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# Criminal Anthropology in its Relation to Criminal Jurisprudence

Francis Alice Kellor
*Cornell Law School*

# C R I M I N A L  A N T H R O P O L O G Y.

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## C R I M I N A L  J U R I S P R U D E N C E.

by

Frances Alice Kellor.

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Criminal anthropology, or criminology, is a science, if one may call it such, of but recent development. Considering its subject matter, and the number and prominence of its advocates, it is perhaps more intimately connected with criminal jurisprudence than with any other science. Although criminal anthropology is closely related to many other fields and lines of thought and work, the object here is to show its relation to jurisprudence only; and as a consequence many of its important lines of work are omitted in this discussion.

While criminal anthropology pursues its distinct method of investigation, and adopts an entirely different basis from that of jurisprudence, it is wholly dependent upon the latter, and can be of but minor practical service, except through the channels of legislation, and the courts of justice. Law determines who shall constitute the criminal class, upon the theory of the protection of society, and criminal anthropology, accepting this definition, attempts to determine the cause of crime, and the methods best adapted for its repression and prevention. It will be seen from its

object, that, if this science can be placed upon a sound foundation and some of the nonsense which characterizes it, as all new sciences, eliminated, its service, in relation to the administration of justice, will be inestimable. In order to show the relation in which the two now stand, it will be necessary to sketch the origin and development of each.

Criminal anthropology is a branch of sociology and its purpose is to investigate crime scientifically; to study its origin and causes; and to determine, if possible, what proportion of responsibility belongs to society and what to the criminal. The remedies are to be examined as well as the causes, and also the effect of punishment as a means of reformation and prevention. From the nature and extent of its work, criminal anthropology may be said to comprehend three parts,-general, special, and practical. The first consists in a summary and classification of all the facts known and is used as the basis for further work; the second includes the investigation of individual criminals,historically, physically,psychically and socially, with a view to their analysis, and the determination of the causes of crime; while the third embraces a consideration of methods and institutions, for the repression and prevention of crime. Criminologists thus become those who study crime with reference to its origin, propagation, prevention, and punishment.

The origin of criminal anthropology, under this title, may be said to have been in 1885, when the first International Congress of Criminal Anthropology was held at Rome. Its antecedents were the investigations of and published results in Morel's "Treatise of the Physical, Intellectual and Moral Degeneracies of the Human Species, and of the Causes which produce these Morbid Varieties", in 1857; Darwin's "Origin of Species" in 1859; Spencer's "First Principles" in 1862; Despine's "Natural Psychology" in 1868; Mandsley's "Responsibility in Mental Disease" in 1872. The precursor in associations was the establishment, by Broca, in Paris, in 1859, of an anthropological society having a branch of criminal anthropology. The needed impulse for a centralization of these studies was given by the publishing of Lombroso's work, the first, "The Delinquent Man", appearing in 1876, Lombroso and his associated school of criminal anthropologists, including Italian scientists and jurists, may thus be called the innovators of the science, although it existed in fragments long previous to their work.

It is, perhaps, unfortunate that at the beginning of the science, two opposing schools should have arisen, Lombroso and the Italians leading the one, the French the other. It will be necessary to examine the beliefs and methods of each, for the lines of reform suggested are different, and if either predomi-

nates, the recommended changes in law and procedure will vary, and the future of the science will change.

The Italian school emphasizes the biological, pathological and atavistic side, and would account for the presence of crime, and distinguishing characteristics of criminals upon these bases. In this belief, the investigations have been principally along anatomic lines[1], the assigned reason being that the organ must be studied before the function and the physical before the moral. It has continually sought to ally the criminal with animals and barbaric peoples. One of its principal assertions is that the criminal is a man of arrested development and harmonizes with the civilization of previous decades, rather than with the present one; that modern civilization has so rapidly advanced that it exceeds the natural capacity of many individuals who live in its midst. With this anatomical or biological basis in view, an extended series of anthropometrical measurements and psychological experiments[2], e.g., of hearing, sight, touch, smell, sensibility to locality, pain, pressure, etc., have been taken, and a

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[1] This in itself has induced much hostile criticism of the Italian school, by the general public, and it has been charged by those who would consider only more conspicuous data, that criminal anthropology narrows crime down to the mere results of conformation of skull and convolutions of the brain. These in themselves are merely morphological observations and but preliminary steps, although not generally so regarded by critics of the school.

[2] See Appendix A.

comparison has been made with similar measurements of and experiments upon normal persons.[1] From the results of this laboratory work, the school has announced what it defines as a criminal type and asserts that all born criminals have characteristic anomalies either physical or mental. The former most frequently refer to the cranium and face, the latter to defective intelligence and absence of moral sensibilities. Criminals are divided into the two categories of born and occasional, although the more accurate division into born, insane, occasional and habitual criminals, and criminals by passion, is used by some criminal anthropologists. The born criminal is asserted to possess the criminal type or at least some of the specified anomalies. There is a tendency to allege that the occasional criminal may also possess them, although not to so great a degree. The effect of environment is not absolutely excluded, but is considered as of minor importance. Atavism is one of the pivots of the thought of this school. So strongly is the biological side emphasized that it is asserted that "the great under-class of criminals have defective organisms especially in relation to the brain and nervous systems, and that they are all more or less defective in moral sense. They are perversely wicked, ignorant and have a bad heredity." Consequently

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[1] See Appendix B.

not much stress is placed upon reform, but primarily upon prevention. These conclusions of the school are the result of the most elaborate and assiduous investigation and are supported by the prestige of prominent scientific names.[1]

The French school is the result of a dissent from the Italian. While admitting the importance of the anatomical and physiological study of the criminal, they deny its precedence. Instead, they emphasize the psychological and socialogical, and hold that the criminal should be studied as a member of the social organism, that he is equally the product of heredity and environment. Lacassagne, a prominent exponent of this school, has said: "Every society has the criminals that it deserves, and there is something radically wrong in the organization of the state."

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1. The prominence given by this school to anatomy, physiognomy, etc., has been the cause of much misapprehension and misunderstanding, and has induced a belief in the existence of no small degree of nonsense in the new science. Many rash statements have been made, similar to Lombroso's recent one in a work upon "Chirography" where he said it is possible to distinguish a criminal by his handwriting; and also, in a recent meeting where it was declared that at no distant day a criminal might be recognized and convicted by his physiognomy and the shape of his cranium. Whatever may be the possibilities, science as such, is not concerned with them, and the public is not prepared for the unauthenticated statements, which in many instances are based upon meagre observations of normal persons, with whom comparisons have been made. The hasty and extreme conclusions formed by this school have done much to bring the science into the disfavor which to some extent it possesses, and to characterize its members as inaccurate in their work.

They deny that a criminal presents any peculiar anatomical characteristics, or that there exists a criminal type. They have less sympathy with the study of the body, physiognomy, speech, handwriting, sensibilities, etc., than with the study of social institutions, and the environment and heredity. They believe the great causes of crime are to be found not so much in an innate tendency to commit crime, but in a lack of resistance to the pressure of social and physical life. They assert that three-fourths of the criminals are such by occasion, and are not so born, and deny that crime is a disease, or is due to disease. In support of this denial they rely upon prison statistics which show that 82 per cent. of the prisoners incarcerated are in good health. They hold that the criminal is only slightly abnormal, and show that of those who are guilty of crimes, as many are at large in society and are classed as normal, as are incarcerated in penal institutions, the ratio of convictions to crimes committed being less than one-half. The French faction characterizes Lombroso's theory as "a revival of the empiric science of phrenology", and the Italian results are deemed inconclusive because "the series of observations is limited, process is defective, methods dissimilar, and the observers inexperienced." Little importance is attached to the theory of atavism or regression. Love of pleasure, aversion to labor, defective social institutions,

bad financial administration, are among the alleged causes of crime. Consistent with these views is the fact that all socialists interested in the work are adherents of the French school. No laboratory work has been done by this faction, as the causes are not sought in the individual alone. Manouvrier and Lacassagne may be said to be the present leaders of this school.

While the two factions are thus radically opposed in both methods and conclusions, the tendency during the past five years, has been to coördinate all theories, and to consider crime as the result of multifarious causes - anthropological, physiological, and sociological and in this union and harmonizing of the work of criminal anthropology, lies its main advantage and possible assistance in criminal law reform. The great progress of the work, as conducted by both schools and the intercourse and discussion afforded by the meetings of the Congress of Criminal Anthropology has been very influential in producing this result.

Having outlined the origin and development of criminal anthropology, it will be necessary to glance hastily at the other important element of the discussion - criminal jurisprudence. The purpose of the following outline is not to give an historical survey of the development of the system, but to show the idea of crime, its origin and the methods employed for its repression; to show the various stages through which crime has passed, and

the beliefs held according to the degree of knowledge incident to the period. For this purpose a division is made into four stages - that of revenge or retribution, repression, reformation and prevention.

Criminal law had its origin in the necessity for preserving peace and harmony, as civilization progressed and social life became complicated. It is that branch of jurisprudence which relates to the definition and punishment of acts or omissions, which are attacks upon public order, abuses or obstructions of public authority; actions injurious to the public generally, attacks upon the persons and property of individuals, or rights connected with them.

In all the primitive relations of mankind, revenge was one of the predominating principles, and was executed first by the individual, then by the clan or family, and finally delegated to the community and to the state. Crime was undefined or codified. The rule of procedure was the simple one that whatever injury was done by one individual to another, or by one clan to another, could be expiated by similar injuries or by warfare. The early penalties, if they may be called such, were death and mutilation and a gradual substitution of a system of fines for the less serious offenses. Private warfare and blood feuds were the

rule, and organized revenge was the principle predominating primitive justice. Moral rights were unrecognized and force was the only method of defense or offense. With the development of community life, it was found impracticable and inexpedient for every injured individual or family to pursue, capture and wreak vengeance upon the perpetrator of an injuty and the gradual delegation of the right to the chief or sovereign was substituted. Specific crimes were declared and certain chosen representatives administered, not justice in the modern sense, but vengeance, which was the prevailing sentiment of the one injured. Many of the crimes and punishments of primitive law exist today almost unchanged, but are administered with a different knowledge and purpose. The rule then, as now, was the greater the crime, the greater the penalty.

The procedure corresponded to the idea of crime and consisted primarily in nothing more than private warfare. From this it developed into the law of infangthief which was a recognition of the <u>right</u> of the injured party to exterminate the offender or receive compensation for the act. Sir Francis Palgrave observes upon this point:- "Perhaps the name legal procedure can scarcely be given with propriety to these plain and speedy modes of admin-

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1. This is not unknown today as is illustrated by the Mafia of Italy and the well known "vendetta".

istering justice; they are acts deduced from the mere exercise of the passions natural to man and the law consists only in the restrictions by which the power of self protection was prevented from degenerating into wanton and unprovoked cruelty." Following infangthief came the development of police organization, purgation, ordeal and trial by combat. The last three were characteristic of the early courts or tribunals where the trial was conducted. These latter were at first only public meetings for the adjustment of personal difficulties. Accusation by either a committee appointed for that purpose, or a private accuser, was the method of indictment, and the receiving of testimony was common in these primitive courts. The idea of the revenge as the permanent factor in early punishment of crime is clearly brought out by a study of the methods of punishment and conviction.

The second period is dominated by the idea of repression not unmixed, however, with that of vengeance. The repressive theory in existence at this period, differs from the present one, in the idea of intimidation, which was so prominent during the middle ages. The characteristic feature of this period may be said to differ from the retributive one, in that the former consists in the desire for retributory punishment - the desire for indemnity for the past, while the purpose of the latter is to gain security for the future. This is the <u>idea</u> which divides the first period from the second.

This period is characterized by a rapid growth of institutions and a marvellous development of community life. Crime became specifically defined in decrees and laws, and sovereignty attained its greatest height, while with it grew much of the oppression and injustice which distinguished the administration of justice. In the first place, the state or sovereign had gained absolute control of the punishment of the criminal, as a natural consequence of the solidarity of families and communities, and this exclusive right, theoretically at least, was administered in the interest of peace. From the keeping of the king's peace therefore grew the modern theory of the protection of society.

The procedure was distinguished by the most unjust proceedings, and the barbarous punishments and the cruelty of this period far exceed that of any other in the history of law. The sovereign or state was everywhere paramount and individual rights, when in opposition to the sovereign, were not recognized. Death, torture and mutilation were the penalties and bills of attainder and numerous ingenious forms of summary proceedings existed. The union of church and state brought into the law a vast number of crimes, and persecution was a dominant feature of the legal system. The idea of reforming or "curing" the criminal was just dawning and the belief was that it could be done by terrorizing or through intimidation. The extortion of confessions by means of

torture, the ingenuity of which has never been surpassed, condemnation without trial, rules of evidence enabling convictions and making them possible without arraigning the accused, severe penalties for misdemeanors and unrestrained capital punishment were among the characteristics of this period. Crime was the willful act of the individual, environment and heredity as factors in producing crime being unrecognized. The only question was as to guilt or the utility of removing the accused, for political or personal reasons. No mitigating circumstances were possible. Insanity was confounded with religious beliefs and made its possessors objects of persecution, rather than furnished a defense. The number of capital offenses, including religious crimes, at one time, in England, exceeded one hundred sixty, and all punishments were enforced where the ecclesiastical courts had jurisdiction. As a result, revolutions, revolts, fanaticism and suppressions of all kinds existed and it was this condition which furnished the reaction of the reformative period.

In the injustice of the laws of the middle ages is found the root of the development of trial by jury, the present system of appeals, appearance by counsel, right to a speedy and public trial, rights of being confronted by the accuser, rules relating to incriminating evidence and conviction upon one's own confession, or that of accomplices, and many other rules of law and evidence. To this source may be traced, also, the abolition of

crimes of religion, the abatement of the severity of punishment, and the separation of church and state which are found in the present century. The reformative tendency became well defined about the middle of the 18th century. Contemporaneous with, and incident to it, was the development of the prison system. Previous to this time, prisons existed, but not as places of detention for punishment or reform. They were used merely as temporary places of detention for those awaiting sentence to execution, exile, transportation, or release. Imprisonment was not in itself a punishment. Together with the prison system came the establishment of asylums, workhouses, and reformatories. Insanity was recognized as a defense and the study of the causes of crime and the nature of the criminal was entered upon. For the first time, the idea of vengeance seemed disappearing in the back-ground of history, and science and knowledge were supplanting fanaticism, superstition and persecution. Education, moral training, discipline, were being introduced where only punishment and extermination had hitherto existed.

In contrasting this period of reform with that of repression, we find in the former the most absolute safeguards thrown up about the criminal, the state handicapped and the most liberal rules applying to the defense. Nearly all of the present rules of evidence, which are so obnoxious to criminal anthropolo-

gists, can be traced to the reaction against the atrocities of the middle ages, and to the determination to prevent a continuance of the "star chamber" methods. There remain, however, to a great degree, the same system of punishment, humanized, and the same disregard of the criminal and his surroundings which existed in the previous stages of the development of criminal law.

We have designated four periods of criminal law, using the idea of crime in punishment rather than giving an historical survey. The fourth period - that of prevention - is just dawning and it is not safe to say that it is well out of the meshes of the idea of reformation. The idea of reform is still the dominant one, and is but slowly developing into reform as a means of prevention. To prevent the commission of crime is novel, and is very far removed from our hasty survey of vengeance. Prevention differs from reformation in this - the object is the good of society, the individual being but slightly considered in the former. In the latter, society is considered but the individual also is an important element. If society is best benefitted by reforming the criminal, this is the better method, but if incapable of reform, then permanent incarceration or extermination - which is prevention. In preventing crime, the criminal and causes of crime are studied and an attempt made to remove the latter; if not possible then of necessity the criminal must be removed. Whatever the causes, he must not be permitted to continue a probable career of

crime or beget a family of paupers, idiots or criminals. Criminal anthropology may be said to be the herald of this idea of preventing crime, but it is certain that the idea is becoming a firmly rooted one. Reformatories and prisons are necessary elements of this system, but are places of discipline and schools, not of punishment. A scientific system of jurisprudence is essential to any prevention of crime, and all of the reforms proposed heretofore are incident to this period. All the suggested changes in criminal law are based upon this idea of prevention.

Criminal law legislation as enacted at present is upon the basis of reform, and remains upon the same foundation as was primitive law,- that in its application, the act and not the individual should be the object to which attention was directed. The idea dominating the repressive system has been outlined in the discussion of the work of the criminal anthropologists. It is not a more revision of the system of criminal law and procedure but that legislation may be influenced in many other lines. It is necessary that the great causes of crime should be reached and until then the criminal must be kept from them. The basis of the preventive system is to be a consideration of the individual rather than of his act - and his relation to the social whole. This is a radical departure from the dominant idea in criminal law legislation during the previous three periods. The ideas of ven-

geance, repression and reform have been logical developments into each other and have been upon the common legal theory. They are closely related and have been so intermingled that it is impossible to distinguish the exact period when each began. With the preventive system, there can be no such harmonious development - for while it is the logical result of the increasing knowledge and development of social and political life, it requires a change of the fundamental principles governing the system of criminal law.

In this outline of crime and punishment, it has been attempted to show the development of the idea of crime and punishment, and to show the position of criminal anthropology as being the summit in the evolution of the thought regarding it.

We have outlined the two systems so as to see the different theories, the origin of each and their mutual relation. Before passing to a consideration of the reforms demanded, it will be necessary to glance more specifically at the doctrines of criminal anthropology, which are the basis for reform. These doctrines are founded upon the researches into history, the study of the individual in the laboratory, and in society, and of social and legal institutions. As a result of this study, in which almost every known science has been applied, we have realized the necessity of working through the channels of legislation and the

courts of justice, in order to remedy certain existing evils, and to this end certain defects are pointed out and substitutions recommended, in accord with modern thought and knowledge. The knowledge of man and society, which forms the present basis of the law's operation should be superseded by the modern enlightened ideas, for the faulty systems of criminal jurisprudence are the greatest detriment in the way of decreasing the amount and causes of crime, and are to a great extent responsible for the increased amount of litigation between the state and the criminal.

In reflecting upon the right of the criminal anthropologists to claim these reforms, which right may be questioned, by reason of the comparatively short time that the science has been in existence, and because of the limited amount of work, it must be remembered that, in America, the work is less strongly organized and has not attained the prominence or commanded the attention that it has in Europe. The workers are for the greater part mere names to most Americans, while in Europe, they are in the closest relation with the people and with the government. The interest there is incessant and does not depend upon reports and occasional congresses, but upon constant research and experiments. By reason of the few translations of reports and publications of the students and investigators in criminal anthropology, there is not the interest and coöperation in America which would otherwise attain. Americans, as a rule, are familiar only with the Italian

school, the study and theories of the sociologists and psychologists being unknown. The "criminal type" is considered here as the pith of the whole science, and its establishment as a fact is regarded as the object of all investigation, whereas it is only one of the most debatable theories, is only inconclusively proven, and is so recognized in Europe. The increased amount of English writing and translation is tending to remove these erroneous, narrow views and thus to establish a less critical and more scientific attitude.

The following is a brief résumé of the conclusions of the criminal anthropologists:-

1. Criminal anthropology renounces entirely the law of retaliation as the end, principle or basis of all judicial punishment.

2. The basis and purpose of punishment is the necessity of protecting society against the consequences of crime, either by moral reclamation of the criminal or by his removal from society. Punishment is not for the purpose of satisfying vengeance.

3. Society should have equal legal rights and privileges, with the criminal, and systems and institutions ~~are~~ should be modified to conform to this view. An absolute equality for each should be maintained.

4. In criminal anthropology, it is not sufficient to study the fact of crime. The criminal must also be considered. It has

become necessary to define the causes which produce crime, to study the sphere of action of the criminal as well as to give attention to measures for the safety of society against his acts. Criminal anthropology does not study him in the abstract and speculate over his guilt and responsibility but it analyzes him according to results of purely scientific investigation, and with the aid of exact methods.

5. In crime, the results of two factors are seen reciprocally reacting: first, the individual peculiarities in the nature of the criminal, or his psycho-physical organization; second, the peculiarities of external influences, such as climate, country, social surroundings, etc.

6. Relying upon exact methods, criminal anthropology reveals the criminal as an organization more or less unfortunate, vicious, impoverished, ill-balanced, defective, and not adapted to struggle with surrounding conditions and, consequently, incapable of maintaining the struggle in legally established ways. This defect of adaptation varies with conditions.

7. The causes of crime are three:- immediate, which arise from the character of the individual; remote which are found in his unfavorable surroundings, under the influence of which organic peculiarities are developed into more or less constant criminal agents; predisposing, which push these ill proportioned and

viciously developed organizations toward crime.[1]

8. Basing crime on scientific grounds, criminal anthropology has for its purpose a fundamental study of the actual criminal and his crimes as ordinary phenomena, which it must investigate throughout their whole extent, from their genesis to their free growth and development; and thus the phenomenon of crime is united with great social questions and legal systems. Based upon these principles, criminal anthropology logically recognizes an absence of reason in the repressive measures determined in advance, as to their duration and specific character. On the contrary, it affirms the necessity of studying individual characteristics before rendering decisions. The terms of punishment should endure so long as the causes exist which necessitate them, but it should cease with the causes.

9. Biological and anthropological studies are indispensable for placing penal legislation upon a solid foundation.

10. The certainty not the severity of punishment operates as a deterrent in crime, prevention being the object of punitive measures.

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[1] In his admirable work upon "Punishment and Reformation" Mr. F. H. Wines, among many other classifications, divides the causes of crime into individual, social and cosmical. In enumerating the causes, he adopts an excellent method by using first those relating to the individual, as physical and mental desires; then broadening into those relating to the family, as education, discipline, etc., following this are those of the community, as poverty, wealth, density of population, employment, rural or urban

Upon theories and conclusions so radically different as those of criminal jurisprudence and criminal anthropology, it is difficult to see a means of reconciliation. The hope lies in the fact that the theories are more diverse than the methods of practical work, since jurists are to some extent recognizing the same evils and recommending similar remedies. In theory, the one system is scientific, the other legal; one considers the individual and his environment, the other considers only the act. One is the result of a comparatively modern study of man and institutions, the other is based upon necessity and relies on the precedent of centuries, and on rules venerable for their antiquity. The one is revolutionary, the other conservative. One is the result of the study of society and individuals and consists largely in theories or propositions, the value of which is unknown, as they are mainly untested, while the other arises from the necessity of protecting society and has already demonstrated its priority and efficiency in the matter of protection.

In nearly all of the reforms suggested and enumerated hereafter, some legislative action has been taken, varying in the different countries, but jurisprudence has made the attempt alone, and not by endorsing the theories of criminal anthropology.

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life, etc.; and from this into the social and political whole, which includes legislation, government, war, etc.

The tendency is, however, for jurists and scientists to unite in the effort for reform and at the Third International Congress of Criminal Anthropology, held at Brussels, one of the distinctive features was the prominent part that jurists took in deliberations and debates.

In dealing with the specific reforms advocated, it has been thought advisable to use the United States as illustrative, because of the increased facility for study, and because the majority of the rules of procedure and laws in force reflect the attitude and progress of other civilized countries. Although there is a greater diversity of law and decisions, owing to the prevailing systems of state government, the purpose is to show the extreme limit to which legislation has gone in advancing the work of criminal anthropologists, and the main obstacles which arise and prevent its further progress. In matters of penology, the United States ranks among the first. It must be remembered that these reforms are not urged, each by itself, but as a part of a system; that while one country may represent a more advanced condition in one reform, as France does in her system of identification of criminals, and England in her provisions for the incarceration of acquitted, although guilty, insane criminals, no one of them has a system founded upon the recent developments in science and upon modern knowledge, or possesses more than a frac-

tion of the proposed system. While the legal attitude in European countries has been obtained, I do not know that any similar results have been secured as to the relation of the legal system of the United States to criminal anthropology.

The principal phases of criminal law and procedure, to which the criminal anthropologists have directed their attention, may be included under two divisions,- those relating to procedure and those relating to law. Under the first may be enumerated discussions of the jury system, expert testimony, evidence of accomplices, incriminating evidence, insanity and allied defenses, burden of proof , and appeal; while the second may comprise discussions of habitual criminal acts, indeterminate sentence, public trial, education and qualification of judges, attorneys and wardens, and carcerial regulations. The criminal anthropologists have not been content merely to recognize existing evils. In submitting these proposed changes, they recognize that when any system has obtained undisputed possession in a country for many years, it has acquired the prescriptive right, and that if any one seeks to alter it,or substitute a new one, the innovator is bound to show not only a probability that the new will succeed and be superior to the old, but that it will save for the government, and require no new expenditure; hence the reforms proposed are not revolutionary. The first discussion is that relating to the jury system:-

By the United States, and by the various state constitutions, it is provided that criminal trials shall be by a jury. which shall consist of twelve citizens, chosen in the district in which the case is to be tried. The verdict must be unaminous, based upon the facts presented in the evidence. The privilege is substantially the same in nearly all of the states. Of the various reforms which have been suggested by thinkers along all lines, that relating to the jury system is best known and has received the strongest criticism. From the point of view of criminal anthropology, the system is not characterized as inherently evil; the criticism applying rather to the degenerate condition, into which it has been permitted to lapse. Legislation, while retaining the old common law form, has changed the practice into one of the most fruitful sources of crime. As it now exists, it is inconsistent with any theory of a scientific legal system. Originally jurors testified and decided the issue upon their own knowledge, and were selected from the vicinage, where the crime was committed, because of their familiarity with the facts of the crime and with its perpetrator. Now the rule is so far changed that such knowledge is a disqualification, and the method of selection has become a financial burden. The following evils have been especially enumerated, and unless remedied the abolishment of the entire system is proposed.

1. The system, as administered, is no longer a trial by a jury of peers and this is due to these causes.(1.)Disqualifications and exemptions of jurors by statute. (2).Excuses by the court. (3).Failure in performance of duty by those who make up the lists, determine the qualifications, and deposit the ballots. (4).The public and political apathy of the best elements of the community. (5).The impotency of the oath from the decay of religious belief. As an illustration of the exemptions from jury service may be cited the New York law, where the statute provides for the exemption of fifteen classes of persons. A more serious direct cause is the abuse of the power of the court in granting excuses to prominent citizens, and the collusion of those who prepare the lists and those who wish to escape service.

2. The method does not subserve the interests of justice, by reason of delay and heavy financial burden.

3. The rules relating to qualification of jurors are such as to render the most intelligent, trained and thoughtful men ineligible to sit.

4. The unanimity vote, which is almost universally required, is detrimental to the conviction of criminals. The ratio of convictions to commissions of crime is already too inadequate for the protection of society.

5. The jury is incapable of dealing with criminal trials con-

ducted upon a scientific legal basis. All questions of medical jurisprudence or psychiatry should be tried before a technical body of men and they should be authorized not simply to make suggestions and render opinions but give a real decision or final judgment. The right of a judge to demand the decision of science, and also to possess the right and power to disregard such decision is a manifest contradiction.

6. The system has developed a large class of so-called professional jurors, who are a source of much evil.

The criminal anthropologist believes that in modern times the common sense of the country men of early English history, is not capable of grasping and deciding the numerous and intricate questions discussed in criminal as well as civil actions. If a jury is deemed incapable of dealing with the complex questions of admiralty law and has never been called therein, how much more reasonably does the objection apply to criminal trials. It is not an exploded theory, or obsolete fact that criminal lawyers appeal more to the sympathy of man to the reason of jurors. Sentimentality and sympathy have too long controlled ~~the~~ in courts of justice, in charitological and penal institutions and in the general treatment of defective and delinquent classes. Society is as seriously handicapped by the attitude today as was the criminal by the rigorous system, characteristic of early Eng-

lish and Roman law. Absolute justice may seem less humane in individual instances but the resultant to society is incalculable.

The question of expert testimony is of equal consideration with the jury system. The rule relating to it is almost uniform, i.e. that when in the discretion of the court, it is a proper case for expert testimony, either party may call properly qualified persons, who shall give their opinion, which is generally based upon hypothetical questions arising out of the evidence in the case.

In its relation to criminal cases, the testimony of such experts is so imperfectly secured, as in many cases to negative its value, and in others to reduce the value to a minimum. Where expert testimony is introduced by persons selected by the opposing counsel the result necessarily is a flat contradiction, as each selects only those favorable to his own cause. Where evidence is secured in this manner, a high degree of discrimination is required, which the average juror does not possess.

It is proposed that there shall be a board of examiners which shall be permanent or selected by the court and which shall not be attached to either party, or remunerated by them. In the United States, the jurists are the greatest opponents of the movement that the legislation should provide for the creation of these boards, and should consider all other expert testimony as

opinion evidence, and no exception to the rules governing the latter. It is also proposed that the opinions of this board be not based upon hypothetical questions, but that its members should have a personal knowledge of the criminal and of all matters connected with the crime.

In 1894, the Medical Society of the County of New York, appointed a committee to consider the matter. They recommended a law providing for the appointment of a commission of experts by the courts. They suggested that the attorneys should agree to the commission, and that all members of it should have equal facilities for examining the accused, without interference by attorneys and that no member should make an examination, except in the presence of the other members. No action has resulted from this recommendation. Similar movements have been made by Medical Associations in other states but with no better success.

The recent case of The People v. Fleming serves as an excellent illustration of the present difficulties attending expert testimony and in commenting upon the case, the Medico-Legal Journal says:- "Rarely, if ever, have the defects of expert testimony been presented so unmistakably, as in this case. A fair estimate of the cost to the defense and the prosecution separately for the expert evidence introduced is $12,000. These eminent and high priced scientists contradicted each other directly and

explicitly, as they always do. These witnesses are not witnesses at all, as they are not called to establish truths but to support theories, the acceptance of which makes for conviction or acquittal. They are chosen with that end in view and with an eye to nothing save the skill with which they can protect themselves and their contentions in cross-examinations. They are not necessarily dishonest and some of them are men of high character. But they become, under the existing system, simply a part of the array of of counsel on either side. Every one of them would consider it a disloyalty to omit a scintilla of evidence, tending in the least to combat or even confuse the contention for the maintenance of which he is retained. This is a sorry hand-maidenship of science to justice. It disgraces both."

In France, in homicide cases, a medical expert is appointed to serve from the time the crime is committed, and is a close observer from that stage until the end of the trial. It is in the discretion of the judge whether other experts shall be admitted. In New York and a few of the other states, it is provided that where [the plea is guilty and] insanity is alleged, one can be adjudged insane and committed without standing trial, [but this only operates where the plea of guilty is entered]

It is a rule of practice, and, in some states it is provided by statute, that a prosecuting attorney can accept the

evidence of an accomplice, and in return grant him immunity from the punishment for his participation in the crime. This is a survival of the early common law rule of approvement, where one indicted for a capital offense might confess the fact in order to obtain pardon, and was termed an accuser. The person accused was tried and if convicted a pardon was granted the accuser; but if the accused were not convicted, the accuser was executed. The practice in the United States is that the testimony shall not be used to convict the accomplice, although the accused is not convicted.

If the object of punishment is protection to the state, it is not quite clear what the gain is when one avowed criminal is turned loose in order that another may be convicted. Not infrequently the greater criminal is released, (Lindsey v. People. 63 N.Y.143) although some of the states have sought to avoid this result (State v. Ray,1 Gr.La.316). It seems anomalous that to procure the chance for the conviction of one who the law assumes innocent, another whose guilt is unquestioned, is pardoned, and this lest the tender sensibilities of the criminal be wounded by a personal examination, as is permitted in France. A conviction may be had on the uncorroborated testimony of an accomplice, but this is not the general rule in the United States.(1Gr.316). It exists in the United States as a rule of practice, rather than as a law. In 9 Cowen 707, the rule is stated that the least guilty

morally and least hardened is selected for state's evidence, and it should appear probable that his testimony will secure a conviction, which, without it, would have been impossible. This is, however, more theoretical than practical. In nearly all states this method is permissable and its faults are obvious. It is inevitable that one criminal must escape, and it is a reflection upon the ability of the law that it must secure punishment with the aid of an accomplice.

Closely related with this rule is that which provides that a witness is not compelled to incriminate himself, and need not give evidence if he is a party defendant. This is also a modified survival of the earlier English common law. One advance may be said to have been made, in that if a criminal elects to give evidence he subjects himself to all the hardships as well as to all the privileges granted to other witnesses, although he cannot be examined as to matters in regard to which he has not testified. (People v. O'Brien, 66 Cal.602; State v.Chamberlain, 80 Mo.129). With one exception (Com.v.Cleaves, 59 Me.298) no inference can be drawn from the silence of the accused. (People v.Tyler, 36 Cal.522;Price v.Com., 77 Va.393). The rule in some jurisdictions has been so extended that the prisoner need not give evidence which tends merely to disgrace him, and is himself the judge as to whether the testimony will incriminate him. In Austria

and France, prisoners are interrogated with good success, on the theory that no criminal should be allowed to menace society through his liberty, and that all efforts to prevent this are just. It is true an interrogated criminal will not often answer truthfully, but it would be much more difficult for him to establish his innocence, were he not to be given the benefit of his silence. Science has no patience with the safeguards thrown about the criminal and believes if he is guilty, it is just that he should not be protected. If he is innocent, his testimony will tend to prove him so. In justice to the state, his silence should be construed against him.

So long as the tendency is to grant greater immunity to the criminal, a decrease in crime is impossible. The certainty or reasonable assurance of not being convicted is one of the strongest incentives to crime, and judging from the present ratio of the convictions to the crimes committed, and the number of recidivists, the risk seems well worth assuming.

With the technicalities of legal insanity, involving the numerous questions of degrees, proof, elements constituting insanity, etc., criminal anthropologists have made no leading suggestions, although the inadequacy is recognized. The question whether the test of insanity shall be the legal or medical one is not so much considered, as whether one acquitted on the ground

of insanity shall be released. Insanity should be no defense, although it may be an explanation. The insane criminal is as dangerous to society as the sane criminal and being equally incorrigible should be incarcerated. The absolute release of insane criminals has led to an abuse of the plea of insanity, and if crime is to be lessened by the prevention of further acts, and a transmission of defective organisms to descendents, incarceration must be assured. In France, Germany, Belgium, Austria, Hungary and the United States, an insane criminal, when acquitted on the ground of insanity, is withdrawn from all judicial control; but in Denmark, Russia, Spain, Holland and England, the judiciary is empowered to order seclusion in an ordinary or criminal asylum, or to keep the person under police surveillance. Italy, also, by her penal code of 1889 (Art.46), gives a similar authority to her judges. Ferri, the Italian jurist, has proposed that the following classes be sent to these asylums: Prisoners acquitted upon the ground of insanity or sentenced for a fixed period on preliminary inquiry; convicts who become insane during the expiration of their sentences; insane persons committing a crime in ordinary asylums; and persons under observation for weak intellect, who have been once on trial.

As a result of the Barberi trial, concluded in New York in 1900, a bill has been introduced, providing for the imprison-

ment of guilty, but acquitted insane and this should apply to any defense which questions mental responsibility. From society's point of view, it cannot make the slightest difference whether the criminal is sane or insane, for in either case he is equally dangerous.

Kleptomania and intoxication are defenses which are demanding much thought, and legislation relative to them is being urged. In some few jurisdictions, the former is admitted as a defense, while the latter is not so held although it may mitigate the punishment.

In criminal trials, the burden is upon the state, to show that the accused is guilty, and there is thus a presumption of innocence. In justice to the state, no presumption should exist as it is as equitable to require one to exculpate himself as to require the state to inculpate him. The whole legal tendency of criminal anthropology is to place the state and the accused upon an equality. The rule, as existing, makes conviction more difficult, by reason of the additional and unnecessary burden upon the state. For this reason, it has been suggested that the verdict of "not proven" be restored in cases where the accused was not free from guilt, although not convicted. It is urged also upon the ground that it would avoid the tendency upon the part of jurors to compromise in favor of guilt and lighten the punishment

A Committee of the American Bar Association, at the annual meeting of 1890, to whom this suggestion was referred, reported unfavorably, and this is the only effort thus far made for its restoration.

The question of appeal is, perhaps, the strongest illustration of the inequality of the administration of justice, as applied to the state and to the criminal. An appeal now exists, a decision against the state is final, unless there be some error in the indictment, or the court has not jurisdiction. There are no other universal grounds common to both state and accused, although there are many technicalities upon which a criminal can secure an appeal.

It is argued first, that the system of appeal is too elaborate and that one fair trial and one appeal satisfies justice, and much litigation would thereby be avoided. The same ground upon which an appeal is granted the accused should be extended to the state. Because one court acquits, it does not establish the innocence of the accused, especially when the appeal is granted upon a legal technicality, and deals only remotely with the question of guilt and innocence.

In the United States, the tendency is in favor of the equality rule, and a greater liberty is being granted the state. However, the common law rule, in all its rigor, remains in force

in many of the states. The law that a person shall not be placed twice in jeopardy for the same offense, has been sought to be made a barrier to appeal by the state, but unsuccessfully. This jeopardy is held to begin when the jury is impanelled and sworn to try the case. (State v.Bowman, 62 Northwestern 750). In the case of the State v.Lee, 30 Atl.1110, which arose under the Connecticut statute #1637, in which it was provided that a case may be taken from the superior to the supreme court, with permission of the presiding judge, on all questions of law, in the same manner by the state, as by the accused, the extent of equal appeal has been reached. The alleged error in the case was the exclusion of certain evidence offered by the state and it was held that an appeal on this ground, and a reversal for a new trial did not violate the provision relating to former jeopardy. Other cases holding advanced decisions are People v.Damon, 13 Wend.351, for misconduct of jurors; State v.Reed, 26 Conn.203. The reason for the proposed change is that, if an individual has a right to claim that he shall not be condemned through the mistake or ignorance of his judges, the state also has the right to demand that those whose acquittal is equally the result of mistake or ignorance, shall not be allowed to go free. The justice of a sentence rests equally upon a just condemnation or a just acquittal. The extreme rules of former jeopardy, incriminating evidence, public trial

and many others, which grew out of the severity of early common law, are now only a menace to society, and the law governing appeals may also be said to be such. From an economic point of view it is better that one innocent man should be punished than that ten guilty should be liberated, although the sentiments of humanity generally refuse to accept this converse of the ordinary rule.

The accused has a constitutional right to a speedy and public trial. The requirement of this public trial is for the benefit of the accused, that the public may see him not unjustly condemned, and that the presence of spectators may keep his triers alive to their responsibility. This requirement is fairly observed if, without partiality, a reasonable portion of the public is suffered to attend (Cooley's Constitutional Limitations, p.379). Criminal anthropologists demand a greater restriction in public trials and executions, upon the theory of criminal contagion. Public trials, together with the newspapers, form an important means of extending this criminal contagion. Any knowledge tending to lower the moral standard of the community does not make the latter more criminal, but does lessen its resistance to criminal influences. This may be illustrated by the many well known epidemics of crime, which show so admirably humanity's power of imitation, and its susceptibility to contagion.

In the United States, so firm is the belief in this

relic of mediaeval barbaric practice, that it is incorporated in nearly if not all state constitutions. There is a discretion vested in the judges, but they have been reluctant to exercise the discretion, possibly because it is not unlimited and has often furnished a ground for reversal (People v.Hartman, 37 Pac.153; Williamson v.Lacey, 99 Atl. 943). Cases illustrating a liberal construction of the rule are Grimmette v.State, 22 Tex.Ap,30, in which exclusion was held not to be a violation of right, wherever it was necessary to support public morals and protect witnesses: (People v.Swafford, 65 Cal.223) where all were excluded except those connected with the case.

Public executions are also a source of the perpetuation rather than of the prevention of crime; and it has been demonstrated that the publicity does not operate as a deterrent, as was at one time so firmly believed.

We now pass to a consideration of those questions which are more distinctly matters of law, and shall first consider habitual criminal acts.

The greater number of criminals are known to be recidivists; and it is from this class that the greater number of dangerous criminals is recruited. To prevent this growth of crime, special legislation is advocated for habitual offenders. It is the criminal in connection with the crime which should be judged;

and the theory is that for each additional commission of felony, there should be an increase of punishment, and that after the third sequestration, imprisonment should be indefinite, pending the decision of certain designated officials. By this change, a decrease of crime is anticipated in two lines - by cutting short a probable career of crime, and by preventing the birth of a race of paupers or criminals. In connection with the latter, may be noted the statute passed by Connecticut in 1895, which provides that no man and woman either of whom is epileptic, imbecile or feeble minded, shall intermarry while the woman is under forty-five years of age, the penalty being imprisonment for three years. The object is obviously to prevent an increase of defective organisms. In France and England, some legislation has been obtained, and also in the United States, but it cannot be said that the test made has been a fair one. The majority of the states still maintain the maximum and minimum penalties, while the discretion of the judge is permitted to run the gamut between them. The States having passed habitual criminal acts are California, (Penal Code #667); Virginia, (Penal Code p.752); Massachusetts, (Stat. 1887, ch.435, #1); Missouri; Illinois, (Rev.S. 1895;#400) Maine, (Rev.S. ch.135; #2); Ohio and Connecticut. While there is some variance in these statutes, all of them substantially provide that after the commission of two or more felonies, there

shall be imprisonment for fifteen years and upwards,and that the prison officials or board of pardons shall have power to release on parol or without condition. These statutes have been subjected to various attacks. It has been sought to hold them unconstitutional on the ground of constituting second jeopardy (People v. Stanley, 87 Cal. 113); that they violate the provision that the penalty shall be proportionate to the offense,(Kelley v. People, 115 Ill. 583); and that they are cruel and unusual punishments, (Sturtevant v.Com. 33 N.E. 648). In each instance the statute has been sustained. It has been held, however, that the previous offenses must have been felonies in themselves and not made so by the statute. (Carson v. State, 19 S.R. 32; Stover v.Com. 22 S.E. 874).

In the application of habitual criminal acts, the mere seriousness of the crime cannot divide the categories of criminals, and the division into born and occasional criminals has been suggested. Born criminals are those who have a tendency to commit crime through heredity or disease, and who inevitably will become recidivists. The occasional criminals are those having no inborn or active tendency to commit crime, but who lapse into it through temptation afforded by personal condition and by physical and social environment, but who do not relapse when these disappear, The second class is more capable of reform, but may become

recidivists.

Closely allied and indispensable to the success of habitual criminal acts, is that of indeterminate sentence. Both of these measures were advocated before criminal anthropology approved them. The Swiss Prison Reform Association first advocated the indefinite segregation of habitual offenders, in 1867. In the United States, by the indeterminate sentence, the maximum penalty is retained but the minimum penalty is removed, the discretion as to time of release being vested in those in control of the institution to which the offender is sent. The reformation of the delinquent, or at least his resignation, to social laws, and respect for them, is the essence of the theory of conditional liberation. As one can count to a certain extent upon the vitality of the criminal instinct and upon the persistence of the social conditions which nourish it, it is necessary to prepare for a prolonged incarceration, which may be regarded as the result of incurability on the part of the criminal. The idea is the proportion of the length of the imprisonment to the nature of the delinquent, to the degree of his perversity and to the danger of his return to society before his evil tendencies are enfeebled or neutralized. This would enable errors in judgment to be more easily corrected and would protect society from having thrust upon it at the end of a definite time individuals who are unfitted for

return. New York, Massachusetts, Ohio, Pennsylvania, Kansas, Maine, Louisiana and Illinois have passed these acts and conditional liberation is provided for; but in no state has the maximum penalty been removed, as is suggested. In consequence, the criminal, if his offense be not serious enough, may return to society regardless of his unfitness, at the expiration of his sentence. The United States, with the Elmira Reformatory[1] as its most noted exponent, leads in this reform, and has ably demonstrated its possibility. No uniform system exists in any country.

In order that the indeterminate sentence plan shall be successful, there must be a reorganization of the prison staff, since its efficiency depends largely upon the capability of these individuals who shall have control of the prisoners and shall determine when they are fitted to return. These officials must be removed from the sphere of political influence, and training and qualification made the basis for their appointment. In Italy, France and Belgium, special training schools for prison attendants have been established.

Again, habitual criminal acts or indeterminate sentence can never operate successfully without a better system of identification than exists in the United States and most of the European countries. The prevailing system of photography has been

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[1] See New York State Reformatory in Elmira: A.Winter.

proved inadequate and the Bertillon system in use in France is recommended as a substitute. Illinois, in connection with its indeterminate sentence act, authorized the adoption of the Bertillon or a similar system and to some extent the former has been adopted. The principle and method of this system may be outlined as follows:-

The method is essentially an anthropometric one, and its discovery and use as a system of identification is due to Dr. Adolph Bertillon, a professor in the French school of anthropology. Through his son, who is chief of the judicial identification service of France, and through M.Herbette, chief of the penitentiary system, this method has attained its present efficiency and extension throughout France. It consists of a series of measurements of the osseous system, on the theory that after maturity, there is no change in this part of the body, and that no wile or trick can alter the measurements, as in photography. This series includes height, sitting height, maximum length and breadth of head, length of arms extended, length of middle finger of left hand, and of left foot, and of right ear. All these are taken by the metric system. To these measurements there is added a complete observation of the eyes, based upon the intensity of the pigmentation of the iris, an exact location of all marks and scars,

which may be upon the body, and a description of all deformities. The measurements are recorded upon cards and classified in such a manner that the individual falls into a subdivision of not more than twenty cards. The classification is made according to the large, medium and small measurements, of the head, arms, finger, foot, etc.,The card upon which this is recorded is filed much after the method used at the National Museum and a desired measurement, if recorded, can be found in from ten to five minutes, When a criminal is arrested, his measurements are taken, and a search made for a duplicate, which can readily be found, if he is a recidivist. If not, it is recorded as a first offender. About one hundred measurements are taken daily. This method is supplemented by photographs, one a full, the other a profile view, of each person, and these are arranged on the reverse of the card containing the anatomic descriptions. The errors attending the system are comparatively few. For an accurate, detailed account, McClaughry's translation of the "Bertillon System of Identification" is the most authentic.[9] In the matter of the education of jurists, judges, and attorneys, criminal anthropologists believe that one of the greatest barriers to reform is the present antagonism between jurisprudence and science, particularly medical science. This condition is more nearly true of the United States than of any European country. To obviate this antagonism there is needed a more extended and systematic study of medical jurispru-

dence and sociology by criminal lawyers, and the separation of criminal and civil courts. Moreover the knowledge and training of a criminal judge should not be the same as that of a civil judge. It is obvious that the same studies which qualify one for a civil judge do not necessarily qualify one for a criminal judge. The learned jurists in civil law are, in fact, accustomed by their studies, to abstractions of humanity, and look solely to judicial bearings, being ignorant of science and thus not fitted to judge human nature. With the American tendency to consolidate courts, it is seemingly an impossibility to apprehend such a division. It is also advocated that professors and students of law should have a clinical study of criminals, and efforts are being made to introduce these studies. Both the legal and medical fraternities endorse these propositions.

Carcerial regulations and methods have an interest in this study of law and criminal anthropology because the success of a scientific system of jurisprudence depends largely upon these methods. If repression and prevention of crime are the objects of punishment, carcerial regulations become of the utmost importance, and are also dependent upon legislation for their removal or continuance. The most prominent existing regulations noted as retrogressive are

1. Legislation restricting or prohibiting labor. This limits

the opportunity for becoming proficient in trades; tends to decrease the adaptability of the prisoner to society, and prevents his procuring an honest livelihood upon his release. The prison containing an excellent labor and self-disciplining system is primarily of assistance in decreasing crime. In the United States, in the majority of institutions, labor and the learning of a trade is compulsory, and provision is made for it. In some states, as New York, for political and economic reasons the legislatures have prohibited the variety and amount of labor which shall be done by convicts. This may reduce the competition with outside establishments and manufactories, but the ultimate gain to the state or society is not quite so clear.

2. The indiscriminate incarceration, in prisons and jails, of youthful and old offenders. This is a well recognized source of criminal contagion, and is a reform advocated early in the beginning of the present century. This indiscriminate association of criminals has laid the foundation for the assertion that these institutions are "schools of crime" and are the "most potent agents in producing experienced and educated criminals". In the United States, a division of sexes is made, but beyond this little thought has been given to the subject by legislators. France has the most complete system in this respect, although many faults remain. It includes five classes of prisons - those for criminals

with long sentences, those for criminals having short sentences, correctional establishments, lockups, and depots for convicts sentenced to relegation and hard labor. There are committees who classify the habitual criminals and determine the destination of every one arrested and convicted. The rule is rigid that first offenders shall be kept separate. Although but limited conversations are permitted in most institutions, many ingenious methods of conversing exist, and many future crimes are planned, or ideas imbibed which will develop into crimes.

3. The cellular system of imprisonment. This is illustrated by the Eastern penitentiary at Philadelphia, and is much more common in Europe than elsewhere. It is condemned upon the ground of being detrimental to reformation. Instead of fitting a convict to re-enter society, it makes him less independent and develops only a small degree of self-control, an attribute in which he is already abnormally deficient. The absence of association during incarceration is not the wisest method of creating or developing a greater degree of adaptability to society. With this system it is even more necessary that there should be a careful separation of criminals, according to age, nature of crime, and number of convictions.

Outside of the main topics enumerated above, many other questions relating to the judicial system and to legislation are

receiving thought and study, but are not deemed so absolutely essential to a decrease of crime as those mentioned.

The discussion relating to a public defender is almost entirely confined to the legal members of criminal anthropology, and the arguments are legal rather than scientific.

The attitude of district attorneys has received some attention, but may be said to be the result of a condition, rather than a cause needing legislation. It does not appear that justice is best served by the attitude taken by them, as their intense antagonism is not compatible with the basis upon which criminal anthropology founds its system. They are not the simple ministers of justice, but are the attorneys for parties on the record. Their duty should be as much to save the innocent as to convict the guilty; but many of them are imbued with the idea that they must convict at all hazards, notwithstanding the presumption of the law that the prisoner is innocent until proven guilty. In some of the states, the practice of awarding premiums for convictions is authorized. Apart from acknowledging an inherent defect in the legal system, this practice does not produce a greater number of convictions. These abuses by attorneys consist largely in opening the case to the jury, in the argument to the jury, in abuse of the defendant, and serve more often to influence the jury in favor of the accused. The office is one

which is usually filled by election, the number of convictions being often used as an argument for re-election. Under a scientific legal system, a radical change in this respect would be necessary.

The matter of more complete statistics is a question for the United States more than for any European country, and legislation influences it to a great extent. No study of crime can be accurate without accurate and complete statistics, but the statistical methods existing in the different states make this almost impossible. Statistics in the United States are taken as mere matters of record, and not with any view to the purposes of social science. Aside from the national census report, there are no uniform data for comparative purposes.

Before leaving this discussion of the United States, it will be interesting to glance at peculiar conditions which make this country imperatively in need of a better system of jurisprudence. These, and other conditions, render it incomparable with European countries, and constitute obstructions to a uniform system of jurisprudence, not existing elsewhere.

The form of government is perhaps one of the greatest impediments to a uniform system of jurisprudence, and the administration of criminal law forms a strong argument for the centralization of governmental power. Now each state enacts its own laws

and penalties and its own procedure; and as a result all grades of punishment and different methods of procedure exist for the same crime. A serious crime in one state may be only a misdemeanor in another and the range of penalties in one state may often result in a criminal's receiving a maximum penalty for a crime, in one jurisdiction, while in another, under precisely similar conditions only a minimum penalty would be imposed. This discrepancy is often greater in comparing states. This impossibility of uniform law is well illustrated by the law of capital punishment. With the exception of four states, it is the penalty for homicide; in less than half the states it is the penalty for both homicide and treason; in nine states arson and rape are added to the above.[1] The various methods of arrest, identification and of police and judicial systems, only add to the hindrances against unification.

The negro element of population, which presents such a large class of citizens, out of harmony with the advanced civi-

[1] In this connection, it will be gratifying to note the late revision of the Federal law relating to capital punishment. The bill was introduced in Congress, by Gen.N.W.Curtis, and was passed in January, 1897. At the time of its passage, there were sixty offenses punishable by death, in the United States Statutes. By this bill the number is reduced to some half dozen offenses and it is provided that in certain cases a verdict of "guilty but without capital punishment" may be returned. This law is a most important step in the way of securing uniform criminal law and penalties.

lization existing in the greater part of the United States, is responsible for no small degree of criminality, and has given the United States the preëminence which it enjoys as the exponent of lynch law. The number of negro prisoners, it being remembered that convictions are very disproportionate to the number of crimes committed, is entirely out of proportion to its population. In 1890, of the 82,329 convicts, 24,277 were negroes, although the negro population was only 7,470,040 or 11.02 per cent; while the white population with 87.70 per cent only furnished 57,380. The number of executions by lynching was twice as great in 1890, as the number of legal executions. This is a condition which must be considered in the discussion of any better administration of criminal law.

No small portion of criminality is due to immigration, since a comparatively large proportion of criminals are foreign born. No country which receives the convicts and outcasts of other countries can expect a decrease of crime, by an improved system of law, while the influx continues.

The system of electing judges for a short period of time, and the appointment of penitentiary incumbents by political methods are well recognized evils and have been referred to. Immigration, the negro element, and the errors in the political and judicial system are three elements which must be considered in a

study of crime in the United States. The increase of crime, notwithstanding the deficient statistics, is shown by the following table to be worthy of grave consideration.

| Year. | Prisoners in U.S. | Ratio to population. |
|---|---|---|
| 1850 | 6,737 | 1 in 3,442 |
| 1860 | 19,086 | " " 1,617 |
| 1870 | 32,901 | " " 1,171 |
| 1880 | 58,609 | " " 855 |
| 1890 | 82,329 | " " 757 |

It is true an apparent decrease of crime may only mean defective laws and it is not infrequent that the moral progress of a nation is marked by its increase in criminality, but when this rate of increase is compared with that of other countries, it is seen to be unusually large.

From the preceding statement of the lines of reform upon which criminal anthropologists are engaged, it will be seen that the science and the jurisprudence are vitally related and that the sole purpose of the former is to provide a more accurate, logical basis for the latter, to eradicate many of the existing principles and the system of their administration. It will be seen that only a comparatively small number of isolated attempts have been made in the direction of the "new jurisprudence." These isolated attempts are of but little value as most of the reforms

are closely related or develop out of each other, and if given a fair test it should be as part of a system. This can be well illustrated by the operation of the habitual criminal act in Massachusetts. There is no accurate method of identification and most of the neighboring states have not similar acts and the effect is not to diminish the number of criminals, but to drive them into other jurisdictions after the first conviction for crime.

If there is to be any progress, criminal anthropology and criminal jurisprudence must coöperate, or the one must yield to the other, and while there is much to criticized in the work of the scientists, the judiciary is itself too faulty to be the critic. If the science shall demonstrate that its principles are enduring, its proposed changes sound, and its knowledge not erroneous, it must have a directly beneficial result in its relation to jurisprudence. It remains to be seen whether this will result from coöperation of substitution or whether the precedent of legal systems shall remain unchanged.

Before closing, it may be of interest to note the strength which the new movement has gathered in the brief period of its existence. This can best be done by a reference to the principal organizations which are studying crime scientifically and are thereby assisting in the establishment of a new basis for criminal jurisprudence. If criminal anthropologists were the only

persons devoted to a study of the delinquent and his relation to society, the movement would not have assumed the importance now accredited to it. There are many minor associations engaged in the various lines of study, but only the most important are here referred to, in order to dispel the idea that the study is a fad or has not the attention of the great mass of scientific and legal workers.

First in importance is the International Congress of Criminal Anthropology, which now meets biennially. Four meetings have been held - at Rome, Paris, Brussels, and Geneva. Its members comprise both schools, so that its work is conducted from sociological and psychological, as well as biological, standpoints. Its work consists of papers, discussions and reports upon the various lines of work and investigation which its members pursue in the interim. This association is the great center and impetus of the scientific study of crime and the criminal, and its work extends directly into the countries of France, Germany, Italy, Austria, Russia, the United States and South American republics, and collaterally into many of the minor states. Its members include prominent scientists, jurists, physicians, alienists and professors and the field of investigation is correspondingly broad. The work done is continuous and the Congress may be said to be but the biennial report or correlation of the work.

In 1889, in Brussels, the first meeting of the Criminal Law Association was held. The organization was due to Professor von Liszt of Halle. In 1892, the membership exceeded five hundred persons and included a number of citizens of the United States. This organization was indirectly the result of criminological agitation, and while composed largely of jurists, its fundamental principles embody the following propositions and membership requires adhesion to them:-

1. The mission of penal law is to combat criminality regarded as a social phenomenon.

2. Penal science and penal legislation must therefore take into consideration the results of anthropological and sociological studies.

3. Punishment is one of the most efficacious means which the state can use against crime. It is not the only means and must not be isolated from the other social remedies, nor lead to the neglect of preventive measures.

4. The distinction between accidental (occasional) and habitual criminals is essential in practice as well as in theory and must be the foundation of penal law.

5. Repressive tribunals and prisons have the same end in view; and inasmuch as sentences acquire value only by mode of execution, the separation, consecrated by our modern laws between

court and prison, is irrational and harmful.

6. The length of imprisonment should depend upon the material and the moral gravity of the offense, and upon the results obtained by treatment during imprisonment.

7. So far as incorrigible or habitual criminals are concerned, the association holds that independent of the gravity of the offense, the penal system should aim at placing them for as long as possible under conditions where they can do no injury.

The work of this association is particularly valuable as its members are almost entirely jurists.

The fourth annual meeting of the International Congress of Psychologists, held at Munich in the summer of 1896, is especially notable by reason of its devoting one of its sections to work in pathological psychology. Many prominenet psychologists are interested in this field of psychology and papers relating to the bearing of psychology upon criminal law, heredity and psycho-pathology, criminal suggestion and etc. were read and discussed. The methods of the biological school of criminal anthropology are identical with those of physiological psychology, the same instruments of measurement being used in both. Thus the tendency of psychologists to study the abnormal, in addition to the excellent work being done in the study of the normal is of espec-

ial value in advancing criminal anthropological studies. In many universities the scientific study of crime is being conducted in connection with psychological and sociological courses.

At the last meeting of the International Congress of Demography held in Budapest, in 1894, the study of crime was considered in relation to movements and development of populations. All discussions from a biologic point of view were laid aside, the sociological receiving the attention of the Congress.

The International Prison Association, which held its last congress in Paris, in 1895, is one of the most influential organizations in the development and dissemination of criminal anthropological ideas and aims. This association is of American origin, being due to the efforts of the late Dr.E.C.Wines. Five congresses have been held at London, Stockholm, Rome, St.Petersburg and Paris; and at each of these, criminal law has received no small amount of consideration and discussion. The work of this association is valuable because its members are largely engaged in the practical application of law, and in the direct management of the criminal. Its reports are particularly full and reliable, but are to be found only in French.

In America, among the numerous organizations, may be mentioned some, whose work is especially valuable. The National Prison Association, which meets annually, gives its entire ses-

sions to a consideration of crime, legislation and prison management. The Medico-Legal Society, which is making strenuous efforts to bring medecine and law into a closer harmony, is a strong organization, and by its publications and meetings is doing much to extend the knowledge of criminal anthropology in the United State The American Association of Social Science, in its publications and discussions, has given especial attention to the subject under discussion, and its papers are among the most valuable printed in English. The American Statistical Association has contributed some valuable papers in anthropometry and criminal statistics.

# A P P E N D I X  A.

The following list of measurements is that generally used by criminal anthropologists in the United States and abroad. There is a tendency to extend the psychological measurements and a very complete list of observations is made:

No.

Name,

Date, weather,

Name of observer,

Anthropometrical.

Weight, Lung capacity, height, sitting height,

Strength of lift, of arms, of r.Hand grasp, of l.h.grasp

Total strength,

Max.length of head, max.width of head, cephalic index,

Distance bet.zyg.arches, bet.external edges of orbits,

corners of eyes,

Length of nose, width of nose, height of nose, nasal index

Length of ears:right, left, length of thumbs:right,

left, width of mouth, thickness of lips.

## Psycho-Neural.

Least sensibility to locality: right wrist, left wrist,

" " " heat, : " " " "

" " " pressure: " " " "

" " "electricity:direct current, induced current,

" " " " on tongue: " " " "

" " "pain by electricity:direct current," "

" " " " " pressure:r.temporal muscle, l.temp-

" " " smell: right nostril, left nostril,

" " of muscle sense to weight,

## Sociological.

Nationality of father, grand father,

" " mother, grand mother,

Occupation,

Education,

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Palate, aural assymmetry, cephalic, palpebral,

Fissures, frontals, expression, hand balance, nutritic

Color of hair, eyes, skin, Pigmentation, age, sex.

# A P P E N D I X  B.

The following list of measurements is the beginning of a series to be taken by myself upon normal women, college students being selected as fair types.

The anthropometrical measurements predominate for the object of these measurements is twofold:

To compare with and if possible to disprove the measurements of Lombroso and Madame Tarnowsky, upon which they establish a criminal type.

To compare with the measurements taken by Dr.Hitchcock, Sr., of Amherst.

The series when completed will include not less than two hundred students.

Name,

Date,

Observers,

ANTHROPOMETRIC.

Weight, Lung Capacity, Height, Sitting Height, Strength of lift, of arms, of r.hand grasp, of l.Hand

grasp, Max.length of head, max.width of head,
Cephalic index, Distance bet.zyg.arches, bet.external
edges of orbits, corners of eyes, crown to chin,
Length of nose, width of nose, height of nose, nasal
index,
Length of ears: right, left, length of thumbs: right,
left, width of mouth, thickness of lips,
Observations,

Psycho-Neural.

Least sensibility to locality: right wrist, left wrist,
" " " pain : " " " "
" " " " :r.temporal muscle, l.temporal,
Color discrimination,
Hearing,

Sociologic.

Nationality of father, Grandfather,
" "mother, Grandmother,
Occupation,
Education,
Aural assymmetry, cephalic, palpebral,
Frontals, expression, nutrition, color of hair,
eyes, skin, pigmentation, age, sex,

Observations

# A P P E N D I X  C.

At the fifth annual meeting of the Psychological Association held in Boston, in December, a committee appointed at the fourth annual meeting submitted a report of recommended physical and mental tests for college students, and the general public and for school children, with some modifications in the latter. The following outline of the lists proposed is given, for if carried out they will be of inestimable value for comparative purposes, with those of abnormal individuals.

1. Preliminary data, including birth, birthplace, birthplace of father and mother, occupation; statistics relating to family. The asymmetry of the head and body, color of hair and eyes, complexion, degenerative or other stigmata of head, ears, eyes, hands, feet, posture, gait, manner, and indications of intellectual, emotional and moral characteristics were also to be noted.

2. Physical measurements including height, weight and size of head, breathing capacity, height, sitting.

3. Keenness of vision.

4. Color vision.

5. Keenness of hearing.

6. Perception of pitch.

7. Fineness of touch. (The aesthesiometer is decided unsatisfactory.)

8. Sensitiveness to pain - the points of the body to be operated upon to be agreed upon.

9. Perception of weight, or of force of movement.

10. Dynamometer-pressure of right and left hands.

11. Rate of movement.

12. Fatigue.

13. Will power.

Voluntary attention.

Right and left movements.

Accuracy of aim.

Reaction time for sound.

" " with choice.

Rate of discrimination and movement.

Quickness of distinction and movement.

Perception of size.

" " time.

Memory .

" type.

Apperception test of Ebbinghaus.

Imagery.

These tests were not submitted as permanent, but in the hope that they would all be tried and a good working series selected from the number.