

GENERAL INTRODUCTION TO THE MODERN CRIMINAL SCIENCE SERIES.

AT the National Conference of Criminal Law and Criminology, held in Chicago, at Northwestern University, in June, 1909, the American Institute of Criminal Law and Criminology was organized; and, as a part of its work, the following resolution was passed:

``*Whereas*, it is exceedingly desirable that important treatises on criminology in foreign languages be made readily accessible in the English language, *Resolved*, that the president appoint a committee of five with power to select such treatises as in their judgment should be translated, and to arrange for their publication."

The Committee appointed under this Resolution has made careful investigation of the literature of the subject, and has consulted by frequent correspondence. It has selected several works from among the mass of material. It has arranged with publisher, with authors, and with translators, for the immediate undertaking and rapid progress of the task. It realizes the necessity of educating the professions and the public by the wide diffusion of information on this subject. It desires here to explain the considerations which have moved it in seeking to select the treatises best adapted to the purpose.

For the community at large, it is important to recognize that criminal science is a larger thing than criminal law. The legal profession in particular has a duty to familiarize itself with the principles of that science, as the sole means for intelligent and systematic improvement of the criminal law.

Two centuries ago, while modern medical science was still young,

medical practitioners proceeded upon two general assumptions: one as to the cause of disease, the other as to its treatment. As to the cause of disease,—disease was sent by the inscrutable will of God. No man could fathom that will, nor its arbitrary operation. As to the treatment of disease, there were believed to be a few remedial agents of universal efficacy. Calomel and bloodletting, for example, were two of the principal ones. A larger or <p vi> smaller dose of calomel, a greater or less quantity of bloodletting,—this blindly indiscriminate mode of treatment was regarded as orthodox for all common varieties of ailment. And so his calomel pill and his bloodletting lances were carried everywhere with him by the doctor.

Nowadays, all this is past, in medical science. As to the causes of disease, we know that they are facts of nature,—various, but distinguishable by diagnosis and research, and more or less capable of prevention or control or counter-action. As to the treatment, we now know that there are various specific modes of treatment for specific causes or symptoms, and that the treatment must be adapted to the cause. In short, the individualization of disease, in cause and in treatment, is the dominant truth of modern medical science.

The same truth is now known about crime; but the understanding and the application of it are just opening upon us. The old and still dominant thought is, as to cause, that a crime is caused by the inscrutable moral free will of the human being, doing or not doing the crime, just as it pleases; absolutely free in advance, at any moment of time, to choose or not to choose the criminal act, and therefore in itself the sole and ultimate cause of crime. As to treatment, there still are just two traditional measures, used in varying doses for all kinds of crime and all kinds of persons,— jail, or a fine (for death is now employed in rare cases only). But modern science, here as in medicine, recognizes that crime also (like disease) has natural causes. It need not be asserted for one

moment that crime is a disease. But it does have natural causes,—that is, circumstances which work to produce it in a given case. And as to treatment, modern science recognizes that penal or remedial treatment cannot possibly be indiscriminate and machine-like, but must be adapted to the causes, and to the man as affected by those causes. Common sense and logic alike require, inevitably, that the moment we predicate a specific cause for an undesirable effect, the remedial treatment must be specifically adapted to that cause.

Thus the great truth of the present and the future, for criminal science, is the individualization of penal treatment,—for that man, and for the cause of that man's crime.

Now this truth opens up a vast field for re-examination. It means that we must study all the possible data that can be causes of crime,—the man's heredity, the man's physical and moral <p vii> make-up, his emotional temperament, the surroundings of his youth, his present home, and other conditions,—all the influencing circumstances. And it means that the effect of different methods of treatment, old or new, for different kinds of men and of causes, must be studied, experimented, and compared. Only in this way can accurate knowledge be reached, and new efficient measures be adopted.

All this has been going on in Europe for forty years past, and in limited fields in this country. All the branches of science that can help have been working,—anthropology, medicine, psychology, economics, sociology, philanthropy, penology. The law alone has abstained. The science of law is the one to be served by all this. But the public in general and the legal profession in particular have remained either ignorant of the entire subject or indifferent to the entire scientific movement. And this ignorance or indifference has blocked the way to progress in administration.

The Institute therefore takes upon itself, as one of its aims, to inculcate the study of modern criminal science, as a pressing duty for the legal profession and for the thoughtful community at large. One of its principal modes of stimulating and aiding this study is to make available in the English language the most useful treatises now extant in the Continental languages. Our country has started late. There is much to catch up with, in the results reached elsewhere. We shall, to be sure, profit by the long period of argument and theorizing and experimentation which European thinkers and workers have passed through. But to reap that profit, the results of their experience must be made accessible in the English language.

The effort, in selecting this series of translations, has been to choose those works which best represent the various schools of thought in criminal science, the general results reached, the points of contact or of controversy, and the contrasts of method—having always in view that class of works which have a more than local value and could best be serviceable to criminal science in our country. As the science has various aspects and emphases—the anthropological, psychological, sociological, legal, statistical, economic, pathological—due regard was paid, in the selection, to a representation of all these aspects. And as the several Continental countries have contributed in different ways to these various aspects,—France, Germany, Italy, most abundantly, but the others each its share,— the effort was made also to recognize the different contributions as far as feasible. <p viii>

The selection made by the Committee, then, represents its judgment of the works that are most useful and most instructive for the purpose of translation. It is its conviction that this Series, when completed, will furnish the American student of criminal science a systematic and sufficient acquaintance with the controlling doctrines and methods that now hold the stage of thought in Continental Europe. Which of the various principles and methods

will prove best adapted to help our problems can only be told after our students and workers have tested them in our own experience. But it is certain that we must first acquaint ourselves with these results of a generation of European thought.

In closing, the Committee thinks it desirable to refer the members of the Institute, for purposes of further investigation of the literature, to the "Preliminary Bibliography of Modern Criminal Law and Criminology" (Bulletin No. 1 of the Gary Library of Law of Northwestern University), already issued to members of the Conference. The Committee believes that some of the Anglo-American works listed therein will be found useful.

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INTRODUCTION TO THE ENGLISH VERSION.

WHAT Professor Gross presents in this volume is nothing less than an applied psychology of the judicial processes,—a critical survey of the procedures incident to the administration of justice with due recognition of their intrinsically psychological character, and yet with the insight conferred by a responsible experience with a working system. There is nothing more significant in the history of institutions than their tendency to get in the way of the very purposes which they were devised to meet. The adoration of measures seems to be an ineradicable human trait. Prophets and reformers ever insist upon the values of ideals and ends—the spiritual meanings of things—while the people as naturally drift to the worship of cults and ceremonies, and thus secure the more superficial while losing the deeper satisfactions of a duty performed. So restraining is the formal rigidity of primitive cultures that the mind of man hardly moves within their enforced orbits. In complex societies the conservatism, which is at once profitably conservative and needlessly obstructing, assumes a more intricate, a more evasive, and a more engaging form. In an age for which machinery has accomplished such heroic service, the dependence upon mechanical devices acquires quite unprecedented dimensions. It is compatible with, if not provocative of, a mental indolence,—an attention to details sufficient to operate the machinery, but a disinclination to think about the principles of the ends of its operation. There is no set of human relations that exhibits more distinctively the issues of these undesirable tendencies than those which the process of law adjusts. We have lost utterly the older sense of a hallowed fealty towards man-made law; we are not suffering from the inflexibility of the Medes and the Persians. We manufacture laws as readily as we do steam-rollers and change their patterns to suit the roads we have to build. But with the profit of our adaptability we are in danger of losing the underlying sense of purpose that inspires and continues to justify measures, and to lose also a certain intimate intercourse

with problems of theory and philosophy which is one of the requisites of a professional equipment <p x> and one nowhere better appreciated than in countries loyal to Teutonic ideals of culture. The present volume bears the promise of performing a notable service for English readers by rendering accessible an admirable review of the data and principles germane to the practices of justice as related to their intimate conditioning in the psychological traits of men.

The significant fact in regard to the procedures of justice is that they are of men, by men, and for men. Any attempt to eliminate unduly the human element, or to esteem a system apart from its adaptation to the psychology of human traits as they serve the ends of justice, is likely to result in a machine-made justice and a mechanical administration. As a means of furthering the plasticity of the law, of infusing it with a large human vitality—a movement of large scope in which religion and ethics, economics and sociology are worthily cooperating—the psychology of the party of the first part and the party of the second part may well be considered. The psychology of the judge enters into the consideration as influentially as the psychology of the offender. The many-sidedness of the problems thus unified in a common application is worthy of emphasis. There is the problem of evidence: the ability of a witness to observe and recount an incident, and the distortions to which such report is liable through errors of sense, confusion of inference with observation, weakness of judgment, prepossession, emotional interest, excitement, or an abnormal mental condition. It is the author's view that the judge should understand these relations not merely in their narrower practical bearings, but in their larger and more theoretical aspects which the study of psychology as a comprehensive science sets forth. There is the allied problem of testimony and belief, which concerns the peculiarly judicial qualities. To ease the step from ideas to their expression, to estimate motive and intention, to know and appraise at their proper value the logical weaknesses and

personal foibles of all kinds and conditions of offenders and witnesses,—to do this in accord with high standards, requires that men as well as evidence shall be judged. Allied to this problem which appeals to a large range of psychological doctrine, there is yet another which appeals to a yet larger and more intricate range,—that of human character and condition. Crimes are such complex issues as to demand the systematic diagnosis of the criminal. Heredity and environment, associations and standards, initiative and suggestibility, may all be condoning as well as aggravating factors of what becomes a "case." The peculiar temptations of distinctive periods of life, the perplexing intrusion of subtle abnormalities, particularly when of a sexual type, have brought it about that the psychologist has extended his laboratory procedures to include the study of such deviation; and thus a common set of findings have an equally pertinent though a different interest for the theoretical student of relations and the practitioner. There are, as well, certain special psychological conditions that may color and quite transform the interpretation of a situation or a bit of testimony. To distinguish between hysterical deception and lying, between a superstitious believer in the reality of an experience and the victim of an actual hallucination, to detect whether a condition of emotional excitement or despair is a cause or an effect, is no less a psychological problem than the more popularly discussed question of compelling confession of guilt by the analysis of laboratory reactions. It may well be that judges and lawyers and men of science will continue to differ in their estimate of the aid which may come to the practical pursuits from a knowledge of the relations as the psychologist presents them in a non-technical, but yet systematic analysis. Professor Gross believes thoroughly in its importance; and those who read his book will arrive at a clearer view of the methods and issues that give character to this notable chapter in applied psychology.

The author of the volume is a distinguished representative of the modern scientific study of criminology, or "criminalistic" as he

prefers to call it. He was born December 26th, 1847, in Graz (Steiermark), Austria, pursued his university studies at Vienna and Graz, and qualified for the law in 1869. He served as "Untersuchungsrichter" (examining magistrate) and in other capacities, and received his first academic appointment as professor of criminal law at the University of Czernowitz. He was later attached to the German University at Prague, and is now professor in the University of Graz. He is the author of a considerable range of volumes bearing on the administration of criminal law and upon the theoretical foundations of the science of criminology. In 1898 he issued his "Handbuch für Untersuchungsrichter, als System der Kriminalistik," a work that reached its fifth edition in 1908, and has been translated into eight foreign languages. From 1898 on he has been the editor of the "Archiv für Kriminalanthropologie und Kriminalistik," of which about twenty volumes have appeared. He is a frequent contributor to this journal, which is an admirable representative of an efficient technical aid to the dissemination of interest in an important and difficult field. It is also worthy of mention that at the University of Graz he has established a Museum of Criminology, and that his son, Otto Gross, is well known as a specialist in nervous and mental disorders and as a contributor to the psychological aspects of his specialty. The volume here presented was issued in 1897; the translation is from the second and enlarged edition of 1905. The volume may be accepted as an authoritative exposition of a leader in his "Fach," and is the more acceptable for purposes of translation, in that the wide interests of the writer and his sympathetic handling of his material impart an unusually readable quality to his pages. JOSEPH JASTROW. MADISON, WISCONSIN, DECEMBER, 1910.

AUTHOR'S PREFACE TO THE AMERICAN EDITION.

THE present work was the first really objective Criminal Psychology which dealt with the mental states of judges, experts, jury, witnesses, etc., as well as with the mental states of criminals. And a study of the former is just as needful as a study of the latter. The need has fortunately since been recognized and several studies of special topics treated in this book—e. g. depositions of witnesses, perception, the pathoformic lie, superstition, probability, sensory illusions, inference, sexual differences, etc.—have become the subjects of a considerable literature, referred to in our second edition.

I agreed with much pleasure to the proposition of the American Institute of Criminal Law and Criminology to have the book translated. I am proud of the opportunity to address Americans and Englishmen in their language. We of the German countries recognize the intellectual achievements of America and are well aware how much Americans can teach us.

I can only hope that the translation will justify itself by its usefulness to the legal profession. HANS GROSS.

TRANSLATOR'S NOTE.

THE present version of Gross's *Kriminal Psychologie* differs from the original in the fact that many references not of general psychological or criminological interest or not readily accessible to English readers have been eliminated, and in some instances more accessible ones have been inserted. Prof. Gross's erudition is so stupendous that it reaches far out into texts where no ordinary reader would be able or willing to follow him, and the book suffers no loss from the excision. In other places it was necessary to omit or to condense passages. Wherever this is done attention is called to it in the notes. The chief omission is a portion of the section on dialects. Otherwise the translation is practically literal. Additional bibliography of psychological and criminological works likely to

be generally helpful has been appended.

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CRIMINAL PSYCHOLOGY.

INTRODUCTION.

OF all disciplines necessary to the criminal justice in addition to the knowledge of law, the most important are those derived from psychology. For such sciences teach him to know the type of man it is his business to deal with. Now psychological sciences appear in various forms. There is a native psychology, a keenness of vision given in the march of experience, to a few fortunate persons, who see rightly without having learned the laws which determine the course of events, or without being even conscious of them. Of this native psychological power many men show traces, but very few indeed are possessed of as much as criminalists intrinsically require. In the colleges and pre-professional schools we jurists may acquire a little scientific psychology as a "philosophical propaedeutic," but we all know how insufficient it is and how little of it endures in the business of life. And we had rather not reckon up the number of criminalists who, seeing this insufficiency, pursue serious psychological investigations.

One especial psychological discipline which was apparently created for our sake is the psychology of law, the development of which, in Germany, Volkmar[1] recounts. This science afterward developed, through the instrumentality of Metzger[2] and Platner,[3] as criminal psychology. From the medical point of view especially, Choulant's collection of the latter's, "Quaestiones," is still valuable. Criminal psychology was developed further by

Hoffbauer,[4] Grohmann,[5]

[1] W. Volkmann v. Volkmar: Lehrbuch der Psychologie (2 vols.).
C_othen 1875

[2] J. Metzger: ``Gerichtlich-medizinische Abhandlungen."
K_onigsberg 1803

[3] Ernst Platner: Questiones medicinae forensic, tr. German by
Hederich

[4] J. C. Hoffbauer Die Psychologie in ihren Hauptanwendungen
auf die Rechtspflege. Halle 1823.

[5] G. A. Grohmann: Ideen zu einer physiognomischen
Anthropologie. Leipzig 1791.

<p 2> Heinroth,[1] Sehaumann,[2] M_unch,[3]
Eckartshausen,[4] and others. In Kant's time the subject was a bone
of contention between faculties, Kant representing in the quarrel
the philosophic, Metzger, Hoffbauer, and Fries,[5] the medical
faculties. Later legal psychology was simply absorbed by
psychiatry, and thereby completely subsumed among the medical
disciplines, in spite of the fact that Regnault,[6] still later,
attempted to recover it for philosophy, as is pointed out in
Friedreich's[7] well-known text-book (cf. moreover V.
Wilbrand's[8] text-book). Nowadays, criminal psychology, as
represented by Kraus,[9] Krafft- Ebing,[10] Maudsley,[11]
Holtzendorff,[12] Lombroso,[13] and others has become a branch
of criminal anthropology. It is valued as the doctrine of motives in
crime, or, according to Liszt, as the investigation of the
psychophysical condition of the criminal. It is thus only a part of
the subject indicated by its name.[14] How utterly criminal
psychology has become incorporated in criminal anthropology is
demonstrated by the works of N_acke,[15] Kurella,[16]
Bleuler,[17] Dallemagne,[18] Marro,[19] Ellis,[20] Baer,[21]

Koch,[22] Maschka,[23] Thomson,[24] Ferri,[25] Bonfigli,[26] Corre,[27] etc.

[1] Johann Heinroth: Grundzuge der Kriminalpsychologie. Berlin 1833.

[2] Schaumann: Ideen zu einer Kriminalpsychologie. Halle 1792.

[3] Munch: <U>ber den Einfluss der Kriminalpsychologie auf Pin System der Kriminal-Rechts. Nurnberg 1790.

[4] Eckartshausen. <U>ber die Notwendigkeit psychologiseher Kenntnisse bei Beurteilung von Verbreehern. Munchen, 1791.

[5] J. Fries: Handbuch der psychologischer Anthropologie. Jena, 1820.

[6] E. Regnault: Das gerichtliche Urteil der <A>rzte <u>ber psychologische Zustande. Coln, 1830.

[7] J. B. Friedreich: System der gerichtlichen Psychologie. Regensburg 1832.

[8] Wilbrand: Gerichtliche Psychologie. 1858.

[9] Kraus: Die Psychologie des Verbrechens. Tubingen, 1884.

[10] v. Krafft-Ebing: Die zweifelhaften Geisteszust<a>nde. Erlangen 1873.

[11] Maudsley: Physiology and Pathology of the Mind.

[12] v. Holtzendorff—articles in ``Rechtslexikon."''

[13] Lombroso: L'uomo delinquente, etc.

[14] Asehaffenburg: Articles in Zeitscheift f. d. gesamten

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