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THE EVOLUTION OF CRIMINOLOGY IN CUBA

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Criminal Law and Legislation

Cuba, a small island lying east and west in the Gulf of Mexico, close to the American continent, surged with republican life at the dawn of the age of progress. Weakened by half a century of conspiracies and rebellions, from the beginning of the battle to the hoisting of their flag as a free people on May 20, 1902, the Cubans passed from the confusion of war to the calm of peace, from the violence of combat to the tranquility of legislation. In a short space of time, the Republic of Cuba—its legitimate name from the beginning of the twentieth century—was forced to acquire a high degree of civilization and to emulate the progress of the more advanced nations.

This task, made difficult and complex by the necessity for extension and change, was a real experiment for Cuba. From a remote colony, ignorant and oppressed, it had to become a nation closely united to the other countries of the continent, and its judicial, social, legislative, and scientific standards had to be attained rapidly. Its proximity to the great republic north of it, in which the most advanced institutions flourished, urged it into quick action. The Cubans were not intimidated by the magnitude of the problem and they attacked it in all its technical aspects. Their history and geographical location rendered their situation in a group of strong and progressive republics most difficult. The recognition of this fact provoked heated debates in judicial, scientific, and social fields. Some sought to revolutionize the administration with one stroke, others to make their way slowly and by degrees. These tendencies, existing throughout the entire range of civil activity, gave rise to a series of projects which vary from scientific cautiousness to technical temerity, from broad eclecticism to narrow scholasticism.

With its peculiar historical vicissitudes, the racial complexity of its population, its native temperament, geographical location and other conditions which it would be necessary to give in detail to show their importance, Cuba has done well to keep from launching itself rapidly along the path of violent reforms. Young nations, like young people, have their crises and their dangers. Just legislators, like parents,

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recognize their responsibility and adapt their rulings to the character, mode of living and stage of development.

The field of penal reform has been the scene of lengthy and extensive argumentation. The opposing views and doctrines of our legislators explain why the Spanish Penal Code of 1848 is in force in Cuba, why by the Royal Decree of May 30, 1879, it was extended throughout the island with modifications in consideration of the political situation of the country. Shortly after founding of the republic, June 10, 1903, a bill was brought before the House of Representatives by F. González Sarrain, R. M. Portuondo, J. L. Castellanos, A. Betancourt, J. A. Garmendía, A. Nodarse and J. R. Xiqués. This bill proposed adapting to the new regime the Spanish Penal Code, which was to be replaced by a plan attached to the bill. In this plan was repeated (as in a following one drawn up by J. A. González Lanuza, Ricardo Dolz, J. A. Cueto and other noted lawyers) the classical postulate that the intention behind the deed is an essential consideration in placing the responsibility for a crime.

Legislation in force in the Republic of Cuba separates responsibility into legal responsibility, when questions of criminal law are involved, and civil responsibility, when it is related to civil law.

The principle of legal responsibility implies that the individual enjoys free-will, i. e., that he of his own accord performs or refrains from any act classed by the law as a crime or misdemeanor. In Article 8 of our Penal Code: (1) "The feeble-minded and the insane are free of criminal responsibility, unless the act is committed during a lucid moment; (2) the minor of ten years of age and (3) a person between ten and seventeen if the act was done intelligently." Article 9 cites as extenuating circumstances: "when the guilty is a minor under eighteen and commits the act in a state of intoxication, when it is not habitual or incurred after planning to commit the misdemeanor."

Civil responsibility permits each person who has reached his majority to dispose of his person and his property, and to engage in the activities of civil life according to his situation, but always within the limitations prescribed by the laws. Ability to enjoy civil responsibility is essential to the full use of the intellectual faculties. The insane, because of their mental abnormality, are dealt with outside the law, and for the same reason, the principal civil privileges of marriage, motherhood and fatherhood, making gifts, drawing up a will, etc., are forbidden them.

The concepts of criminal and civil responsibility necessitate the

consultation of medico-legal specialists in many cases. In most of these instances, the opinions of psychiatrists are taken into consideration by the judges and courts, and the decision is rendered in agreement with the judgment of the experts.

In Cuba, judges welcome the coöperation of experts. The antagonism existing elsewhere between the courts and the specialists, between the judges and the scientists, is an exception in Cuba. Perhaps this is due to the fact that our medico-legal experts always have been actively interested in the reform of our penal laws and have presented eloquent proof of the modernity of their ideas. C. Piñeiro, doctor and lawyer, has studied criminal responsibility from the medico-legal point of view and has made a pertinent criticism of the existing Penal Code. Dr. R. de Castro, professor of the School of Medicine in Havana, also seeking a modernization of the criminal laws now in force, called together several conferences of the Academy of Sciences.

But we offer more than academic discussions. M. A. Vietes, in the plan he has drawn up, places our future penal laws under a standard of the broadest judicial discretion. Q. Saldaña of Madrid has praised this plan highly. Fernando Ortiz, president of the Department of Penal Legislation of the National Codification Commission, has presented another plan which is doubtless the one best known, both within the country and abroad. Ferri used to say that the sentiment of legislators was continually fluctuating between the new and the old; but Ortiz, without the slightest vacillation, has decided in favor of the modern. Although we were among the first to recognize the official importance of Dr. Ortiz, we shall not be so irreverent as to state our humble opinion rather than that of Enrico Ferri: "I am very proud that the principal points of my proposed plan have found agreement in yours, and if Cuba accepts yours as a law, she will be placed in the vanguard of all civilized countries as far as the reform of penal practice is concerned, and will be an example in awarding direct penal justice to dangerous delinquents and humane and merciful justice to the less dangerous." The criticism of Ferri, called by Q. Saldaña "the foremost penalist of the world," could not be more enthusiastic.

The old doctrinal criteria, consecrated by court laws and ritual, have gone down before the attacks of the critical and have lost ground before the urgent necessity of reforming our penal institutions. The classical and positive views have been brought closer together to facilitate action "in harmony with the practical demands that influence,

with typical precision, American legislation," as Ortiz puts it. On the other hand, Ortiz himself, in a magnificent treatise on legal philosophy, states that the materialism of Lombroso and idealism coincide to no little extent and that one can arrive at the same criminological concepts by starting from materialistic premises and going through the frankest positivism, and by the most subtle idealistic reasoning from idealistic hypotheses.

Finally, the most outstanding lawyers of the country, expressly invited by the House of Representatives, have discussed there the future Cuban criminal laws. On the eve of legal, judicial, penitentiary, police and administrative reforms which will integrate anti-criminal activity in Cuba, all the penal problems and the most advanced legal questions already are being thoroughly investigated in professional publications. In the pages of these journals is evidence that Cuba is pursuing penal development rigorously at this time and that the groundwork for the major reforms has been laid. The fact that this small republic can support two publications in this field is the best testimony to the fertility and intellectual vigor of its lawyers and criminologists.

Judicial Procedure

Our laws of civil and criminal judgment have been including modern postulates, placing themselves on a technical and scientific basis. Though the law of civil judgment in force in Cuba posits in Article 639 that "the judges and courts shall take into consideration expert advice according to the rules of the 'sane critic,' without necessarily being bound to the dictates of these experts," in actual practice, the recommendations of the medico-legal experts determine the final decision. When at any time the opinion of the court and that of the experts differ, the court resorts to a special report from the Academy of Medical Science of Cuba, an official institution. As we have said before, there does not exist in Cuba what V. Codeluppi called "a bitter dispute between science and justice"; on the contrary, it appears that in all judicial procedure the little republic bears in mind the fine statement of Novicow, "Society is being more and more impregnated with science." Our experts follow the doctrine expressed by A. Barreras and R. de Castro in their *Manual of the Cuban Medico-Legal Expert* (Havana, 1920), which teaches, for example, that such an expert should never allow his decision to be influenced by the offer of a bribe or any other form of consideration and that he should speak the truth always.

Police Organization

In Cuba there are the following bodies: the National Police, uniformed; the Secret Police, consisting of detectives, and the Judicial Police.

Among the services which the National Police renders, besides those of security and maintenance of public order which constitute its primary purpose, are: execution of judicial orders given by the courts of justice and legal officials, summonses, arrests, seizures, investigations, supplying information about previous occurrences, searches, etc. Although uniformed, its members are agents of the general public administration, discharging those duties committed to it by the magistrates, such as filing reports on conduct, residence and education, inspecting public lighting, watching the execution of the orders of the administrative centers of the state, i. e., those on the procedure prerequisite to bearing fire-arms, retirement of cases, violation of the sanitary ordinances, law of foreclosure, etc.; in a few words, the National Police sees that all the laws, rulings and orders of the municipality and the government are obeyed.

The city of Havana has thirteen stations and four substations. It has a Travel Bureau and a Bureau of Experts. There is a special group of agents, speaking English and French, for the sole purpose of attending to tourists. The Bureau of Criminal Records and the Bureau of Identification maintain organizations similar to those of the United States. A Bureau of Explosives has been founded recently.

The National Police is affiliated with an academy in which the policemen are trained and instructed how best to discharge their administrative duties and technical functions. An examination on the material given in the courses and a knowledge of medicine and psychology is required of prospective members of the force.

The Secret Police, consisting of detectives exclusively, has ten divisions: judicial investigation, public order, investigation of robberies, investigation of homicides, contraband goods, commerce, colored societies, press and administration.

The Havana police and the Secret Police have their separate chiefs, both forces being under the ultimate control of the Department of the Interior.

The Republic has 123 judicial bodies, each of which maintains its municipal police force and chief directly responsible to the judge.

Criminal Anthropology

In Cuba, the anatomical study of the delinquent is based upon some original investigations. The observations devolve upon physical features but little studied in the foreigner. The development of the inferior maxillary in Cuban criminals has been noted, ultimately yielding evidence in support of Foley's contention that the low forehead and the pronounced development of the mandible coincide with the homicidal temperament; a new kind of occipital fossa, different from that which suggested Lombroso's atavistic theory of crime has been discovered; the nasal-fronted suture in the criminals of the various races populating Cuba, and especially the skull of negro delinquents has been investigated. The anatomical investigations conducted by I. Castellanos among the hybrid criminals (negroes and Chinese) confined in Cuban prisons substantiate the claim of Prof. Fano as to Indian delinquents: "Among inferior races, criminality is physically less marked (than among others)."

In connection with the study of the somatic stigmata of degeneracy in abnormals of the colored race, Castellanos maintains that these signs can be recognized easily in the white race, the most educated of the human family, that they also are encountered in the negroes, mulattoes and Indians, but that recognizing them in these people requires more technical skill and better anthropological training.

In the various collections of delinquent types which have been published, the physical anomalies of the criminal are indicated. The hand of the insane and the criminal has been studied from the anatomical and functional, zoological and physiological points of view. In two reports subsidized by the Academy of Sciences, Castellanos recently investigated the height and weight of Cuban delinquents, following the outline of Olóriz of Madrid and the criminological method of Vervaeck of Brussels.

In the School of Letters and Sciences of the National University, a course is offered in juridical anthropology, an official name that was given to criminal anthropology in Cuba in 1907. The students of the Law School are required to take this course, and after attending the practical lectures held in the prisons and insane asylums of Havana, they are quizzed on the material that has been explained by the professor, A. Mestre.

Penal Anthropology

Besides scientific investigations among the Cuban delinquents, in response to the progress in that field, and the special instruction

which the National University offers in the anthropologic, physical and social factors of crime, to meet the need for understanding the kinds of crimes and delinquents, there is also a physical and psychologic study of the imprisoned and the convicted to satisfy fully the demands of modern criminology. The delinquent is observed in the light of scientific theory as well as in that of practical administration.

R. Pérez Vento, an alienist, was one of the first of us to demand a slow and thorough medical examination of the prisoners. E. Tejerizo indicated also the advantages of maintaining a corps of medical specialists in the prisons. R. de Castro has outlined an advanced course of study for those who are entering this field of scientific activity. But the medical examination to which we refer is not the regular one which has been given right along in most of the prisons, but a particular kind of one—an examination in what Vervaeck calls *penal anthropology*, also called a *crimino-biological* examination by the Germans and *medico-psychological* by the Argentines.

Actually, a Laboratory of Penal Anthropology has been established to provide a center dedicated to the study of the constitution, temperament and character of the convicts, where moral diagnoses and correctional advice may be given and adequate penitentiary treatment determined. This new criminologic service, praised by M. Ruiz-Funes, gives out rules for the moral reform and social rehabilitation of prisoners. All the anatomical, psychological and sociological characteristics of the delinquent are analyzed to further the scientific understanding of his personality. This penitentiary service is interested in crime causation, clinical and therapeutic treatment. It is not limited merely to making classifications, as are the clinics in some American prisons; it is also a center of scientific investigation, for with the aid of an abundance of anthropological, physical and social observations it purposes to study crime and its causes in order to set up a technical norm for prophylactic and inhibitory measures.

Penal System

The establishment of the Laboratory of Penal Anthropology proclaims the essential change in the penitentiary system. J. M. Colantes, F. Ortiz, F. Fernández Plá and many others have sought urgently the reform of our prisons. The lack of institutions themselves will be an economic difficulty in the way of rapid penal progress, since the Republic was unable to build the fifteen prisons and the House of Correction at the same time. By the Presidential Decree, No. 1321, of June 27, 1925, the jail of Guanabacoa was adapted to

receive women only, under the name of "National Prison for Women." Since then, the Hon. R. Zayas Bazán, Secretary of the Interior, has completed the construction of the Model House of Correction, on the Isle of Pines, according to his theories of penitentiary reform.

The Model House of Correction, the first penitentiary which Cuba has built, is doubtless one of the best in America. The system is under the direct personal supervision of Com. P. A. Castells.

The Department of the Interior includes the Bureau of Prisons which handles all matters connected with the direction, inspection and administration of the prisons and the House of Correction.

R. Zayas Bazán put into actual practice the plan for initiating the reform of the penal system proposed by I. Castellanos while the program of penitentiary construction was being realized. A system of classification was adopted, which divided the prisoners into three groups: first offenders, repeaters and sexual perverts. Repeaters were subdivided into corrigibles and incorrigibles. Finger-prints were utilized as a means of distinguishing the past offender.

Penal Institutions

The two correctional schools in Cuba are under the direction of the Charity Division of the Department of Sanitation. The one for boys is in Guanajay, and its organization has been analyzed in detail by A. Velis, A. Domínguez, J. Lascaibar and J. A. García in the last Conferences of Charity and Correction held in Cuba. The one for girls, sponsored by the Sisters of Charity, is located in Havana, and B. Q. Barnet, T. B. Mederos and others in the Conferences previously mentioned have been concerned with the functioning of its system.

With the exception of the institutions for the treatment of delinquent minors, the rest (totalling sixteen) are under the direction of the Department of the Interior. Throughout Cuba there are fourteen prisons, including those in the capital of each province, a National Prison for Women, whose subordinate personnel are feminine, and a Model House of Correction on the Isle of Pines, a few hours from Havana.

In the National Hospital for the Insane (Mazorra), under the supervision of the Department of Health, there is a special division for the criminal insane and one for abnormal minors. In accordance with Article 351 of the Organic Law of the Executive Authority, a person declared insane cannot be imprisoned but must be sent to the Hospital of Mazorra.

The girls in a correctional institution, the women, in a suitable establishment, and the female inverts, in the prisons and House of Correction—all undergo scientific treatment. The male attendants bear in mind the beautiful phrase of Lecha-Marzo: "Justice for society and pity for the unfortunate."

Other Institutions

The League of Mental Hygiene in Cuba is concerned with "the hygienic care and adequate treatment, medical as well as educational, of juveniles afflicted with mental disturbances; the supervision of the feeble-minded and the application of mental hygiene to the factors which enter into the problems of education, delinquency, psychologic abnormality, etc., in the field of human conduct."

The Anti-narcotic League of Cuba, like the Temperance League, attempts to aid and cure sufferers from these habits.

Since 1920, eight National Conferences of Charity and Correction have been held "to make effective charitable work and criminal reform—for example, the methods and results realized in charitable or correctional institutions—in order to assure widespread cooperation in the difficult task of caring for the infirm and the homeless, of saving the morally weak, for the benefit of society." In these conferences, A. Mestre has discussed the advantages of a department for the scientific education of girls of subnormal intelligence and morality; J. Basarrate has explained the basis of the dietary system adopted in the Correctional School in Guanajay; B. Q. de Barnet and J. San Martin have analyzed our methods of correcting delinquency in minors.

J. F. Planas is making a complete review of child welfare activities in Cuba and lists all the institutions existing in the Republic.

The juvenile rather than the adult delinquent has been the object of attention in Cuba, and Castellanos, Gómez Planos, A. Mestre and others have been investigating this problem. In 1911, a bill providing for the introduction of a Juvenile Court was read before the Senate by E. Regüíferos. At the Fifth Pan-American Congress on the Juvenile, held in Havana in 1927, R. de Castro, in collaboration with C. Arenaza of Argentine, obtained the agreement of the assembly "to create and organize special juvenile courts in a definite fashion": more recently, he has investigated the social work of the patrons of these courts.

The lack of institutions for preventing female delinquency in Cuba is explained by the fact that this country has one of the lowest

percentages of female offenders to be found in all countries. Castellanos is credited with demonstrating that women tend to break the law less than men. During the Spanish rule, women committed 14% of the total number of crimes; in free Cuba, but 6% is attributed to them even though they appear in the business and industrial world, struggling for a livelihood and competing with men. Pizzi de Porra has disclosed that Cuban women break the law in moments of violent emotion. The Cuban woman is aware of the possibilities of the future and is getting ready to create a new type of preventive and educational institution. In the first National Congress of Cuban Women, H. Lamar discussed the most effective ways of fighting prostitution and white slavery.

R. de Castro, observing from the medico-legal point of view, states that the Penal Laboratory is a prophylactic as well as a therapeutic center.

Aspects of the Progress of Criminology

Cuba, a small territory in which thousands of negroes and Chinese are living and in which the most widely divergent races have been crossed, has had to take into consideration numerous anthropologic and social factors which are extremely important in the many forms of law-breaking. F. Ortiz has studied the immigration problem of the Republic and has pointed out the advantages of racial selection.

Slavery left Cuba two types of negro criminality: fetishism, which on several occasions has led to the murdering of white women, and the "ñañiguismo": a criminal organization employing the knife as a means of settling personal grudges. Ortiz has made a thorough investigation of the manner of living and the delinquency of negro "witch-men," suggesting repressive and remedial steps in his famous report on the subject. A. Mestre advocates rehabilitating the fetishist and educating and civilizing the rural districts, where the "witch-men" hold sway.

Castellanos also has studied this particular phase of Cuban criminology and makes a distinction between the born fetishist, who is a kind of African priest, and the fake witch-man, who is an exploiter of the ignorance of his people. He also differentiates, in a report subsidized by the Academy of Sciences, the witch-man from the "ñañigo." The "ñañigo," as a general rule, is a natural murderer and extremely dangerous.

The various races populating Cuba display peculiar characteristics in their crimes, as in their suicides. The same is true of the

feeble-minded. Because of the distinct racial groups and the diverse manifestations of their lack of social and legal adaptability, the Cubans have had to formulate a suitable anthropology and criminology (see the Penal Bibliography of Cuba). If little progress is evidenced, it is because we have been forced to study the endogenous and exogenous factors most intensely in order to differentiate the delinquency of natives from that of foreigners. The negro race offers further difficulties since it must be distinguished from the Jamaicans and Haitians who, notwithstanding the fact that they are negroes and West Indians, have a distinct type of criminality, some resorting to incendiary offenses and others to rape.

"Policeology"

Ortiz has proposed the term "policeology" to signify the system of studies which Locard of Lyons calls *technical policing* and Bertillon, *scientific policing*. Cuban progress in this field is quite apparent.

In 1909, identification by means of finger-prints was established in Cuba, and in 1912, all the identification services were centralized in the National Bureau of Identification. This bureau was reorganized into a scientific laboratory in 1927 so that all physical, chemical and analytical methods might be applied to the discovery and investigation of crime. In order to spread modern techniques among the judges and police forces, the Bureau of Identification began in 1921, publishing a monthly Bulletin (3), which has a wide circulation in the form of a Review. It discusses all the scientific problems of modern crime.

So that officials and agents in the course of their inspections, will not destroy clues left by the criminals, they are given profusely illustrated instructions to facilitate removing and preserving stained or suspicious-looking objects. To obviate the difficulties encountered in homicidal investigations (when domestic animals are killed in the house of the murder to create a false impression), Castellanos has constructed a chromatic table for classifying blood spots and stains which gives a fairly accurate indication of the time the crime was committed. The same author has made a profound study of the blood, differentiating the so-called stain from the drop, the spatter, etc. Correctly interpreted, it is of value in reconstructing the crime. Besides the ordinary clues which the perpetrator of the crime leaves behind, other strictly scientific evidence is uncovered by the medico-legal experts. This is called *reconstructing the crime*, as the scene

of the crime is reproduced from the evidence brought to light. Castellanos has published various reconstructions of crimes. By one of them, an hour after the crime was committed, the husband of the victim was exonerated as he lacked the physical strength which would have been necessary to produce the deep lacerations sustained. By employing purely scientific techniques, Cuban lawyers have proved many cases to be actually murders although they looked like suicides or accidental deaths.

Since 1921, finger-prints have been obtained scientifically from unidentified corpses. These have aided the identification of thieves, who were killed while escaping, and of unknown persons who have died under mysterious circumstances.

Aliases, which assume a peculiar form in Cuba for ethnographic and sociologic reasons, have been furthered by popular imagination. They have been classified by Castellanos (22) in an official index showing the names assumed by a particular person at any one time and his criminal specialty.

The scars observed in finger-prints have been specially classified to determine the identity of a thief when the finger-prints have been blurred or are not subject to classification.

Moreover, finger-prints have been studied from the medical point of view. A court investigation checks the fingerprints of those criminals who have been hanged, and of those who have died violently and not from illness, to see if it is possible to tell from digital impressions when an individual has died a violent death.

The National Bureau of Identification is completely equipped with instruments and apparatus for undertaking any kind of scientific investigation in the field of criminology. It is fitted for judicial and clinical anthropometry, ballistics, dactyloscopy, investigations by means of ultra-violet rays, etc. All of which demonstrates that Cuba feels no pleasure in persecuting criminals, but is eager only to mete justice, as a truly civilized country should be. If we consider that everything has been accomplished by a Republic which has been in existence but thirty years, in the midst of its period of construction, one must admit the magnitude of Cuba's efforts—efforts not unworthy of the era of progress nor of a young and small nation of free America.