup>30</sup> Crime thus appears to have been a violation of the civil and religious life, invoking both the punishments of gods and men. The laws of the state rested upon a theological foundation.<sup>31</sup>

Punishment of crime in the noble class was according to the "Lex Talionis." This was because a noble, vested with the law (as a divine trust) was adjudged more culpable than the peasant who was only subject to it.

"The death penalty, says Campbell, was provided for the following major offences; rape, brigandage, burglary and theft . . . ."

Oppenheimer,<sup>32</sup> however, claims that, ". . . only in default of payment of the statutory damages is death the fate of a thief," an implication that the death penalty was reserved only for those who were unable to make restitution for the stolen property.

A thief at a fire was cast into the selfsame flames which had provided him with the occasion to steal.<sup>33</sup>

In conclusion, Babylonian law, while elaborately codified, still

<sup>28</sup>Encyclopedia of Religion and Ethics. Vol. II. Article "Sin," Sec. Egypt, p. 544. Chap. 125, 1-5 Source, "Book of the Dead." By A. M. Blackman.

<sup>29</sup>Ferrero, Gina L., Criminal Man. According to the classification of Cesare Lombroso. New York and London, 1911, p. 128.

<sup>30</sup>Cambridge Ancient History. Babylonia. Chapter XIX. By R. Campbell Thompson.

<sup>31</sup>Although the preamble to our own constitution is rather elaborate it does not necessarily follow that the substantive laws themselves follow the ideals set forth in the introduction. Here too, in the case of Babylonian law, it need not necessarily be assumed that the religious preamble ligated the code with theology. In this particular instance, however, we are inclined to assume such a bond.

<sup>32</sup>Oppenheimer, H., The Rationale of Punishment. London, 1913, p. 106.

<sup>33</sup>Interestingly enough, we see here a differentiation between types of theft, whereas in our own times this crime comes under a general law.

rested upon a retributive substructure, doling out an eye for an eye and a tooth for a tooth long before the same idea appears in Hebrew law.

Calhoun,<sup>34</sup> in referring to the beginnings of law in ancient Greece says, "Considerable progress is made in the maintenance of private rights before the conception of crime as an offence against the social is consciously formulated or permanent means established for the punishment of such offences by the community." In Homeric times Greek political consciousness was slowly awakening<sup>35</sup> and we find that "Theft of public or sacred monies . . . seems very early to have been the subject of stringent public legislation in Athens." These offences were coming to be regarded as offences against society; and therefore they assume the character of a criminal offence instead of a private wrong. Apart from public or sacred thefts "Theft was considered as a private rather than a public wrong, and it was the business of the party injured to secure redress for himself. A legal search warrant was the means of securing such redress."<sup>36</sup> This warrant empowered the holder to search the premises of the suspected thief and recover his property.

In Sparta, boys in military training were permitted to steal in order to appease their hunger. Boys caught stealing were punished in order to point a moral, "That by pain endured for a brief season a man may earn the joyous reward of lasting glory. Herein too, is shown that where speed is requisite the sluggard will win for himself much trouble and scant good."<sup>37</sup>

The commission of a criminal act as a punishment visited upon a person by the gods is a notion which we meet in the plays of Sophocles and Aeschylus . . . "It is the impious act," says Aeschylus, "that bears more evil deeds like the parent stock. The fate of religious houses is blessed with fair children."<sup>38</sup>

<sup>34</sup>Calhoun, George M., *The Growth of Criminal Law in Ancient Greece*, University of California Press, California, 1927. Chapter 1.

<sup>35</sup>Westermann, W. L., *The Story of Ancient Nations*. New York, 1912, pp. 87-92. He is inclined to attribute this awakening to the *Iliad* and *Odyssey*. He says, "The *Iliad* and *Odyssey* . . . aided greatly in developing a feeling among the Hellenes that, whatever their tribal differences might be, they were nevertheless one people."

<sup>36</sup>Vinogradeff, Paul. *Outlines of Historical Jurisprudence*. Oxford, 1920, p. 365. At this time the psychological element of intention entered in trials of homicide. *Ibid.*, Vol. 2, p. 182, et seq.

<sup>37</sup>Boisford and Sihler. *Hellenic Civilization*. Columbia University Press, New York, 1920. From "Zenephons' Constitution of the Spartans." P. 133 f.

Note: Boys in military training were fed scantily and made to forage in order to prepare them for the rigours and dangers of war.

<sup>38</sup>Taylor, Henry O. *Ancient Ideals*. New York, 1913. 2 Vols. Vol. I, pp. 212-218.

The man who spurned the altar of right was forced by the Gods to commit crime as a punishment. This wrongdoing would naturally bring ill to the doer and repay him for previously undetected offences.

Sophocles notes that, "When a person himself wittingly commits crimes, it works itself out in further crimes, which at last entangle him in ruins."<sup>39</sup>

Greek thought at this period (5th Century, B. C.) laid stress upon the intent with which an act was done, making that the test of crime. This, however, was not the sole ethical criterion of an act. It included the general sum of personal intentions, motives and tendencies constituting self, fully recognizing the responsibility of the human being for his character and all acts springing from it. Differences of character were recognized and taken into account even though the responsibility of an individual for his own conduct was stressed.

It thus appears that the criminal was one who had committed a crime under the aegis of free-will. This crime, through accident and the vagaries of chance, had gone unpunished by humans. Therefore the Gods deprived the offender of his will, forcing him to the perpetration of an act which ultimately brought down upon him that punishment he so richly deserved.

Plato<sup>40</sup> recognizes the deterministic elements in life and appears to have realized the influences of environment upon actions. Thus, he says, ". . . Many innovations, too, diseases compel men to make, through pestilences falling upon them, and unfavorable seasons through many years." He also believed that the criminal was a man who had miscalculated the relative amounts of pleasure and pain to which a given act would lead.<sup>41</sup> Virtue is right estimation of the pleasureable and painful consequences of our actions. Vice is the reverse.<sup>42</sup>

Goodness and right conduct, says Aristotle,<sup>43</sup> depend upon a well ordered soul, one in which the right relation exists between reason, feeling and desire. He distinguishes good activities from bad by a series of classifications which propose a middle line for the normal and the excess and the defect of the quality as variation from the normal, on the analogy of health and disease.

<sup>39</sup>One wonders whether the influence of habit could have been meant here.

<sup>40</sup>Giddings, F. R. *Studies in the Theory of Human Society*. New York, 1922. Quoted from *The Laws*, IV, 4. (Chap. VI, p. 95):

<sup>41</sup>Taylor, H. O. *Plato*. London, 1922, Chap. III.

<sup>42</sup>It is possible that an implication of intelligence defect of a certain degree is hinted at here. Ostensibly, the person who miscalculated did so because of inability to foresee consequences or reason out possible effects.

<sup>43</sup>Thilly, Frank. *A History of Philosophy*. New York, 1924, pp. 89-115. See also "Ethica Nichomachia." *Cambridge Ancient History*, Vol. VI, Ch. X, XI, pp. 11, 6, 1-3.

He proposes freedom of moral activity but clearly points out that, while a normal individual is responsible for his misdemeanors, an abnormal case is to be treated as irresponsible and therefore not subject to the same punishment. (Aristotle does *not* waive punishment in the case of the abnormal!) In some cases of criminal conduct therefore, the offender, according to Aristotle, lacks the right relation between reason, feeling and desire.

Intelligence, the Materialists and Idealists agree, is of paramount importance; "Right action depends upon right thinking."

The Stoics,<sup>44</sup> who followed Aristotle chronologically, believe that the criminal was one who lived at variance with nature and out of conformity with reason. They held there was an objective "Rightness" in the world which one either followed and lived harmoniously with or else opposed and paid afterwards.

For Epicurus,<sup>45</sup> the wrongdoer was a conscious violator of the social contract, which was "a pledge of mutual advantage to restrain men from harming one another and save them from being harmed." Men were afraid to commit crime because they feared detection. It follows from this that either the criminal cannot imagine reprisal or is unintimidated by the prospect.

Private vengeance was suppressed very early in Roman law. Theft, when committed in places that were sacred entailed the death penalty. This punishment was inflicted as an expiation. The community must be freed from the stain of guilt, as an unavenged crime would bring down the wrath of heaven. No vengeance was taken against other than a produce thief or one who stole from sacred precincts.<sup>46</sup> Payment of from two to four times the value of goods stolen was generally exacted of the thief.

Referring to produce thieves Walton<sup>47</sup> points out that, "One kind of theft of private property and one only is in the 12 tables (451 B. C.) treated as a public crime. This is when a man, by night, furtively cuts his neighbor's crop. The Offender was offered as a sacrifice to Ceres, the Goddess who protected crops, and was put to death by hanging, or according to Mommsen, by crucifixion. If he was be-

<sup>44</sup>Thilley, Frank. A History of Philosophy, p. 111-115.

<sup>45</sup>Bailey, Cyril, M. A. Epicurus. The Extant Remains. Oxford, 1926, p. 103.

<sup>46</sup>Von Bar, Ludwig. A History of Continental Criminal Law. Chap. I, pp. 4-290, London, 1916.

<sup>47</sup>Walton, Frederic P. Historical Introduction to the Roman Law. Edinburgh and London, 1916. Pp. 205-240.

low the age of puberty,<sup>48</sup> he was beaten with rods at the discretion of the council and condemned to pay twice the amount of the damage."

In conclusion, it appears that in ancient times the crime of theft was a personal matter unless it involved sacred or public goods. There was no theory of criminality as such, although we may infer from the ethical teachings of the great philosophical schools of the times, that a man's actions were the result of deliberate choice which could be misdirected through poor thinking or discord among the essential elements of the individual's constitution. There was also a possibility that the present crime was a punishment for previously undetected offences.

#### CHAPTER IV.

##### *Theories of Crime in the Middle Ages*

With the inception of Christianity the whole ethical structure of the ancient world underwent a profound metamorphosis. The laws became permeated with Paulian theology and dogma; punishment and reward were made as requisite on earth as they were inevitable in heaven. Acts which had been of a private nature previously now assumed a universal complexion. Man was accountable not only to his fellow man but to a vengeful and vindictive god as well.

"It was under the aegis of religion," says Oppenheimer,<sup>49</sup> "that the criminal code was born. In a subordinate way other factors may have helped its seeds to sprout; it remained nevertheless true that it is religious thought, religious fears, and feelings which public punishment was to be fathered upon."

Another step in the transition from private vengeance to public punishment was the introduction of the Kings' peace,<sup>50</sup> a personification of the peoples' peace. Society was already functioning as a unit and found private feuds annoying and disruptive. The public peace was also the kings' peace and whosoever disturbed one disturbed the other. Any such act was construed as contempt for the monarch, who ruled by divine sanction and was, so to speak, semi-divine. It may readily be deduced that the obvious step from the kings' to God's peace was not a far one. All mankind lived under the protection and jurisdiction of the king of kings (God), and he who indirectly offended

<sup>48</sup>In making this distinction the Romans were far more civilized and advanced than England of the 17th century, where children under the age of 10 were hanged for the theft of so small an article as a silk handkerchief. (See Pikes' "A History of Crime in England.")

<sup>49</sup>Oppenheimer, H. *The Rationale of Punishment*. London, 1913, p. 91.

<sup>50</sup>Oppenheimer, H. *The Rationale of Punishment*. London, 1913, p. 168.

the supreme ruler incurred the wrath of both earth and heaven.<sup>51</sup> Thus, the whole-hearted faith in a supernatural ruler in the adolescent years of the Christian era may be held partly responsible for the subrogation of public for private punishment.

Again, the wealthy among the Pagan elements were gradually flocking to Christianity, swelling its ranks and enduing it with a power which slowly and insidiously seeped over into the juridical branches of the government. Christianity claimed that the whole life of man belonged to it, which of course included both the ecclesiastical and civil aspects. It was unavoidable that the Christian dogmas of sin and redemption should enter into the theories of good and evil.<sup>52</sup>

It is commonly held that Demonism served as the explanation of criminal conduct in the middle ages. While this is true to a certain extent it does not hold altogether, for the Devil is more concerned in those cases where the soul is imperiled, i. e., truly immoral acts than in other types of crimes (such as theft, unless the article stolen were sacred). Referring to the influence of demons in human behavior, Stewart says,<sup>53</sup> "The daemons . . . were the objects of the Christians' deepest fear and hate as being the source of all material and spiritual evil, and the avowed enemies of God. To them were due all the errors and sins of man, all the cruelty of nature. Wind and storm fulfilled God's word; but when mischief followed in their train, it was the work of Satan and his angels." Taylor shows<sup>54</sup> that in the great body of monkish literature the devil inspires evil thoughts, instigates crimes and causes an unhappy or immoral ending. All uncanny or untoward happenings were ascribed to this malignant personality. The sinful were especially likely to suffer at the hands of the devil at the first opportune meeting.<sup>55</sup>

However, it is well substantiated<sup>56</sup> that the evil who served the devil were dangerous to the church in one way or another. These

<sup>51</sup>Here we have the same element which we find in very primitive societies, i. e., fear of punishment from the tribal god. The Bible mentions numerous accounts of plagues which were interpreted as calamities visited upon the group because of one person's trespass.

<sup>52</sup>Cambridge Mediaeval History, Vol. I. The Christian Roman Empire. New York, 1911, pp. 95-6.

<sup>53</sup>Cambridge Mediaeval History, Vol. I. The Christian Roman Empire. New York, 1911, pp. 95-6.

<sup>54</sup>Taylor, Henry O., *The Mediaeval Mind*, 2 Vols. Vol. I, pp. 502-509. Macmillan Co., 1919.

<sup>55</sup>Cf. this theory with that of Sophocles and Aeschylus.

<sup>56</sup>The treatment of the church was not intended as punishment against the person but against the devil resident in the body. It was necessary to destroy the body and liberate the soul in order to save it. For an excellent fictional treatment of this view, Wasserman, Jacob, *The Triumph of Youth*, 1926. See also accounts of the trial of Joan of Arc, John Huss and Savonarola.



were turned over to the ecclesiastical arm of the law and there disposed of, the secular branch executing sentence.

Among the great thinkers of the Mediaeval period stands Maimonides, the Hebrew philosopher, who gives us the attitude of Judaism toward a social conduct.<sup>57</sup> Maimonides believes in freedom of the will. He sums up his conclusions in the following words, “. . . reflect then upon all that has been said, viz., that man has control over his actions, that it is by his own determination that he does either the right or the wrong, without, in either case, being controlled by fate, and that, as a result of this divine commandment, teaching, preparation, reward and punishment are proper.” Maimonides saw clearly that if freedom of the will were denied the concepts of reward and punishment would be unjust and meaningless.

In his ethics he recognizes individual differences in regard to temperament, ability to think clearly, strength of will, etc. How people will act depends upon “whether their brain matter is clear and not overloaded with fluids, whether the blood is warm or cool,” and other causes. In almost all cases it is possible to change a man through education inasmuch as man is not born good or bad.

In this system of ethics we may discern an iota of environmentalism. If the criminal is amenable to education and is born morally neutral the conclusion points to environmental influences which have brought the individual to his present state.

Duns Scotus<sup>58</sup> held that the Will and not the person is to be judged as bad. He believed in a natural goodness which followed from the requisite conjunction of natural causes, working without impediment. Every act of will is good; it is the consequences which are bad. The full morality of an act depends upon the mitigating and extenuating circumstances present at the time, together with the motive or intention, manner and the persons with respect to which it is carried out. The criminal or offender is one in whom appetites are stronger than the will, which is therefore deceived. Practical reason is also weak in those who stray.

Thomas Aquinas,<sup>59</sup> the outstanding figure of the middle ages, says of the passions, “If these particular passions or movements, which impell us toward a particular evil present in sense perception become violent and escape the control of reason, they disturb and may even

<sup>57</sup>Cohen, Rev. A. M., Ph. D. *The Teachings of Maimonides*. London, 1927, pp. 214-219, 258-274.

<sup>58</sup>Harris, C. R. S., *Duns Scotus*, 2 Vols. Vol. II. Oxford, 1927, pp. 305-357.

<sup>59</sup>De Wulf, *Mediaeval Philosophy*. Harvard University Press, 1922, pp. 47-52, 99-107.

dominate us completely." Again, "Whatever darkens intelligence diminishes our freedom. . . . Threats, terrorism, external violence or organic disturbances may suppress entirely the exercise of reason and leave no place for liberty in a particular case."

The human will be regarded as free and attaining to God. Offences are wilful objections of a human being to divine law. They are not pathological in nature but are the normal result of free choice.<sup>60</sup>

Aquinas agreed with Scotus that moral laws depended upon exigent circumstances and that only the effect of an act was bad. He believed in a central, natural law which demands punishment for the malefactor but leaves the type of punishment to human law. In common with the scholastics he believed that all men seek the good in the most diverse objects but frequently deceive themselves as to the nature of the good.<sup>61</sup> The criminal then is a man who does not pursue his good according to rational judgments but lets himself be deceived by appearances. Sometimes a man cannot control his actions through various circumstances—in this case St. Thomas might have rationalized by blaming the strength of the passions over reason through over-indulgence and development of the former, an inabstinence which throws culpability upon the individual.

St. Augustine<sup>62</sup> taught that all men are born sinful and tend to do evil. The fall of Adam resulted in a complete disablement of man's will, which requires a special divine operation for rehabilitation. This is achieved only through God's grace. Grace is procured through sincere penance and a perfect life. Without grace man can only will evil. Therefore a criminal was without grace and could not help doing evil.<sup>63</sup>

Opposed to this view was the theory of Pelagius, a monk, who said, "Grace was good and a help; sin was widespread; but the latter was not due to an inherited taint but to the influence of Adam's bad example. Man can overcome temptation if he sets his will to do it."<sup>64</sup>

The punishments for theft in Mediaeval England were extremely cruel.<sup>65</sup> Wealth would usually purchase immunity for the thief who

<sup>60</sup>Aquinas, Thomas, *Summa Theologica*, Part 2 (First part), New York, 1915.

<sup>61</sup>De Wulf, *Philosophy and Civilization in the Middle Ages*. Princeton University Press, 1922, pp. 264-272, 241-263, 219-240.

<sup>62</sup>Cambridge Mediaeval History, p. 585-586.

<sup>63</sup>St. Augustine calls to mind the position of the Hereditist while Pelagius holds that of the Empiricist. Augustine sought the origin of all evil and rested content when he had traced it to the Adamic transgression.

<sup>64</sup>Cambridge Mediaeval History, p. 585.

<sup>65</sup>Pike, Luke Owen, M. A., *A History of Crime in England*. London, 1873, pp. 49-52.

had offended but once. He could pay compensation and fine. The second offence was generally punishable by death. (In some places provisions existed which stated that no one could buy off his life even for a first theft.) The lowly who were apprehended for this crime were horribly mutilated. A female slave guilty of theft was sometimes sentenced to be burnt alive. Pike further asserts that, "If the thief was a free woman she was to be thrown down a precipice or drowned. If the thief was a man and a slave he was to be stoned to death by eighty slaves, and if one of the eighty missed the mark three times that one was to be whipped three times." If a thief was detected in the act of carrying off what he had stolen no trial was considered necessary; if a poor man who could not pay a fine, he was put to death with little ceremony.

#### CHAPTER V.

#### *Attitudes and Theories from the Beginning of the Eighteenth to the End of the Nineteenth Century*

In order to fully appreciate and understand the tremendous changes which took place in this period, it is necessary to consider the great and far-reaching social, religious, and political subversions which preceded them. We have shown in previous chapters how deeply the concepts of King and Deity, Demonism, and Freewill colored the legal, penal, and juridical, philosophies and functions of government. What occurred in history which precipitated this radical inversion?

It is beyond the scope of this thesis to delve into a detailed analysis of the various causes. A few salient points, however, will serve as a requisite and important orientation.

In the first place, the absolutism of monarchs who had accepted the Divine Right hypothesis too literally and had overlooked social service, the real justification for their existence, was gradually crumbling into scorned theory. Attempts to put through measures strongly repugnant to the people met with determined opposition and finally ended the Divine Right theory. (This was particularly true in England.)

Secondly, the Clergy, while still holding a respected position in the government, no longer belonged to a special order. Primacy in intellectual and academic matters passed into lay hands, those of the scientist and philosopher. The schools began to exhibit an indifference to the dicta of theology and dogma, pursuing their searches for truth regardless of the lifted eyebrows of horrified ecclesiastics.<sup>66</sup>

<sup>66</sup>Schevill, Ferdinand. *A History of Europe. From the Reformation to Our Own Day.* Harcourt, Brace, and Co., New York, 1925, pp. 384-403.

The birth and development of Chemistry in the 18th century was initiated by Lavoisier, who studied the constitution of matter. The direction and impetus imparted to scientific research by these developments reached its climax in the 19th century with the studies of Loeb<sup>67</sup> in Biology, who attempted to pierce the mysteries of human life with the lance of science. It was his revolutionary ultimatum, that "Living organisms are but chemical machines consisting chiefly of colloidal material and possessing the peculiarity of preserving and reproducing themselves . . ." and that all the actions of any organism, from lowest to highest, could be analyzed into chemotropisms, which served to ligate the study of humans with biology and placed the primary postulates of that behavior upon a biological instead of a theological foundation.

In addition to these trends, that humanism which had first commenced with Locke in 1690 and had been progressively developed by Berkeley, Hume, Hartley, and others, gradually led to a mechanistic interpretation of man, an interpretation which rejected the traditional notion of the impotence and natural depravity of human nature and substituted for it an interpretation based on evolution, environmental factors, physics and chemistry. Man was fast becoming a part, instead of the center, of the universe, subject to natural laws and functioning in accordance with them.<sup>68</sup>

Finally, the invention of the steam engine in 1769 inaugurated the industrial revolution, one of the most momentous movements in the history of mankind.<sup>69</sup> Outside of its immediate economic effects there were also the subtle psychological and philosophical parallelisms which were impressed upon the reflective minds of the period and evolved as mechanistic systems. These were to become greatly instrumental in theories relating to the varieties and geneses of human behavior.

We find that the ideas of modern Criminology germinated in Italy, from whence they spread to all enlightened countries of the world. The earliest pioneer of the modern movement was Beccaria,<sup>70</sup> who realized that "Neither the power of eloquence, nor the sublimest truths,

<sup>67</sup>Randall, *Making of the Modern Mind*. Pp. 454-466.

<sup>68</sup>Randall, *Making of the Modern Mind*. Pp. 282-355.

<sup>69</sup>See Dietz, Frederick C., *The Industrial Revolution*, New York, 1927, p. 108. See also Toynbee, Arnold, *The Industrial Revolution of the 18th Century*. Longmans Green, 1923.

<sup>70</sup>Beccaria, Cesare. *An Essay on Crimes and Punishments*. London, 1769, p. 179. This work was written in Italy and published in England because of intolerance in the former country (In preface). It contains a summary purported to have been written by Voltaire.

are sufficient to restrain for any length of time, those passions which are excited by the lively impressions of present objects." He possessed insight into the deterministic nature of human behavior, saying, "No man is cruel without some interest, without some motive of fear and hate. There are no spontaneous or superfluous sentiments in the heart of man; they are all the result of impressions on the senses."

His theory of theft is an economic one which claims that theft is ordinarily the crime of poverty and despair. The solution is obviously in the domain of sociology and economics.

Concerning crimes in general he advances the environmentalist point-of-view. To quote,<sup>71</sup> "Lastly, the surest but most difficult means of preventing crime is to improve education . . . ." We must bear in mind that at this period the environment was regarded as the source of all good and evil, therefore, it was reasoned, change the environment and you change all.

The greatest name in Criminology, however, is that of Lombroso,<sup>72</sup> the father of modern Criminology. Although most of his work is discredited at the present time, he will always be remembered for shifting the emphasis from the crime and its classification to the criminal, from the objective to the subjective. The crime he viewed as a result, the criminal as the cause. In conformity with scientific procedure he turned his attentions to the causal agent in the hope, through it, of controlling the effect.

The modern or positive school of penal jurisprudence is founded on anthropology. Lombroso first thought of the idea in 1864<sup>73</sup> when, as an army doctor he beguiled his leisure time with a series of studies on the Italian soldier, noting that there were observable physical differences between the honest and vicious soldier. "This idea, however, he says, bore no fruit." It was in 1870, while conducting researches in the prisons and asylums of Pavia that he made his great discovery. He says of it, "I, therefore, began to study criminals in the Italian prisons, and, amongst others I made the acquaintance of the famous brigand Vilella. . . . On his death one cold, grey, November morning, I was deputed to make the post-mortem, and on laying open the skull I found on the Occipital part, exactly on the spot where a spine is found in the normal skull, a distinct depression which I named Median Occipital Fossa, because of its situation precisely in the middle

<sup>71</sup>Farrar, James A. *Crimes and Punishments*. A new translation of Beccaria's "Dei Delitti E Delle Pene." London, 1880.

<sup>72</sup>Ferrero, Gina Lombroso, *Criminal Man*. A Brief Summarization. The Knickerbocker Press, 1911, p. 279.

<sup>73</sup>Introduction, by Cesare Lombroso. XIV-XV.

of the occiput as in inferior animals, especially rodents. This depression, as in the case of animals, was correlated with the hypertrophy of the Vermis, known in birds as the middle cerebellum.

"This was not merely an idea, but a revelation. At the sight of that skull, I seemed to see all of a sudden . . . the problem of the nature of the criminal . . . an atavistic being who reproduces in his person the ferocious instincts of primitive humanity and the inferior animals."

In brief, Lombroso's theory held that the criminal was a physical and psychological atavism, born so, epileptic in constitution, and forming a special type both biologically and anatomically. He was ". . . an abnormal, being driven by an irresistible atavistic impulse to commit anti-social acts."<sup>74</sup> In addition to the born criminal there are also criminaloids who differ from the born type psychologically rather than physically, the criminaloid committing his initial offence later in life and always for some adequate reason. The thief belongs to the criminaloid group.

The physical anomalies include abnormalities of head size and shape, disproportionate face exhibiting prognathism; ptosis, strabismus and Galtonism in the eyes; peculiarities in nose shape, cheek pouches, abnormal dentition, feminine distribution of hair, prehensile feet, etc. There are also, according to Lombroso, numerous mental and psychological anomalies which are easily recognized. "In thieves the nose is frequently twisted, upturned or of a recognized, flattened, negroid, character."<sup>75</sup>

Lombroso later modified his strict classification,<sup>76</sup> introducing the habitual criminal class, composed of those who, through poor environment and education fall back to the primitive tendency toward evil.

The Lombrosian school gave organic action supremacy over environment. It broke the binding shackles of free-will and responsibility and set out to study the offender from the experimental standpoint. Although its conclusions were far-fetched and unsubstantiated, it nevertheless pointed the way for more painstaking research along a fruitful path.

Ferri,<sup>77</sup> while accepting much of Lombrosian doctrine, developed his theory along sociological lines. He firmly believed with Lombroso

<sup>74</sup>Ferrero, Gina Lombroso. *Criminal Man. A Brief Summarization.* G. P. Putnam's Sons. The Knickerbocker Press, 1911, p. 279, p. 52.

<sup>75</sup>Ferrero, Gina Lombroso. *Criminal Man. A Brief Summarization.* Op. Cit., p. 15.

<sup>76</sup>Lombroso, Cesare. *Crime. Its Causes and Remedies.* Boston, 1912.

<sup>77</sup>Ferri, Enrico. *Criminal Sociology.* D. Appleton and Co., New York, 1896, pp. 1-142.

that the criminal is distinguished from normal men in organic constitution, regarding these as inherited tendencies to criminal conduct.<sup>78</sup> "Moral insensibility" and "Want of Insight" are the two fundamental abnormalities of the criminal. He sums up his thesis with the conclusion that, ". . . the psychology of the criminal is summed up in a defective resistance to criminal tendencies and temptations, due to that ill-balanced impulsiveness which characterizes children and savages."

His prognosis for the thief is pessimistic. "Whatever the reason may be," he claims, "as a matter of fact the thief is rarely or never reformed."<sup>79</sup>

Ferri also looked upon crime, not as a social phenomenon solely, in which the organic and psychical anomalies have no part, but as a result of "Anthropological social and physical conditions."<sup>80</sup>

Garofalo<sup>81</sup> represents a sharp swerve from the Lombrosian theory. He disagrees with atavistic theory on the ground that human society has existed for a long time, developing altruistic instincts along with its own development. An atavist should therefore inherit this instinct. The fact that he fails to do so Garofalo regards as sufficient proof of his own position.

In reference to the Instincts Garofalo states, ". . . it is certain that every race today possesses a sum of Moral Instincts which are not due to individual reasoning, but are the inheritance of the individual quite as much as is the physical type of his race."<sup>82</sup> This moral sense is created by the evolution of the race and is inherited like all other heritable factors.<sup>83</sup> This moral sense is a psychic activity, subject to change and infirmity, may become diseased or even entirely lost.

The thief, according to this theory, is deficient in the instinct of Probity. "This sentiment of Probity is generally the effect of examples in infancy which continually renewed, have produced an ingrained instinct which in all probability will persist for life."<sup>84</sup> In place of

<sup>78</sup>Ferri, Enrico. *Criminal Sociology*. D. Appleton and Co., New York, 1896, pp. 1-142.

<sup>79</sup>*Ibid.*, p. 35.

<sup>80</sup>*Ibid.*, p. 35.

<sup>81</sup>Garofalo, Baron Raffaele. *Criminology*. Modern Science Series. Boston, pp. 401. Little, Brown and Co., 1914. Tr. from 1905.

<sup>82</sup>Garofalo, Baron Raffaele. *Criminology*. Modern Science Series. Boston, pp. 401. Little, Brown and Co., 1914. Tr. from 1905, ed. by R. W. Miller.

<sup>83</sup>The discoveries of Gregor Mendel, in 1865, made a profound impression on the theories of the period, even to the application of Mendelian principles of abstract entities.

<sup>84</sup>*Op. Cit.*, p. 125.

Probity he gives evidence of an instinct of Improbability. "It is only from hereditary moral degeneracy, or from the influence of his individual environment—that immediately surrounding him—which may create an instinct as deep rooted as if it had been hereditary, that a man becomes a thief."<sup>85</sup>

The concepts of Moral responsibility, choice and free-will have no place in this theory. Choice and free-will depend on experiential antecedents, which include individual ways of thinking and feeling, bodily constitution, and influences of exterior circumstances. There is only one aim in criminology—the careful study of the individual with a view toward ascertaining the cause of the crime.<sup>86</sup>

Carnevale,<sup>87</sup> in 1889, throwing aside the supposition that theft was due to immorality, greed or contempt for the law pointed out that the "thief's predecessors, his education, his shameless mendicancy, the petty larcencies which were his apprenticeship during his childhood, his shameless loves, and his sorry associates . . ." were responsible for his condition. The free-will bogey he disposes of, showing the real danger which society faces. "On the whole, free will being denied, society understands that it has not a single force, accumulated and isolated in an individual to contend with, but it stands face to face with a complexity of forces converging in an individual."

In France, Tarde<sup>88</sup> based his theory of criminality on an imitative process running its course from the high and powerful to the low, weak and poor. Vice and crime, he claims, were formerly propagated from the nobles to the people. "Theft," he asserts,<sup>89</sup> "so degrading in our day, has had a brilliant past. Montaigne tells us, without being very indignant about it, that many young gentlemen of his acquaintance, to whom their fathers did not give enough money, got funds by stealing."

Tarde considered crime as a peculiar social fact, but after all a social fact like any other.<sup>90</sup> In common with other branches of social activity it implies physiological and psychological conditions.<sup>91</sup>

<sup>85</sup>Garofalo, *Op. cit.*, p. 288.

<sup>86</sup>Garofalo, Baron R. *New Theories of Criminology*. A paper in, "Commitment, Detention, Care and Treatment of the Insane." A Report of the 4th section of the Int. Cong. of Charities, Correction and Philanthropy. Baltimore, Johns Hopkins Press, 1894, pp. 48-57.

<sup>87</sup>Carnevale. *Critica Penale*. Lipari, 1889. Quoted from Tarde, *Penal Phil.*

<sup>88</sup>Tarde, Gabriel. *Penal Philosophy*. Boston, 1912 (Written 1890).

<sup>89</sup>*Ibid.*, p. 334.

<sup>90</sup>*Ibid.*, p. 362.

<sup>91</sup>*Ibid.*, p. 416.



As early as the year 1516, Thomas More wrote and published his "Utopia,"<sup>92</sup> an idealistic portrayal of government. In it he criticizes economic conditions in England, blaming these for the great amount of crime and shows that theft cannot be prevented by extreme punishment, it being a means of livelihood for those "who have no other craft whereby to get their living."

Bentham<sup>93</sup> dismisses the moral sense concept and reduces all behavior to pleasure and pain. Systems of right and wrong he bases upon a principle of Utility, "That principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose happiness is in question; or . . . to promote or oppose that happiness."<sup>94</sup>

The offender, in all likelihood, would be an individual whose pleasure goal is a malevolent one. This theory is a purely social one and takes no special cognizance of the acting agent.

The earliest application of psychiatry to the criminal personality in England occurs in the works of Henry Maudsley.<sup>95</sup> The Moral Sense has a strictly physical basis, and is, he explains, inherited in the brain structure from previous ancestors. In diseased or feeble brains it is partially or totally lacking. As a consequence of disease, that portion of the brain containing the transmitted moral ideas (which are evidently behavior tendencies) may degenerate and bring about evil or perverted conduct. There are those also, who are born without the moral sense and are true moral imbeciles. These constitute the habitual criminal class and show stigmata of degeneration.<sup>96</sup> His conclusion is that,<sup>97</sup> "Crime is not, then, always a simple affair of yielding

<sup>92</sup>More, Sir Thomas. *Utopia*.

<sup>93</sup>Bentham, Jeremy. *Principles of Morals and Legislation*. Oxford, 1823. (First edition in 1789.)

<sup>94</sup>*Ibid.*, p. 2.

<sup>95</sup>Maudsley, Henry. *Body and Mind*. New York, 1880, pp. 108-120.

<sup>96</sup>It appears here that Maudsley is seeking a psychiatric solution to the conflicting problem of the moral sense, the phenomena of insanity and crime, and the anthropological discoveries of the period. He mentions that those who are without the Moral Sense constitute a morbid or degenerate variety of mankind, marked by peculiar low physical and mental characteristics. They are scrofulous, deformed, have badly formed angular heads, are stupid, sluggish, sometimes afflicted with epilepsy, weak-minded and imbecile. The solution is a synthesis of Mendelism, Darwinism, Lombrosianism, and psychiatry; which spares the terminology of the times but sets it upon a concrete foundation. . . . For a highly interesting and instructive work on the general treatment of criminals at this time, see, "Half-Hours with the Highwaymen," 2 Vols. G. C. Harper, Chapman and Hall, London, 1908.

<sup>97</sup>Maudsley, *Op. cit.*, p. 112.

to an evil impulse or a vicious passion, which might be checked were ordinary control exercised; it is clearly sometimes the result of an actual neurosis which has close relations of nature and descent to other neuroses; and this neurosis is the result of physiological laws of production and evolution." Maudsley despairs of reformation or education in the "habitual" criminal, who inherits his criminality as insanity is inherited.

In cases of theft, especially when it occurs in a person who has up to a certain point lived an honest life, we may, he writes, really look for the first signs of a mental derangement.

A theory somewhat similar in certain respects is that of Mercier<sup>98</sup> who regards the criminal as an individual in whom the social instinct is undeveloped. This theory is incomplete in contrast with Maudsley's. Mercier claims, "There is<sup>99</sup> also a moral disorder . . . unaccompanied by any delusion or by any discoverable disorder of intellect . . . which gives rise to "Moral Imbecility, a congenital inability to distinguish between right and wrong."<sup>100</sup> Feeble-mindedness is also named as a cause of crime, generally found together with moral obtuseness. Lack of intelligence and consequent inability to learn a trade predisposes the offender to his career.<sup>101</sup>

Dugdale<sup>102</sup> in America concluded from a careful study of a criminal family that the criminal is the result of a cross between a vicious and a strong strain. He speaks of the possibility of organizing Morality, provided vitality is present, this vitality being misdirected in the case of the criminal. Heredity is alterable through education, part of which consists in change of environment. Dugdale attempts to justify the environmentalistic point of view.<sup>103</sup> In discussing the question of poor mentality he says, "These phenomena take place not because there is any aberration in the laws of nature, but in consequence of these laws; because disease, because unsanitary conditions, because educational neglects produce arrest of cerebral development at some point, so that the individual fails to meet the exigencies of the civilization of his time and country, and that the cure for unbalanced lives

<sup>98</sup>Mercier, Charles. *Crime and Insanity*. Henry Holt and Co., New York, p. 254.

<sup>99</sup>*Ibid.*, p. 35.

<sup>100</sup>*Ibid.*, p. 253.

<sup>101</sup>As early as 1818 the first industrial school was founded at Stretton-on-Dartmoor, England. Here the young who had fallen into crime were taught a trade, such as tailoring, etc. Another was established at Mettray, France, in 1839. (Rylands, C. L. *Crime. Its Causes and Remedy*. London, 1889, pp. 262.)

<sup>102</sup>Dugdale, R. L. *The Jukes*. Fourth Ed. New York, 1910. Copyright, 1877.

<sup>103</sup>*Ibid.*, p. 55.

is a training which will affect the cerebral tissue, producing a change of career." He explains the potential thief as being, if not a moral imbecile, at least a moral infant. In his study of 84 larceny cases in Sing Sing he found 71 sane and 13 neurotic.

In conclusion we may say that crime in the 18th century was assumed to involve a like moral freedom and to imply a like responsibility. Criminals, such as thieves for example, were regarded as free agents. In determining punishments, it was necessary to determine to what extent the offender had been responsible for his action, i. e., the judge had to examine to what extent the offender had been morally free in his actions.<sup>104</sup>

In the 19th century, the rapid advance in science, industry, and politics, together with the resulting intellectual freedom brought about a great change in attitudes toward human behavior, especially that form of it called criminal. Abstract theories were giving way to substantiable concepts, the inductive method was being applied to society and the last mediaeval hypotheses were thinning out and melting away before the onslaught of an untrammelled scientific approach.

## CHAPTER VI.

### *Contemporary Theories and Studies of Criminality*

#### Introduction

The attitude toward criminality, both in theory and approach, underwent that significant change in the 20th century which the activities of the 19th century had foreshadowed. While these earlier stimuli had been of momentous consequence, their influence might have become dormant had it not been for the discovery of objective techniques and the indefatigability of those who applied them.

Foremost among these techniques stands the mental test, devised by Binet in France and introduced into America by Dr. H. H. Goddard in 1910. At the present time numberless variations of this test are in use, together with others which purport to measure emotivity, character and personality traits, vocational fitness, special types of intelligence, degree of motor control, and degree of psychopathy. Their outstanding value, in addition to the employment of standardized scales, is the exclusion to a very great degree of biased and subjective opinions by the tester. It has become possible, through testing, to allocate an individual with reference to his position in the group, and deduce

<sup>104</sup>Saleilles, Raymond. *The Individualization of Punishment*. Boston, 1911.

therefrom, by comparison with others on the same level, his relative ability and capacity to generalize, assimilate abstract principles and fit in with the group among which he lives. In addition, careful experimental and clinical studies have shown that the "sentiments" of the older schools are reducible to visceral movements and chemical changes within the body, these movements being subject to functional anomalies.

Advances in the fields of abnormal psychology and psychiatry have aided materially in the adoption of new views on crime and the criminal. Observations on abnormal behavior and the concomitant physical changes attending them have led to the belief that wherever abnormalities of behavior are noted, some organic or functional change acts as the cause. This attitude has stimulated research along endocrinological lines, and, although results up to the present time have been indefinite, there is reason to believe that future research along this line will add materially to our knowledge of the criminal.

Finally, there are the contributions of psycho-analysis. This technique operates upon the assumption that determinism in the psychic sphere is as universal as in the physical. According to this theory, all abnormal forms of behavior, including the neuroses and allied disorders, are traceable to definite experiences in the mental life of the individual. These experiences, when traced back and uncovered, reveal the genesis of the abnormality and afford a means of rectification.

The application of psychoanalysis to crime may later become widespread, aiding in the rehabilitation of the criminal and reclaiming him for society.

The scientific study of the criminal in America was given a strong impetus through the researches of Dr. Goddard,<sup>105</sup> who thought that crime was generally committed by the high grade moron and other feeble-minded. These, because of their low intelligence, are unable to differentiate right from wrong and consequently develop anti-social habit patterns. He points out that descriptions of the criminal type are nearly always descriptions of the feeble-minded.<sup>106</sup> Inheritance of criminality, says Goddard, reduces itself to inheritance of feeble-mindedness, which, when it exists in conjunction with nervousness and excitability, renders the unfortunate individual a prey to a stronger intelligence. Every feeble-minded person is therefore a potential criminal, at the mercy of his own uncontrollable and untutored impulses or the machinations of more intelligent but unscrupulous companions. A significant point brought out in connection with the criminal is the

<sup>105</sup>Goddard, Henry H. *The Kallikak Family*, 1912.

<sup>106</sup>Goddard, Henry H. *Feeble-mindedness. Its Causes and Consequences*. Macmillan Company, 1914, p. 590.

fact that in most cases we are dealing with an individual who has virtually ceased developing before the age of adolescence is reached, and is therefore incapable of comprehending the nature of a criminal act and relies only on his natural impulses. These naturally unfit him for adapted social interaction and cause him to fall into crime.<sup>107</sup> The feeble-minded are unable to understand what society demands of them. They lack the power of making generalizations or abstractions and react to their environment in much the same manner as a child of ten or eleven years.

In regard to theft, Goddard points out<sup>108</sup> that the act is a perversion of the hoarding instinct, brought about by inability to recognize personal property rights. This inability may be due to insufficient intelligence or brain disease. It may also have its origin in lack of training or experience.<sup>109</sup>

On the basis of the most careful studies Goddard concludes that somewhere in the neighborhood of 50% of all criminals are feeble-minded.<sup>110</sup>

Terman<sup>111</sup> places the percentage at 25%. He agrees with Goddard that all feeble-minded are potential criminals and that the so-called criminal stigmata are indications of mental deficiency. In the case of the intelligent criminal Terman believes we are confronted with an individual who possesses the ability to foresee and weigh the possible consequences for self and others of different kinds of behavior but lacks the willingness and capacity to exercise self-restraint.<sup>112</sup>

Wallin<sup>113</sup> also believes with Goddard that in the criminal we have, not a person of vicious proclivities, but one who, through intellectual and moral weaknesses, weak powers of inhibition, and inability to resist temptation, often becomes the "Unsuspecting, helpless or guileless dupe of the more intelligent vultures who prey upon the weak."<sup>114</sup> Sneve<sup>115</sup> inclines to the belief that 50% of criminals are deviates from

<sup>107</sup>Goddard, H. H. *The Criminal Imbecile*. Macmillan Company, New York, 1915, pp. 1-108.

<sup>108</sup>Goddard, H. H. *Juvenile Delinquency*. New York, 1921, p. 88.

<sup>109</sup>Goddard, H. H. *The Criminal Instincts of the Feeble-minded*. *Journal of Delinquency*, Vol. II. No. 6. November, 1917, pp. 352-355.

<sup>110</sup>*Ibid.*; See *Feeble-mindedness, Its Causes and Consequences, and Juvenile Delinquency for the statistical presentation of these studies*.

<sup>111</sup>Terman, Lewis M. *The Measurement of Intelligence*. Houghton Mifflin, 1916, pp. 7-12.

<sup>112</sup>This may be due to absence of an adequate stimulus.

<sup>113</sup>Wallin, J. E. *Problems of Subnormality*. New York, 1917.

<sup>114</sup>*Ibid.*, p. 248.

<sup>115</sup>Sneve, Haldor. *Influence of Parental Diseases, Habits, and Heredity, upon Juvenile Crime*. Pp. 43-52. 1914. *From Physical Basis of Crime*. Symposium.

the average standard of contemporary individuals of the same age. He concludes that "Parental diseases which infect the growing foetus or infant predisposes to crime because of weakness of mind. Alcoholism except in the mother is a negligible direct fact in weakening the child's brain, and morphine and cocaine must be considered in the same way." There is no evidence therefore for the transmission of criminal tendencies as such. Bowers<sup>116</sup> found that of 2500 prisoners examined 401 were in poor physical condition, 664 in fair condition and 1435 rated good. Of the total number, 934 were syphilitic, 49% showed hereditary taint of insanity, feeble-mindedness, and other psychopathy. 23% were definitely feeble-minded. He concludes that a purely causal relationship exists between physical defects and crime. Many Lombrosian stigmata were found but are ascribed to defective states of mind, "Which hinder the individual from adjusting himself to his environment, and this hindrance of social adjustment frequently gives rise to criminal tendencies."<sup>118</sup> Ordahl<sup>117</sup> found 26.4% feeble-minded out of 53 male convicts studied. Of 300 male criminals studied at the Massachusetts State Prison, ranging between 16-80, 22% were found feeble-minded; 9.6% borderland cases and 3.3% psychotic.<sup>118</sup> Murchison,<sup>119</sup> using the Army Alpha in numerous state institutions found that in terms of Alpha scores the criminal groups seems superior to the white draft group (p. 57). In 992 cases of theft and concomitant crime he found:

7.3%.....	E
7.3%.....	D
17.2%.....	C—
26.6%.....	C
25.1%.....	C+
11.3%.....	B
4.3%.....	A

or 31.8% below normal intelligence.

Although Murchison devotes the first few pages of his book to a refutation of Goddard's figures, he himself approximates them.

<sup>116</sup>Bowers, Paul E. A Survey of 2,500 Prisoners in the Psychopathic Laboratory in the Indiana State Prison. *Jour. of Delinquency*, No. 1, January, 1919, pp. 1-45.

<sup>117</sup>Ordahl, George. A Study of 53 Male Convicts. *Jour. of Delinquency*, 1916, p. 1 ff.

<sup>118</sup>Report of the first hundred cases examined at the Massachusetts State Prison. *Bulletin No. 17 of the Mass. State Bd. of Insanity*, 1916.

<sup>119</sup>Murchison, Carl. *Criminal Intelligence*. 1926.

Bowman,<sup>120</sup> in a study of 100 court cases, many of which were indictments for larceny, found that 28 were insane, 5 psychotic but not committable, 3 psychoneurotic, 35 psychopathic personalities, 9 feeble-minded and 3 epileptic.

A study<sup>121</sup> carried on for eight months on 608 consecutive admissions to Sing Sing showed that 66.8% of that number comprised individuals who had shown throughout life a tendency to behave in a manner at variance with normal behavior, this behavior being manifested in crime. 59% deviated from average mental health, 28.1% exhibited intelligence of the average 12 year old child, 18.9% were constitutionally inferior or psychopathic to the extent that adaptation to the ordinary demands of life was difficult or impossible. Of the 608, 388 were incarcerated for theft and concomitant crimes. Among these, 12.9% were mentally diseased or deteriorated, 24.7% were intellectually defective and 19.6% were diagnosed as psychopathic or constitutional inferior. In all, 57.2% of those immured for theft were classifiable as psychological deviates.<sup>122</sup>

Healy and Bronner<sup>123</sup> in a study of 4000 delinquency cases conclude that the delinquent does not form a separate group physically.<sup>124</sup> Their records show 13.5% clearly feeble-minded and 2.8% psychopathic personalities.

Glueck,<sup>125</sup> regards criminality as the expression of a diseased personality to which the same principles should be applied as those utilized in psychiatry. He also stresses the need for character, wisdom and healthy attitudes in the parents if the offspring are to develop normally.<sup>126</sup> Head injury and the presence of syphilis are also regarded as directly related to the prevalence of crime.<sup>127</sup>

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<sup>120</sup>Medical and Social Study of 100 Cases Referred by the Courts to the Boston Psychopathic Hospital. By Karl Bowman, M.D., *Ment. Hyg.*, Jan., 1928, Vol. XII, p. 55.

<sup>121</sup>Glueck, Bernard. A study of 608 Admissions to Sing Sing Prison. *Ment. Hyg.* 1918, Vol. II, pp. 85-100.

<sup>122</sup>Glueck, Bernard. Concerning Prisoners. A good summary of the above.

<sup>123</sup>Healy, W., and Bronner, A. F. *Delinquents and Criminals: Their Making and Unmaking.* Macmillan Company, 1916. Pp. 241.

<sup>124</sup>Results on this point agree with studies made on adult male criminals, notably Goring.

<sup>125</sup>Glueck, Bernard. *Studies in Forensic Psychiatry.* Little, Brown Co., 1916. Pp. 266.

<sup>126</sup>———. Significance of Parental Attitudes. *Ment. Hyg.*, Vol. XIII, No. 4, p. 277.

<sup>127</sup>———. Head Injury and Syphilis as a Cause of Crime. Pp. 177-183. From Symposium; *Physical Basis of Crime.* 1914.

Healy<sup>128</sup> stresses the ideational life of the individual, saying, "We must know not only the fact of his offence but also the nature of his criminalistic ideas, their character, their force and their derivation . . . the anti-social tendencies even of the professional crook can be traced far back into childhood influences, and they steadily grow as the result of unfortunate ideational life . . . ."

Healy adheres to a strict determinism in his approach to the problem of criminal behavior,<sup>129</sup> believing that no criminal is ever produced who cannot upon examination show mental defect and aberration, detrimental environment or mental conflict of some sort.

"To those who study crime and criminals in a scientific manner," writes Hoag,<sup>130</sup> "the evidence is overwhelming that in the main the serious violations of those established social customs which we call laws are evidence of lack of judgment based upon a defective intelligence or an unsound mind."

He ascribes petty thefts mainly to those suffering from psychopathic personality (Chap. X).

Hollander,<sup>131</sup> claims that injury in the anterior-superior head region will cause thieving behavior.

White,<sup>132</sup> discards the collective label "criminal," substituting in its place the individual offender who must be accorded individual treatment. Stealing, he claims, may be due to poverty, neurosis, alcoholism, paresis, manic-depressive psychosis, mental defect, and lack of education coupled with the influence of dominating and evilly disposed associates.<sup>133</sup>

Crime as "the normal act of an abnormal person"<sup>134</sup> is Parsons' epitomized conclusion on the nature of criminality. Mental defect or pathology renders the individual incompetent to meet the exigencies of normal social life.

Crime as a behavior situation implying a state of relationship

<sup>128</sup>Healy, William. *The Mental Factors in Crime*. Read at a Conference held May 17, 1928, under the combined auspices of the Massachusetts Commission on Probation and the Massachusetts Society for Mental Hygiene. *Ment. Hyg.* for October, 1928. Vol. XII, No. 4, p. 761.

<sup>129</sup>Healy, William. *The Individual Delinquent*. Little, Brown and Co., 1922. Especially p. 783.

<sup>130</sup>Hoag, E. B. *Crime, Abnormal Minds and the Law*. Indianapolis, 1923. Pp. 1-121.

<sup>131</sup>Hollander, Bernard. *The Psychology of Misconduct, Vice and Crime*. 1923. Pp. 215.

<sup>132</sup>White, William A. *Insanity and the Criminal Law*. Macmillan Company, 1923.

<sup>133</sup>White, William A. *Insanity and the Criminal Law*. Macmillan Company, 1923. P. 25 f.

<sup>134</sup>Parsons, P. A. *Crime and the Criminal*. Alfred Knopf and Company, 1926.



between the individual and the group is the objective attitude of Sutherland,<sup>135</sup> Weiss,<sup>136</sup> and Wheeler.<sup>137</sup>

Schlapp<sup>138</sup> explains criminal behavior from the standpoint of physico-chemical laws. Crime is represented as the result of an inner drive, a criminal imperative, which impels forbidden and extraordinary human acts. Criminals are the products of bodily disorders; crimes come about through disturbance of the ductless glands in the criminal or through mental defects caused by endocrine troubles in the criminal's mother. Criminal reactions are caused by the internal chemistry of the body. In theft the intellect may remain intact but the chemistry of the bodily organization has been broken down because of some cause, and the act, i. e., unlawful removal of property, is indulged in in spite of all attempts at resistance and results in crime.<sup>139</sup>

In England Mercier<sup>140</sup> regards the concept of responsibility as belonging to the domain of psychology. It is not a quality of the person who has committed the crime but rather a demand on the part of others that he shall suffer (p. 17f). Before determining the culpability of an offender, intentions, motives, circumstances under which the act was done, reasons for the choice of one particular pattern of behavior, condition of judgment, memory, antecedents of particular desires and diversions should all be gone into. The criminal, in other words, is the product of his earlier experiences which in turn were contingent upon the environment.

Ellis<sup>141</sup> considers the average criminal "a congenitally abnormal person, endowed with an ill-adjusted organism which fails to respond to the same social stimuli as the organisms by which it is surrounded." This abnormality chiefly affects feelings and volitions. He disagrees with the epilepsy theory on the ground that the definition of that malady is too broad. His interpretation of the atavistic characteristic emphasized by Lombroso reduces itself to the simple and incomplete modes of life exhibited by a simple and incomplete creature. The "instinctive criminal," Ellis' surrogate for Lombroso's "Reo Nato"

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<sup>135</sup>Sutherland, Edwin H. *Criminology*. J. B. Lippincott and Company, 1924. Pp. 623.

<sup>136</sup>Weiss, A. P. *A Theoretical Basis of Human Behavior*. R. G. Adams Co., Columbus, 1925.

<sup>137</sup>Wheeler, R. H. *The Science of Psychology*. Thomas Crowell Company, 1929.

<sup>138</sup>Schlapp, Max G., and Smith, E. H. *The New Criminology*. Boni Liveright, 1928. Pp. 280.

<sup>139</sup>Schlapp, *Op. Cit.*, p. 208 f.

<sup>140</sup>Mercier, Charles. *Criminal Responsibility*. Oxford, 1905. Pp. 228.

<sup>141</sup>Ellis, Havelock. *The Criminal*. Charles Scribners Sons. Fifth Edition, Contemporary Science Series.

is one in whom the self-seeking and sensual impulses have overdeveloped. Causes of crime are cosmic, biological, and social.

It was not until the year 1913 that the death blow was dealt the dismal theory of Lombroso. Goring's meticulous statistical study of 3000 English criminals<sup>142</sup> showed that "criminals are not physically differentiated because they are criminals, but because of differences in age, stature, intelligence, etc., etc., and of the different social classes from which they are drawn."<sup>143</sup> Physical differences exist among criminals in the same proportion as they are found among the different kinds of law-abiding citizens. Inferior stature and weight of criminals are not due to an inbred criminal trait, but is rather the result of selection. Goring believes that through time this characteristic may become inbred. Thieves and burglars are characterized by inferiority in stature and weight as well as puniness in general body habit.<sup>144</sup>

We may as well dismiss Goring's results on intelligence. In the first place, no objective tests appear to have been used, secondly, estimates were based on "opinions" of official observers, thirdly, the divisions into intelligent, fairly intelligent, unintelligent, and defective strikes us as being decidedly unscientific and arbitrary and finally, the division between the first and second category was determined solely by the opinion of one person. The school standard was employed as a good "working test" of mental capacity (See pp. 237-263). Belief in the inheritance of criminal tendency as dependent upon temperamental qualities, feeble-mindedness, inebrity, etc., is also expressed. The general standard of morality may be raised by education, however.

In a recent study of young delinquents, Burt<sup>145</sup> found that only 3% of the total number of his cases were attributable to poverty. 60% suffered from defective home relations, 68% manifested intellectual defects, 15% showed mild neurotic tendencies. He concludes that the hereditary constitution of the criminal exercises at most but an indirect effect. Inherited weaknesses, when excessive, favor a moral lapse in later life although in no manner do they constitute a fatal and inexorable propulsion towards it (p. 56).

Grasset<sup>146</sup> in France bases his theory of criminality on neurology.

<sup>142</sup>Goring, Charles. *The English Convict. A Statistical Study.* London, 1913. Pp. 11-374.

<sup>143</sup>Ibid. P. 139.

<sup>144</sup>Ibid. P. 200.

<sup>145</sup>Burt, Cyril. *The Young Delinquent.* Appleton and Company, New York, 1925.

<sup>146</sup>Grasset, Joseph. *The Semi-Insane and the Semi-Responsible.* N. Y., 1907. Pp. 166-170, 309-339.

He concludes that "An individual whose psychic neurons are normal is a responsible being." Responsibility for him is purely social. He makes a one-to-one correlation between neuron and behavior, claiming that as the neurons are normal, semi-normal or subnormal so also will the individual become responsible, semi-responsible or irresponsible.<sup>147</sup>

Sommer compares the criminal to a mentally diseased person, "Schon der umstand, das eine Handlung genau in der gleichen Weise von einem Kriminellen wie von einem Geisteskranken ausgeführt werden kann, beweist, das nicht die Straftaten als solche zum Einteilungsprinzip für die rechtbrachenden Personen gemacht werden können" (p. 337).<sup>148</sup> He also points out the various external and internal components of criminal conduct.

Emotional dysfunction as an outstanding factor in the criminal synthesis is the opinion of Wulffen<sup>149</sup> who says, "Diese Minderwertigkeit liegt erstens im Gefühlsleben, wo sich ein starkes, teils sogar übermächtiges Auftreten von sinnlichen, egoistischen, niedrigen Trieben, Leidenschaften, Affekten, Stimmungen, und Launen, und dem Inhalt aller dieser Gefühlsbewegungen entsprechende, bis zur Willkur und Brutalität gesteigerte Willensantreibe geltend machen."<sup>150</sup>

Aschaffenburg<sup>151</sup> disagrees with those who emphasize the individual approach. Crime, he asserts, is more to be looked for in the environment, especially the economic aspects thereof, than in the individual. He ascribes to alcohol a greater percentage of crimes than to any other cause.<sup>152</sup> The inheritance of children of drunkards, epileptics and insane persons consists of physical and mental inferiority which predispose to crime. The sources of these anomalies are, however, to be found in the environment. Lombrosian stigmata are explained as results of poverty and wretchedness, hard work of the mother during pregnancy and poisoning by alcohol during pregnancy. Bongger<sup>153</sup> places alcoholism as one of the causes of poor economic conditions, making it therefore an indirect cause of crime. Crime it-

<sup>147</sup>A direct relationship between neuron and behavior overlooks the difference between physiological and social reaction.

<sup>148</sup>Sommer, Robert. *Kriminalpsychologie und Strafrechtliche Psychopathologie*. Leipzig, 1904. Pp. 337-352.

<sup>149</sup>Wulffen, Erich. *Gauner und Verbrecher-Typen*. Berlin, 1910. Pp. 7-18.

<sup>150</sup>Wulffen, Op. Cit. P. 9.

<sup>151</sup>Aschaffenburg, Gustave. *Crime and Its Repression*. Little, Brown, 1913. Pp. 28-332.

<sup>152</sup>This refers only to Germany, where the study was made.

<sup>153</sup>Bongger, W. A. *Criminality and Economic Conditions*. Little, Brown and Co., 1916. Pp. 672.

self he does not consider an abnormal act, regarding it as a fiction dependent upon social circumstances. He says of theft, "The same thing is true of theft. For centuries it was considered the right of soldiers to pillage the country of the conquered . . . soldiers are not, however, from this fact considered to be biologically abnormal individuals. And yet there is no biological difference between these acts and those of the ordinary thief . . ." <sup>154</sup> Theft per se is caused by the pressure of poverty.

Asua, <sup>155</sup> in a resume of studies in Spain brings out the point that the endocrinological approach is being stressed there. He concludes, ". . . las modernas investigaciones de la Endocrinologia demuestran que las hormonas de las glandulas endocrinas no solo influyen sobre la constitucion y la forma armonica del cuerpo, sino que toman tambien parte esencial en la constitucion del espiritu, de tal manera . . . como Pende dice . . . de la distinta formula endocrina individual . . . depende, en ultime termino, la personalidad psiquica de todo sujeto." <sup>156</sup>

Lombrosian stigmata are recognized as due to endocrinal hypo or hyper function. <sup>157</sup>

Poznishev, <sup>158</sup> in Russia, divides criminality into two categories. the exogenous and the endogenous. Instead of going into detail, however, we may merely remark that the theory advanced appears to be rather metaphysical than scientific

Finally, there is the psychoanalytical school and its theories of human behavior. According to Tridon <sup>159</sup> the criminal reverts to primeval ethics, solving his problems by following the line of least resistance and least effort. Dangerous factors are at the bottom of the criminal unconsciousness and these must be removed before reform is possible.

Stekel <sup>160</sup> implies that the criminal reacts in a primal fashion, seeking to place himself above the limitations imposed by commandments. <sup>161</sup> Stealing is viewed as a deeply ingrained propensity in human nature,

<sup>154</sup>Bonger overlooks the fact that in one case the element of general sanction enters in whereas in the other the dictates of the group are prohibitive.

<sup>155</sup>Asua, L. Jimenez de. *Libertad de Amor Y Derecho Morir*. Historia Nueva. 1929.

<sup>156</sup>Asua, L. Jimenez de. *Op. Cit.* P. 185.

<sup>157</sup>Ibid. Pp. 189-191.

<sup>158</sup>Poznishev, S. V. *Criminal Psychology; Criminal Types*. Review in *Jour. of Criminal Law and Criminology*, Vol. XIX, No. 2, Part 1, August, 1928.

<sup>159</sup>Tridon, Andre. *Psychoanalysis and Behavior*. Knopf Company, 1923. Pp. 13-149.

<sup>160</sup>Stekel, Wilhelm. *Disorders of the Instincts and the Emotions*. 2 Vols. Vol. I, Chap. 5. Pp. 231-256.

<sup>161</sup>This view is merely a re-statement of Adler's position.

impossible to uproot. Crime<sup>162</sup> as a result of associating any particular act with the sex urge is also admitted as a possibility.

For Adler the criminal might be one who compensates for an inferiority by outdoing others in criminal behavior. The criminal act would then become a "manly" deed, a proof of manliness.

### *Conclusion*

It is evident from the foregoing, that the present trend is in the direction of individualization. The criminal is no longer credited with a free will, moral insanity, or the lack of purely hypothetical entities. He is viewed as a highly complex mechanism, subject to physical laws and reacting as he does because of adverse environmental antecedents, organic or functional disorders, or factors in both categories. The concepts of responsibility appear to be, in the theoretical fields at least, losing ground to a purely objective approach which attempts to treat the deviate without the introduction of theological terms.

One point is certain; no single theory of criminality will solve the problem of the criminal and his behavior. A greater probability of success will be insured society if the approach to the problem is founded upon a synthesis of those theories which show the best results and readily lend themselves to objective manipulation.

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<sup>162</sup>Estabrooks, G. H. *Moral Responsibility in the Light of Certain Psychological Facts*. *Mental Hygiene*, October, 1928. Vol. XII, No. 4, pp. 768-771.

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