

Winter 1941

Criminology in Germany

Werner S. Landecker

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

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

Recommended Citation

Werner S. Landecker, *Criminology in Germany*, 31 *Am. Inst. Crim. L. & Criminology* 551 (1940-1941)

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

CRIMINOLOGY IN GERMANY

Werner S. Landecker¹

The problem of crime can be studied from various points of view. The sociologist, the psychologist, the jurist—each looks at crime from a different angle and is concerned with an aspect of crime that is determined by the interest predominating in his field of study. This should be borne in mind in a discussion of German contributions to the field of criminology. Here, too, we find that the problems considered vary with the branches of science from which the writers approach the study of crime. In Germany, this has led to an even greater diversity of criminological investigations than in this country. This is the case because in Germany contributions to criminology are not co-ordinated in any single department of higher learning; whereas, in the United States it is sociology which functions as a clearing house for all varieties of criminological research. In Germany, criminology is not considered a subdivision of sociology, nor is it an autonomous science in its own right; rather, it is a loose nexus among contributions coming from a variety of sources. Corresponding to the particular points of view employed in these contributions, one can distinguish between the legalistic, anthropological, psychological, sociological and biological approaches to the field of criminology.

¹ Teaching Fellow in Sociology and Research Associate, University of Michigan. This article

I.

The Legalistic Approach: The Purpose of Punishment

German criminology can be said to have arisen from the interest of the jurist in matters of crime. This is hardly surprising, for in a sense crime is a product of law. No act is a criminal act unless it is determined as such by law; i.e., unless law prescribes a penalty for the person who has committed that act. Therefore, once jurists had become less dogmatic in their point of view by broadening their interest beyond the mere interpretation of legal rules, they began to philosophize and meditate about the purpose of legal institutions and focused their attention on the question, Why do we punish criminals?

The answers given to this question can be classified roughly into two groups. According to some writers, the penalty is solely a reaction of society to the fact that a crime has been committed; according to others, the penalty is a means to an end, by which society attempts to reduce the number of future crimes. Customarily, the first group is called "absolute theories of punishment," the second "relative theories of punishment."

was submitted on the recommendation of Professor Arthur E. Wood.

Absolute Theories—Justice

An influential "absolute" theory was that advanced by the philosopher Immanuel Kant (1724-1804). Nowadays, his penal theory appears to be the weakest point in his system of thought. Yet he laid the basis for modern liberal and humanitarian ideas by stressing the value of the individual. Man is an entity which has its own intrinsic value; "one man ought never to be dealt with merely as a means subservient to the purpose of another."² This principle served not only as a basis for his humanitarian philosophy, but also as the point of departure for his penal theory which is utterly devoid of humanitarian considerations. Since Kant assumes that man should not be used as a mere means, he maintains that even when being punished man should not be used as a means to an end, neither to the end of reforming society nor even to the end of reforming the criminal himself.³ Punishment, then, finds its justification only in the principle of justice, which requires that a person who has committed a crime shall be punished. In other words, punishment has its *raison d'être* not in any future effect upon which it may be directed, but only in the criminal act by which it is preceded.

Justice, according to Kant, requires not only that crime be followed by punishment, but also that the harm done by the offender should find its equivalent in the harm done to him; justice requires that the measure of

punishment should be determined by the principle of retaliation. Whoever has committed murder must die, sex offenses must be punished by castration, etc. Beccaria, therefore, who advocated the abolition of capital punishment was motivated, as Kant would see it, "by the compassionate sentimentality of a humane feeling." The fact that Kant could arrive as such conclusions from the principle of the intrinsic value of man shows that social problems cannot be solved solely by means of abstract reason; for any principle, when carried to its extreme, defeats itself.

Negation of Wrong

Partly in harmony with Kant's views is the penal theory of another great German philosopher, Georg Wilhelm Friedrich Hegel (1770-1831). He, too, advocates an absolute theory, in that he justifies punishment not as a means to influence either society or the criminal, but as an act of retribution.⁴ However, the reasoning on which this thesis is based is quite different from Kant's.

In the first place, if punishment were an attempt at exercising influence on people, either on the criminal or on others, it would be based on the assumption that man is not free. This, Hegel objects, would violate the principle that right and justice must have their seat in the free will, not in a restriction of the will. To use punishment as a threat by which to enforce law would be much the same as to raise a cane against a dog. Man, however,

² Immanuel Kant, *The Philosophy of Law*, transl. by W. Hastie, Edinburgh, 1887, p. 195.

³ Kant, *op. cit.*, p. 195.

⁴ Hegel's *Philosophy of Right*, transl. by S. W. Dyde, London, 1896, §§90 ff.

must not be treated as dog, but with due accordance to his dignity and honor.

Hegel feels that punishment is a form of recognizing the criminal as a rational being, because the conception and measure of his punishment are deducted from his very act. The criminal act is a negation of law; therefore, law must reinstate itself by canceling this negation through punishment. Punishment is the negation of a negation and in this manner serves the purpose of restoring the reality of law.

Strictly speaking, punishment not merely re-establishes law as it existed before it was violated by the criminal deed, but it also transforms it from the state of abstractness to that of concreteness. Hegel develops this idea in a highly philosophical manner, emphasizing logical necessity rather than social reality. But if we translate his philosophical terminology into sociological language, the result is not such bad sociology after all. We might put it this way: Criminal law, as all law, has its social reality in its practical application and enforcement. A legal act which is never violated and therefore never enforced exists only in the books and has, in this sense, merely abstract existence. The fact that it is never broken shows that it does not ordain anything which would not be done at any event. Therefore, such an act is not a social force or control factor, for no force is so formidable that it does not give rise to occasional revolts. A law which is never broken—and a law which is always broken—exists only on paper.

Therefore, it can be said in a sense that the criminal renders the law a service; he gives the law a chance to unfold its strength and by this to appear as a concrete entity. By inflicting punishment on the criminal the law takes advantage of this opportunity for materializing itself. Law gains in concreteness and tangibility through the act of punishment; in Hegel's terms, "it becomes an actualized will, free not only abstractly and potentially, but actually."

Does this interpretation of punishment exclude that a rational purpose is attached to it, in the sense that punishment is also used as a means to influence the criminal and society? Hegel objects that this would amount to denying the freedom of will and to treating man as we treat a dog. Since Hegel's days, however, psychologists have found that differences between man and dog—and even neurotic rats—are not as far reaching as they may appear to be.

Relative Theories

According to absolute theories as they are exemplified in Kant's and Hegel's views, punishment looks back to the past, so to speak, being a reaction of society to an occurrence that has taken place in the past. As viewed by relative theories, however, punishment looks into the future, being an attempt at exerting some kind of control over conditions which are conducive to criminal actions. Since these latter theories consider punishment as a means of crime prevention, they are also called "prevention theories." It is

customary to distinguish among them "general prevention" theories from "special prevention" theories, depending on whether punishment is considered a means to influence the general public or the individual criminal.

GENERAL PREVENTION

An outstanding figure among the advocates of general prevention theories is Anselm von Feuerbach (1775-1833). Feuerbach has gained fame as the author of the Bavarian Penal Code of 1813, one of the greatest legislative achievements in the history of criminal law. This code is a practical application of Feuerbach's penal theory, which is known as the "theory of psychological coercion."

Feuerbach realized that the use of punishment as a means of crime prevention presupposes a notion of the causes of crime. We cannot prevent crime unless we know how it originates. Like the Italian Beccaria and the Englishman Bentham before him, Feuerbach explains crime in terms of the pleasure principle. Man is motivated to commit crimes by the pleasure which he anticipates from the criminal act or from its results. In order to prevent crimes it is necessary to counteract the impulse to commit the deed with an impulse to abstain from it. Therefore, the pleasure derived from the act must be outweighed by the expectation of pain resulting from it. Thus, the threat of punishment functions as a means to impress the potential offender

with the fact that the pleasure which he might derive from the act would be more than balanced by the discomfort attached to it by the law.⁵ It is the threat of punishment which, according to Feuerbach, is the agent of deterrence; the execution of the penalty has only a secondary place in the balance of pleasure and pain, since it merely affirms the threat by its fulfilment.

SPECIAL PREVENTION

1. Deterrence

While Feuerbach emphasized the deterrence of the general public from violating the law, other German penologists aimed at preventing the individual criminal from continuing his criminal career. Among the advocates of "special prevention" theories, Karl Ludwig Wilhelm von Grolman (1775-1829) agreed with Feuerbach that the institution of punishment is justified by its deterrent effect. He disagreed from him, however, in deriving this effect not so much from the threat of punishment as from its actual infliction. Furthermore, he believed that the deterring effect is not directed against the populace in general, but against the individual offender who undergoes punishment.⁶ Punishment, according to Grolman, has the purpose of deterring the offender from committing criminal acts in the future. Being a means of influencing the individual offender, punishment, as Grolman sees it, must be proportional to the needs of the individual who is subjected to it. Thus,

⁵ Anselm Ritter von Feuerbach, *Lehrbuch des peinlichen Rechts*, 13th ed., Giessen, 1840, §13.

⁶ K. L. W. von Grolman, *Grundsätze der Kriminalrechtswissenschaft*, 1798. On Grolman see

C. L. von Bar, *A History of Continental Criminal Law*, transl. by J. S. Bell and others, Boston, 1916, pp. 427 f.

Grolman's theory of punishment has cleared the way for more recent trends toward the individualization of punishment. Nevertheless, it must be realized that he fell short of modern penological ideas in that his individualized treatment aimed merely at deterrence, and that he did not recognize the necessity to change attitudes by means of more therapeutic devices.

2. Reformation

The therapeutic point of view, from which punishment appears as a means of reforming the criminal, was strongly advocated in German penology by a group of writers who followed the lead of the philosopher Karl C. F. Krause (1781-1832). Krause denied the existence of criminal tendencies as inherent characteristics of offenders and thus laid the basis for a sociological approach to the problems of crime prevention. He believed that criminal behavior results from environmental conditions to which the offender is exposed, and by which the criminal will is formed.⁷ Therefore, the most thorough method of preventing crime is to counteract these evil influences by educating the criminal.⁸ Thus early in the nineteenth century Krause anticipated modern trends in penal psychology when he stated that an essential part of penal education is habit formation. The offender must be habituated to what Krause calls "the good." Since crime is the product of acquired habits, crime prevention requires that these

undesirable habits be broken by conditioning the offender to opposite habits. Although Krause did not consider habit formation but the reformation of the will of the offender as the ultimate goal of penal education, he recognized that only through habit formation could the offender be made "to will the good."

3. Social selection

To the above considered penological theories, which in one form or another have persisted in German criminology until recent times, the contemporary criminologist Hans von Hentig has added a theory of punishment which proceeds from an entirely different point of view. Von Hentig, formerly Professor of Criminal Law and Criminology at the University of Bonn in Germany and now at the University of Colorado, attempts to apply Darwin's hypothesis of natural selection to penological theory. According to Darwin, evolution is a process of selection, in which those individuals survive who are best adapted to the conditions of life. Furthermore, individuals having this advantage over others have the best chance of procreating their kind. Consequently, useful variations become ultimately fixed and thus become characteristics of the species.

Von Hentig believes that punishment is an agent in this process of selection. "Criminal jurisdiction," he says, "must work out a type of man who fulfills the

⁷ K. C. F. Krause, *Das System der Rechtsphilosophie*, ed. by K. D. A. Roeder, Leipzig, 1874, pp. 303 ff.

⁸ An account of educational methods in Ger-

man prisons prior to the Hitler régime is given by Werner Gentz, "The Problem of Punishment in Germany," *Journal of Criminal Law and Criminology*, vol. XXII (1931-1932), pp. 873-894.

conditions of human symbiosis."⁹ Punishment affects the chances of survival and propagation of the offender by lowering the conditions of his existence. It leads thus to the result, as von Hentig states, that the "wild" variety of man, the one afflicted with criminal tendencies, will gradually disappear, and that a socially desirable mentality will spread among men.

Besides the selective function of punishment, reformation of the criminal is considered only a secondary and supplementary goal. Punitive measures should aim at reform in cases where the criminal is amenable to correction, and where selection would unduly decimate the available "breeding material." Similarly, von Hentig does not deny the deterring effect of punishment, but he considers intimidation merely a preliminary step in the social process of selection. In Von Hentig's opinion, man is born either with or without criminal tendencies. To increase the number of those who are born without them is the goal of punitive selection.

4. *Deterrence, reformation and isolation*

While the theories discussed above are unitary in the sense that they emphasize a single aim of punishment as either exclusive or predominant, a more refined penological theory cannot fail to recognize differences in kind among offenders and accordingly dis-

tinguish various purposes of punishment. It is Franz von Liszt (1851-1919), one of the most outstanding men in the history of German criminology,¹⁰ to whom we owe such a theory of punishment. Von Liszt, who was a celebrated teacher of criminal law at the University of Berlin, gained international reputation as the founder of the sociological school of criminology in Germany. Together with Prins in Belgium and van Hamel in Holland, he founded in 1889 the "International Criminalistic Association," which was devoted to the study of crime as a social phenomenon and to the promotion of a theory of punishment as a means of preventing crime.¹¹

Von Liszt's penal theory is based on the principle that the object of punishment is not the crime, but the criminal. Therefore, he claims that the penalty should not be determined by the effect of the deed committed, but by the personality of the offender.¹² That aspect of personality which is significant for the infliction of punishment is the greater or lesser dangerousness of the offender to the maintenance of social order.¹³ From this point of view von Liszt arrives at a threefold classification of criminals; he distinguishes between "acute criminals," "incipient chronic criminals," and "chronic criminals." In the case of an acute crime, the offender is moved to his deed by external conditions which have led to

⁹ Hans von Hentig, *Punishment; Its Origin, Purpose and Psychology*, London, etc., 1937, p. 131.

¹⁰ See Adalbert Albrecht, "Professor Franz von Liszt," *Journal of Criminal Law and Criminology*, vol. II (1911-1912), pp. 168-170.

¹¹ The work of the association is described by the son of one of its founders, J. A. van Hamel,

in the *Journal of Criminal Law and Criminology*, vol. II (1911-1912), pp. 22-27.

¹² Franz von Liszt, "Die psychologischen Grundlagen der Kriminalpolitik," in *Strafrechtliche Aufsätze und Vorträge*, Berlin, 1905, vol. II, p. 170.

¹³ Von Liszt, *op. cit.*, p. 170.

a momentary excitement or to an emergency situation. Under the influence of these factors the individual commits a single offense which does not spring from inveterate character traits and is later deeply regretted. The chronic crime, on the other hand, is the product of deeply rooted tendencies of the offender, which may or may not have their origin in environmental conditions. If the deed is the expression of a criminal tendency which is in the process of development without having yet taken possession of the personality of the offender, von Liszt speaks of an "incipient chronic criminal."

Von Liszt believes that in the case of each of these three categories punishment should fulfill a different purpose. Those who might become "acute criminals" should be impressed by the threat of punishment as a means of deterrence. "Incipient chronic criminals" are in a stage where they are still corrigible. Therefore, in their case penal measures should aim at reformation. Von Liszt believes that reformation can be achieved by habituation to regular work. In his opinion, reformation is frequently possible in the case of juvenile habitual offenders. As an implication of the reformatory character of punishment he advocates the indeterminate sentence. The "chronic criminal," on the other hand, is considered incorrigible by von Liszt; accordingly, he states that he should be isolated from society.

¹⁴ See also Nathaniel Cantor, "Prison Reform in Germany—1933," *Journal of Criminal Law and Criminology*, vol. XXV (1934-1935), pp. 84-90.

¹⁵ Ordinance of the Minister of Justice of May 14, 1934, art. 48.

THE NATIONAL SOCIALIST CONCEPTION OF PUNISHMENT'

With the advent of Hitlerism, German penal theory and practice have returned to the idea of punishment as retribution.¹⁴ This trend has found its legal expression in an act in which penal servitude is called a means to make the offender atone for the wrong he has committed.¹⁵ Accordingly, in an official publication of the National Socialist Party,¹⁶ punishment is defined as "retribution for the offense by an injury imposed upon the offender."

How can we account for this revival of the dark ages in German penology? By writers who can be considered thoroughly permeated with current trends of thought in Germany we are told that the idea of retribution is an essential element of German culture. The demand for atonement, it is stated, is as old as the German people; this demand will prevail as long as the German people will exist. Says the writer, Undersecretary of State in the German Department of Justice: "Maybe the desire to have the offender atone for his deed cannot be based on logical or philosophical grounds, but it lives in us, and that is enough."¹⁷ He finds the justification of punishment in what he calls "a refined urge for vengeance." Similarly, in a publication of the official "Academy of German Law" it is pointed out that the legal penalty which is rooted in German legal "feeling" is retributive in nature. In typical

¹⁶ Hans Frank (ed.), *Nationalsozialistisches Handbuch fuer Recht und Gesetzgebung*, 2nd ed., Munich, 1935, p. 1320.

¹⁷ Freisler, in *Das kommende deutsche Strafrecht, allgemeiner Teil*, ed. by F. Guertner, Berlin, 1934, p. 14.

Nazi phraseology, the idea of retribution is called "one of the deepest world wisdoms, an immortal principle of justice, springing forth from the elementary depths of the uncrippled German folk-spirit."¹⁸

What appears thus in the guise of a flowery romanticism is in reality a methodical attempt to popularize Nazi penal methods and the Nazi system in general by an appeal to the most crude and cruel impulses of man. This political "philosophy" has found its most cynical expression in a discussion of capital punishment, written by the Undersecretary of State in the Department of Justice, Mr. Freisler.¹⁹ After having discarded other techniques of execution, the writer finally arrives at the alternative of the guillotine or the axe. Which deserves preference? Freisler decides for the axe because, as he says, "decapitation by axe better suits the German spirit."

It is hardly necessary to point out that this is not the way of science. The fundamental claim on which all science bases its justification and prestige is to be an agent for progress. The objective of penal science, in particular, is progress in penal treatment, i.e., to develop a procedure of treatment for the offender which is of benefit for society. If the penologist seeks to appeal to popular prejudices he allies himself with those forces which are the most serious obstacles to progress. It is the politician who wishes to please the masses; the scientist, however, must have the courage to advocate principles

which, because they depart from traditional prejudices, lack in popular appeal. The fate of penology under National Socialism teaches us the lesson that by merely aiming at political success the scientist forfeits the quest for progress and, thus, science itself.

II.

THE LEGALISTIC APPROACH: THE CLASSIFICATION OF OFFENDERS

Throughout the history of criminal law we find that criminal acts have been divided into various categories. Usually it has been the character of the object attacked by the offender—such as life, property, or morality and decency—which has served as the main criterion for the classification of punishable deeds. This interest of the jurist in categories of crime rather than in the phenomenon of crime in general has led to the result that the personality of the offender also has been approached in the light of the kind of offense committed by him. Here we observe a significant difference between American and German criminology in the study of the offender. American criminology, not being influenced by legal traditions, studies "the criminal" or "the juvenile delinquent" as such. The American criminologist investigates causes of crime and means of reform without differentiating between various categories of offenders according to the legal classification of the deed committed. The German criminologist, on the other hand, follows the legal approach in establishing classes of

¹⁸ Schoetensack, in *Schriften der Akademie fuer Deutsches Recht*, vol. I, Berlin, 1934, p. 90.

¹⁹ *Schriften der Akademie fuer Deutsches Recht*, vol. I, Berlin, 1934, p. 101.

crime, and directs his attention to the particular conditions under which the various kinds of offenses are committed.

If we state that criminologists in Germany follow the example of legal tradition in that they, too, differentiate between various kinds of crimes and criminals, we do not mean to imply that they necessarily use the same categories that have been established by the legislator. On the contrary, the sociologist uses a criterion of distinction which differs from that employed by the jurist. While criminal law classifies offenses in terms of the value attacked, sociology determines the elements of the offense as a social action and establishes categories accordingly.

An attempt at classifying crimes in terms of their elements has been made by Wilhelm Sauer, a contemporary writer, in a book called "Criminal Sociology."²⁰ Criminology, according to Sauer, attempts to determine the essential characteristics of every kind of offense and to use them in establishing types of crime, which can serve as a scientific basis for criminological investigations. The two main categories into which Sauer divides criminal acts are offenses committed by acts of violence and offenses for gain. Acts that belong to the first category are destructive in nature. Their main characteristic is that the offender causes damage. Deeds of the second type are constructive in the sense that the offender acts to achieve an advantage for himself.²¹ Under the heading of offenses committed by acts of violence we find four

sub-classes: brutality crimes, offenses for self-expression (which includes such offenses as libel and blasphemy), offenses by taking advantage of power, and exploitation offenses. Among offenders for gain, Sauer again distinguishes four types, which he calls the graspers, the cheaters, the traitors, and the exploiters.

By means of these categories, Sauer is able to establish relations between offenses which from the point of view of criminal law appear as isolated from each other. For instance, in Sauer's classification assault and malicious mischief are both brutality crimes, whereas possession of stolen property and keeping a house of ill fame are both committed by the "exploiter" type. The typological approach, as Sauer believes, broadens our knowledge because it throws light on related traits and identical tendencies.²² On the other hand, this approach makes it possible to restrict generalizations to certain types of offenders in contradistinction to other types for which they are not valid. Such a generalization is Sauer's "law of inertia." This law applies only to offenders for gain and states that the offender does not turn away from his path unless he is urged to do so by cogent motives. Other generalizations attempted by Sauer apply to all types of offenses. The most significant one is concerned with the frequency of offenses. The law formulated by Sauer states that an offense is committed the more frequently, a) the more easily it is committed; b) the more difficult it

²⁰ Wilhelm Sauer, *Kriminalsoziologie*, Berlin and Leipzig, 1933.

²¹ Sauer, *op. cit.*, p. 634.

²² Sauer, *op. cit.*, p. 22.

is to control; c) the milder the deed is judged; d) the more closely it is related to unpenalized or even legal actions;²³ e) the less the object of attack is valued.²⁴

The main advantage of the typological approach seems to be that it enables one to include in criminological research the distinguishing characteristics of each type. All the more it is surprising that Sauer eventually relapses to the traditional manner of treating all types of offenses as identical. In his study of causative factors he assumes that all offenses have the same single cause, the "wish for exploitation." This wish, he states, is neither founded in an inherent disposition of the offender nor produced by the influence of environmental factors upon him, but originates from his "free will."²⁵ With this assumption Sauer departs from the realm of scientific investigation and enters into purely metaphysical speculation.

Another exponent of the typological approach to the study of the criminal is Franz Exner, at present Professor at the University of Munich. Under his direction, a number of investigations have been made, in which classes of criminals are studied from various aspects.²⁶ Some of the groups dealt with are murderers, receivers of stolen goods, perjurers, robbers, and sex offenders. The procedure employed in

these studies is rather uniform; they are based on a number of case histories, usually between 100 and 200, which are examined for the purpose of determining personal conditions of the offender, such as sex, age, marital status, occupation, and religion; prevalent types, such as occasional, habitual, or professional offenders; and the situations in which the acts have been committed. The value of these studies consists in making it possible to compare the conditions prevalent in each category of offenders, and thus to arrive at the conclusion that certain conditions are either peculiar to some of them or characteristic of criminal acts in general. Such a concluding statement, which would co-ordinate the various single pieces of research, has not thus far appeared.

III.

THE ANTHROPOLOGICAL APPROACH

The anthropological approach to the study of crime and the criminal proceeds from the assumption that criminal behavior has its counterpart in physical characteristics of the offender. In German criminology we find two varieties of this school of thought. The first anthropological criminologists were followers of the Italian Lombroso and adopted his theory that criminals are distinguished by physical anomalies of either atavistic or degenerative ori-

²³ It is noteworthy that this hypothesis seems to be borne out by socio-psychological research in this country. Floyd H. Allport has established and substantiated a "J-curve hypothesis," according to which there is a negative correlation between the degree of the deviation of an act from a generally accepted standard and the frequency with which it occurs. F. H. Allport, "The J-Curve

Hypothesis of Conforming Behavior," *The Journal of Social Psychology*, vol. V (1934), pp. 141-183.

²⁴ Sauer, *op. cit.*, p. 799.

²⁵ Sauer, *op. cit.*, p. 779.

²⁶ These studies are published in the series *Kriminalistische Abhandlungen*, which is edited by Professor Exner.

gin. Lombroso's main follower in Germany was Hans Kurella, who published his *Natural History of the Criminal* in 1893.²⁷ Kurella, although on principle a faithful disciple of Lombroso, departed from his master's theory that criminal characteristics result from degeneration. Instead he assumed that physical traits by which the criminal is distinguished originate from a variety of sources; among them he named prenatal diseases, cerebral and infantile paralysis, and other conditions of various kinds affecting the normal development of the individual. At the same time, the spread of Lombroso's theories in Germany resulted in attempts to disprove his claims. Adolf Baer, in particular, chief physician at the Ploetzensee prison in Berlin, made measurements of the inmates of this institution and came to results which did not substantiate Lombroso's thesis.²⁸ In his opinion, crime is not a physical, but a social phenomenon. He believes that whatever factors contribute to the origin of criminal behavior result, ultimately, from environmental influences.²⁹

While the early German studies in criminal anthropology received impetus from abroad, later trends in this field were stimulated by a German scientist, Ernst Kretschmer. Like Lombroso, Kretschmer can be classified as a physical anthropologist. But while Lombroso concentrated his efforts upon the

study of physical details, such as the formation of the skull, jaw, ears, nose, and teeth, Kretschmer is concerned with the human physique and its types in general. Moreover, he differs from Lombroso in that his interest is not focused on the criminal and his characteristics. Nevertheless, his contribution is of significance for criminology, since some of his followers attempted to apply his theory to the study of the criminal.

Kretschmer's main assumption is that constitutional traits and behavior traits are correlated.³⁰ The method by which he determines the association between constitution and behavior is the ideal-typical; that is to say, he establishes certain types of body-build and behavior, any one of which is approximated by every individual, no individual being a perfect example of his type. Kretschmer distinguishes three types of body-build: the asthenic, who is tall and thin, with narrow shoulders, lean arms with thin muscles, and a narrow chest; the athletic, who is middle-sized to tall, with broad shoulders, strong development of the musculature and narrow hips; and, finally, the pyknic, who might be described best in Kretschmer's own words: "Middle height, rounded figure, a soft broad face on a short massive neck, sitting between the shoulders; the magnificent fat paunch protrudes from the deep vaulted chest which broadens out toward the lower part of the body."³¹

²⁷ H. Kurella, *Naturgeschichte des Verbrechers*, Stuttgart, 1893.

²⁸ A. Baer, *Der Verbrecher in anthropologischer Hinsicht*, Leipzig, 1893.

²⁹ A. Baer, *op. cit.*, pp. 410 f.

³⁰ E. Kretschmer, *Physique and Character*, transl. by W. J. H. Sprott, New York, 1925.

³¹ E. Kretschmer, *op. cit.*, p. 29.

Kretschmer's thesis is that these constitutional types are paired with certain mental types, abnormal as well as normal. On the one hand, he finds that schizophrenia is associated with the asthenic and athletic types, and manic-depressive insanity with the pyknic type. These two abnormal mental conditions, he assumes, are merely derivations from two corresponding "normal" mental dispositions. These normal types he calls "schizothymes" and "cyclothymes." Consequently, the schizothymes are associated with the asthenic and athletic types, the cyclothymes with the pyknic type.

What, actually, is the disposition of the schizothymes and the cyclothymes? Typically schizothyme, we are told, are the polite sensitive man, the world-hostile idealist, the cold masterful nature and egoist, and the dried and emotionally lamed. Among the cyclothymes we find the gay chatter-box, the quiet humorist, the silent good-tempered man, the happy enjoyer of life, and the energetic practical man.³²

Kretschmer's theory of the association between physique and character has been very influential in Germany as well as abroad. Some of his followers have made the attempt to find relationships between constitutional types and criminal behavior. E. Mezger³³ reports that the pyknic type, being more sociable and adaptable, tends less

to criminal behavior and is more easily reformable. Gustav Aschaffenburg³⁴ finds that the pyknic type is prevalent among occasional offenders, while the asthenic and athletic types have a larger share among habitual offenders. This seems to be compatible with a contention by Sauer³⁵ that the cyclothyme tends more to crimes of violence and brutality, the schizothyme to fraud, embezzlement, receiving of stolen goods and related offenses.

Statistical investigations support these contentions only in part. Two studies have been published, each based on 100 cases, one dealing with inmates of a German prison,³⁶ the other with murderers of Turkish descent in the Russian province of Aserbaidzan.³⁷ In both groups the proportion of pyknics was considerably lower than that of the other types. However, the German study does not substantiate the assumption that pyknics commit acts of violence; rather, the athletic type appeared to be associated with such offenses. The author of the Russian study found—contrary to what one would have expected—that among his murderers the asthenics outweighed any other type in number. He comes to the conclusion that the asthenic commits his act in a premeditated, insidious manner, frequently in connection with robbery, while the deed of the pyknic results from a sudden impulse.

³² E. Kretschmer, *op. cit.*, pp. 207 ff.

³³ "Die Bedeutung der biologischen Persönlichkeitstypen fuer die Strafrechtspflege," *Mitteilungen der Kriminalbiologischen Gesellschaft*, vol. II (1929), p. 26.

³⁴ "Kriminalanthropologie und Kriminalbiologie," in *Handwoerterbuch der Kriminologie*, ed. by A. Elster and H. Lingemann, Berlin and Leipzig, 1933-36, vol. I, pp. 835 f.

³⁵ W. Sauer, *op. cit.*, p. 27.

³⁶ Kurt Boehmer, "Untersuchungen ueber den Koerperbau des Verbrechers," *Monatsschrift fuer Kriminalpsychologie und Strafrechtsreform*, vol. XIX (1928), pp. 193-209.

³⁷ S. Blinkov, "Zur Frage nach dem Koerperbau des Verbrechers," *Monatsschrift fuer Kriminalpsychologie und Strafrechtsreform*, vol. XX (1929), pp. 212-216.

It is interesting to compare the findings of these investigations with studies of juvenile delinquents which have been made by Willemse at two reformatories in the Union of South Africa.³⁸ He found the delinquency of asthenics to be characterized by lack of energy, susceptibility to influences, timidity, cowardly acts, careful calculativeness, and a tendency to commit acts solitarily. The delinquency of athletics does not seem to be so well defined in character; Willemse stresses their self-confidence and egocentricity. The delinquency of pyknics, finally, consists usually in momentary aggressions, sensational joy-rides with stolen motors, forming of criminal gangs, sexual excesses, and alcoholic intemperance.

In the United States, Kretschmer's approach exercised influence on Earnest Albert Hooton, a Harvard Professor who recently made an attempt at reviving the anthropological study of the criminal in this country which received wide attention. Hooton applies Kretschmer's classification of physique in a modified manner; his categories are entirely based on height and weight. He believes that he has demonstrated conclusively that constitutional types are associated with certain offenses. The most important of his findings are the relationship of shortness and slenderness to burglary and larceny and to frequency of previous conviction, of tallness to murder, and a predilection for sex crimes shown by the short, fat men.³⁹

In conclusion it might be asked,

What is the significance of Kretschmer's theory for the criminologist? The thesis of an association between physique and character should be applied in the field of criminology with extreme caution; present-day psychologists do not recognize the existence of an entity called "character." On the other hand we know that the individual responds to stimuli by certain modes of reaction. It can be expected that modes of reaction are associated with body-build, since in reaction processes the physical organism plays a part. It is apparent that this must apply also to modes of reaction which are classified as criminal behavior. It should not be overlooked, however, that there are a variety of other factors which contribute also to the formation of behavior patterns. Science is not yet in a position to determine the share of the constitutional factor as compared with others. Few criminologists, if any, would assume that the constitutional factor (in Kretschmer's sense) is ever responsible for a tendency to criminal behavior. On the other hand, many criminologists would probably agree that in those cases where a criminal tendency has become established the constitutional factor frequently determines the type of criminal behavior in which this tendency is materialized.

IV.

THE PSYCHOLOGICAL APPROACH

The psychological study of crime has been cultivated in Germany for a long time. In a comparison of the contribu-

³⁸ W. A. Willemse, *Constitutional Types in Delinquency*, New York, 1932.

³⁹ E. A. Hooton, *Crime and the Man*, Cambridge, Mass., 1939, p. 98.

tions of the three principal continental countries it has been said that in each of them a special trend has always been noticeable—Italy emphasizing the anthropological side of crime, France the social side, and Germany the psychological side.⁴⁰ At present, German writers do not emphasize the psychological aspect of crime any longer,⁴¹ and many of the earlier studies have been rendered obsolete by more recent developments in the field. Nevertheless, a number of contributions made by German psychologists during the last few decades are still of great significance for criminological investigation.

There is hardly a school of thought in German psychology that has exercised greater influence upon the study of the criminal than the psychoanalytic movement, which proceeded from the teachings of Sigmund Freud (1856-1939). The basic points of Freud's theory which are of interest in the present context can be summarized as follows:

(1) Freud holds that the human mind is in part made up of processes of which the individual is unaware; these he calls "the unconscious." (2) The unconscious is largely formed by experiences during the early years of life. (3) Its content is to a great extent of either a sexual or an egotistic character. (4) It consists of material which would prove painful at the conscious level and which enters the unconscious by means of repression. (5) The repressed object is substituted in the conscious by an

object more acceptable to the individual. (6) Consequently, in cases where a repression has taken place behavior can be explained only by uncovering the repressed desire and its relation to its substitute in the conscious.

The application of this theory to the study of the criminal is apparent; to understand a criminal act it is necessary to determine motivations which are buried in the unconscious of the criminal. Furthermore, these repressed motivations serve also as a means to explain the phenomenon of crime in general. Franz Alexander and Hugo Staub, two leading exponents of the Freudian school of criminology, find the criminal to be distinguished from the non-criminal by a difference in repression processes.⁴² The criminal does not deviate from the rest of the population by inherent, hereditary traits; rather, criminal behavior is the outcome of developmental conditions by which the individual has been prevented from adjusting himself to society. According to the psychoanalytic school of thought, every individual, regardless of whether he develops into a criminal or not, is born with the mental equipment of a criminal; that is to say, he is born with impulses which are not in harmony with the requirements of social life. The normal individual is able to repress these impulses and to transform them into socially acceptable striving; the future criminal fails in carrying out this adjustment.⁴³ Whether or not the indi-

⁴⁰ Maurice Parmelee, editorial preface to Gustav Aschaffenburg, *Crime and Its Repression*, transl. by A. Albrecht, Boston, 1913, pp. XII f.

⁴¹ See below part VI.

⁴² F. Alexander and H. Staub, *The Criminal, the Judge and the Public*, transl. by G. Zilboorg, New York, 1931, p. 34.

⁴³ Alexander and Staub, *ibid.*

vidual is able to repress his original drives and to find socially harmless outlets for them depends on the education which he receives. It is, therefore, the social factor of the bringing up which is of decisive importance in the origin of crime as seen by the Freudian school.

The need for repressing a desire arises only if it is not eliminated by being fulfilled. By experiencing an interference in materializing his desires the individual is frustrated. Freud's followers claim that criminal behavior results from desires which have not found a socially acceptable substitute and which, therefore, have become frustrated. A group of American sociologists and psychologists, who are greatly influenced by Freud, have indeed emphasized the function of frustration in the causation of crime.⁴⁴ These writers have attempted to substantiate their hypothesis that frustration always leads to aggression.⁴⁵ They claim that in the case of a frustration the individual reacts to this experience by an act of aggression, which is not necessarily directed against the agent that caused the frustration. This assumption is utilized also in the explanation of crime, since crime is harmful to one or more members of the group in which it is committed and is, therefore, an act of aggression.⁴⁶

In their attempt to trace the origin of crime to the influence of frustration, the authors stress elements of it in

conditions which have been found to be correlated with criminal behavior. Such factors of frustration are poverty, unsatisfactory occupational status, meager education insofar as it lowers the earning capacity, youthful age where lacking earning power is a source of frustration, smaller than average stature, physical ugliness and deformity, membership in socially inferior racial and national groups, illegitimacy, unsatisfactory marital conditions, and unwholesome home conditions and the resulting frustration of the child. The volume of crime is conceived of as a function of the interaction and balance between the degree of frustration, on the one hand, and the degree of anticipated punishment, on the other. The amount of crimes committed in a society depends on the extent to which the effect of frustration is balanced by anticipated punishment.⁴⁷

In its attempt at determining the causes of crime the psychoanalytic school is at its best in cases where criminal acts seem to lack rational motivation; i.e., where they cannot be traced to motives which ordinarily underlie acts of the same kind. It has been found, for instance, that sometimes thefts are committed although the thief has no use for the stolen object. In such cases, the criminal act is frequently an outlet for sexual wishes and thoughts which the individual has attempted to repress.⁴⁸ Likewise, fire-

⁴⁴ John Dollard, Leonard W. Doob, Neal E. Miller, O. H. Mowrer and Robert R. Sears, *Frustration and Aggression*, New Haven, 1939, esp. pp. 110-141.

⁴⁵ *Op. cit.*, p. 1.

⁴⁶ *Op. cit.*, p. 111.

⁴⁷ *Op. cit.*, p. 141.

⁴⁸ William Healy, "Psychoanalytic Contributions to the Understanding and Treatment of Behavior Problems," *The American Journal of Sociology*, vol. XLV (1939-1940), pp. 422 f.

setting frequently can be traced to sexual urges.⁴⁹ In a great number of cases, criminal behavior is a means to compensate a sense of inferiority. The criminal tries to overshadow his tendency to depend on others and traces of femininity by displaying toughness and aggressiveness.⁵⁰ Another motivation, also unconscious, is what is called the "spite reaction." The offender finds himself hurt or neglected by somebody whom he considers responsible for himself and takes revenge by disgracing this person by his own criminal acts.⁵¹ Another typical example of psychoanalytic interpretation is the "criminal out of a sense of guilt." Criminal acts, it is maintained, are sometimes committed because the offender is burdened with an unconscious feeling of guilt.⁵² Such a feeling of guilt may have its origin in forbidden wishes, possibly of an incestuous character, which the offender has repressed in his early childhood. In order to relieve this feeling of guilt, the individual seeks punishment, the criminal act being a means of attaining this desired goal. Again, in other cases the individual is unable to bear the responsibilities and frictions which everybody has to undergo in the state of freedom and commits a criminal act in order to get into jail, where he can live in a condition of dependency and routine, without being forced to make his decisions for himself.⁵³

While the Freudian school traces crime to a variety of unconscious motivations, the followers of Alfred Adler (1870-1937) consider crime as the product of a single impulse. For Adler, the primary agent in human behavior is the wish to gain superiority over others. If a person experiences a feeling of weakness or inferiority, his desire for superiority compels him to relieve his feeling of inferiority by an effort to excel. The intensity of this effort is determined by the degree to which he is affected by an inferiority feeling. Consequently, an extreme sense of inferiority will lead to an exaggerated attempt at compensation.

According to Adler's school of "Individual Psychology," crime is an over-compensation for a deep feeling of inferiority. Adler, himself, in a paper on juvenile delinquents,⁵⁴ explains a certain case of theft as a means of compensation for a feeling of inferiority, which the delinquent had acquired due to the fact that his parents used to keep drawers and containers locked from him. Another example is the case of a boy who had experienced severe frustrations because his younger sister was manifestly preferred to him. The outcome was that he stole money from his mother with which he bought candy. Part of this he distributed among other boys in order to compen-

⁴⁹ W. Healy, *op. cit.*, p. 422.

⁵⁰ Franz Alexander and William Healy, *Roots of Crime*, New York and London, 1935, pp. 67 and 223 ff.

⁵¹ Alexander and Healy, *op. cit.*, p. 67.

⁵² F. Alexander and H. Staub, *The Criminal, the Judge and the Public*, pp. 112 ff., 159 ff.

⁵³ Alexander and Healy, *Roots of Crime*, p. 67.

⁵⁴ Alfred Adler, "Demoralized Children," in *The Practice and Theory of Individual Psychology*, London, 1933, pp. 346 f.

sate his inferior role at home by gaining prestige elsewhere.⁵⁵

Of particular interest for the sociologist is an attempt to use Adlerian principles as a means of determining socio-cultural causes of crime. This attempt has been made by Professor Gotthold Bohne, Director of the Criminological Institute at the University of Cologne.⁵⁶ His objective was to explain an increase in the rate of capital crimes in Germany, as well as an increase in recklessness in the commission of crimes, particularly a growing lack of regard for human life. Bohne advances the hypothesis that this trend can be accounted for by the declining influence of individualism in modern life. Until the middle of the nineteenth century, history had witnessed a breakdown of authoritative controls over the individual. Man had become more and more emancipated from communal restrictions and, in accordance with this development, had increasingly learned to recognize the intrinsic value of the human personality. This trend was reversed through the impact of the industrial revolution. Again social and economic factors of control arose, life became more and more industrialized and mechanized, and as a result the individual was once more deprived of his initiative and his role as an independent and self-sufficient unit. Being degraded to a mere wheel in an intricate industrial machinery, the individual has lost the satisfaction of

achieving something, the satisfaction of pursuing and attaining a goal; he has lost respect for his performance and instead acquired a feeling of being a small and insignificant particle within a total structure. The spread of this feeling of insignificance and inferiority is accompanied by an equally widening need for compensation through acts which give control, prestige or—at least—conspicuousness. The mounting demand for such compensation, as a corollary of present cultural trends, is in Bohne's opinion responsible for the increasing resort to criminal activities and the growing recklessness in their execution.

If this analysis is correct for conditions in Germany—and it seems that it reveals at least a contributing factor in the formation of criminal trends—then it must all the more be applicable to American conditions. On the one hand, the process of standardization and mechanization seems to have acquired greater impetus in the United States than abroad. On the other hand, competent observers have pointed out that in this country more than anywhere else the criminal enjoys a sort of morbid prestige. There are strata of the population that look at the criminal with a kind of hero worship.⁵⁷ Under such conditions crime lends itself easily to an interpretation which stresses its compensatory elements.

Obviously, the Adlerian approach, especially as it is represented by

⁵⁵ Alfred Adler, *op. cit.*, pp. 347 f. Other cases are analyzed from the point of view of individual psychology by Alexandra Adler, *Guiding Human Misfits*, New York, 1938, pp. 44-54.

⁵⁶ G. Bohne, "Individualpsychologische Be-

trachtungen zu den Kapitalverbrechen der letzten Zeit," *Deutsche Juristen-Zeitung*, vol. XXXIII (1928), pp. 1502-1507.

⁵⁷ F. Alexander and W. Healy, *Roots of Crime*, pp. 282 f.

Bohne, does not overlook the social bases of crime. In spite of the psychological point of departure, the social and cultural setting of crime finds due recognition. This is not quite so evident in the case of the psychoanalytic school of criminology. But although the psychoanalyst emphasizes psychic aspects of crime, he does not assume that by this approach the causes of crime are determined in their entirety. Alexander and Healy recognize that a complete explanation of crime must proceed from the sociological as well as the psychological point of view.⁵⁸ Both social and psychic factors are at work in producing criminal behavior. As long as this fact is recognized by the psychologist and the sociologist, the specialization of each in restricted aspects of crime can only be welcomed.

V.

THE SOCIOLOGICAL APPROACH

Sociological research in the field of criminology had received a promising start in Germany as early as 1902, when the first edition of Gustav Aschaffenburg's classic *Crime and Its Repression*⁵⁹ was published. Since then, however, there has been a surprising scarcity in original contributions of this character.⁶⁰ The point of view on which Aschaffenburg's work is based is truly sociological. Crime, he says, is a product of human society; only within society does crime originate, and from its connection to society it draws fresh

nourishment.⁶¹ He proceeds with an analysis of the social causes of crime. Among these he discusses the change in social activities and conditions under the influence of seasonal changes of weather, race and religion, urban and rural environment, occupation, the consumption of alcohol, prostitution, gambling, superstition, economic conditions, and certain social situations, such as, crises and strikes. Following his analysis of social factors, he deals with the personal and psychic causes of crime, and concludes with a discussion of the treatment and prevention of crime. This work, therefore, is distinguished not only by its sociological approach to the study of crime, but also as the only contribution by a German writer which in its scope and organization resembles an American textbook on criminology.

Recent sociological research in the field of crime has been influenced greatly by American patterns. It has been the merit of Franz Exner to have directed the attention of German scholars on current trends in American criminology. Exner became acquainted with research in the United States upon the occasion of a journey to this country in 1934. After having returned to Germany, he published a "Criminalistic Report on a Journey to America,"⁶² where he raises the question what Germany can learn from the United States in the treatment of crime. His answer is: "About nothing in the field of penal law and procedure,

⁵⁸ Alexander and Healy, *op. cit.*, pp. 273 ff.

⁵⁹ In 1913, it was made available in an English translation.

⁶⁰ Among the exceptions Moritz Liepmann's book on *War and Crime in Germany (Krieg und Kriminalitaet in Deutschland, Stuttgart, etc.,*

1930) is especially noteworthy.

⁶¹ Aschaffenburg, *op. cit.*, p. 5.

⁶² F. Exner, "Kriminalistischer Bericht ueber eine Reise nach Amerika," *Zeitschrift fuer die gesamte Strafrechtswissenschaft*, vol. LIV (1935), pp. 345-393, 511-543.

some things of value in the field of punitive treatment, and a great deal in the field of criminological research."⁶³ There are two features of American criminology by which Exner was especially impressed, and which he consequently attempted to transplant to Germany: the ecological investigation of crime and the prediction of success or failure in parole. In the line of ecology, Exner instigated a study in which the attempt was made to show the existence of a "delinquency area" in the city of Munich after the fashion of Clifford Shaw's research in Chicago.⁶⁴ The result was negative; the author did not succeed in demonstrating that cases of delinquency are concentrated in a certain part of the city. Furthermore, stimulated by methods of determining the probability of recidivism, which had been developed in this country by Ernest W. Burgess, Sheldon and Eleanor T. Glueck, and others, Exner inaugurated similar research in Germany.⁶⁵ The study of German delinquents showed that the factors associated with recidivism were largely identical with those found by American criminologists.

The main contribution of German scholars to the sociology of crime lies in the fact that they have provided its theoretical foundation. In particular, they have concerned themselves with a question to which American writers

have given little attention,⁶⁶ i.e., What aspects of crime are the subject-matter of sociology, and how does the sociological approach to crime differ from other approaches? It was Franz von Liszt⁶⁷ who in his famous article "Crime as a Socio-Pathological Phenomenon"⁶⁸ first determined the scope of a criminal sociology. According to von Liszt, crime appears from the biological and psychological points of view as an event in the life of the individual, and must from these points of view be explained by the characteristics of the individual. From the angle of the sociologist, on the other hand, crime is studied as an event in the life of society and explained as a product of social conditions. Both approaches, in von Liszt's opinion, are not mutually exclusive but supplement each other. Every crime is the product of individual traits of the criminal, on the one hand, and of social conditions surrounding the offender, on the other. Thus, von Liszt comes to the conclusion that the causes of crime can be found only by a study of both the social and the individual aspects of crime; among these, however, he considers the former by far more significant than the latter.

Does the interrelationship of individual and social aspects of crime imply that the sociologist must concern himself with both? In a later publication von Liszt made clear that this is not

⁶³ F. Exner, *op. cit.*, p. 345.

⁶⁴ Klaus Seibert, *Die Jugendkriminalitaet Muenchens in den Jahren 1932 und 1933*, Kriminalistische Abhandlungen, ed. by F. Exner, vol. XXVI, Leipzig, 1937, pp. 44-62.

⁶⁵ F. Exner, "Die Prognose bei Rueckfallsverbrechen," *Mitteilungen der Kriminalbiologischen Gesellschaft*, vol. V (1938), pp. 43-53.

⁶⁶ An exception is: Jerome Michael and Mortimer J. Adler, *Crime, Law and Social Science*, New York, 1933, pp. 77-87.

⁶⁷ Cf. above p. 12.

⁶⁸ "Das Verbrechen as sozial-pathologische Erscheinung," in F. von Liszt, *Strafrechtliche Aufsaeztae und Vortraege*, vol. II, pp. 230-250.

the case.⁶⁹ The individual aspects of crime are of interest only if a certain deed of a certain offender is considered; only then is a study of the offender from the anatomical, physiological, psychological and genetic points of view significant. It is the physician, the judge, the psychologist, and the prison officer who are concerned with the single offender; but not the sociologist. The sociologist, as von Liszt points out, studies a series of crimes, composed of innumerable instances, which as a whole is typical for society in general or a certain social organization. In the explanation of such a series of crimes it is irrelevant to ask why the individual criminal happened to commit his act; instead, the explanation can be found only in social, political or economic conditions, by which a whole group of individuals is affected. Eventually, von Liszt was led to abandon the view that crime must be accounted for by a combination of social and individual factors. Rather, he assumed that the study of either the individual or the social factor must prevail, depending on whether one is concerned with a single crime—which in his opinion is not the matter of the sociologist—or with crime in general and its various types.

If we compare von Liszt's definition of criminal sociology and its subject-matter with the views of a more recent writer, such as Exner,⁷⁰ we find some divergence of opinion, although von Liszt's influence is still noticeable. Exner defines criminal sociology as

"the science which attempts to describe crime as a social phenomenon and to understand it as a function of social conditions." Criminal sociology is concerned with crime as a mass phenomenon, whereas criminal psychology deals with the individual crime. Nevertheless, Exner holds that a single crime also can be studied in a sociological manner, i.e., by an investigation of the social situation from which the deed has originated. While, thus, criminal sociology is concerned not only with social conditions but also with individual cases, likewise criminal psychology cannot neglect to consider mass phenomena. Certain data cannot be studied from the psychological point of view but by mass observation. For instance, studies of the psychology of the sexes or of age groups are possible only if a great number of cases are used. Thus, Exner concludes that sociology has to pay attention to the single case also, and likewise psychology to crime as a mass phenomenon. Yet, he maintains that there remains a distinct difference between the two. The psychologist considers crime in its intra-human conditions, i.e., as a phenomenon rooted in the individual mind; also in those cases where he studies a whole mass of crimes his interest is focused on the psychic aspects of these crimes. For the sociologist, however, crime is a social phenomenon, which he attempts to study in its social conditions. He is never concerned with the description of a single case for its own sake. Single cases serve only as means

⁶⁹ F. von Liszt, "Die gesellschaftlichen Faktoren der Kriminalitaet," *op. cit.*, pp. 433-447.

⁷⁰ F. Exner, "Kriminalsoziologie," in *Handwoerterbuch der Kriminologie*, vol. II, pp. 10-26.

of studying the influence of social factors upon the individual and thus of determining, ultimately, the connection between such factors and crime in general.

In conclusion, it seems that von Liszt's main contribution to the definition of criminal sociology as against criminal psychology consists in the idea that the two branches of criminology deal with different problems. To this Exner has added that sometimes the study of different problems requires the investigation of identical material; but although both sciences overlap in their use of data, they differ because data which in one science are studied for their own sake serve in the other only as a means to an end.

VI.

THE BIOLOGICAL APPROACH

The biological approach to the study of crime stands at the end of this survey because it is predominant in Germany at the present time. Its advocates maintain that crime is mainly the outcome of inherited dispositions. There are two reasons why present-day criminology in Germany places emphasis on the theories of hereditary-biological causation. First, this trend can be explained by the fact that a major part of contributions to criminological research in Germany has been made by physicians and psychiatrists.⁷¹ Second,

the stress on biological factors is in line with the views of the National Socialist Party which is the controlling power in Germany. The central theme of National Socialism is the doctrine of the determination of human behavior by "blood" and "race." According to this assumption, the basic personality pattern of the individual results from inherited traits which are either common to the whole race or peculiar to a more limited biological group, such as the family. Under a dictatorial system such as it is established by National Socialism, research is permitted only if it proceeds on the basis of the political doctrine in power; the task of research, then, is to give scientific support to the officially accepted hypothesis. This being the case, it is easily understood why a leading exponent of the school of criminal biology could state: "Criminal biology has contributed its share to the support of the authoritarian form of government."⁷² Under modern dictatorships there is an official and solely acceptable school of thought in every field of science in general and in criminology in particular. This is not only the case with the biological approach in Germany; we find that the same holds true for Soviet Russia where, in accordance with the Marxian ideology, crime may be studied only in terms of the socio-economic approach.⁷³

⁷¹ See Nathaniel Cantor, "Recent Tendencies in Criminological Research in Germany," *Journal of Criminal Law and Criminology*, vol. XXVII (1936-1937), p. 782.

⁷² Adolph Lenz, "Die Persönlichkeit des Täters und sein Verschulden gegenüber der Volks-

gemeinschaft," *Mitteilungen der Kriminalbiologischen Gesellschaft*, vol. V (1938), p. 10.

⁷³ Cf. Nathan Berman and E. W. Burgess, "The Development of Criminological Research in the Soviet Union," *American Sociological Review*, vol. II (1937), pp. 216 f.

Criminal biology, as defined in the basic text,⁷⁴ is "the systematic study of the personality of the offender and of his offense as an individual experience." For the study of personality from the point of view of criminal biology the hereditary background of the offender is of primary importance.⁷⁵ Accordingly, the objective of research in criminal biology has been to demonstrate the significance of the hereditary factor in the formation of the criminal personality.

The typical criminal personality is supposedly found among habitual offenders, whereas individuals who have committed offenses not more than once are considered to have succumbed to environmental influences. To bear out this thesis, the psychiatrist Friedrich Stumpfl studied 195 recidivists, who had served at least five penal sentences, and compared them with a control group of 166 former offenders who had been convicted only once and since then refrained from criminal acts for a period of at least 15 years.⁷⁶ In order to show the role of heredity in the background of both groups, the author investigated the family history of each offender. He found that in the families of the recidivists the number of criminals was considerably larger than in the families of the non-repeaters; e.g., the percentage of criminal brothers was 37.0% as against 10.8%, and of cousins 17.5% as against 6.3%. Regarding mental diseases, there was no significant difference for manic de-

pressives, schizophrenics, epileptics, and psychotics; on the other hand, the percentage of the feebleminded in the families of the recidivists was 23.1% as against 6.6% in the families of the non-repeaters. In general, Stumpfl found the families of the recidivists to be characterized by a spirit of enterprise, unsteadiness, and a desire for independence. The families of non-repeaters, on the other hand, were predominantly pedantic, co-operative, conservative, and stationary.

Stumpfl arrived at the conclusion that crime is the product of certain character traits which are inherited. The validity of this conclusion is greatly impaired by the unscientific manner in which the data have been gathered, which is quite typical for the investigations of family histories undertaken by criminal biologists. All too frequently the author received his information from unreliable sources, as evidenced by phrases such as "he is supposed to have been . . .," "people say of him . . .," "but there are also people who say . . .," or "somebody who knew him well said. . . ." Data obtained in such a fashion are not the kind of material on which scientific conclusions can be based.

The author of another study attempted to determine the role of heredity and environment in the formation of 500 recidivists.⁷⁷ This writer determined the number of those who were "mentally inferior," found that they constituted 80% of his recidivists,

⁷⁴ Adolf Lenz, *Grundriss der Kriminalbiologie*, Vienna, 1927, p. 20.

⁷⁵ A. Lenz, *op. cit.*, p. 22.

⁷⁶ F. Stumpfl, *Erbanlage und Verbrechen*, Berlin, 1935.

⁷⁷ Karl Schnell, *Anlage und Umwelt bei 500 Rueckfallsverbrechern*, Kriminalistische Abhandlungen, ed. by F. Exner, vol. XXII, Leipzig, 1935.

and thus arrived at the "conclusion" that in 80% of his cases crime was caused by inherent traits. That mental characteristics can result from environmental influences also is evidently not recognized under the reign of the National Socialist doctrine.

More judicious in its conclusions is a study of criminals who committed acts of violence in comparison to the criminal behavior of their offspring, by Konrad Ernst.⁷⁸ This book is based on an investigation of 93 cases of convicts who had committed at least three acts of violence and had adult descendants. The author found that among the sons of the offenders 56.4% had been convicted also, and not less than 27.1% more than thrice. The corresponding percentages among daughters were 23.4% and 1.6%. Variations in the crime rate of the second generation were correlated with certain characteristics of the first generation. A high rate among the offspring was associated with the following traits of their fathers: Early delinquencies, short intervals between offenses, continuation of criminal activities in the later periods of life, a large number of penal sentences, variations in kind of criminal acts, convictions for beggary, and the commission of sex crimes against family members.

The scope of this study is described by the author as the comparison of criminal behavior in two generations. He expressly declined to decide whether the correlations established by him are due to the influence of heredity or en-

vironment.⁷⁹ Such self-restriction is wise indeed; the avoidance of hasty conclusions is a great merit of this work as compared with the studies mentioned above. That criminal parents have criminal offspring is not necessarily due to the hereditary transmission of criminal tendencies; it can just as well be explained by the fact that the children of criminals are exposed during their most formative period of life to an environment conducive to the formation of criminal habits. Whether actually heredity or environment have contributed more to the transmission of criminal traits, and whether it is at all possible to differentiate heredity from environment, we do not know. To the solution of these problems the recent German studies have contributed as much and as little as the much earlier American investigations of the famous Jukes and Kallikak families.

A number of studies have been undertaken with a view toward demonstrating the importance of heredity as a cause of crime by a more exact method. This method is the investigation of twins, of whom at least one is a criminal offender. Twins are either "identical" (monozygotic) or "fraternal" (dizygotic). Identical twins are those who have developed from the same ovum and whose hereditary background is therefore more similar than that of fraternal twins who have developed from two different ova. Among criminal biologists the opinion is prevalent that a comparison of identical and fraternal pairs of twins who have grown

⁷⁸ K. Ernst, *Ueber Gewalttaetigkeitsverbrecher und ihre Nachkommen*, Berlin, 1938.

⁷⁹ K. Ernst, *op. cit.*, p. 1.

up in the same environment affords an opportunity to determine the influence of heredity upon criminal behavior. The hypothesis employed in the studies of this school is the following: If in the case of identical twins one sibling is an offender the other should be an offender too, because both have the same hereditary qualities. Among fraternal twins, however, the other sibling is expected to be a non-criminal, since the two differ in their hereditary make-up.

The first study of this kind was made by Johannes Lange, who believed to have proved by his research that "crime is destiny."⁸⁰ Lange's material consisted of 13 identical and 17 fraternal pairs of twins, of whom at least one was an offender. He found that in 10 cases of identical twins both siblings had committed offenses, whereas among the fraternal twins there were only two such pairs. There are three plain reasons why the results of this study are not as startling as its title. First, the two samples, 13 and 17, are too small to support generalizations. Second, in both samples the alleged rule suffered exceptions which require explanation. Third, the methods of distinguishing between identical and fraternal twins are far from being foolproof.

The weight of at least the first of these shortcomings has been decreased by further research in the same direction. The samples used in a study by Heinrich Kranz⁸¹ were slightly larger,

but the differences he found between identical and fraternal pairs of twins were smaller than those at which Lange had arrived. Kranz came to the result that 21 out of 32 identical pairs and 23 out of 43 fraternal pairs consisted of two criminal siblings. Even less pronounced was the difference found in a study by Friedrich Stumpfl.⁸² Here, the number of criminal pairs was 11 out of 18 identical pairs and 7 out of 19 fraternal pairs. The most impressive research of this kind has been undertaken by a group of American students.⁸³ The number of pairs used in this investigation was 340, a sample much larger than any which was available to German workers. This material was composed of cases of adult criminality, juvenile delinquency, and cases of behavior difficulties in children. The authors found that out of a total of 126 identical pairs 105 pairs were both marked by any one of the three behavior problems. Among 214 fraternal pairs both siblings were affected in only 68 cases.

What do these twin studies show? Their authors claim that the comparison of identical and fraternal twins furnishes a method by which the role of heredity can be determined without the interference of environmental factors. Since twins, regardless of whether identical or fraternal, supposedly grow up in the same environment it is maintained that the environmental factor is kept constant in these studies, heredity

⁸⁰ J. Lange, *Crime and Destiny*, transl. by Charlotte Haldane, New York, 1930.

⁸¹ *Lebensschicksale krimineller Zwillinge*, Berlin, 1936.

⁸² *Die Urspruenge des Verbrechenens, dargestellt*

am Lebenslauf von Zwillingen, Leipzig, 1936.

⁸³ Aaron J. Rosanoff, Leva M. Handy and Isabel Avis Rosanoff, "Criminality and Delinquency in Twins," *Journal of Criminal Law and Criminology*, vol. XXIV (1933-1934), pp. 923-934.

being the only variable. This assumption is erroneous. First, it never happens that two individuals live in exactly the same environment however similar they may be. It must not be overlooked that environment includes not only economic conditions and family status, which are the same for all members of the same family during their early years of life, but also less tangible but equally potent factors such as one's role within the family, the child-parent relationship, and associations outside the family. If variations in these respects exist even for identical twins, which cannot be doubted, then they exist all the more for fraternal twins. The latter show greater dissimilarities in appearance than the former, and it must be expected that these differences call for differences in reaction on the part of parents and other associates. Therefore, it can be assumed that the differences in environment are greater for fraternal than for identical twins. If this is the case, the factor of environment is not kept constant in these studies, so that it is fallacious to ascribe variations in behavior solely to variations in heredity.

There can be no doubt that heredity has its share in the formation of human behavior in general and in the causation of crime in particular. But no unbiased student of crime will deny that the hereditary factor works in a total structure of conditions among which heredity is but a single item. Unfortunately, it has always been a characteristic of the specialist to overemphasize the importance of his particular approach to his object of study. It is no wonder that this tendency is even augmented when political expediency puts a premium on it. A true scientist will never forget that the more he narrows down his field of specialization the less he is able to explain the total situation which he focuses from his limited point of view. Therefore, the exaggerations of the biological school of criminology should serve us as a warning against scientific onesidedness and narrow-mindedness and against the dangers of political control over science. If present-day criminology in Germany helps us in this way to define better our own goals, then history will judge it a not entirely useless adventure in science.